2019
DIGEST OF CASE LAWS
DIRECT TAXES

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

(For Private Circulation)
Compiled by Research Team

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All disputes are subject to Mumbai Jurisdiction.

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PREFACE

2019 – Digest of Case Laws on Direct Taxes

We are glad to present **"2019 – Digest of case laws on direct taxes"**. This year's digest is the Ninth year of private publication. The Research team has digested more than 2253 cases, section-wise, which were reported in the year Calendar year 2019 in various reports (CTR, DTR, ITR, Taxman), journals, magazines and www.itatonline.org. The cases are digested in the descending order i.e. Hon'ble Supreme Court, Hon'ble High Courts, Hon'ble Tribunal and Learned Authority for Advance Rulings. More than 100 judgements which were digested are unreported cases. All judgements of the Hon'ble Supreme Court and the Hon'ble High Courts which are reported in, ITR, CTR, DTR and Taxman are digested. All case laws digested in the year 2018 and 2019 are can be visited in the "Digest" of www.itatonline.org, which are up dated from time to time. Readers can search the case laws by subject wise e.g. "Bogus purchase" or by name of the case. Research team is updating the case laws in the digest on regular basis for the benefit of tax professionals.

Research team also made an attempt to write editorial notes in some of the cases where the SLP is granted or rejected by the Supreme Court against the decision of the High Courts.

Important case laws on allied laws and interpretation of taxing statutes are also digested. A separate chapter on reference to Circulars and Articles are arranged section wise and subject wise.

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

Case	Presented in index case laws as:
PCIT v. A. A. Estate Pvt. Ltd	A. A. Estate Pvt. Ltd.; PCIT v. *
ITO v. Ajay Raj	Ajay Raj; ITO v. *
ACIT v. Danda Brahmanandam	Danda Brahmanandam; ACIT v. *
Shilpa Shetty v. ACIT	Shilpa Shetty v. ACIT
UOI v. Shreya Sen	Shreya Sen; UOI v. *

This digest is for private circulation in print form with the objective of facilitating quick reference for professional colleagues who are practicing before appellate forums.

We desire to have your valuable suggestions. Your suggestion may be sent to ksalegal@gmail.com. If any error or mistake is noticed by our readers, they are requested to update us by email which will enable us to make necessary corrections in our

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

For Research and Editorial Teams,

Yours Sincerely,

Dr. K. Shivaram
Senior Advocate

30-6-2020

Abbreviations

Journals, Reports, Magazines and online

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

Online

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

Abbreviations – Authorities

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

Courts

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

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

Tribunal Benches

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

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

Case Laws Index

Section wise Index

Income-tax Act, 1961

S. 2(7A) : Assessing Officer – Jurisdiction – The Addl. CIT as an Assessing Officer – In the absence of notification or an order, the assessment order is without jurisdiction and has to be quashed as null and void – No estoppel against the law – Additional ground of assessee on jurisdictional issue is allowed. [S. 2(28C), 120(4), 127, 254(1)] 1

Allowing the additional grounds raised by the assessee, the Tribunal held that, though, by virtue of the retrospective amendment to S. 2(7A), the Addl. CIT is an Assessing Officer, he can act as such only if there is a notification issued by the CBDT u/s 120(4)(b) or if there is an order u/s. 127 transferring jurisdiction from the DCIT to the Addl. CIT. In the absence of either, the assessment order is without jurisdiction and has to be quashed as null and void. The fact that the assessee co-operated is irrelevant because there is no estoppel. The argument of the Dept that as the order is passed by a higher officer, there is no prejudice to the assessee is not acceptable. The matter also cannot be remanded back. (ITA No.3927/Mum/2017 dt. 16.08.2019)(AY. 2003-04, 2004-05)

Tata Communications Ltd. v. Addl.CIT (Mum.)(Trib.) www.itatonline.org

S. 2(14)(a) : Capital asset – Advance given to subsidiary – Loss – Held to be allowable as short term capital loss. [S. 2(42A), 2(47)] 2

Dismissing the appeal of the revenue the Court held that, advance given to subsidiary which was written off is held to be allowable as short term capital loss. (Arising from ITA No. 3833 /M/21 dt 31-03-2016) (ITA No. 1366 of 2017 dt 26-08-2019) (AY. 2002-03)

CIT v. Siemens Nixdorf Information Systemse Gmbh (2019) BCAJ-October-P. 63 (Bom.)(HC)

S. 2(14)(a) : Capital asset – Capital gains – Land acquisition – Compensation received from land acquisition under National High Ways Act, 1956 is exempt from tax-Matter remanded to the AO to decide the matter after taking in to consideration circulars issued by CBDT. [National High Ways Act, 1956, RFCTLARR Act 2013] 3

Property of assessee was compulsorily acquisitioned by National High Way, through Notification made by Collector. Assessee contended that compensation received on compulsory acquisition of land was exempt from tax as per RFCTLARR Act, 2013. AO denied the exemption and CIT(A)confirmed the addition. It was submitted before the Tribunal that CIT (A) overlooked CBDT Circular No. 36 of 2016 dated 25-10-2016 and Circular No. 11011/30/2015-LA Govt. of India, Ministry of Road Transport & Highways regarding applicability of RFCTLARR Act 2013 on land acquisition under National High Ways Act, 1956 regarding exemption of tax on land. Tribunal held that the Circular / instructions are binding on the revenue authorities, however circulars brought on record were not furnished by assessee before authorities below, impugned order was to be set aside and, matter was to be remanded back for making denovo assessment after taking into consideration effect of aforesaid circulars. (AY. 2015-16)

Annapurna Mishra (Smt.) v. ITO (2019) 177 ITD 496 (Cuttack)(Trib.)

4 **S. 2(14)(iii) : Capital asset – Agricultural land – Capital gains – Agricultural lands and beyond 8 k.m., from the notified cities – Revenue records showing as agricultural lands – Department to prove that the entries in the revenue records and the patta were false or bogus – Entitle to exemption. [S. 45, 131]**

Dismissing the appeal of the revenue the Court held that, the agricultural land sold by the assessee is beyond 8 k.m., from the notified cities and the revenue records showing as agricultural lands. It is for the department to prove that the entries in the revenue records and the patta were false or bogus. There is a presumption to the validity of such official document and if a party states that the entry is incorrect or the document is false, the onus is on the party to prove the same. There is no allegation made by the Assessing Officer that the patta, copy of which was furnished by the Tahsildar, is a bogus patta. Even going by the Adangal extracts, which were furnished by the VAO, on being summoned under Section 131 of the Act, court observed that in column no.19 of the Adangal extract, the land has been described as "Tharisu". Therefore, even going by the subsequent records, the character of the land is not stated to be non agriculture. A land, which is an agricultural land, at many at times, cannot be put to use for agricultural purposes. Merely because an agriculture activity could not be carried on for various reasons including natural causes, it will not cease to be an agricultural land. Accordingly the order of the Tribunal granting exemption is affirmed. (AY. 2011-12)

PCIT v. K. P. R. Developers Ltd. (2019) 311 CTR 832 / 183 DTR 406 (Mad.)(HC)

5 **S. 2(14)(iii) : Capital asset – Agricultural land – Burden is on assessee to prove that the land was agricultural – Mere certificate by village Officer after sale of land is not sufficient – Gains assessable as capital gains. [S. 45]**

Allowing the appeal of the revenue the Court held that a presumption did not arise because no evidence of agricultural operations on the land was placed by the assessee before any of the fact-finding authorities. The sole evidence placed on record by the assessee was a certificate of the Village Officer long after the sale. The land in question was not agricultural land. Accordingly the gains is assessable as capital gains. (AY. 2010-11)

CIT v. Kalathingal Faizal Rahman (2019) 416 ITR 311 (Ker.)(HC)

6 **S. 2(14)(iii) : Capital asset – Agricultural land – Classified as dry land for which Kishtu had been paid – Adjacent land was divided into plots for sale cannot be the ground to reject the claim of the assessee. [S. 45, 260A]**

Assessee sold agricultural land and claimed exemption. AO rejected the claim on the ground that the assessee had not utilised land for agricultural purpose. Tribunal held that records were showing that lands were agricultural land, classified as dry land for which Kisthu had been paid. Tribunal also held that the merely because of adjacent land was divided into plots for sale was not a reason to held that land sold by assessee was for purpose of development land in question cannot be treated as capital asset. Order of Tribunal is up held by the High Court. (AY.2012-13)

CIT v. Venkateswara Hospital (2019) 106 taxmann.com 282 / 264 Taxman 90 (Mad.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Venkateswara Hospital (2019) 264 Taxman 89 (SC)

S. 2(14)(iii) : Capital asset – Agricultural land – Land sold being situated within municipal limits of Thanesar City – AO rightly considered land as non-agricultural land – Contention that benefit of S.54F is to be given could not be accepted since it was not raised before any of the lower authorities. [S. 45, 54F] 7

On appeal the Court held that, the agricultural land sold by the assessee was situated within 4 kms of the municipal limits of Thanesar City (notified limits being 5 kms), hence did not constitute agricultural land. Assessee's contention that he would be entitled to the beneficial provisions of S.54F of the Act could not be accepted at this stage, since the record shows no such claim was ever made and no facts relating to this issue had been pleaded before lower authorities. (AY. 2013-14)

Gurdeep Singh v. PCIT (2019) 307 CTR 117 / 174 DTR 381 (P&H)(HC)

S. 2(14)(iii) : Capital asset – Agricultural land – Exemption – Village Administrative Officer Confirming Land is Agricultural at time of transfer – AO to adjudicate issue afresh after enquiries and verifications with local authorities and of area – Reassessment is held to be valid. [S. 10(37), 69, 147, 148] 8

The assessee sold lands for a consideration of ₹ 1,91,50,575 which was evidenced by an unregistered agreement of sale entered into by him with the buyers. He claimed that he received an advance of ₹ 50 lakhs in cash, out of which he deposited ₹ 45 lakhs in his bank while he retained the balance of ₹ 5 lakhs in cash, which was subsequently deposited with the same bank. It was the assessee's contention before the AO that the lands were rural agricultural lands and therefore not liable to income tax having consideration to the provisions of S.2(14)(iii) read with S. 10(37) of the Act. Further, since the assessee had identified the nature of receipt, source of funds and persons who had provided the sum to the assessee, the provisions of S.69 had no applicability. However, the Assessing Officer observed that the parties to the agreement to sale had expressed conflicting versions of the facts and therefore the unregistered agreement lost its evidentiary value. Thus, there was no evidence on record to prove that the assessee received cash which was deposited in the bank, and the unregistered sale agreement did not contain any endorsement relating to the payment of cash made or received by respective parties. Since the assessee had failed to explain the sources of amount deposited in the bank the cash deposits were treated as unexplained investments under S.69.

On appeal, the CIT (A) confirmed the addition made by the AO.

On further appeal to the Tribunal it was observed that the Village Administrative Officer confirmed that agricultural operations were being conducted on the land sold by the assessee when the transfer took place by stating that various crops were grown and land revenue of ₹ 500 was collected. The matter was remanded to the Assessing Officer for reconsideration on whether the assessee could claim benefit the provisions of S.2(14)(iii) read with S. 10(37) of the Act by conducting necessary enquiries with the local authorities of the area where the land was located. The assessee was directed to produce all relevant evidence in support of his contention that capital gains earned from sale of land were exempt from income tax under the Act which would be admitted by the AO in the interest of justice and thereafter be adjudicated on the merits and in accordance with law. Reassessment is held to be valid. (AY.2008-09, 2009-10)

Anthiah Pancras v. ITO (2019) 76 ITR 50 (Chennai)(Trib.)

9 **S. 2(14)(iii) : Capital asset – Agricultural land – Tree standing on an agricultural land are transferred along with land as its integral part in one transaction, said land would be regarded as 'agricultural land' and not a separate capital asset – Entitle to exemption. [S. 2(14)(iii)(a), 10(37), 45]**

Tribunal held that tree standing on an agricultural land are transferred along with land as its integral part in one transaction, said land would be regarded as agricultural land and not a separate capital asset. Entitle to exemption. (AY.2012-13)

ITO v. G.S. Lekha (Smt.) (2019) 177 ITD 1 / 200 TTJ 785 / 180 DTR 249 (TM) (Cochin) (Trib.)

10 **S. 2(15) : Charitable purpose – School – Expenditure incurred on catering services for maintenance of its boarding school – Held to be educational purposes – Entitle to exemption. [S. 11, 13, 12AA] Dismissing the appeal of the revenue the Tribunal held that, since catering services were part of lodging and boarding activity of students, expenditure incurred on it by assessee was for educational purpose. Entitle to exemption. (AY.2010-11)**

DCIT v. Wood Stock School (2019) 175 ITD 722 (Delhi)(Trib.)

11 **S. 2(22)(e) : Deemed dividend – Loan to share holder – Loan in the ordinary course of business – Not assessable as deemed dividend – Deemed dividend is exempt u/s. 115O. [S. 10(34), 115O, Art. 226]**

Allowing the petition the Court held that in the application before the Settlement Commission, the assessee had specifically stated that Rasi Seeds Pvt. Ltd. had advanced money to Rasi Tex Pvt. Ltd. in the ordinary course of business. The money so received was utilised for its working capital requirements and no part of it was diverted as loan or advance for direct or indirect benefit of any of the directors, including the assessee. It was further stated therein that these funds were given as inter corporate loans on which interest was charged at market rates. The interest charged by Rasi Seeds Pvt. Ltd. have been assessed as business income by the same Assessing Officer, who was also the Assessing Officer of the assessee. The only finding by the Settlement Commission in this regard was that the lending of money did not form a substantial part of the business of Rasi Seeds Pvt. Ltd. When the facts which were specifically referred to in the application and contended before the Settlement Commission had not been disputed, it could not be said that the assessee had failed to explain before the Commission that the transactions were during the ordinary course of business. The dividend was not taxable as per the provisions of S. 10(34) of the Act and the contrary findings in the order of the Settlement Commission were violative of the statutory provisions and therefore illegal. It was not in dispute that during the assessment years 2012-13 and 2013-14, there were more than one shareholder holding substantial interests in Rasi Seeds Pvt. Ltd. and Rasi Tex Pvt Ltd The Settlement Commission was also apprised of this fact that there were two shareholders having substantial interests in Rasi Tex Pvt. Ltd. The loan from Rasi Seeds Pvt. Ltd. was not made directly to the specific shareholder and as more than one shareholder was to be treated as specified shareholder for the purposes of S. 2(22)(e) for the loan from Rasi Seeds Pvt. Ltd. to Rasi Tex Pvt. Ltd. the section could not be applied for the relevant assessment years for the reason that the computation of the section failed since the section did not provide for making the amount of loan to

be added in the hands of more than one shareholder or dividing the amount of loan between specified shareholders in any ratio. Since the computation of the section itself failed, it necessarily would follow that the charge of the section for the assessment years 2012-13 and 2013-14 would also fail. The ground of absence of incriminating material in relation to deemed dividend, was placed before the Settlement Commission but not considered. The order of the Settlement Commission was not in accordance with the provisions of the Act and therefore, it was liable to be quashed. (AY. 2007-08 to 2013-14)
R. Chitra v. ITSC Vice Chairman (2019) 418 ITR 530 (Mad.)(HC)

12 **S. 2(22)(e) : Deemed dividend – Advances received from company – Two partners are shareholders with substantial interest – Accumulated profits – Not able to substantiate that the advance was in the course of business – Deemed dividend for the assessment year 1998-99, had to be computed only after deducting the advances given in the earlier assessment years and accordingly the accumulated profits of the lending company had to be reduced to that extent – Order of Tribunal is affirmed.**
Dismissing the appeal the Court held that the assessee is not able to substantiate that the advance was in the course of business. Deemed dividend for the assessment year 1998-99, had to be computed only after deducting the advances given in the earlier assessment years and accordingly the accumulated profits of the lending company had to be reduced to that extent. Accordingly the order of Tribunal is affirmed. Order in *Aswani enterprises v. ACIT (2009) 314 ITR 29 (AT) (Chennai)(Trib.)* is affirmed. (AY. 1998-99, 1999-2000)
Aswani Enterprises v. ACIT (2019) 417 ITR 223 (Mad.)(HC)

13 **S. 2(22)(e) : Deemed dividend – Income cannot be taxed in the hands of the shareholders unless it is shown that the monies have been received by them – Alleged admission – Matter remanded. [S. 254(1)]**
Where provisions of deemed dividend were invoked in the hands of the borrower company on account of the fact that the same shareholders held substantial interest in the lending and the borrowing company, the amount of deemed dividend cannot be brought to tax in the hands of the said shareholders unless it is shown that they have actually received the money. Matter remanded.(AY. 2006-07)
Ramesh V. v. ACIT (2019) 177 DTR 105 / 104 taxmann.com 292 / 309 CTR 87 / (2020) 420 ITR 10 (Mad.)(HC)
Ramu S. v. ACIT (2019) 177 DTR 105 / 104 taxmann.com 292 / 309 CTR 87 / (2020) 420 ITR 10 (Mad.)(HC)

14 **S. 2(22)(e) : Deemed dividend – Loans from companies – Not beneficial share holder in lender companies – Cannot be added as deemed dividend.**
Dismissing the appeal of the revenue the Court held that, the assessee was not a beneficial owner of any shares in the creditor companies which had advanced the loans. No loan had been given by the creditor companies to any concern in which the assessee had a substantial interest. What was contemplated by the second limb of S. 2(22)(e) was that the creditor companies gave a loan not directly to its shareholder but to any concern in which such shareholder had substantial interest. The common shareholder having a substantial interest in the assessee as well as in the creditor companies was

only SIPL which held 86 per cent of the shareholding in the assessee and 99 per cent in the creditor companies. Hence the transaction between the assessee and the creditor companies did not fall within the second limb of S. 2(22)(e).(AY.2009-10)
PCIT v. Sunjewels International Ltd. (2019) 411 ITR 613 / 183 DTR 411 (Bom.)(HC)

15 **S. 2(22)(e) : Deemed dividend – Substantial share holding – Sale of flat and a major portion of price remained unpaid by end of previous year – Justified in treating said amount as deemed dividend. [S. 260A]**
Assessee had substantial interest in a company. Company sold a flat to assessee of which a major portion of price remained unpaid by him at the end of previous year. AO assessed the said amount as an advance to director and assessed as deemed dividend. CIT(A) deleted the addition however the Tribunal upheld the order of AO. On appeal High Court also up held the order of Tribunal. (AY. 2007-08)
Bhagavathy Velan v. DCIT (2019) 264 Taxman 146 (Mad.)(HC)

16 **S. 2(22)(e) : Deemed dividend – Share holder – Substantial business is money lending – Loan not assessable as deemed dividend.**
Dismissing the appeal of the revenue the Court held that, substantial business of the assessee is money lending hence, loan to share holder is not assessable as deemed dividend. (AY. 2000-01)
CIT v. Bharat Hotels Ltd. (2019) 410 ITR 417 (Delhi)(HC)

17 **S. 2(22)(e) : Deemed dividend – Intercorporate deposit – Business transactions – Deposit in the course of business – Interest income was offered as income – Not assessable as deemed dividend.**
Dismissing the appeal of the revenue the Court held that the transaction was business transaction and interest corporate deposit was accepted as genuine by the AO in the case of lender concern by the same AO. Interest was also offered as income. Deletion of addition as deemed dividend is held to be justified.(AY. 2004-05)
CIT v. Basant Poddar (2019) 412 ITR 529 / 173 DTR 368 / 307 CTR 341 (Karn.)(HC)

18 **S. 2(22)(e) : Deemed dividend – Repayment of loan or advance, which gets deemed, on receipt, on account of legal fiction, as a distribution of profit and, thus, as income in hands of payee shareholder, is of no consequence. [S. 10 (34), 2(24)(iii), 56]**
The loan or advance to the assessee was held to be liable to be assessed in its hands as deemed dividend under S. 2(22)(e) read with S,56 of the Act. CIT(A) confirmed the addition. On appeal the Tribunal held that, the period of retention has again been found to be not relevant. Inasmuch as each payment qualifying as a loan or advance falls within the ambit of the provision, and its subsequent repayment held as of no consequence, the entire payment to (receipt by) the shareholder (company) would stand to be regarded as 'dividend'. The revenue has, in regarding only the peak amount advanced as the qualifying amount, acted as reasonable as it could under the circumstances, i.e., given the settled law in the matter, the payment being regarded as dividend only under its artificial definition, as explained, per an irrebuttable presumption, statutorily provided. The question of the genuineness of the loan or advance, is, for the same reason, of no significance. Further, being not a regular dividend, declared and paid by company, the same does not fall

to be covered under S. 10(34) and, thus, is not excepted under S. 56. The same has, accordingly, been rightly brought to tax under S. 2(24)(ii) read with S. 2(22)(e) and S. 56 by the revenue. (AY. 2014-15)
G.G. Oils & Fats (P.) Ltd. v. DCIT (2019) 178 ITD 573 / (2020) 203 TTJ 698 (Asr.)(Trib.)

S. 2(22)(e) : Deemed dividend – Trade advance – Commercial transaction – Not assessable as deemed dividend. 19
Allowing the appeal of the assessee the Tribunal held that the amount received by holding company in the ordinary course of business as trade advances cannot be assessed as deemed dividend. (AY. 2015-16)
Asian Business Connections (P.) Ltd. v. DCIT (2019) 179 ITD 595 (Indore)(Trib.)

S. 2(22)(e) : Deemed dividend – Advance given to society – Advance not to be treated as deemed dividend. 20
If the assessee does not have a substantial interest namely beneficial entitlement of 20% or more of the income in a concern receiving any loan or advance from a company then such a loan or advance cannot be treated as deemed dividend. (AY. 2006-07)
Dy. CIT v. Roshan Lal Jindal (2019) 71 ITR 596 (Chd.)(Trib.)

S. 2(22)(e) : Deemed dividend – Advance to shareholders – Interrelated group concerns – Advances given by one concern to another concern to tide over short-term financial deficiency to be treated as commercial expediency – Amount given not in nature of any loans or advances to assess as deemed dividend. 21
Assessee received loans from companies he had a substantial interest in and owned shares, this amount was treated as deemed dividend by the AO u/s 2(22)(e), the Commissioner partly confirmed the addition. On appeal it was held that the qualifying conditions for treating any payment as dividend in terms of the provisions of S. 2(22)(e) of the Act were; (i) the payment was in the nature of loan or advance; (ii) the payment was made to a shareholder who had not less than 10 per cent voting power interest in the company; and (iii) or the payment was made to another company in which such shareholder had substantial interest which had been defined as beneficial and entitled to not less than 20 per cent income of the company. However, as all the concerns and their stability were interrelated the advances made in the present case to tide over short-term deficiencies of fund was in the nature of commercial expediency or advances for business purpose only and not in the nature of loans and advances simply benefiting any substantial or beneficial shareholder. (AY. 2006-07 to 2009-10)
Amit Jindal v. Dy.CIT (2019) 70 ITR 545 (Chd.)(Trib.)

S. 2(22)(e) : Deemed dividend – Loans to shareholder – Business of money lending – Loan from two companies which were substantially involved in business of money lending – Addition cannot be made as deemed dividend. [S. 2(22)(e)(ii)] 22
Tribunal held that money lending was a substantial part of business of both lender companies, therefore, proviso (ii) to S. 2(22)(e) would apply. Accordingly addition cannot be made as a deemed dividend. (AY. 2015-16)
Mohan Bhagwatprasad Agrawal v. ACIT (2019) 176 ITD 735 (Ahd.)(Trib.)

23 **S. 2(22)(e) : Deemed dividend – Loan to a share holder – Not in the business of lending of money – Holding more than 10 percent voting power – Assessable as deemed dividend.**

Company which is not in the business of lending of money advance to a share holder who has more than 10 per cent voting power is assessable as deemed dividend. (AY.2005-06)

Rajesh Kumar v. ACIT (2019) 175 ITD 734 / 181 DTR 79 (Bang.)(Trib.)

24 **S. 2(22)(e) : Deemed dividend – Share holder – Can be assessed only in hands of a person who is a share holder of the company and not in hands of a person other than a share holder. [S. 2(32)]**

Dismissing the appeal of the revenue the Tribunal held that deemed dividend can be assessed only in hands of a person who is a shareholder of lender company and not in hands of a person other than a shareholder Followed *ACIT v. Bhaumik Colour Labs (P.) Ltd. (2009) 118 ITD 1 (SB)(Mum.)(Trib.)* (AY.2012-13)

Microfinish Valves (P.) Ltd. ACIT (2019) 174 ITD 199 (Bang.)(Trib.)

25 **S. 2(24)(i) : Income – Profits and gains – Collection of value added tax on behalf of the State Government – Excess over expenditure deposited in State Treasury – Not assessable as income. [S. 12A]**

Dismissing the appeal of the revenue the Court held that The assessee merely performed the statutory functions under the 2005 Act, and collected the tax amount for and on behalf of the State and transferred such collection to the Government Treasury. Even if the tax collection remained temporarily parked with the assessee for some time, it could not be treated as "income" generated by the assessee as the amount did not belong to it. Hence, it did not partake of the character of "profit or gain" earned by the assessee. The non-registration of the assessee under S. 12AA of the Act was inconsequential. (AY.2007-08 to 2011-12, 2013-14)

CIT v. H. P. Excise and Taxation Technical Service Agency (2019) 414 ITR 539 (HP)(HC)

Editorial : SLP of revenue is dismissed CIT v. H. P. Excise And Taxation Technical Service Agency (2019) 414 ITR 7 (St) (SC)

26 **S. 2(24)(i) : Income – Profits and gains – Concept of real income – Statutory levy under the VAT Act, 2005 is being collected by virtue of the powers entrusted by the State Government to the assessee-entire collection is deposited in the Government Treasury of the State after deducting the actual expenditure incurred by the assessee-No real income accrues to the society – Not necessary to get registration u/s. 12AA of the Act. [S.4, 5, 12AA]**

Dismissing the appeal of the revenue the Court held that; statutory levy under the VAT Act, 2005 is being collected by virtue of the powers entrusted by the State Government to the assessee. Entire collection is deposited in the Government Treasury of the State after deducting the actual expenditure incurred by the assessee. No real income accrues to the society. It is not necessary to get registration u/s 12AA of the Act.

PCIT v. H.P. Excise & Taxation Technical Service Agency (2019) 260 Taxman 302 / 173 DTR 13 (HP)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. H.P. Excise & Taxation Technical Service Agency (2019) 266 Taxman 280 (SC)

S. 2(24)(iv) : Income – The value of benefit or perquisite – Success fee paid by company Tirumala Milk products Pvt Ltd to Barclays Bank could not be treated as perquisites. [S. 48(1)] 27

Assessee, was holding 10.34 per cent of shares in company Tirumala Milk products Pvt Ltd. During year, assessee along with all other individual shareholders decided to sale his shares in Tirumala Milk products Pvt. Ltd. BSA International. Tirumala Milk products Pvt. Ltd. had appointed Barclays Bank as a financial advisor for evaluating value of its shares, searching a potential buyer, etc. On finalization of sale transaction, Tirumala Milk products Pvt. Ltd. paid success fee to Barclays Bank. The AO held that the assessee being shareholder of 10.34 per cent had got indirect benefit from services of Barclays Bank which required to be taxed in hands of assessee under S. 2(24)(iv) of the Act. CIT(A) held that provision is not applicable hence deleted the addition. On appeal by the revenue the Tribunal affirmed the order of the CIT(A). (AY. 2014-15)

ACIT v. Danda Brahmanandam (2019) 179 ITD 38 / (2020) 203 TTJ 485 (Vishakha)(Trib.)

S. 2(24)(xi) : Income – Business income – Key man insurance policy – Accrual or receipt basis – Bonus on Keyman Insurance Policy taxable on receipt basis. [S. 5, 28(vi), 10(10DD), 145] 28

Tribunal that the proceeds from LIC are exempt under S. 10(10D) except if the amount is received on a key man insurance policy, if the amount is received from a pension policy and the premium paid is more than 20 per cent. of the sum assured in any year. The proceeds from the insurance company in respect of key man insurance policy would be taxable only on receipt basis. In terms of the provisions of S. 2(24)(xi) read with S. 28(vi), the amount of bonus on key man insurance policy is to be taxed on receipt basis only. Hence taxing the income on accrual basis was not valid. (AY. 2006-07 2009-10, 2010-11, 2011-12)

Dy. CIT v. Impulse International P. Ltd. (2019) 71 ITR 28 (SN) (Delhi)(Trib.)

S. 2(28A) : Interest – Accrual basis – Interest on compensation awarded by Motor Accident Claims Tribunal is taxable on year wise accrual basis. [S.145, Motor Accident Claims Tribunal] 29

Dismissing the appeals the Court held that the component of interest received on the compensation awarded by the Motor Accident Claims Tribunal on the death of the victim was interest within the meaning of S. 2(28A) and could be subjected to tax and would be taxable on year-wise accrual basis.

Sharda Pareek (Smt.) v. ACIT (2019) 416 ITR 441 / 104 taxmmann.com 76 / 262 Taxman 253 (Raj.)(HC)

Editorial : SLP is granted to the assessee, Sharda Pareek (Smt.) v. ACIT (2019) 412 ITR 31 (St.) / 262 Taxman 252 (SC)

30 **S. 2(31)(v) : Person – Association of persons – No partnership deed – No unity of control – Assessment as Association of persons is justified. [S. 132]**
Allowing the appeal of the revenue the court held that the AO found on the basis of the materials recovered on search that there were multiple entities but no unity of control, inter-locking and inter-lacing of funds. There was no partnership deed. The assessee had not refuted the findings of the Assessing Officer at any point. The registration as a firm, inclusive of all the entities carrying on business in common, being not established by the assessee, the compelling evidence as recovered under the search and seizure supported the finding that the status of the assessee was one of association of persons. Accordingly assessment as Association of persons is justified. (AY. 1995-96, 1996-97)
CIT v. Malayil Bankers (2019) 416 ITR 322 / (2020) 185 DTR 322 (Ker.)(HC)

31 **S. 2(31)(vii) : Person – Artificial juridical person – Status of an entity incorporated abroad has to be determined even in India, according to the law of the country where the entity is incorporated. [S. 74, 80, 139(3)]**
The Court held that, in accordance with the principles of Private International Law, as held by the Supreme Court in case of *Technip S.A. v. SMS Holding (P) Ltd. & Ors. (2005) 5 SCC 465,* the status of an entity incorporated abroad, has to be determined even in India, according to the law of the country where the entity is incorporated. Accordingly, the Court held that change in avtar in law of the assessee would not disentitle the assessee in claiming loss. (AY. 2011-12) (WP No. 9358 of 2018, dt. 08.03.2019)
Aberdeen Institutional Commingled Funds LLC & Ors. v. AAR & Anr. (2019) 308 CTR 287 (Bom.)(HC)

32 **S. 2(35) : Principal officer – Notice must mention some connection with the management or administration of the company – Merely on surmises and conjectures, no person shall be treated as a Principal officer. [Art. 226]**
The assessee is treated as a Principal Officer of the Company Kingfisher Airlines Ltd for the financial years 2009-10 to 2012-13 u/s 2(35) of the Act. The said notice is challenged mainly on the ground that the objections submitted to the notice issued had not duly considered. Allowing the petition the Court held that, notice must mention some connection with the management or administration of the company. Merely on surmises and conjectures, no person shall be treated as a Principal officer. Accordingly the notice is quashed. (AY. 2009-10 to 2012-13)
A. Harish Bhat v. ACIT (2020) 269 Taxman 218 (Karn.)(HC)

33 **S. 2(42A) : Short-term capital asset – Assignment of loan – Loss arising out of assignment of loan is allowable as short term capital loss. [S. 2(14), 2(42B), 28(i)]**
Dismissing the appeal of the revenue the Court held that Loss arising out of assignment of loan is allowable as short term capital loss. Followed *Siemens Nixdorf Informations Systems GmbH v. Dy. DIT(IT) (2016) 158 ITD 480 (Mum.)(Trib.) affirmed in Dy.DIT v. Siemens Nixdorf Informations Systems GmbH ITA No. 1366 of 2017 dt. 26-08-2019).* (AY. 2007-08)
PCIT v. Reliance Natural Resources Ltd. (2019) 267 Taxman 644 (Bom.)(HC)

S. 4 : Charge of income-tax – Deposit – Subscription receipt – The primary liability and onus is on the Department to prove that a certain receipt is liable to be taxed – Deposits collected by a finance company are capital receipts and not revenue receipts – The fact that the deposits are credited to the profit and loss account is irrelevant – The true nature of the receipts have to be seen and not the entry in the books of account. [S. 145] 34

Assessee treated subscription receipts as income. However the receipts in question were capital receipts and not income. Tribunal decided the issue in favour of the assessee. High Court reversed the order of the Tribunal. On appeal the Court held that the primary liability and onus is on the Dept to prove that a certain receipt is liable to be taxed. Deposits collected by a finance company are capital receipts and not revenue receipts. The fact that the deposits are credited to the profit and loss account is irrelevant. The true nature of the receipts have to be seen and not the entry in the books of account. Order of High Court is set aside and order of the Tribunal is affirmed. (AY. 1985-86, 1986-87)

Peerless General Finance and investment Co. Ltd. v. CIT (2019) 416 ITR 1 / 265 Taxman 413 / 309 CTR 321 / 180 DTR 97(SC), www.itatonline.org

Editorial : From the judgment in CIT v. Peerless General Finance and Investment Co. Ltd. (2006) 282 ITR 209 / 204 CTR 198 (Cal.)(HC)

S. 4 : Charge of income-tax – Compensation awarded by Motor Accident Claims Tribunal – Interest on compensation awarded up to date of order of Tribunal or Court is held to be not taxable – Provision of deduction at source is not charging section. [S. 2(28A, 56(2)(viii), 145A(b), 194A, Motor Vehicles Act, 1988, S. 171] 35

Petitioner when he was 8 years old while crossing the Road knocked down by a speeding vehicle. He was in coma for six months. Compensation was determined after 36 years after the accident. Motor Accident Tribunal awarded compensation within three months and the rate of interest payable was 12 percent per annum on the unpaid amount. The insurance company before depositing the tax deducted the tax at source at 10 percent on interest component. The petitioner filed the return and claimed the refund on the ground that the tax was wrongly deducted. The petitioner moved the petition challenging the vires of S. 194A(3)(ix), and (ixa) as also S. 145A(b) and 56(2)(viii) of the Act. When the petition was pending the AO has passed the order. The petition was amended accordingly. Allowing the petition the Court held that, awarding interest for delayed computation of compensation is therefore an integral part of this exercise. Interest awarded in motor accident claims cases is, thus, compensatory in nature and forms part of the compensation itself hence not taxable. Court also held that clause (viii) of sub-section (2) of S. 56 by itself would not make the receipt of interest on compensation chargeable to tax as income from other sources, if such receipt is not income. Clause (b) of S. 145A of the Act does not make interest on compensation or enhanced compensation taxable if it is otherwise not exigible to tax. It merely provides for the point of time when it would be subjected to tax if otherwise taxable. The provision for deduction of tax at source is not a charging provision. It only provides for deduction of tax at source on payment of a sum, which, in the hands of the payee, is income. If the payee has no liability to tax on such income, the liability to deduct tax at

source in the hands of the payer cannot be fastened. The provision for deducting tax at source cannot govern the taxability of the amount which is being paid. Accordingly the question of deduction of tax at source would arise only if the payment is in the nature of income of the payee. (AY. 2016-17)
Rupesh Rashmikant Shah v. UOI (2019) 417 ITR 169 / 182 DTR 203 / 310 CTR 826 / 266 Taxman 474 (Bom.)(HC)

36 **S. 4 : Charge of income-tax – Subsidies – Book profit – Receipts of interest and power subsidiaries – Capital receipts – Amendment is prospective – Receipts not being nature of income cannot be included for purpose of computing book profit. [S. 2(24), 115JB, West Bengal Incentive Scheme, 2000]**
Dismissing the appeal of the revenue the Court held that, according to the West Bengal Incentive Scheme, 2000 and the West Bengal Incentive to Power Intensive Industries Scheme, 2005 the subsidies were granted with the sole intention of setting up new industry and attracting private investment in the State of West Bengal in the specified areas which were industrially backward and hence the subsidies were of the nature of non-taxable capital receipts. Thus according to the "purpose test" laid out by the Supreme Court and the High Courts the subsidy should be treated as a capital receipt in spite of the fact that the computation of "power subsidy" was based on the power consumed by the assessee. Once the purpose of a subsidy was established, the mode of computation was not relevant. The mode of computation of form of subsidy was irrelevant. The mode of giving incentive was reimbursement of energy charges. The nature of subsidy depended on the purpose for which it was given. The entire reason behind receiving the subsidies was for setting up of a plant in the backward region. Therefore, the incentive subsidies of interest subsidy and power subsidy received by the assessee were "capital receipts" and not "income" liable to be taxed in the assessment year 2010-11. The amendment to the definition of income under S. 2(24) wherein sub-clause (xviii) has been inserted including "subsidy" for the first time by the Finance Act, 2015 with effect from April, 2016, i.e., assessment year 2016-17. Receipts not being nature of income cannot be included for purpose of computing book profit. (AY.2010-11)
PCIT v. Ankit Metal And Power Ltd. (2019) 416 ITR 591 / 182 DTR 333 / 266 Taxman 237 / 311 CTR 369 (Cal.)(HC)

37 **S. 4 : Charge of income-tax – Capital or revenue – Subsidy from State Government – Capital receipt. [S. 2(24)]**
Dismissing the appeal of the revenue the Court held that subsidy received from State Government is capital receipt. (AY. 2000-01, 2003-04)
CIT v. Keventer Agro Ltd. (2019) 416 ITR 482 (Cal.)(HC)

38 **S. 4 : Charge of income-tax – Bonus shares – Cannot be assessed as income. [S. 2(24)]**
Court held that bonus shares given by a company in proportion to holding of equity capital by shareholders would, in absence of express provision to contrary be treated as capital and not income. (AY. 2006-07 to 2009-10)
PCIT v. Ashok Apparels (P.) Ltd. (2019) 264 Taxman 50 (Bom.)(HC)

S. 4 : Charge of income-tax – Capital or revenue – Foreign exchange fluctuation gain – Business not commenced – Profits or gains arising out of fluctuation of foreign exchange rate would be capital in nature – Revision is held to be not justified. [S. 4, 28(i), 263] 39

Assessee-company was constituted as a special purpose vehicle to carry out foundational tasks for setting up a coal based power plant. Assessee had not commenced any business activity during the relevant period to assessment year. Assessee had entered into contract for purchase of plant and machinery from abroad. In relation to such purchase, on account of cancellation of contracts and on account of notional adjustment, due to favourable fluctuation of foreign exchange rate, assessee had gained certain income. AO accepted the contention of the assessee. CIT revised the order and directed the AO to redo the assessment. The Tribunal held that the imports made by the assessee were part of the project of setting up power plant. It was recorded that, the business of the company had not commenced during period relevant to assessment year in question. The profit or loss which arose to an assessee on account of appreciation or depreciation in the value of foreign currency held as capital asset which was liable to be treated as capital in nature. Accordingly the order of AO is affirmed. On appeal the High court also affirmed the order of the Tribunal. (AY. 2009-10)

PCIT v. Coastal Gujarat Power Ltd. (2019) 264 Taxman 244 (Bom.)(HC)

S. 4 : Charge of income-tax – Capital or revenue – Sale of shares upon open offer – Additional consideration paid in terms of open offer due to delay in making offer and dispatch of letter of offer – Capital receipt. 40

Dismissing the appeal of the revenue the Court held that the additional amount received by the assessee was part of the offer from the sale of shares made by it. The additional sum was part of the sale price and retained the same character as the original price of the share. The additional receipt of the assessee relatable to this component was a capital receipt.

CIT v. Morgan Stanley Mauritius Co. Ltd. (2019) 413 ITR 332 / 308 CTR 139 / 176 DTR 413 (Bom.)(HC)

S. 4 : Charge of income-tax – Capital or revenue – Sales tax waiver benefits are in the nature of capital receipts. 41

Dismissing the appeal of the revenue the Court held that, sales tax waiver benefit are in the nature of capital receipts. Followed *Indian Petrochemicals Corporation Ltd (2016) 74 taxmann.com 163 (Guj.)(HC) and CIT v. Nirma Ltd (2017) 397 ITR 49 (Guj.)(HC)*

CIT v. Indian Petrochemicals Corpn. Ltd. (2019) 261 Taxman 251 (Bom.)(HC)

S. 4 : Charge of income-tax – Capital or revenue – Grant in aid – Disbursement of salaries and flood relief – Protect the functioning of the assessee – Held to be capital receipt. [S. 28(i)] 42

Dismissing the appeal of the revenue the Court held that the amount received by the assessee from the State Government in the form of grant-in-aid utilised for clearing the salary and provident fund dues and flood relief was capital in nature There was no separate business consideration on record between the grantor-State Government and

the recipient-assessee. Since flood relief did not constitute part of the business of the assessee, the funds extended for flood relief could not constitute revenue receipt. (AY. 2006-07)
PCIT v. State Fisheries Development Corporation Ltd. (2019) 414 ITR 443 (Cal.)(HC)
Editorial : PCIT v. State Fisheries Development Corporation Ltd. (2019) 411 ITR 4 (St.)

43 **S. 4 : Charge of income-tax – Capital or revenue – Subsidy from foreign company – Capital receipt not liable to tax.**
Allowing the appeal of the assessee the Court held that in order to set up a joint venture in insurance sector, a foreign company gave capital subsidy to assessee in order to enable it to contribute its share in share capital of joint venture company, amount of subsidy so received was to be regarded as capital receipt not liable to tax. (AY. 2002 03)
Sundaram Finance Ltd. v. ACIT (2019) 413 ITR 298 / 262 Taxman 465 / 178 DTR 351 / 310 CTR 774 (Mad.)(HC)

44 **S. 4 : Charge of income-tax – Capital or revenue – Capital subsidy in terms of shareholders' agreement from foreign company for investment in share capital of joint venture company – Capital receipt not liable to tax as revenue receipt. [S. 28(i)]**
Allowing the appeal of the assessee the Court held that Capital subsidy in terms of shareholders' agreement from foreign company for investment in share capital of joint venture company is capital receipt not liable to tax as revenue receipt. (AY. 2002-03)
Sundaram Finance Ltd. v. ACIT (2019) 413 ITR 298 (Mad.)(HC)

45 **S. 4 : Charge of income-tax – Capital or revenue – Interest subsidy received under TUFS (Technology Upgradation Fund Scheme), is capital in nature. [S. 28(i)]**
Dismissing Revenue's appeal, the Tribunal held that; After analyzing the terms of the scheme (TUFS) and finding that the purpose of the scheme was to induce modernization of plant and machinery used in textile industry, held the interest subsidy received under TUFS Scheme and to be capital in nature following the proposition laid down by the Apex Court for determining the nature of subsidy in the case of *Sawhney Steels & Press Works Ltd v. CIT (1998)228 ITR 253 (SC); CIT v. Ponni Sugars & Chemicals Ltd (2008) 306 ITR 392 (SC)* (AY. 2002-03 to 2005-06)
Vardhman Textiles Ltd. v. DCIT (2019) 183 DTR 477 / 202 TTJ 750 (Chd.)(Trib.)

46 **S. 4 : Charge of income-tax – Development and operation of multipurpose port terminal – Share capital in form of foreign inward remittance – Unutilised funds – FDR interest – Capital receipt – Interest income is a capital receipt and is not taxable at all both under the normal provisions of the Act as well as under S. 115JB of the Act. [S. 56, 115JB]**
The assessee-company was incorporated to develop, operate multipurpose port terminal. For the purpose of the port terminal project, the assessee raised share capital as foreign inward remittance from its holding company (P.) Ltd. Cyprus. The IPO was raised for the specific purpose of developing multipurpose port terminal facility and logistics facility at Karanja Creek. However, the port terminal could not be developed as envisaged and

planned as it was delayed for various reasons beyond the control of the assessee and therefore the unutilized funds as received from the IPO were put in fixed deposits and ICDs with banks and non-Banking finance companies till the resumption of development work of the port terminal and other facilities at Karanga Creek. The assessee, treated the said interest as capital in nature and did not file any return of income for the instant year. AO assessed the income as income from other sources. CIT (A) confirmed the order of the AO. Tribunal held that the interest income received by the assessee from the FDRs/ICDs made out of funds are inextricably linked to the development of port terminal and other infrastructure which was yet to be completed and commissioned. These funds could not be used for the development work of the port due to late issuance of permissions / clearances by the Govt. authorities and also due to some local issues. Therefore, the interest income is a capital receipt and is not taxable at all both under the normal provisions of the Act as well as under S. 115JB of the Act. (AY. 2013-14 to 2015-16)

Karanja Terminal & Logistics (P.) Ltd. v. DCIT (2019) 178 ITD 659 / 71 ITR 390 (Mum.) (Trib.)

S. 4 : Charge of income-tax – Mesne profit – Capital or revenue – Arbitral award – Income from house property – Damages from tenant for unauthorized occupation of let out property, amount so received being in the nature of 'mesne profit' was a capital receipt, not liable to tax. [S. 2(24), 22] 47

Assessee owned a property which was given on sub-lease to PSIDC. PSIDC did not vacate premises after determination of sublease. Matter was thus referred to arbitrator who passed an award in terms of which assessee received damages for unauthorised occupation of property by PSIDC. AO held that amount so received was nothing but unrealized rent and should be taxed as 'income from house property. Tribunal held that on facts, damages received by assessee were in the nature of mesne profits which were not chargeable to tax being in the nature of a capital receipt.(AY. 2010-11)

Talwar Bro. (P.) Ltd. v. ITO (2019) 178 ITD 818 (Kol.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Income from sale of Carbon emission reduction certificates is capital receipt. [S. 80IA, 115BBG] 48

Dismissing the appeal of the revenue the Tribunal held that Income from sale of Carbon emission reduction certificates is capital receipt. Followed *PCIT v. Rajasthan State Mines & Minerals Ltd.* [D.B. IT Appeal No. 151 of 2016, 13-10-2017 (Raj) (HC)]. (AY. 2010-11, 2011-12)

ACIT v. Ginni Global (P.) Ltd. (2019) 178 ITD 693 (Jaipur)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Compensation for termination of lease – Loss of source of income – Capital receipt not to be chargeable to tax. [S. 45] 49

Assessee-company owned a godown. This property was already given on long term lease of 99 years. The lessee sold the property. The assessee entered into MOU with lessee in terms of which assessee received compensation of ₹ 4.65 crore towards termination of long-term lease. The AO treated the compensation as sale consideration. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that compensation received

was towards loss of source of income; same could not be treated as revenue receipt, and it was capital receipt not liable to tax. Referred *Karam Chand Thapar and Bros. (P.) Ltd. v. CIT (1971) 80 ITR 167 (SC), Kettlewell Bullen & Co. Ltd. v. CIT (1964) 53 ITR 261, (SC)* (AY. 2012-13)
Butterfly Marketing P. Ltd. v. DCIT (2019) 179 ITD 431 (Chennai)(Trib.)

50 **S. 4 : Charge of income-tax – Diversion of income by overriding title – Obligation to spend on AMP arose after receipt of income – No obligation to spent definite amount – Application of income – Chargeable to tax. [S. 2(24), 28(i)]**
Assessee is a wholly owned step down subsidiary of YRIPL incorporated on a non-profit making purpose for managing advertising and marketing at local store level from franchisees. Assessee co., its parent co. and franchisees had entered into tripartite agreements (franchisee agreements) whereby assessee received certain contributions from franchisees in order to carry on co-operative advertising. Assessee contended that since contributions received were for predefined purposes for incurring them on advertising, marketing and promotion(AMP) activities, contributions were diverted at source by overriding title. Tribunal held that it was after receipt of income that obligation to spend on AMP arose and there was no obligation on assessee to spend any definite amount every year. Tribunal also held that merely mentioning that it will act on non-profit basis did not make income received by assessee diverted by overriding title. Accordingly the income of assessee was not diverted by overriding title but was merely an application of income of assessee and therefore chargeable to income tax. (AY. 2001-02 to 2003-04, 2006-07, 2008-09 to 2010-11 and 2013-14)
Yum! Restaurants Marketing (P.) Ltd. v. ITO (2019) 179 ITD 480 (Delhi)(Trib.)

51 **S. 4 : Charge of income-tax – Subsidy – Capital or revenue – Refund of octroi – Capital receipt – Not chargeable to tax. [S. 2(24)(xviii), 43(1), 56]**
The receipt of a subsidy in the form of refund of octroi is a capital receipt and not a revenue receipt in the hands of the assessee if the subsidy goes to reduce the cost of assets being material/purchases and the receipt of such a subsidy will be on capital account. Applied, *CIT v. Chaphalkar Brothers (2018) 400 ITR 279 (SC)* (AY. 2012-13)
Dy. CIT v. Mas India P. Ltd. (2019) 74 ITR 72 (SN) (Pune)(Trib.)

52 **S. 4 : Charge of income-tax – Capital or revenue – Subsidy received from Government is a capital receipt not chargeable to tax – Rule of consistency to be followed. [S. 2(24)]**
The assessee had received grant/financial assistance from the Government of India. The assessee had recorded the same as capital receipt and not offered to tax which was accepted by the Department from AY 2006-07 till AY 2013-14. However, for AY 2014-15 the Department in the assessment has considered the receipt as revenue in nature and made an addition on account of the same. The Tribunal after going through the facts and circumstances of the case and relying on the decision of Apex Court in case of *CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 362 (SC)* and in the case of *CIT v. Chaphalkar Brothers Pune (2018) 400 ITR 279 (SC)* held that grants given for specific purpose to be applied for capital outlays is capital in nature and not chargeable to tax.

Further the Tribunal, placing reliance on the decision of *Radhasaomi Satsang v. CIT (1992) 193 ITR 321 (SC) and CIT v. Neo Poly Packs (P) Ltd. (2000) 245 ITR 492 (Delhi)* (HC) noted that the Apex Court has laid down the principle of rule of consistency. Thereby in absence of any material change justifying the Revenue to take different stand view, the same view as accepted by earlier years should continue to prevail till there is some material change in facts. (AY.2014-15)
Chhattisgarh Mineral Development Corporation Ltd. v. ACIT (2019) 69 ITR 75 (SN) (Raipur)(Trib.)

S. 4 : Charge of income-tax – Deposit with a bank to avail credit facilities for importing equipments for setting up new plant – Interest earned was to be treated as capital receipt. [S. 56]. 53
Assessee earned interest on deposit placed with a bank with object of availing credit facilities for importing equipments for setting up of its new plant. Tribunal held that interest income earned on such deposit was inextricably linked or connected to setting up of plant and, therefore, interest was to be treated as capital receipt. (AY. 2011-12)
ITO v. Chiripal Poly Films Ltd. (2019) 177 ITD 441 / 202 TTJ 317 (Mum.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Right to sue – Damages received for breach of development agreement are capital in nature & not chargeable to tax. [S. 2(14), 45] 54
Tribunal held that the only right that accrues to the assessee who complains of breach is right to file a suit for recovery of damages from the defaulting party. A breach of contract does not give rise to any debt. A right to recover damages is not assignable because it is not a chose-in-action. Such a mere 'right to sue' is neither a capital asset u/s 2(14) nor is it capable of being transferred & is therefore not chargeable under u/s. 45 of the Act. (AY. 2012-13)
Chheda Housing Development Corporation v. ACIT (2019) 179 ITD 154 (Mum.)(Trib.), www.itatonline.org

S. 4 : Charge of income-tax – Capital or revenue – Incentives by way of excise duty refund and sales tax-encourage setting up of new industrial unit in area which was devastated by earthquake – Capital receipts not exigible to tax. 55
Relying on the decision of Special Bench in the case of Reliance Industries Ltd. (2004) 88 ITD 273 (SB) (Mum.)(Trib.), and the decision of co-ordinate Bench of the tribunal in the case of Assesse's group concern, Welspun Steel Ltd. (ITA No. 7630/M/211 dated 18 December 2015), Tribunal held that incentives by way of excise duty refund and sales tax incentives given to assessee to encourage setting up of new industrial unit in area which was devastated by earthquake were capital receipts not exigible to tax. (AY. 2008-09, 2009-10, 2010-11, 2011-12)
Welspun India Ltd. v. Dy. CIT (2019) 69 ITR 617 (Mum.)(Trib.)

56 **S. 4 : Charge of income-tax – Capital or revenue – Subsidy – Industrial investment or expansion – Capital receipt – Amendment to S. 2(24) by inserting clause (xviii) by Finance Act, 2015 with effect from 1-4-2016 is prospective in nature – Not liable to be reduced from cost of assets for purpose of depreciation.[S. 2(24)(viii), 32, 43(1)]**

Subsidy received by assessee, engaged in manufacturing of extra neutral alcohol from grain, from State Government to encourage investments in grain based distilleries in backward regions of State, was a capital receipt. Subsidy received is not liable to be reduced from cost of assets for purpose of depreciation in year under consideration in view of proviso to Explanation 10 to S. 43(1). Amendment to S. 2(24) by inserting clause (xviii) by Finance Act, 2015 with effect from 1-4-2016 providing that even if a subsidy is given to attract industrial investment or expansion, which is otherwise a capital receipt under pre-amendment era, shall be treated as income chargeable to tax, is prospective in nature. (AY. 2011-12)

Alkoplus Producers (P.) Ltd. v. DCIT (2019) 177 ITD 150 / 71 ITR 650 / 181 DTR 329 / 201 TTJ 893 (Pune)(Trib.)

57 **S. 4 : Charge of income-tax – Capital or revenue – Interest subsidy given for the purpose of payment of loan acquired for the acquisition of capital asset is capital receipt. [S. 28(i)]**

Assessee received interest subsidy from Rajasthan Govt. and disclosed the same as capital reserve in its balance sheet. Ld. AO treated it as revenue receipt. CIT(A) confirmed the contention of the assessee following earlier years order. On further appeal, the Tribunal observed that in *Sahney Steel & Pressing Works Ltd. v. CIT (1997) 228 ITR 253 (SC)*, the Supreme court held that subsidy given to the new industries at the commencement of business, to carry on their business and not as an aid for setting up of the industries that subsidy is treated as operational subsidy and not a capital one. With regard to revenue subsidy, it held that if it is given by way of assistance to carry on trade or business, it has to be treated as a trading receipt. The Tribunal observed that in the present case, the interest subsidy was given only for the payment of loan acquired for acquisition of capital assets. As such, it is a subsidy given for setting up of business. Hence, it has rightly been treated as a capital receipt. (AY. 2012-13)

JCIT v. J. K. Cement Ltd. (2019) 69 ITR 26 (SN) (Luck.)(Trib.)

58 **S. 4 : Charge of income-tax – Capital or revenue – Compensation received on termination of business activity is held to be capital receipt. [S. 28(i)]**

Dismissing the appeal of the revenue, the Tribunal held that, Compensation received on termination of business activity is held to be capital receipt. (AY.2011-12)

DCIT v. Rishabh Infrastructure (P.) Ltd. (2019) 176 ITD 150 (Raipur)(Trib.)

59 **S. 4 : Charge of income-tax – Association of persons – Mutuality – Assessee is not claiming the benefit of mutuality – AO cannot suo motu treat the part of income as mutuality. [S. 2(31)(v)]**

The Tribunal held that the assessee AOP had carried on its activities on commercial basis without making any distinction between members or non-members and had never claimed any benefit under mutuality. Accordingly the AO was unjustified in

treating assessee as mutual entity suo motu and treating the part of receipt as mutuality. (AY.2008-09 to 2015-16)
Film Nagar Cultural Center v. DCIT (2019) 175 ITD 712 (Hyd.)(Trib.)

S. 5 : Scope of total income – Accrual of Interest – Question of fact – Deletion of addition is held to be justified – No question of law. [S. 4, 260A, Infrastructure Development Board Act, 2001] 60
Dismissing the appeal of the revenue the Court held that, the assessee-board, established under Infrastructure Development Board Act, 2001, was carrying on transaction on behalf of Government and as such, interest accrued on deposit and issue of accrual taxability thereupon was a question of fact, which stood correctly and completely appreciated by authority below. Order of Tribunal is affirmed.
PCIT v. H.P. Infrastructure Development Board (2019) 267 Taxman 500 / 111 taxmann.com 288 (HP)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. H.P. Infrastructure Development Board (2019) 267 Taxman 499 (SC)

S. 5 : Scope of total income – Accrual of Interest – Question of fact – Deletion of addition is held to be justified – No question of law. [S. 4, 260A, Infrastructure Development Board Act, 2001] 61
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CIT v. H.P. Infrastructure Development Board (2019) 267 Taxman 487 / 111 taxmann.com 326 (HP)(HC)
Editorial : SLP of revenue is dismissed, CIT v. H.P. Infrastructure Development Board (2019) 267 Taxman 486 (SC)

S. 5 : Scope of total income – Untilized amount on prepaid card at end of year which was treated as advance in balance-sheet and recognized as a revenue receipt in subsequent year, when talk time was actually used or was exhausted – Addition cannot be made. [S. 145]. 62
Assessee is engaged in the business of providing telecom services to both prepaid and postpaid subscribers. AO held that assessee must account for and include entire amount paid on date of purchase of prepaid card by subscriber. Tribunal accepted assessee's plea that unutilized amount on prepaid card at end of year was to be treated as advance in balance-sheet and recognized as a revenue receipt in subsequent year, when talk time was actually used or was exhausted. High Court affirmed the order of Tribunal. (AY. 2003-04, 2004-05, 2009-10)
CIT v. Sistema Shyam Teleservices Ltd. (2019) 260 Taxman 402 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Sistema Shyam Teleservices Ltd. (2019) 265 Taxman 549 (SC)

63 **S. 5 : Scope of total income – Interest on NPAs not taxable on accrual basis in the hands of a non-banking institution. [S. 145, RBI Act, S. 45Q]**

The assessee, a non-banking institution, which is regulated by the Reserve Bank of India, is not assessable on the interest income earned on non-performed assets on accrual basis, since under S. 45Q of the RBI Act, when such income is not received and the possibility of recovery is almost NIL, it cannot be said to have accrued to such institution. (AY. 2009-10)

Bhind District Co-operative Central Bank Ltd. v. IT Departments (2019) 177 DTR 196 / 106 taxmann.com 396 (MP)(HC)

64 **S. 5 : Scope of total income – Accrual – Real income theory – Bad debt – Mercantile system of accounting – Bill raised for premature termination of contract – Contracting company not accepting Bill – Income did not accrue – Another bill of which a small part is received after four years – Claim as bad debt is to be accepted. [S. 36(1)(vii), 145]**

Dismissing the appeal of the revenue the Court held that though the assessee following the mercantile system of accounting Bill raised by assessee for premature termination of contract however the contracting company not accepting Bill. Income did not accrue. As regards another bill of which a small part is received after four years, claim as bad debt is to be accepted. (AY.2002-03)

CIT v. Bechtel International Inc. (2019) 414 ITR 558 (Bom.)(HC)

65 **S. 5 : Scope of total income – Accrual – Method of accounting – Amount retained under contract to ensure there are no defects in execution of contract – Amount retained did not accrue hence cannot be taxed on accrual basis. [S. 145]**

Dismissing the appeal of the revenue the Court held that by the specific terms of the contract itself, the awarder was entitled to retain the amounts so as to rectify any defects arising in the period in which as per the terms of the contract the amount was retained. There could be no accrual found on the completion of contract, since the assessee's right to such amount would depend on there being no defects arising in the subsequent period during which the awarder was enabled retention of such amounts. (AY. 2002-03 to 2005-06)

CIT v. Chandragiri Construction Co. (2019) 415 ITR 63 (Ker.)(HC)

66 **S. 5 : Scope of total income – Accrual – Demurrage charges – Mercantile system of accounting. [S.145]**

High Court held that the Tribunal has rightly decided that the demurrage / wharfage charges had not accrued to the assessee though the assessee is following mercantile system of accounting. Accordingly the addition cannot be made on accrual basis.

CIT v. Rajasthan Small Industries Corporation Ltd. (2019) 105 tamann.com 81 / 263 Taxman 253 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Rajasthan Small Industries Corporation Ltd. (2019) 263 Taxman 252 (SC)

S. 5 : Scope of total income – Actual of income reported cannot be substituted with notional figures – Appellate Tribunal – Departmental representative cannot adopt a new basis to argue the sustenance of an addition before the Tribunal, which did not form the basis of such addition in the assessment order. [S. 4, 145(3), 254(1)] 67

The actual profits reported by an assessee cannot be substituted by the profits that the AO believes should have been earned basis the market value of the products. There is no embargo on an entity selling its products at a price lower than the market price. The only way to substitute the reported price with another price would be by first taking an action under S. 145(3) of the Act. Further, Revenue cannot adopt a new basis to argue the sustenance of an addition before the Tribunal, which did not form the basis of such addition in the assessment order. (AY. 2012-13 to 2014-15)

JCIT v. Flipkart India (P) Ltd. (2019) 73 ITR 392 / 180 DTR 49 (Bang.)(Trib.)

S. 5 : Scope of total income – Salary – Seafarer – Rendered services outside India – Salary is not taxable in India. [S. 15] 68

Assessee Seafarer rendered services outside India and earned salary income, which was remitted by his foreign employer in his Non-Resident External (NRE) account maintained with an Indian bank. Tribunal held that salary received by assessee would not be taxable in India. (AY.2015-16)

DCIT v. Chukkapalli Mallikarjuna (2019) 177 ITD 582 (Vishakha)(Trib.)

S. 6(6) : Residence in India – Not-ordinarily resident – Cash credits – If the assessee is non-resident amount found deposited in a foreign bank is not taxable in India either u/s. 68 or u/s. 69 of the Act – Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. [S. 68, 69] 69

The assessee was born in India in year 1960 and thereupon he went to foreign country for education and carrying on his profession. During the year assessee was in India for 173 days. AO treated the assessee as resident. CIT(A) and Tribunal held that the assessee was not an ordinary resident. Dismissing the appeal of the revenue the Court held that if the assessee is non-resident amount found deposited in a foreign bank is not taxable in India either u/s. 68 or u/s. 69 of the Act. Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. Residential status was regarded as 'not an ordinary resident'. (AY. 2006-07)

PCIT v. Binod Kumar Singh (2019) 178 DTR 49 / 264 Taxman 335 / 310 CTR 243 (Bom.) (HC), www.itatonline.org

S. 9(1) : Income deemed to accrue or arise in India – Business connection – Royalty – Broadcasting services – Subscription received by TV channel operator from customers – Receipt was not for transfer of any copyright in literary, artistic or scientific work – Can not be categorized as royalty income – DTAA-India-Singapore. [S.9(1)(vii), Copy Right Act 1957, S. 2(y), 14, 37 Art. 5, 12] 70

Assessee is a Singapore based company and operated TV channels through different agencies. Assessee received a part of subscription charges paid by customers which enable customers to view channels operated by assessee. Dismissing the appeal of the revenue the Court held that this was not a case where payment for any copyright in literary, artistic or scientific work was being made, nor assessee was parting with any

copyrights therefore payment could not be categorized as royalty. (Followed *Set Satellite (Singapore) P. Ltd. (2008) 307 ITR 205) (Bom.)(HC) Dy.CIT v. Set India (P) Ltd.* (ITA No. 4372/Mum/ 2004 dt.25-04-2012)
CIT v. MSM Satellite (Singapore) Pte. Ltd. (2019) 265 Taxman 376 / 180 DTR 13 (Bom.) (HC)

71 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Fixed place permanent establishment – Facts of the case clearly point to the fact that the assessee's employees were not merely liaisoning with clients and the headquarters office. E-mail communications and chain mails indicate that with respect to clients and possible contracts of GE with Reliance CS-1, GE Oil & Gas, Bongaigaon Refinery, Draft LOA for WHRU (E-mail from Andrea Alfani (GE Overseas) to Vivek Venkatachalam (GEIIPL) and Riccardo Procacci (GEII) on proposed & connected matters mail to send Reliance, including comments to RIL on the proposed letter of acceptance and relevant attachments. Also, asked them whether they wanted to send the e-mail themselves to RIL or for it to be sent directly – These appear to show important role for Vivek and Riccardo in the negotiating process – These suggest that substantive work on the BHEL contract was done in India by mix of GE overseas and GE India team-Kind of activity i.e. manufacture and supply of highly specialised and technically customised equipment, the "core activity" of developing the customer (identifying a client) approaching that customer, communicating the available options, discussing technical and financial terms of the agreement, even price negotiations, needed collaborative process in which the potential client along with GE's India employees and its experts, had to intensely negotiate the intricacies of the technical and commercial parameters of the articles etc. – Considering all the aspects it is clearly revealed that the GE carried on business in India through its fixed place of business (i.e. the premises) through premises. Accordingly the order of the Tribunal is affirmed – The assessee cannot selectively quote on certain parts of the commentary – Rather, must read the spirit of the entire commentary – Order of Tribunal is affirmed – DTAA-India-USA [S. 90, Art. 4, 5(1), 5(3)]**

Appellate Tribunal held that the GE Energy Parts Inc. had a fixed place Permanent Establishment (PE) and Dependent agent PE (DAPE) in India under the DTAA and liable to file income tax returns in India. At the time of hearing following questions of law were framed for consideration was;

"(1) Did ITAT fall into error in its findings with respect to existence of a fixed place Permanent Establishment (PE) of the assessee in India?
(2) Did ITAT fall into error in concluding that the assessee/appellants separately had an independent agent PE, located in India; and,
(3) Whether on the facts and the circumstances of the case and the law, the ITAT was justified in attributing as high as 35% of the profits to the alleged marketing activities and thereafter, attributing 75% of such 35% profits to the alleged PE of the Appellant in India Submission of parties"

The Appellant submitted that the technology and not marketing enabled it to be successful in their business. Since products are so sophisticated, marketing is a minimal component of the sale. All strategy decisions reside with the applicant outside India-work in India is only limited to providing market inputs and interface. In this case, the

LO is only collecting information about potential customers in India and passing on this information to its non-resident businesses; and creating awareness of the business products. After considering the Articles 5(1) to 5(3) of India-USA DTAA and referring to all judgments and pronouncements from the OECD Commentary and eminent authors the Court answered all the questions in favour of the revenue. Court held that, facts of the case clearly point to the fact that the assessee's employees were not merely liaisoning with clients and the headquarters office. E-mail communications and chain mails indicate that with respect to clients and possible contracts of GE with Reliance CS-1, GE Oil & Gas, Bongaigaon Refinery, Draft LOA for WHRU (E-mail from Andrea Alfani (GE Overseas) to Vivek Venkatachalam (GEIIPL) and Riccardo Procacci (GEII) on proposed & connected matters mail to send Reliance, including comments to RIL on the proposed letter of acceptance and relevant attachments. Also, asked them whether they wanted to send the e-mail themselves to RIL or for it to be sent directly. These appear to show important role for Vivek and Riccardo in the negotiating process. These suggest that substantive work on the BHEL contract was done in India by amix of GE overseas and GE India team-Kind of activity i.e. manufacture and supply of highly specialised and technically customised equipment, the "core activity " of developing the customer (identifying a client) approaching that customer, communicating the available options, discussing technical and financial terms of the agreement, even price negotiations, needed collaborative process in which the potential client along with GE's India employees and its experts, had to intensely negotiate the intricacies of the technical and commercial parameters of the articles etc. Considering all the aspects the it is clearly revealed that the GE carried on business in India through its fixed place of business (i.e. the premises) through premises. Accordingly the order of the Tribunal is affirmed. The assessee cannot selectively quote on certain parts of the commentary, rather, must read the spirit of the entire commentary. (ITA 621/2017 dt. 21.12.2018) (connected matters) (AY.2001-02) (Note. Order in *GE Energy Part Inc v. ADDIT (2017) 56 ITR 51 (Delhi) (Trib.)* is affirmed.)

GE Energy Part Inc v. CIT (2019) 411 ITR 243 / 306 CTR 417 / 174 DTR 25 (Delhi)(HC), www.itatonline.org
GE Genbacher Gmbh & Co v. CIT (Delhi)(HC), www.itatonline.org
GE Engine Services Malaysia Sdn Bhd v. CIT (Delhi)(HC), www.itatonline.org
GE Packed Power Inc v. CIT (Delhi)(HC), www.itatonline.org
GE Transportation Parts LLC v. CIT (Delhi)(HC), www.itatonline.org
GE Engine services Distribution LLC v. CIT (Delhi)(HC), www.itatonline.org
GE Engine services Inc v. CIT (Delhi)(HC), www.itatonline.org
GE Japan Ltd v. CIT (Delhi)(HC), www.itatonline.org
GE Electronic Canada Company v. CIT (Delhi)(HC), www.itatonline.org
GE Aircraft Engine Services Ltd v. CIT (Delhi)(HC), www.itatonline.org
GE Aviation Services Operation LLP v. CIT (Delhi)(HC), www.itatonline.org
GE Aviation Materials LP v. CIT (Delhi)(HC), www.itatonline.org
GE Caledonian Ltd v. CIT (Delhi)(HC), www.itatonline.org
GE Electronic Power Systems Inc v. CIT (Delhi)(HC), www.itatonline.org
General Electric Canada Company v. CIT (Delhi)(HC), www.itatonline.org
GE Multilin v. CIT (Delhi)(HC), www.itatonline.org
GE Specific Ltd v. CIT (Delhi)(HC), www.itatonline.org

72 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Liaison office of assessee did not constitute Permanent Establishment – Income is not chargeable to tax in India – DTAA-India-Japan. [Art. 5]**

Assessee is a company incorporated in Japan and has opened a Liaison office in India seeking RBI approval. Assessee declared nil income in its return of income. AO held that assessee's LO constituted a PE under article 5 of India-Japan DTAA as it had a full fledged office with employees and staff. AO also referred to an agreement between assessee's LO and LG Chemicals Ltd, Korea for granting exclusive and non-transferrable right to distribute chemicals products on commission basis. Tribunal noted that the agreement was valid up to December 1996 and it did not pertain to the year under consideration. Further, the co-ordinate bench of the tribunal in its own case for earlier years held that LO did not constitute a PE of the assessee in India and the LO was performing activities in accordance with permission granted by RBI. Hence, relying on the earlier year order it was held that LO did not constitute PE of the assessee under Article 5 of India-Japan DTAA. (AY.2002-03)

Nagase and Company Ltd. v. ADIT (2019) 109 taxmann.com 288 / 180 DTR 1 (Mum.) (Trib.)

73 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Security – Shares – Sale of units of equity linked mutual funds and derived short term capital gain (STCG) – Exempt to tax in India – DTAA-India-UAE. [S. 5(2), Indian Companies Act, 2013, S.2(84), Securities Contract (Regulation) Act, 1956. Art. 3(2), 13(4), 13(5)]**

The assessee, an individual, was a non-resident for the relevant assessment year. He sold units of equity oriented mutual funds and derived short term capital gains (STCG). In his return of income, he claimed STCG amounting to ₹ 1.35 crore as exempt to tax in India by virtue of Article 13(5) of the India-UAE Tax Treaty. The AO held that the underlying instrument of any equity oriented mutual funds was nothing but a 'share' and, therefore, as per Article 13(4) of the said Tax treaty, STCG would be taxable in India. Accordingly, he made addition of ₹ 1.35 crore. CIT(A) held that said short term capital gains were not taxable in India. He was of the view that the equity oriented mutual funds were not 'shares' and, therefore, the case was governed by Article 13(5) of the said Tax Treaty. On appeal by the revenue the Tribunal held that the definition of 'securities', it is clear that 'shares' and 'units of a mutual fund' are two separate types of securities. Applying the above meaning to the provisions of the Tax Treaty, the gains arising from the transfer of units of mutual funds should not get covered within the ambit of Article 13(4) of the Tax Treaty, and should consequently be covered under Article 13(5) of the Tax Treaty. Therefore, the assessee, who is a resident of UAE for the purposes of the Tax Treaty, STCG arising from sale of units of equity oriented mutual funds and debt oriented mutual funds should not be liable to tax in India in accordance with the provisions of Article 13(5) of the Tax Treaty. (AY. 2012-13)

DCIT(IT) v. K. E. Faizal (2019) 178 ITD 383 (Cochin)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Subsidiary company neither concluded any contracts on behalf of assessee – US company-It had no such authority nor secured any orders for it in India, it could not be regarded as Agency PE of assessee in India – DTAA-India-USA. [Art. 5 (6)] 74

The assessee-US company is engaged in the business of diamond grading and preparation of diamond dossiers. It was a tax resident of USA and entitled to be taxed in accordance with the provisions of the India-USA Double Taxation Avoidance Agreement (DTAA). The AO held that the diamond grading services were rendered, constituted a Permanent Establishment (PE) of the assessee in India and, to that extent, the assessee's receipts from the diamond grading services would be taxable in India. On appeal the Tribunal held that GIA India Lab is not acting in India on behalf of the assessee-company. Further, GIA India Lab is not having any authority to conclude contracts and has neither concluded any contracts on behalf of the assessee-company nor has it secured any orders for the assessee-company in India. Thus, GIA India Lab cannot be regarded as 'agency PE' of the assessee-company in India. Accordingly the finding of the AO is reversed. (AY. 2010-11)

Gemological Institute of America, Inc. v. ACIT(IT) (2019) 178 ITD 620 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Import of coal – Income cannot be deemed to have accrued or arose in India in transaction of export of coal to assessee in India – Not liable to deduct tax at source – OECD Model convention, Art 7. [S. 195, 201(1), 201(IA)] 75

Assessee, a trader in coal, imported coal from four non-resident-suppliers through common broker, namely, 'SPEPL', but no tax was deducted at source under S. 195 on payment made to them. AO held that import of coal via broker constituted business connection of non-resident supplier in India and, accordingly, estimated 10 per cent income on alleged purchases from non-resident sellers as taxable income in India. CIT(A) confirmed the addition. On appeal the Tribunal held that non-resident suppliers directly delivered coal from outside India to assessee without routing through agent SPEPL and there was no role of SPEPL directly or indirectly in respect of sales, coal shipment services, collection of money and import documentation and SPEPL had no authority to conclude contract on behalf of non-resident suppliers. Since no business connection was established, income cannot be deemed to have accrued or arose in India in transaction of export of coal to assessee in India. Not liable to deduct tax at source. (AY. 2015-16)

Hind Energy & Coal Benefication (India) Ltd. v. ITO (IT & TP) (2019) 179 ITD 388 (Indore) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Supply of equipment – Sale from outside India – Risk and title transferred outside India and no transaction taking place in India – Customs clearance, inland transportation done by buyer on its own – No permanent establishment involved in sale – Income is not taxable in India – DTAA-India-Japan. [S. 44D, Art.7, 24] 76

In this case it has been held that the goods were sold from outside India. The risk and title were also transferred outside India and no transaction took place in India. Customs clearance and inland transportation were also done by buyer on its own

and the assessee was at no stage involved in the activities. There was no permanent establishment involved in the sale. In fact supervision was done after the supply of equipment. The Department could not establish that the assessee had a fixed place permanent establishment or supervisory permanent establishment in India. Hence, income from such transaction is not chargeable to tax in India. (AY. 2001-02 to 2004-05, 2007-08, 2010-11 to 2012-13)
Sumitomo Corporation v. Dy. DIT (2019) 73 ITR 443 (Delhi)(Trib.)

77 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Water supply augmentation project and oil pipeline project etc. – Payment received during year was attributable to PE in India, same was taxable as business profit – DTAA-India-Russia. [Art. 7, 12]**
Assessee a Russia based company, participated in water supply augmentation project and oil pipeline project etc. through its PE in India, since there was no transfer of any technical know-how and, moreover, entire payment received during year was attributable to PE in India, same was taxable as business profit in terms of India-Russia DTAA. (AY. 2004-05, 2005-06, 2006-07)
PJSC Stroytransgaz v. DCIT (2019) 177 ITD 538 (Delhi)(Trib.)

78 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Indian assignment – Resident of USA – Not liable to tax in India – DTAA-India-USA. [Art.4]**
Assessee, a resident of US, was on Indian assignment (August, 2012 to march, 2013) he had a permanent home available both in India as well as in US however, by applying second tie breaker in article 4 of DTAA between India and USA, i.e. Closer personal and economic relations, assessee, centre of vital interest was closure to US and assessee succeeded in establishing that he was a resident of US available to assessee. Accordingly income of assessee for aforesaid period, during which he was a resident of US under DTAA on Indian assignment could not have been brought to tax in India (AY.2013-14)
Dy.CIT v. Shri Kumar Sanjeev Ranjana (2019) 177 DTR 17 (Bang.)(Trib.)

79 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Transfer pricing adjustment – Income received outside India for the services rendered outside India shall not be taxable in India – Actual profit attributable to India being a factual issue restored to the Assessing Officer to examine assessee's claim. [S. 92C]**
The assessee, a foreign company and a tax resident of Hong Kong, was engaged in the business of distribution of satellite television channels and sale of advertisement air time for the channel companies at global level. Till F.Y. 2007-08, the assessee and channel had principal to principal relationship in respect of both advertising stream and distribution stream of income. However, in pursuance to the guidelines issued by Ministry of Information and Broadcasting, there was change in relationship and the channel companies with effect from 1st April 2008 and the assessee started operating as an agent of the channel companies in respect of advertisement and distribution stream of income. During AY 2010-11, the assessee earned income from agency commission, management fees and other income in the nature of royalty. In the course of assessment proceedings, the assessing officer noticed that assessee earned income from international transaction from its AE in India and therefore made a reference to

TPO. Assessee had adopted PSM as the most appropriate method to benchmark its international transaction relating to agency commission and has shown a profit margin of 28.17%. The Transfer Pricing Officer after taking note of the profit margin shown by the assessee and that of the comparable companies has also accepted the arm's length price shown by the assessee to be at arm's length. However the TPO noticed that out of the global commission received by the assessee from the overseas merged entities, commission fee received towards the services rendered outside India was not offered to tax by the assessee in India and only the balance commission fee was offered to tax in India. He thus made an adjustment on the ground that instead of offering profit of ₹ 252,59,62,559/- under the PSM, the assessee has offered profit of ₹ 227,80,28,141/-. While doing so, the Transfer Pricing Officer has basically relied upon an Annexure to the transfer pricing study report wherein revised computation of consolidated net profit compared to the total India / Global Revenues earned by the channel companies and the overall profitability for the period 1st April 2009 to 31st March 2010 has been reflected. Aggrieved by the draft order, assessee raised objection before DRP. The DRP confirmed the addition. On further appeal, the Tribunal, held that agency/marketing commission paid to non-resident outside India and for the services rendered outside India is not taxable in India. Moreover, if one carefully reads the provision contained in Explanation below S. 9(2) of the Act, it will be very much clear that it will not be applicable to the agency commission earned by the assessee. Therefore, income accruing or arising outside India would not be taxable under the Act. The Tribunal further observed that the assessee itself has admitted that the profit attributable to India is ₹ 252,59,62,559/-. As the actual profit attributable to India was a purely factual issue which had to be demonstrated by the assessee through proper documentary evidences / books of account, for the limited purpose of verifying this fact, the Tribunal restored the issue to the AO to examine assessee's claim. (AY. 2010-11)

Fox International Channel Asia Pacific Ltd. v. DCIT (IT) (2019) 175 DTR 233 / 198 TTJ 0377 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Income from grouting to be taxable income arising out of a Fixed Place Permanent establishment – DTAA-India-UAE. [S. 90, Art. 5] 80

Assessee-company was incorporated in UAE. It was engaged In business of undertaking grouting work for companies in oil and gas industry and income arising from said activity had been claimed by it as non-taxable in India. AO treated income from grouting to be taxable income arising out of a Fixed Place PE under article 5(1). Tribunal held that, Grouting work carried out by assessee for main contractors in Indian territories, being pipelines and cable crossing, pipeline and cable stabilisation, etc., could not be held to be 'Construction PE' under sub-clause (h) of clause (2) of article 5, as sub-sea activities that can be treated as 'Construction' are laying of pipe-lines and excavating and dredging. Tribunal also held that since assessee's equipments as well as personnel were stationed on vessel of main contractor, for carrying out grouting, said vessel was fixed place of business through which business was carried on by assessee and, thus, income earned by assessee was taxable in India.(AY. 2008-09 to 2012-13)

ULO Systems LLC v. DCIT IT (2019) 176 ITD 805 / 200 TTJ 321 / 179 DTR 97 (Delhi) (Trib.)

81 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Capital gains – Sale of shares – Not taxable in India – DTAA-India-Spain. [Art. 14(6)]**
Dismissing the appeal of the revenue the Tribunal held that being a Spain based company, engaged in real estate development activities in India, capital gain arising from sale of shares of various companies is held to be not taxable in India. (AY. 2012-13)
DCIT v. Merrill Lynch Capital Market (2019) 174 ITD 226 (Mum.)(Trib.)

82 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment made for use of software – Not royalty – DTAA – India-USA-United Kingdom. [S. 195, Art. 12]**
Allowing the appeal of the assessee the Court held that payment made for licence to use the software is not royalty, as the copyright in the software was not transferred but merely allowed to be used and it being a part of operative standard. Followed *Danisco India (P) Ltd v UOI (2018) 404 ITR 539 (Delhi)(HC)*
GE India Industrial (P) Ltd. v. PCIT (2019) 267 Taxman 398 / 111 taxmann.com 165 (Delhi)(HC)
Editorial : SLP is granted to the revenue, PCIT v. GE India Industrial (P) Ltd. (2019) 267 Taxman 166 (SC)

83 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment made to supplying drawings, designs etc. – Before commencement of production – Not royalty – Not liable to deduct tax at source – DTAA-India-Austria [S.195]**
Allowing the appeal of the assessee the Court held that, payment made to supplying drawings, designs etc, before commencement of production is not royalty hence not liable to deduct tax at source.
Majestic Auto Ltd. v. CIT (2019) 267 Taxman 252 (P&H)(HC)
Editorial : Order in Dy.CIT v. Majestic Auto Ltd. (1994) 51 ITD 313 (Chd.)(Trib.) is reversed.

84 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Amount paid to Associated Enterprise towards embedded software – Not royalty – No substantial question of law. [S. 260A]**
Dismissing the appeal of the revenue the Court held that Amount paid to Associated Enterprise towards embedded software is not royalty. Followed *CIT(IT) v. ZTE Corporation (2017) 392 ITR 80 (Delhi) (HC)*. Held no substantial question of law.
CIT v. Nortal Network India International Inc (2019) 267 Taxman 523 / 111 taxmann.com 224 (Delhi)(HC)
Editorial : SLP is granted to the revenue CIT v. Nortal Network India International Inc (2019) 267 Taxman 522 (SC)

85 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – The insertions of Explanations 5 & 6 to S. 9(1)(vi) by the Finance Act 2015 w.r.e.f. 01.04.1976, even if declaratory and clarificatory of the law, will not apply to the DTAAs. The DTAAs are a bilateral agreement between two Countries and cannot be overridden by a unilateral legislative amendment by one Country – Not liable to deduct tax at source – DTAA-India-Netherlands. [S. 195, Art.]**
Question before the High Court was, whether the Respondent assessee while making payment on royalty to the payee Company failed to deduct tax at source,

though required in law? Dismissing the appeal of the revenue the Court held that, The insertions of Explanations 5 & 6 to s. 9(1)(vi) by the Finance Act 2015 w.r.e.f. 01.04.1976, even if declaratory and clarificatory of the law, will not apply to the DTAAs. The DTAAs are a bilateral agreement between two Countries and cannot be overridden by a unilateral legislative amendment by one Country. Followed, New Skies Satellite BV 382 ITR 114 (Delhi)(HC) & Siemens AG 310 ITR 320 (Bom) (HC). Held not liable to deduct tax at source.
CIT v. Reliance Infocomm Ltd. (2019) 179 DTR 112 (Bom.)(HC), www.itatonline.org

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty/ Fees for technical services – Access to online database is not royalty/Fees for technical services. [S. 9(1(vii)] 86
Where the assessee collated data from various journals and articles relating to chemical industry and organized them in a structured form and made the same available for a subscription fee, the consideration was not in the nature of royalty or fees for technical services. It is not royalty as no use or right to use of any copyright of literary, artistic or scientific work has been provided. It is not fees for technical services since there was no material available on record to show that any skilled personnel from the chemical industry were employed in rendering of the service or that any human intervention was involved. This was merely a case of providing access to a copyrighted article. (AY. 2011-12)
Elsevier Information Systems GmbH v. Dy. CIT (IT) (2019) 180 DTR 147 / 202 TTJ 831 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Computer software – Payment made to its foreign based AE for purchase of copyrighted software would not be termed as payment of royalty – Information technology support services – Lease line charges – Not liable to deduct tax at source – DTAA-India-USA. [S. 195, Art. 12] 87
Assessee made payments towards purchase of software licenses to its US based Associated Enterprise (AE). CIT(A) held that TDS was required to be deducted from aforesaid payment as same was 'royalty' within meaning of s.9(1)(vi) and Article 12 of DTAA. Tribunal held that purchase of software in case of assessee being copyrighted article was not governed by definition of royalty not liable to deduct tax at source. Tribunal also held that payment made to information technology support services is not royalty hence not liable to deduct tax at source. Tribunal also held that leasing charges paid for using lease lines only for transmitting data and since there was no lease of any equipment to assessee by its AE, said expenditure could not be classified as royalty. (AY. 2009-10)
John Deere Equipment (P.) Ltd. v. DCIT (2019) 178 ITD 192 (Pune)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Computer software – Transfer of copyrighted software – Consideration would not amount to 'royalty' or fees for 'included services' or 'technical services' – Not taxable in India – Not liable to deduct tax at source – DTAA-India-Sweden. [S.9(1)(i), Art.12] 88
Assessee non-resident and was providing software services and also IT support services to Swedish Company (SA) Since SA did not acquire any copyright in software and it

was a mere transfer of copyrighted software, consideration received by assessee would not amount to 'royalty' or 'fees for included services' or 'fees for technical services' under realm of S. 9 (1)(vi) or under article 12 of DTAA between India and Sweden. Accordingly not taxable in India. Not liable to deduct tax at source. (AY. 2010-11, 2011-12, 2013-14)
Sandvik Tooling Sverige AB v. DCIT (IT) (2019) 176 ITD 390 (Pune)(Trib.)

89 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Non-resident – Sale of software – Copyrighted products-Not liable to tax as royalty – DTAA-India-Ireland. [Art. 12]**
Tribunal held that the Double Taxation Avoidance Agreement between India and Ireland unambiguously required that the use of copyright was to be taxed in the source country. In the present case, the payment had been made by the assessee for use of "copyrighted material" rather than for the use of copyright. None of the authorities had factually doubted the contention of the assessee that it had received consideration for the transfer of a copyrighted product and not for the transfer of copyrights in the computer software programme.
The distinction between the transfer of a copyright and the transfer of a copyrighted product was prominent. Hence the receipts derived by the assessee from "sale of software" was not in the nature of "royalty" as defined under article 12 of the Agreement hence not liable to tax as royalty (AY. 2013-14)
Mentor Graphics Ireland Ltd. v. ACIT(IT) (2019) 69 ITR 247 (Delhi)(Trib.)

90 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment for 'bandwidth services' is not assessable as 'royalty' – Amount received by RJIPL from assessee for providing standard bandwidth services was its 'business profits' – In the absence of its business connection or PE in India could not be brought to tax in India – DTAA-India-Singapore. [S.90, 195, 195A, Art. 7, 12]**
Dismissing the appeal of the revenue the Tribunal held that, Payment for 'bandwidth services' is not assessable as 'royalty'. if the assessee only has access to services and not to any equipment. The assessee also did not have any access to any process which helped in providing of such bandwidth services. All infrastructure & process required for provision of bandwidth services was always used and under the control of the service provider and was never given either to the assessee or to any other person availing the said services. Amount received by RJIPL from assesse for providing standard bandwidth services was its ' business profits' which in the absence of its business connection or PE in India could not be brought to tax in India. (AY. 2016-17)
DCIT v. Reliance Jio Infocomm Ltd. (2019) 200 TTJ 213 / 73 ITR 194 / 179 DTR 105 (Mum.)(Trib.), www.itatonline.org

91 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Monies received towards arbitration costs and legal costs – Amount payable as per decree – Not liable to deduct tax at source – DTAA-India-Switzerland. [S.190, Art.22 Arbitration and Conciliation Act, 1996 S.48]**
Pursuant to the orders passed by the court, the judgment debtor deposited a cumulative sum of ₹ 4.50 crores, a part of which was released vide order dated 17.12.2018. The

decree holder, presently, seeks release of the balance amount along with accrued interest. The reason that a certain portion of the amount was kept back was to ascertain the view of the income tax department as to whether the decree holder could be called upon to pay withholding tax. The income tax department has treated monies received under the award towards arbitration costs and legal costs as income of the decree holder and thereby proceeded to take the stand that the same will be taxable as "fee for technical services", both under the provisions of the Act, and the DTAA. Court held that once a claim merges into a decree of the Court it transcends into a judgment-debt and, therefore, only those adjustments and deductions can be made which are permissible under the Code of Civil Procedure, 1908. The judgments encapsulate the theme that a decree should be executed according to its tenor unless modified by a statute such as the 1962 Act. Accordingly the Court directed, the Registry to release the balance amount available with it along with accrued interest to the decree holder without deducting any sum towards withholding tax. Followed (i) *All India Reporter v. Ramachandra D. Datar, (1961 41 ITR 446 (SC) / (1961) 2 SCR 773, V.K. Dewan v. DDA, Execution Petition No. 194/2005, Delhi High Court. Sino Ocean Limited v. Saivi Chemical Industries Limited, Chamber Summons No. 76/2013 in Execution Application (Lodg.) No. 263/2012, American Home Products Corporation v. MAC Laboratories Pvt. Ltd. and Am., (1986) 1 SCC 465., Islamic Investment Company v. Union of India (UOI) and Anr., 2002 BOMCR 685, S.S. Miranda Ltd. v. Shyam Bahadur Singh, (1985) 154 ITR 849 (Cal.)(HC)*
Xstrata Coal Marketing AG v. Dalmia Bharat (Cement) Ltd. (2019) 311 CTR 597 / 183 DTR 315 (Delhi)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Wind turbines – Installing and carrying out repair work of wind turbines abroad, payment made for said services was liable to tax in India as fee for technical services – Liable to deduct tax at source – DTAA-India-Sri Lanka. [S. 90, Art.7, 12] 92
Assessee is engaged in manufacturing and supply of wind turbines. The assessee exported wind turbines to Sri lanka. Assessee availed services of two companies based in Sri lanka for installation and repair work of wind turbines. AO held that payments made to foreign companies amounted to fee for technical services liable to tax in India. Tribunal upheld order of AO. On appeal the Court held that since activities of installation and repairs of wind turbines was a highly technical work requiring deployment of technical staff by foreign companies, authorities below rightly concluded that payments made for availing said services was liable to tax in India as fee for technical services. Accordingly liable to deduct tax at source.(AY. 2014-15)
Regen Powertech (P.) Ltd. v. DCIT (2019) 266 Taxman 521 (Mad.)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Permanent usage of the service envisages by the concept of make available services remains at the disposal of their service recipients – Liable to be assessed as FTS both under the Income Tax Act and under the tax treaty as well – DTAA-India-USA [Art. 12(2)] 93
The assessee entered into a global agreement with its group entities including HIPL. The AO held that services provided by assessee were in area of supply chain, human

resources, strategic planning and marketing, finance and information systems under agreement which was an admitted fact. Thus, services were utilized by Indian Company as well. Concept of make available required that fruits of services should remain available to service recipients in some concrete shape such as technical knowledge, experience, skills etc. which was met in instant case as could be reflected from nature and duration of contract. Service recipient had to make use of such technical knowledge, skills etc. by himself in his business and for his own benefit. Accordingly the short durability or permanent usage of service envisages by concept of make available services remained at disposal of their service recipients. Accordingly the, consideration qualified as FTS both under Income-tax Act and under tax treaty as well. Tribunal affirmed the order of the AO. (AY.2009-10, 2011-12)

H. J. Heinz company USA v. Add.CIT (2019) 201 TTJ 786 / (2020) 185 DTR 207 (Delhi) (Trib.)

94 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Inspection charges – Not liable to deduct tax at source – DTAA-India-Indonesia. [S. 195, Art. 12]**

Allowing the appeal of the assessee the Tribunal held that, services rendered by the for obtaining inspection report for inspection of grade of coal at time of shipment at port at Indonesia to submit same to shipping agent at time of shipment, services provided were not in nature of Fee for Technical Service hence not liable to deduct tax at source. (AY. 2015-16)

Hind Energy & Coal Benefication (India) Ltd. v. ITO (IT & TP) (2019) 179 ITD 388 (Indore) (Trib.)

95 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Training of pilots and cabin crew – Can not be assessed as fees for technical services or royalties – Not liable to deduct tax at source – OECD Model Convention, Art. 12. [S. 9(1)(vi), 195]**

Assessee was carrying on business of airline. During relevant years assessee sent its personnel for training of pilots and cockpit crew to various countries. AO held that services rendered by foreign companies were highly technical in nature, therefore, any consideration paid towards those services would come within the nature of FTS and, assessee ought to have deducted tax at source as per S. 195 of the Act. CIT(A) upheld order of AO only on ground of retrospective amendment to S. 9 by insertion of an Explanation by Finance Act, 2010, with retrospective effect from 1-6-1976. On appeal the Tribunal held that tax deduction at source obligation cannot be fastened on a person on basis of a retrospective amendment to law, which was not in force when payments were made. Since, in the instant case, when assessee made payments to non-residents in assessment years in question, such a provision did not exist, assessee could not be held liable to deduct tax at source on said payments on basis of retrospective amendment to law. (AY. 2007-08, 2008-09)

Kingfisher Airlines Ltd. v. Dy. DIT (IT) (2019) 179 ITD 367 (Bang.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Charges for flight simulator usage and other flight training to cockpit crew and pilots – Not liable to deduct tax at source – DTAA-India-UAE. [S. 9(1)(vi) 195, Art.12] 96

During the relevant year, assessee paid charges for flight simulator usage and other flight training to cockpit crew and pilots. The AO held that payment of simulator fee amounted to royalty as per Explanation-2 clause (iv) and (iva) of S. 9(1) and as per article 12(3) of DTAA between India and UAE hence liable to deduct tax at source. CIT(A) affirmed the order of the AO. On appeal Tribunal held that mere fact that charges for use of simulator was separately quantified on hourly basis did not mean that assessee was hiring same or making payment for a right to use same, even otherwise, since without imparting of training by instructors, hiring of simulator on its own did not have any purpose, it could not be concluded that assesse paid royalty for use of simulator. Order of the AO is set aside. (AY. 2008-09)

Kingfisher Airlines Ltd. v. Dy. DIT(IT) (2019) 179 ITD 367 (Bang.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Management service fees from its Indian subsidiaries – Not taxable as fees for technical services and not as dividend – Reimbursement of expenses – DTAA-India-Swedish. [S. 9(1)(iv), Art. 10, 12] 97

Assessee-Swedish company received management service fees from its Indian subsidiaries, department's view that said receipts were in nature of Fees for Technical Services (FTS). Alternate, case of the department was, said receipts to be treated in nature of dividend taxable under DTAA between India and Sweden as well as u/s.9(1)(iv). Tribunal held that, management service fees from its Indian subsidiaries is neither taxable as fees for technical services nor as as dividend. Reimbursement of expenses is not taxable in the absence of any Permanent Establishment in India. (AY. 2009-10)

Sandvik AB v. DIT (2019) 178 ITD 128 (Pune)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Dubai based branch a foreign bank, received referral charges from its Indian Branch for referring a resident client to Indian branch for bringing out issue of convertible bonds – Not liable to tax in India as fee for technical services – Transaction with head office – Interest paid – Neither deductible nor chargeable – DTAA-India-Switzerland. [S. 9(1)(i), Art. 7, 12] 98

Assessee had a branch office in India and it also had a branch in Dubai namely 'CSDB'. During relevant year, CSDB received certain amount from Indian branch of assessee-company for referring a resident client to Indian company for bringing out issue of convertible bonds. AO held that referral fee was liable to be taxed in India under S.9(1)(i) of the Act. Tribunal held that referral fee was not taxable in India as fee for technical services. Tribunal; also held that since CSDB did not have PE in India, amount in question could not be brought to tax even as business income under article 7 of India-Switzerland DTAA. Tribunal also held that interest paid by Indian branch of foreign bank to Head Office is neither deductible in hand of Indian Branch nor chargeable to tax in hand of Head Office and overseas branches as they constitute a single entity. (AY. 2013-14)

Credit Suisse AG v. DCIT (IT) (2019) 176 ITD 873 (Mum.)(Trib.)

99 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services-Investigation services do not satisfy the 'make available' condition under Article 12(5) of the India Netherlands Tax Treaty, payment for such services could not be taxed as Fees for Technical Services in India-DTAA-India-Netherlands. [Art. 7, 12(5)]**

The Tribunal held that the services were a one-time job performed and the job ended with the submission of investigation report. It further held that, there was no recurrence of the services as there was no guarantee that the future accidents would happen in the same way so that the first report could be used as a guidance for conducting investigation by the Assessee on its own. Accordingly, it was held that even though the Assessee had the benefit of the services, but it did not gain any technical knowledge, experience or skill by which it could conduct an investigation into an accident independently without the aid of the Dutch company. Accordingly, it was held that as the services do not fall within the 'make available' criteria, the same cannot be considered as FTS as per Article 12(5) of the India Netherlands tax treaty. Moreover, in the absence of a Permanent Establishment ('PE') of the Dutch Company in India, the same could not be taxed in India under Article 7 of the Tax Treaty as well. (AY. 2007-08, 2008-09)

Oil and Natural Gas Corporation v. ADIT (2019) 175 DTR 89 / 198 TTJ 34 (Delhi)(Trib.)

100 **S. 10(1) : Agricultural income – Growing high yielding hybrid seeds – Agricultural activity – Entitle for exemption.**

The assessee produced high yielding hybrid seeds. It purchased seeds and then produced hybrid seeds in the net houses and marketed the seeds. The AO held that the activity carried on by assessee was not agricultural activity and treated the receipts as income of assessee and denied the exemption. The CIT(A) deleted the addition. Dismissing the appeal of the revenue the Tribunal held that growing of hybrid seeds could never be held to be non-agricultural activity. Accordingly entitled for exemption. (AY. 2012-13, 2013-14).

Dy. CIT v. Genuine Seeds P. Ltd. (2019) 74 ITR 7 (SN) (Pune)(Trib.)

101 **S. 10(1) : Agricultural income – Assessee was able to prima facie establish that possession of agricultural land was acquired during the year – Entitled to exemption.**

Tribunal held that there was a mention of growing plantation, trees and paddy in the certificate of Record of Rights, Tenancy and Crop Information issued by the village accountant for FY 13-14. The Tribunal also observed that the agreement to sell, per se, had a clause recording the handing over of possession of land to the Assessee in FY 2013-14 (relevant to AY 2014-15); which fact was also confirmed by the seller. On the basis of the above observation, the Tribunal held that on a reasonable basis, 50% of the income could be regarded as 'agricultural income' and the balance as 'income from other sources'. (AY. 2014-15)

Anil Gowda v. ITO (2019) 69 ITR 55 (SN) (Bang.)(Trib.)

102 **S. 10(12) : Recognised provident fund – Accumulated balance – Accumulated balance lying in provident fund of assessee upto retirement is eligible for exemption.**

Dismissing the appeal of the revenue the Court held that; Accumulated balance lying in provident fund of assessee upto retirement is eligible for exemption. (AY. 2012-13)

PCIT v. Dilip Ranjrekar (2019) 260 Taxman 317 / 177 DTR 158 / 308 CTR 662 (Karn.)(HC)

S. 10(22) : Educational institution – Property was purchased in name of Secretary and Manager of Society for running a school – Profits of institution was being used for self aggrandizement – Denial of exemption is held to be justified. [S. 12AA] 103
Dismissing the appeal of the assessee the Court held that, the property was purchased in name of Secretary and Manager of Society for running a school and the profits of institution was being used for self aggrandizement. Accordingly the denial of exemption is held to be justified.
Sree Chithra Educational Cultural And Film Society v. DIT (2019) 412 ITR 76 / 263 Taxman 93 (Ker.)(HC)

S. 10(22) : Educational institution – Institution Should exist solely for educational purposes-Income from educational institution utilised to purchase immovable property in names of members of society – Not entitled to exemption. 104
Dismissing the appeal of the assessee the Court held that the assessee was a society formed with many objectives, one of which was imparting education. Hence, the assessee was not an institution established and existing solely for educational purposes. The Assessing Officer found that the funds of the society were diverted to purchase of assets, immovable property in the name of persons managing the society. The clear finding was that it could not be held that the institution was existing solely for educational purposes and not for profit. Hence the assessee was not entitled to exemption under S. 10(22) of the Act.
Sree Chithra Educational, Cultural And Film Society v. DIT (2019) 412 ITR 76 (Ker.)(HC)

S. 10(22) : Educational institution – Exemption cannot be denied merely on ground that it was receiving fees from foreign students in foreign exchange abroad by way of an arrangement with an educational organisation abroad. 105
Dismissing the appeal of the revenue the Tribunal held that, exemption cannot be denied merely on ground that it was receiving fees from foreign students in foreign exchange abroad by way of an arrangement with an educational organisation abroad. The provisions of S. 10(22) for claiming exemption provides that the requirement is that the university or the educational institute must exist solely for educational purposes in India in other words, the recipient of the income must have the character of an educational institute in India and its character outside India or it being a part of university existing outside India is not relevant for deciding whether its income would be exempt under S. 10(22) or not. (AY.1998-99)
DIT(E) v. American School of Bombay Education Trust (2019) 174 ITD 326 / 69 ITR 66/ 198 TTJ 534 (Mum.)(Trib.)

S. 10(23C) : Educational institution – Substance over form to be considered – Matter remanded back to the Chief CIT with a direction to examine the entire financials and to take decision on merits in accordance with law. [S. 10(23C)(vi), 12, Art. 226] 106
Allowing the petition the Court held that the CIT rejected the application only on the ground that by stating that the trust deed does not specifically mention that the educational institution established by it not running for the purpose of profit. Assessee contended that substance over form is required to be considered has not been examined opportunity of being heard could also be afforded to the assessee when the assessee has

come forward with the plea that the funds are utilized for educational activities and the same is pursued as a charitable activity matter is remanded back to the Chief CIT with a direction to examine the entire financials of the assessee and take a decision on merits and in accordance with law. (AY. 2010-11, 2012-13)
PKD Trust v. ITO (2019) 181 DTR 23 / 311 CTR 657 (Mad.)(HC)

107 **S. 10(23C) : Educational institution – Charitable trust – Entitle to exemption. [S. 2(15), 10(23C)(iv), 12AA]**
Tribunal held that the assessee being a charitable trust within meaning of section 2(15) entitled to benefit under section 10(23C)(iv) of the Act. Order of the Tribunal is affirmed by High Court. (Followed *CIT v. GSI India (ITA No 691 of 2017 dt. 16-02-2018 and GSI India v. DCIT (WP No. 7797 of 2009 dt 26-09-2013)* (AY. 2011-12)
CIT(E) v. GS1 India (Formerly Ean India) (2019) 266 Taxman 279 (Delhi)(HC)
Editorial : SLP is granted to the revenue; CIT(E) v. GS1 India (Formerly Ean India) (2019) 266 Taxman 278 (SC)

108 **S. 10(23C) : Educational institution – Withdrawal of exemption – Collection of capitation fee – Notice of withdrawal containing unspecified allegation – Notice and consequent order is held to be not valid. [S. 10(23C)(vi), 132]**
A writ petition against the order was dismissed. On appeal against the single judge order allowing the appeal the Court held that, in the notice for withdrawal of exemption except stating that there was a raid on December 16, 2015 and documents were seized from the premises and that a considerable part of the amount belonging to the assessee-trust had been misused for personal use of the trustees, no other details were forthcoming. The Revenue had not given reasonable opportunity to the assessee to put forth its case effectively. In the circumstances, the notice dated November 28, 2017 was unsustainable in law. The consequent order of withdrawal of exemption was also not valid. Court also observed that a notice to be valid in law, should be clear and precise so as to give the party concerned adequate information of the case he has to meet. The adequacy of notice is a relative term and must be decided with reference to each case. The test of adequacy of the notice will be whether it gives sufficient information so as to enable the person concerned to put up an effective defence. If a notice is vague or it contains unspecified or unintelligible allegations, it would imply a denial of proper opportunity of being heard. Natural justice is not only a requirement of proper legal procedure but also a vital element of good administration.
Navodaya Education Trust v. UOI (2019) 417 ITR 157 (Karn.)(HC)
Editorial : Decision in Navodya Education Trust v. UOI (2018) 405 ITR 30 / 253 Taxman 412 / 302 CTR 381 / 165 DTR 16 (Karn.)(HC) is reversed.

109 **S. 10(23C) : Educational institution – Child education – Annual receipts from fee, interest and addition as cash credits exceeded ₹ one crore – Prior approval was not taken from CCIT – Denial of exemption is held to be justified. [S. 10(23C)(iiad), 68]**
Dismissing the appeal of the assessee the Court held that, annual receipts from fee, interest and addition as cash credits exceeded ₹ one crore and prior approval of CCIT was not taken. Accordingly the denial of exemption is held to be justified. (AY. 2011-12)
Satluj Shiksha Samiti v. CIT (2019) 264 Taxman 315 / 311 CTR 244 (P&H)(HC)

S. 10(23C) : Educational institution – Wholly or substantially financed by Government – Receiving grant from Government in excess of 50 Per Cent of its total receipts – Entitled to benefit of exemption for assessment years prior to amendment – Original assessment u/s. 143(1) – Reassessment is held to be proper. [S. 10(23C)(iiiab), 143(1), 147, 148] 110

Dismissing the appeal of the revenue the Court held that, receiving grant from Government in excess of 50 Per Cent of its total receipts can be considered as substantially financed by Government hence entitled to benefit of exemption for assessment years prior to amendment. Original assessment u/s. 143(1) accordingly reassessment is held to be proper. (AY. 2004-05, 2006-07, 2007-08)

DIT v. Tata Institute of Social Sciences (2019) 413 ITR 305 / 177 DTR 417 / 308 CTR 759 / 263 Taxman 387 (Bom.)(HC)

S. 10(23C) : Educational institution – Receipt exceeded more than 1 crore – Purchase of land for further extension of school building – Eligible for exemption. [S. 10(23C(vi)] 111

Assessee educational society filed application for grant of registration under S. 10(23C)(vi). CIT(E) denied the exemption on ground that no evidence that assessee had utilised its income for educational purpose was adduced. Tribunal held that the assessee had utilised its income for purchase of land for further extension of school building, thus, assessee was held to be covered within provisions of S. 10(23C)(vi) of the Act. On appeal High Court up held the order of Tribunal. (AY. 2012-13 to 2015-16)

CIT(E) v. Managing Committee, Arya High School, Mausa, Punjab (2018) 97 taxman 656 (P&H)(HC)

Editorial : SLP of revenue is dismissed, CIT (E) v. Managing Committee, Arya High School, Mausa, Punjab (2019) 261 Taxman 450 (SC)

S. 10(23C) : Educational institution – Exemption cannot be denied on the ground that in isolated case few institutions run by the Trust may not fulfil the requirements. [S. 10(23C(iiiab)] 112

Dismissing the appeal of the revenue the Court held that, Exemption cannot be denied on the ground that in isolated cases few institutions run by the Trust may not fulfil the requirements. Exemption is not relatable to any individual institution run under the common umbrella of a Trust. (AY. 2008-09)

CIT(E) v. Deccan Education Society (2019) 173 DTR 323 / 306 CTR 525 (Bom.)(HC)

S. 10(23C) : Educational institution – Non-disposal of assessee's application within prescribed time period of twelve months, would not result in deemed approval under said section [S. 10(23C)(vi), 254)(1)] 113

Assessee filed its return claiming exemption under S. 10(23C)(vi) of the Act. AO rejected assessee's claim primarily on ground that assessee could not be considered to be an educational institution as it did not provide any formal education as was provided in schools, colleges, etc. CIT(A) upheld order passed by AO. On appeal it held that assessee's claim was rejected without giving it any sufficient opportunity to furnish all documentary evidences and material to demonstrate that it had imparted training/ education in respect of courses offered. Accordingly the order was to be set aside and

assessee's application seeking approval under S. 10(23C)(vi) was to be restored back to file of CIT (E) for de novo adjudication. (AY. 2016-17)
Indian Institute of Banking & Finance v. CIT (2019) 178 ITD 833 / (2020) 186 DTR 108 / 203 TTJ 820 (Mum.)(Trib.)

114 **S. 10(23C) : Educational institution – Society running a school – Entitled to exemption. [S. 10(23C)(vi)]**
The CIT refused to grant exemption on the ground that the school was not registered as a separate entity with the IT Department and did not have its own PAN. On appeal, the ITAT following the decision of *CIT v. Children Education Society (2013) 358 ITR 373 (Kar.)* held that, when the assessee was running a school for educational purposes and not for earning profit, then it was entitled to the exemption under S. 10(23C)(vi) of the Act. (AY. 2016-17)
Ram Lal Bhasin Public School v. CIT(E) (2019) 198 TTJ 20 (UO) / 69 ITR 560 (Asr.)(Trib.)

115 **S. 10(23C) : Educational institution – Skill training programme – Placement activities – Entitled to exemption. [S. 2(15), 10(23C)(iiiab), 12AA]**
Tribunal held that conducting various skill training programs for students to get placement, activities would fall within the definition of education under S. 2(15), hence entitled for exemption under S. 10(23C)(iiiab) of the Act. (AY. 2010-11 to 2013-14)
Process-Cum-Product Development Centre v. ACIT (2019) 175 ITD 517 / 178 DTR 433 (Delhi)(Trib.)

116 **S. 10 (23C) : Public religious purposes – Hindu religious temple – Renewal of approval – When the approval was granted since 1989 the CIT(E) is not justified in restricting approval only from AY. 2016-17) – Tribunal has directed the CIT(E) to grant approval also for the AY. 2015-16. [S. 10(23C)(v), Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959]**
Temple was granted approval under S. 10(23C)(v) in year 1989 and same was renewed from time to time till assessment year 2014-15. CIT(E) granted fresh approval only from AY. 2016-17 On appeal the Tribunal held that, as the assessee is seeking only renewal of earlier approval, Commissioner (E) was unjustified in restricting approval only from 2016-17 and directed the CIT(E) to grant approval from AY. 2015-16. (AY. 2015-16)
Arulmigu Devi Karumariamman v. ITO (2019) 174 ITD 151 (Chennai)(Trib.)

117 **S. 10(23EA) : Investor Protection Fund – Trust which is qualified under Sections 11 to 13 could also claim exemption – Rejection of claim is held to be not justified. [S. 11, 12, 13]**
Assessee is a trust duly recognized under a notification issued by Government of India for the purpose of benefit under S. 10(23EA) of the Act. Assessee filed its return claiming exemption under S. 10(23EA). AO rejected assessee's claim on ground that a trust which received benefits under S. 11 to 13, could not claim exemption under S. 10(23EA). Tribunal held that there was no prohibition in law that Trust which qualified

under S. 11 to 13, could not claim exemption under S. 10(23EA) accordingly allowed the claim. High Court upheld order passed by Tribunal. (AY. 2010-11)
CIT v. National Stock Exchange Investor Protection Fund Trust (2019) 109 taxmann.com 275 / 266 Taxman 181 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. National Stock Exchange Investor Protection Fund Trust (2019) 266 Taxman 180 (SC) / 416 ITR 129 (St.)(SC)

S. 10(23G) : Infrastructure undertaking – Long term finance – Interest – Liquidated damages fall within the purview of word interest – Entitled to exemption. [S. 2(28A)] 118
Allowing the appeal of the assessee the Court held that; the liquidated damages earned by the assessee were admittedly on account of defaults committed by the borrowers. According to the terms of agreement with the borrowers in case of default in redemption or payment of interest and all other moneys (except liquidated damages) on their respective due dates, liquidated damages at the rate of 2.10 per cent per annum were levied and payable by the borrowers for the period of default. Though the term "liquidated damages" was used in the agreement, it actually signified the interest claimed by the assessee. This term "interest" would come within the word "charge" as provided under the definition of interest. (AY. 2002-03)
Infrastructure Development Finance Co. Ltd. v. ACIT (2019) 412 ITR 115 / 262 Taxman 483 (Mad.)(HC)

S. 10(26) : Exemption to member of a Scheduled Tribe – Allowability – Individual vis-a-vis partnership firm – Since partnership firm is not a member of a scheduled tribe-Such firm not entitled to exemption under S. 10(26) – But its partners are eligible for the same. [Art. 366, General Clauses Act, 1897, S.13] 119
Dismissing Assessee's appeal the Tribunal held that:
1) The specified member of a scheduled tribe only is covered under Art. 366 of the Constitution of India for enjoying the benefit of exemption of income. Hence, the benefit of exemption is available only to a member of Schedule tribe and not partnership firm of such individuals. In such a situation, benefit of doubt in relation to an exemption provision in tax laws goes in favour of the Revenue and not to the taxpayer.
Further, the Income-tax Act being a special legislation and complete code in itself, provisions of S. 13 of the General Clauses Act, 1897 (containing masculine and singular expression in central regulations to be inter-changeable as famine gender, plural expression, etc), are of no avail. *(CA No. 3327 of 2007, dt. 30th July, 2018, Raghunath Rai Bareza v. PNB (2007) 135 Company Cases 163 (SC), CIT v. B.R. Constructions (199) 202 ITR 222 (AP) [FB]* (AY. 2013-14 to 2015-16)
Hotel Centre Point v. ITO (2019) 182 DTR 297 / 201 TTJ 913 (Gau.)(Trib.)

S. 10(26AAB) : Income of an agricultural produce market committee – Agricultural produce to be given a wider meaning – Marketing of fish, poultry and eggs are entitled to exemption. [Delhi Agricultural Produce Marketing (Regulation) Act, 1998] 120
The expression 'agricultural produce' under the section is to be understood in the context in which the expression is used in the relevant Agricultural Produce Marketing Act. Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (DAPM) gives a very wide meaning to the expression since it covers other products like decorative plants,

forest products, production of honey, silk etc. Therefore, the activities of the assessee, i.e. marketing of fish, poultry and eggs are entitled to exemption under the section. (AY. 2009-10 to 2012-13)

ITO v. Fish Poultry & Egg Marketing Committee (2019) 179 DTR 137 / 109 taxmann.com 17 (Delhi)(Trib.)

121 **S. 10(26B) : Scheduled castes or scheduled Tribes – Housing scheme for benefit and welfare of employees of Police department, Government of Arunachal Pradesh – All persons of Police Department are not belonging to Scheduled Castes, Scheduled Tribes or other backward classes – Not eligible for exemption.**

Court held that corporation set up for formulating and executing housing scheme for benefit and welfare of employees of Police department, Government of Arunachal Pradesh is not eligible for exemption as all persons of Police Department could not be considered as belonging to Scheduled Castes, Scheduled Tribes or other backward classes. (AY.2010-11)

Arunachal Police Housing And Welfare Corporation Ltd. v. CIT (2019) 264 Taxman 160 / 307 CTR 543 / 175 DTR 358 (Gauhati)(HC)

122 **S. 10(33) : Capital asset – Tax avoidance – Loss on redemption of units – Short term capital loss is allowed to be set off – Denial of exemption on dividend is held to be not valid. [S. 2(14), 94(7)]**

The assessee had obtained a loan from a financial services company and purchased units of mutual funds. It had earned dividend from the same and also redeemed the units. On redemption, it suffered a short term capital loss soon after earning dividend and set-off the same against the long term capital gains. The AO considered that the assessee had connived with the financial services company and the mutual fund to form a colourable device to earn dividend as well as suffer short term capital loss for set-off. Accordingly, the AO disallowed the short-term capital loss claimed by the assessee and denied the exemption of dividend income u/s. 10(33). Tribunal held that the assessee had been regularly investing in mutual funds and all the documents were filed to rebut the colourable device or connivance alleged by the AO. The Tribunal also observed that the transaction went out of the purview of S.94(7) and the investment of the assessee was only 1.38% of the fund size. Further, the mutual fund was regulated. After taking into consideration all of the aforementioned, the Tribunal reached a conclusion that the assessee did not connive with the financial services company and mutual fund. Thus, the Tribunal directed the AO to allow the short term capital loss and exemption u/s 10(33). (AY. 2015-16)

Agencies Rajasthan P. Ltd. v. ITO (2019) 73 ITR 633 / 179 ITD 90 (Jaipur)(Trib.)

123 **S. 10(34) : Dividend – Domestic companies – Tax on distribution of profits – Exemption cannot be denied to receiver of dividend, though the payer company had not paid tax on dividend distribution under S. 115-O of the Act. [S.(22)(d), 115-O]**

Dismissing the appeal of the revenue, the Court held that; exemption cannot be denied to receiver of dividend, though the payer company had not paid tax on dividend distribution under S. 115-O of the Act. (AY.2008-09)

PCIT v. Kayan Jamshid Pandole (Smt.) (2019) 260 Taxman 32 / 306 CTR 597 / 174 DTR 141 (Bom.)(HC)

S. 10(37) : Capital gains – Agricultural land – Compensation received on compulsory acquisition – Price fixed upon negotiation – Entitled to exemption. [S. 45, Land Acquisition Act, S. 4, 6, 9] 124

Dismissing the appeal of the revenue the Tribunal held that, entire procedure prescribed under land Acquisition Act followed, however sale price was fixed through a negotiation settlement hence the character of acquisition would still remain compulsory acquisition, accordingly the compensation is entitled to exemption. (AY. 2013-14)

ITO v. Asha Vimla (Smt.) (2019) 74 ITR 1 (Cochin)(Trib.)

S. 10(37) : Capital gains – Agricultural land – With in specified urban limits – Compulsorily acquiring of land for public purpose – Provision meant for removing hardship – Two years prior to acquisition was used for agricultural purposes – Agricultural Officer had certified land to be agricultural land – AO cannot deny the exemption. [S. 2(14)(iii)(a)(b), 45] 125

Land belonging to assessee as well as adjoining lands were acquired for purpose of development of Seaport (VISL). Thereafter, assessee by a registered sale deed conveyed property to VISL. AO held that on date of transfer, land owned by assessee became part of Municipal Corporation and, thus, it could not be regarded as agricultural land because of S. 2(14)(iii)(a), and on that basis, he denied benefit of exemption under S. 10(37) of the Act. There was a difference of opinion amongst the members and the matter is referred to third member. Third member held that provision of S. 10(37) are meant specifically for purpose of removing hardship to a land holder, whose lands are situated in an area specified in S. 2(14)(iii)(a)(b), if such lands are compulsorily acquired for public purpose subject to condition that, two years prior to their acquisition, land was used for agricultural purposes. On facts the Agricultural Officer had certified said land to be agricultural land, AO was not right in coming to the conclusion that land falling within purview of capital asset under S. 2(14)(iii)(a) would not be entitled to exemption under S. 10(37) of the Act. (AY. 2012-13)

ITO v. G.S. Lekha (Smt.) (2019) 177 ITD 1 / 200 TTJ 785 / 180 DTR 249 (TM) (Cochin) (Trib.)

S. 10(37) : Capital gains – Agricultural land – Interest received on enhanced compensation – Entitled to exemption. [S.45(5), Land Acquisition Act, S. 28] 126

Interest on enhanced compensation for acquisition of agricultural land by the Government is exempt from tax. (AY.2011-12)

Opinder Singh Virk Pravesh Kumar Sharma v. ITO (2019) 176 ITD 863 (Delhi)(Trib.)

S. 10(37) : Capital gains – Agricultural land – Acquired by Government – Enhanced compensation including interest received would be eligible for exemption. [S. 45, Land Acquisition Act, 1894, S. 28] 127

Allowing the appeal of the assessee the Tribunal held that, where the Agricultural land is acquired by Government, enhanced compensation including interest received by the assessee is exempt from the tax. Accordingly TDS amount that was deducted on account of enhanced compensation was to be refunded. (AY.2011-12)

Baldev Singh v. ITO (2019) 176 ITD 1 (Delhi)(Trib.)

128 **S. 10(38) : Long term capital gains from equities – Penny stocks – Burden is on the revenue to show with evidence the chain of events and live link of the assessee's involvement in the scam including that he paid cash and in return received exempt Long term capital gains – Denial of exemption is held to be not justified – Addition cannot be made as unexplained income – Addition cannot be made on estimated commission for alleged accommodation entries. [S.45, 68, 69C]**

The AO treated the transactions of sale of shares of listed companies as bogus and added the sale proceeds as unexplained income u/s. 68 of the Act and also added commission u/s. 69C for alleged accommodation entries. CIT(A) confirmed the order of the AO. On appeal allowing the appeal of the assessee the Tribunal held that the fact that a scam has taken place in some penny stocks does not mean that all transactions in penny stocks can be regarded as bogus. In deciding whether the claim is genuine or not, the authorities have to be guided by the legal evidence and not on general observations based on statements, probabilities, human behavior, modus operandi etc. The AO has to show with evidence the chain of events and live link of the assessee's involvement in the scam including that he paid cash and in return received exempt Long term capital gains/ Addition cannot be made as unexplained income. Addition cannot be made on estimated commission for alleged accommodation entries. (Note: *Sanjay Bimalchand Jain v. PCIT (2018) 89 Taxman.com 196 (Bom.)(HC)* is distinguished) (ITANo.3427-3429/Mum/2019, 3311-3313/Mum/2019, 3426/Mum/2019, 3264, 3265/Mum/2019, 3247, 3248/Mum/2019, dt. 01.10.2019) (AY. 2012-13)

Vijayattan Balkrishan Mittal v. DCIT (2020) 203 TTJ 288 (Mum.)(Trib.) www.itatonline.org
Mahendra B. Mittal HUF v. Dy. CIT (2020) 203 TTJ 288 (Mum.)(Trib.) www.itatonline.org
Mahendra Balakrishan Mittal v. Dy. CIT (2020) 203 TTJ 288 (Mum.)(Trib.) www.itatonline.org
Pooja Mahendra Mittal v. Dy. CIT (2020) 203 TTJ 288 (Mum.)(Trib.) www.itatonline.org

129 **S. 10(46) : Body or authority – Specified income – Maharashtra State Board of Technical Education falls under definition of 'State' as per Article 12 of Constitution and its income is eligible for exemption. [Art. 12, 289]**

Maharashtra State Board of Technical Education, a statutory body established under Maharashtra State Board of Technical Education Act, 1997, being under complete superintendence, and control of State Government financially as well as administratively fall under definition of 'State' as per Article 12 of Constitution of India. Accordingly its income is not chargeable to tax and it is eligible for exemption. (AY.2010-11)

Maharashtra State Board of Technical Education v. ITO (2019) 176 ITD 47 / 200 TTJ 810 / 182 DTR 89 (Mum.)(Trib.)

130 **S. 10A : Free trade zone – Disallowance of expenses – Enhanced profit due to statutory disallowances – Entitled to deduction. [S.40(a)(ia)]**

Tribunal held that disallowance made under S. 40(a)(ia) would not affect assessee's liability to tax because even if said amount was disallowed and added to income, same would be exempted under section 10A. High Court upheld Tribunal's order. (Followed *CIT v. Gem Plus Jewellery India Ltd. (2011) 330 ITR 175 (Bom.)(HC) (AY. 2006-07) (CIT v. HCL Technologies Ltd. (SC) 2018 (6) SCALE 524*)

PCIT v. BMC Software India (P.) Ltd. (2019) 109 taxmann.com 277 / 266 Taxman 179 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. BMC Software India (P.) Ltd. (2019) 266 Taxman 178 (SC)

10A : Free trade zone – Computation of deduction – Loss of another unit – cannot – Set off against profit of unit eligible for deduction – Deduction in respect of eligible unit has to be allowed before setting off brought forward depreciation and losses of a non-10A unit. [S.72] 131

Export oriented undertaking, while computing deduction u/s.10A, loss of another unit of Assessee Company could not be set off against profit of unit eligible for deduction. Followed, *CIT v. Black & Veatch Consulting (P.) Ltd. (2012) 348 ITR 72 (Bom.)(HC)* (AY. 2005-06) (Arising ITA 6139/M/2010 dt.18/06/2013)(ITXA No.2354 of 2013 dt.19/01/2016) *CIT v. Russan Pharma Ltd (2019) 107 taxmann.com 111 (Bom.)(HC)*

Editorial: SLP of revenue is dismissed (SLP No.12984 of 2019 (2019) 414 ITR 6 (St.) (SC) / (2019) 265 Taxman 1 (SC)

S. 10A : Free trade zone – Turnover – Unrealised sale proceeds cannot be included in total turnover and excluded from export turnover – Expenditure incurred in foreign currency for export of software is includible in export turnover. 132

Court held that unrealised sale proceeds could not be included in the total turnover and excluded from the export turnover. Followed *CIT v. HCL Technologies Ltd. (2018) 404 ITR 719 (SC)*. Court also held that on a perusal of the contract, it was clear that the element of "technical services" had been rendered as an integral part of the software development process. There was no material available before the Assessing Officer to split the transaction into two or to bisect the transaction to find out an element of "technical services". The technical services rendered by the assessee were not on a "standalone basis", but as an integral part of the software development, the assessee was bound to render all assistance to the foreign entity. Therefore, the artificial splitting of the transaction by the Assessing Officer, that too without any materials on his file, was wholly unsustainable. The expenditure incurred in foreign currency in export of software was includible in export turnover for purposes of S. 10A. (AY. 2001-02, 2002-03)
Polaris Consulting and services Ltd. v. DCIT (2019) 417 ITR 441 (Mad.)(HC)

S. 10A : Free trade zone – Total turnover – Expenses excluded from export turnover were also to be excluded from total turnover. Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that, expenses excluded from export turnover were also to be excluded from total turnover. (AY. 2007-08) 133

CIT v. Intel Technology India (P.) Ltd. (2019) 107 Taxmann.com 461 / 265 Taxman 240 (Karn.)(HC).

Editorial : SLP of revenue is dismissed, CIT v. Intel Technology India (P.) Ltd. (2019) 265 Taxman 239 (SC).

S. 10A : Free trade zone – Loss of another unit cannot be set off against the profit of unit eligible for deduction. 134

Affirming the order of the Tribunal the Court held that loss of another unit of assessee company could not be set off against profit of unit eligible for deduction. Followed *CIT v. Black & Veatch Consulting (P) Ltd. (2012) 348 ITR 72 (Bom.)(HC)* (AY. 2005-06)
CIT v. Russan Pharma Ltd. (2019) 197 taxmann.com 111 / 265 Taxman 2 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Russan Pharma Ltd. (2019) 265 Taxman 1 (SC)

135 **S. 10A : Free trade zone – Deduction is to be allowed before allowing set off of losses of earlier years – Expenses reduced from export turnover have to be reduced from total turn over.**

As regards deduction is to be allowed before allowing set off of losses of earlier years, the High Court dismissed the appeal of the revenue following the decision in *CIT v. Yokogawa India Ltd. (2012) 349 ITR 98 (SC)*. As regards Expenses reduced from export turnover has to be reduced from total turnover. The High Court followed the judgement in *CIT v. Tata Elxsi Ltd. (2012) 349 ITR 98 (Karn)(HC)*. (AY. 2005-06)

PCIT v. Infosys BPO Ltd. (2019) 107 taxmann.com 56 / 264 Taxman 290 (Karn.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Infosys BPO Ltd. (2019) 264 Taxman 289 (SC)

136 **S. 10A : Free trade zone – Computer software – Expenses which are to be excluded from the export turnover would also have to be excluded for the purpose of computing total turnover – Deduction rightly claimed u/s. 10A instead of S.80HHE of the Act. [S. 80HHE]**

Dismissing the appeal of the revenue the Court held that under Finance Act of 2000, the provisions of section 10A came to be amended giving benefit of deduction in relation to the income from the manufacturing activities of computer software development for export. This amendment would take effect from 1/4/2001. In the return of income filed for the assessment year 2005-06, the assessee had claimed such deduction in terms of section 10A of the Act, instead of section 80HHE. Court also held that expenses which are to be excluded from the export turnover would also have to be excluded for the purpose of computing total turnover. (AY. 2005-06)

CIT v. Tata Consultancy Services (2019) 177 DTR 317 (Bom.)(HC)

137 **S. 10A : Free trade zone – Expenditure incurred in foreign exchange on communication/internet charges are to be excluded from total turnover.**

Dismissing the appeal of the revenue the Court held that, Expenditure incurred in foreign exchange on communication/internet charges are to be excluded from total turnover. *CIT v. HCL Technologies Ltd. (2018) 302 CTR 191 (SC)* followed. (AY. 2005-06, 2007-08)

CIT v. Ness Technologies (India) (P) Ltd. (2019) 307 CTR 588 / 174 DTR 260 (Bom.)(HC)

138 **S. 10A : Free trade zone – Export through third party – Entitled to deduction.**

Court held that export through third party is also entitled to deduction. Followed *CIT v. HCL Technologies Ltd. (2018) 404 ITR 719 (SC)* (AY.2006-07)

PCIT v. Broadcom India Pvt. Ltd. (2019) 415 ITR 380 (Karn.)(HC)

139 **S. 10A : Free trade zone – Expenses incurred in foreign currency to be excluded from export turnover and total turnover – Compensation received on termination of export agreement constituted profits of business – Supply of software to another exporter – Entitled to Exemption – Loss Carried Forward From earlier years can be set off against income of current Year – Amendment by Finance Act, 2000.**

Dismissing the appeal of the revenue the Court held that; the Tribunal was justified in law in confirming the order of the CIT(A), directing the AO to exclude expenses

incurred in foreign currency, both from the export turnover and total turnover for the purpose of computation of deduction under S. 10A. The compensation/damages received by the assessee on account of termination of service/export contract were to be treated as profits of business. The amount from the export turnover which related to software supplied to another unit in the software technology park was entitled to deduction. Tribunal was justified in law in confirming the order of the CIT(A) with regard to allowing setting off of brought forward losses. (AY. 2005-06)
CIT v. Sasken Communication Technologies Ltd. (2019) 412 ITR 468 (Karn.)(HC)

S. 10A : Free trade zone – Export turnover – Total turnover-while computing amount of deduction expenditure incurred in foreign currency that was deducted from export turnover, had to be deducted from total turnover. 140
Dismissing the appeal of the revenue the Court held that while computing the amount of deduction expenditure incurred in foreign currency that was deducted from export turnover had to be deducted from total turnover as well. (AY. 2009-10)
CIT v. Citrix R&D India (P.) Ltd. (2019) 104 taxmann.com 84 / 262 Taxman 276 (Karn.) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. Citrix R&D India (P.) Ltd. (2019) 262 Taxman 275 (SC)

S. 10A : Free trade zone – Re computation of a claim already made is permissible – Language of S.80A(5) does not restrict the correction or modification of claim before the AO. [S. 80A(5)] 141
The assessee claimed exemption u/s. 10A in respect of its income earned from the business of providing outsourcing services. In the course of assessment proceedings, the assessee sought to revise the claim of exemption by making certain other allowances and disallowances. The AO refused to take cognizance of such claim on the ground that under S. 80A(5), no new claims can be entertained, which were not made in the original return of income. Dismissing the appeal of the revenue the Court held that in the present case was that of recomputation of a claim already made. It was not a new claim at all. Therefore, the department ought to have taken cognizance of the same, especially considering the fact that it did not dispute the merits of such claim. (AY. 2009-10)
PCIT v. Oracle (OFSS) BPO Services Ltd. (2019) 174 DTR 353 / 307 CTR 97 / 102 taxmann.com 396 (Delhi)(HC)

S. 10A : Free trade zone – New Industrial undertaking – Advance pricing agreement – (APA) – As per saving clause contained in S. 92CD(2), if an assessee is otherwise entitled to deduction u/s. 10A, or for that matter under any other provision of the Act, in respect of the income offered in the modified return, the same cannot be denied. [S.92CD(1)] 142
Tribunal held that a careful circumspection of sub-section (2) of S. 92CD deciphers and delineates that in the computation of total income by the AO pursuant to the filing of the modified return by the assessee in terms of the APA, all other provisions of this Act shall apply accordingly. In other words, if an assessee is otherwise eligible for deduction under any other appropriate provision in respect of the income offered in

the modified return, there cannot be any embargo on granting deduction under such relevant provision. The saving clause contained in sub-section (2), making all other provisions of the Act applicable in the assessment of the modified return, ostensibly includes the applicability of S. 10A as well, of course, subject to the fulfilment of others conditions as set out in the section. Accordingly if an assessee is otherwise entitled to deduction u/s. 10A, or for that matter under any other provision of the Act, in respect of the income offered in the modified return, the same cannot be denied. As such, the view of the lower authorities that in the absence of any specific provision in S. 92CD for granting of deduction u/s. 10A, no deduction can be allowed, is sans merit. Such stipulation is contained in sub-section (2) of 92CD itself. It is, ergo, held that the assessment u/s. 92CD provides for granting deduction u/s. 10A of the Act. (AY. 2010-11) *Dar Al Handasah Consultants (Shair & Partners) India P. Ltd. v. Dy.CIT (2019) 76 ITR 669 / (2020) 185 DTR 66 / 203 TTJ 66 (Pune)(Trib.)*

143 **S. 10A : Free trade zone – Loss in-unit situated outside the Software Technology Park (STPI) not adjusted against units within the STPI – Income enhanced – Deduction is allowable on enhanced income – Expenses excluded from export turnover – Consequential exclusion from total turnover.**

Assessee is engaged in the business of providing solutions to the Railways. It had units both within and outside the Software Technology Park (STPI). In its return of income, it claimed deduction u/s. 10A for income earned from STPI unit. The lower authorities set-off the loss of non-STPI unit against profits of the STPI unit before giving the deduction u/s. 10A. Further, it made various disallowance/addition to returned income filed by the assessee. The authorities restricted deduction u/s. 10A as claimed in the return of income and not assessed income. The lower authorities excluded certain expenses from the export turnover and not from the total turnover while computing deduction u/s 10A. The Tribunal held the loss of the non-STPI unit shall not be adjusted against the profits of the STPI unit before computing deduction u/s. 10A. The disallowance/addition made during the assessment proceedings increases the profits of the assessee, thereby the deduction u/s. 10A should also be enhanced. Export turnover is part of total turnover. While computing deduction amount of deduction u/s. 10A, expenditure excluded from export turnover were also to be excluded from total turnover. (AY. 2008-09 to 2010-11) *McMl Systems Pvt. Ltd. v. ACIT (2019) 75 ITR 656 (Bang.)(Trib.)*

144 **S. 10A : Free trade zone – Export sale proceeds not received in India in foreign exchange within time specified – Assessee seeking extension of time – No extension of time allowed after period of six months from end of year and application not rejected- Amounts includible in export turnover though received belatedly – Disallowance of payments for failure to deduct tax at source enhancing taxable income of assessee – Entitled to exemption on enhanced income. [S. 40(a)(ia)]**

Tribunal held, that the foreign exchange remittances had been received and credited to the assessee's account. Notwithstanding the fact that there was no express order granting approval by the authorised bankers extending the time limit of six months for receipt of foreign remittances on account of export sales, the assessee was entitled to the benefit of exemption under S. 10A and consequently, the AO was directed to include

those amounts, though realised belatedly, in the export turnover while computing the exemption under S. 10A of the Act. The Tribunal also held that the disallowance of expenses had been made under S. 40(a)(i) towards non-deduction of tax at source and such disallowance automatically enhanced the taxable income of the assessee. As a result, the assesse was entitled to exemption under S. 10A on such enhanced income. (AY. 2010-11, 2011-12)
DCIT v. Tecnotree Convergence Ltd. (2019) 75 ITR 505 (Bang.)(Trib.)

S. 10AA : Special Economic Zones – Computation of profits and gains of eligible unit for grant of deduction would be independent of computation of profits and gains of ineligible unit – Permitted to carry forward losses of its ineligible unit – Amendment to section 10AA takes effect only from 1-4-2018 – Direction is issued to the respondent to either accept the manual return of the assessee or alter the software to permit it to again file online its returns claiming the carry forward of losses of its ineligible unit for the assessment years in question. [S. 72] 145
The assessee was engaged in the business of manufacturing and export of Bi-axially Oriented Polypropylene Films ('BOPP'). The assessee had manufacturing units set up both in the Domestic Tariff Area ('DTA') as well as Special Economic Zones ('SEZ') The assessee was allowed deduction under S. 10AA since assessment year 2014-15. In its return for assessment year 2017-18, the assessee reported certain income from its SEZ unit, under the head 'profit and gains of business and profession' (PGBP). The assessee first calculated the PGBP of the eligible unit separately by claiming the deduction under section 10AA in Form ITR-6. In other words, the losses of the ineligible unit i.e. the unit set up in the DTA, was not taken into account while calculating the PGBP of the eligible unit. AO set off the entire loss of the ineligible unit got set off against the business profit of the eligible unit and thereupon the net loss of the ineligible unit to be carried forward was thus brought down to 'Nil'. The assessee filed the writ petition. Allowing the petition the Court held that once it is abundantly clear that the amendment in S. 10AA takes effect only from 1-4-2018 and would apply only from assessment year 2018-19, it is clear that for all the assessment years prior to 2018-19, the law explained by the Supreme Court in *CIT v. Yokogawa India Ltd. (2017) 391 ITR 274 (SC)*. would apply. Accordingly, a direction is issued to the respondent to either accept the manual return of the assessee or alter the software to permit it to again file online its returns claiming the carry forward of losses of its ineligible unit for the assessment years in question. (AY. 2017-18)
Cosmo Films Ltd. v. CBDT (2019) 265 Taxman 102 (Mag.) (Delhi)(HC)

S. 10AA : Special Economic Zones – Conditions in S. 10AA(4) are to be satisfied on a unit wise basis and not on an entity basis – Once the claim was allowed in the first year, it could not be denied in the third year. [S. 10AA(4)] 146
An assessee which had existing units in an SEZ and was claiming benefits under S. 10AA, set up a new unit in the SEZ, with new plant and machinery and sought exemption under S. 10AA on the profits earned from the said new units. The AO denied such exemption in the third year of claim on the ground that the new unit was formed by splitting or reconstruction of the existing business. Held that the conditions

stipulated under S. 10AA have to be satisfied on a unit wise basis and not on an entity basis. Simply because the assessee was carrying on the same business through existing units does not mean that the new unit, setup with new plant and machinery, will be said to have been formed by splitting or reconstruction of business. Further, once the claim was allowed in the first year, it could not be denied in the third year. Accordingly, the issue was to be decided in assessee's favour. (AY. 2013-14)
PCIT v. Macquarie Global Services (P) Ltd. (2019) 178 DTR 27 / 102 taxmann.com 272 / 311 CTR 929 (Delhi)(HC)

147 **S. 10AA : Special Economic Zones – Reconstruction – Sole proprietorship was not shifted to firm – Only Capital received from sole proprietorship – Not a reconstruction – Entitled to exemption. [S. 10AA)4)(iii)]**
Sole proprietor has introduced his capital to partnership. AO denied the exemption on the ground that it was reconstruction of business. On appeal the Tribunal held that apart from capital received from proprietorship concern, huge amount of fresh capital had also been introduced to the firm and assets appearing in balance sheet of old concern i.e. sole proprietorship, had not been shifted to the firm hence it is not a reconstruction. The High Court up held the order of the Tribunal. (AY. 2007-08)
PCIT v. Green Fire Exports (2019) 106 taxmann.com 32 / 263 Taxman 676 (Raj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Green Fire Exports (2019) 263 Taxman 675 (SC)

148 **S. 10AA : Special Economic Zones – Determination of profits where profits disclosed by assessee higher than ordinary profits – No arrangement between assessee and comparable companies to enable assessee to earn super normal profits – Concept of applying profit level indicators applied in determination of arm's length price of international transactions not applicable for determination of profits for computation of exemption – AO is directed to allow entire deduction. [S. 10A(7), 10AA(9), 80IA(10), 92CA]**
The assessee provided various services in the field of engineering, information technology enabled services and business support services to its associated enterprises and claimed the exemption under S. 10AA of the Act. The AO in the draft assessment order proposed an addition of ₹ 2.53 crores alleging that the assessee had claimed excess exemption under S. 10AA of the Act, on the ground that operating profit to operating cost of the assessee was 150.55 per cent. as against 27.72 per cent. operating cost of the comparable companies. The Dispute Resolution Panel upheld the reduction of exemption under S. 10AA of the Act. On appeal, Tribunal held that the Transfer Pricing Officer had accepted the profit level indicator shown by the assessee at 150.55% when compared with the mean margins of the comparable companies at 27.72%. The Assessing Officer's view that the assessee showing such high operating profit had earned super normal profits when compared with the margins of comparable companies was not tenable as the concept of profit level indicator, and the operating profit which had been adopted by the AO was relevant for comparability for transfer pricing analysis and could not be used for holding the assessee to have earned super normal profits in carrying on its business. The officer had to look at the net profit shown by the assessee, which in

the present year was 63% only. The basic condition for application of the provisions of S. 10AA of the Act was an arrangement between the parties to enable the assessee to earn super normal profits. Neither the TPO nor the AO or the DRP had pointed out any such arrangement between the assessee and the comparable companies. In the absence thereof, the provisions of S. 10AA(9) read with S. 80-IA(10) of the Act were not attracted. There was no merit in invoking the provisions of S. 10AA(9) read with S. 80IA(10) of the Act in the case of the assessee. The TPO having accepted the transactions to be at arm's length and where the assessee was raising invoices on man hour basis, in line with the third party agreement and where the net profit was shown by the assessee at 63%, the concept of operating profit/operating cost could not be the basis for benchmarking the profits of any business. Hence, the AO was directed to allow the deduction claimed under S. 10AA of the Act in entirety. (AY.2012-13)
Eaton Technologies Pvt. Ltd. v. Dy. CIT (2019) 75 ITR 675 (Pune)(Trib.)

S. 10AA : Special Economic Zones – Export – Entitled to deduction stand alone basis – Deduction cannot be denied only on the ground that non filing of audit report along with the return. [S. 80A(5)] 149
Tribunal held that the assessee filed audit report in Form 56F when revised computation of total income was furnished before Assessing Officer, deduction under S. 10AA could not be denied merely for non-filing of audit report along with return of income itself. Forex loss being capital in nature the assessee is entitled to deduction stand alone basis. (AY. 2014-15)
DIC Fine Chemicals (P.) Ltd. v. DCIT (2019) 177 ITD 672 / 183 DTR 204 / 202 TTJ 372 (Kol.)(Trib.)

S. 10AA : Special Economic Zones – Interest on capital and remuneration – Partnership deed is not providing any interest – AO cannot disallow the interest and remuneration and reduce the eligible exemption. [S. 80IA] 150
Dismissing the appeal of the revenue the Tribunal held that, when the partnership deed has not provided any interest or remuneration to partners, the AO cannot disallow the interest and remuneration and reduce the eligible exemption. (AY. 2014-15)
ACIT v. Mukta Enterprise (2019) 174 ITD 259 / 175 DTR 350 / 198 TTJ 374 (Surat)(Trib.)

S. 10B : Export oriented undertakings – Derived from – Dividend income, profits on sale of fixed assets, profits on sale of investments, excess provision return back, duty drawback and interest income could be said to have direct nexus with the income of the business of the undertaking – Eligible deduction. [S. 10A, 10B(4)] 151
Dismissing the appeal of the revenue the Court held that, the dividend income, profits on sale of fixed assets, profits on sale of investments, excess provision return back, duty drawback and interest income could be said to have direct nexus with the income of the business of the undertaking. Although they might not partake of the character of profits and gains from the sale of articles, they could be termed income derived from the consideration realised by the export articles. In view of the definition of "income from profits and gains" incorporated in sub-section (4), the Tribunal committed no error in granting the benefit of exemption under S. 10B. (AY. 2006-07)
PCIT v. Dishman Pharmaceuticals and Chemicals Ltd. (2019) 417 ITR 373 (Guj.)(HC)

152 **S. 10B : Export oriented undertakings – Manufacture or production – Conversion of benzarone crude to benzarone pure constitutes manufacture – Entitled to exemption – Conversion of benzarone crude to BFX-P is not manufacture – Not entitled to exemption.**

Court held that considering the process which benzarone crude was subjected to for the purpose of converting it into benzarone pure as well as the fact that the benzarone pure was a distinct marketable commodity, different from benzarone crude which was not capable of being used as such, the conversion of benzarone crude to benzarone pure would fall within the ambit of the expression "manufacture or produce" as contemplated under S. 10B. The Tribunal was, therefore, justified in holding that the assessee was entitled to deduction. However in respect of BFX-P was concerned, either before the CIT(A) or even before the High Court. The chart referred to by the CIT(A) in his order showed that except for the work-in-progress being shown as BFX-P, no further details had been provided regarding the final product or the chemical formula. In the absence of any material having been placed on record to indicate the process carried out on BFX-P, it could not be said that any process of manufacture or production had taken place so as to entitle the assessee to deduction under S. 10B in respect of the product. Accordingly the Tribunal was not justified in allowing the deduction under section 10B of the Act in respect of BFX-P. (AY. 2007-08)

PCIT v. Tonira Pharma Ltd. (2019) 415 ITR 503 / 182 DTR 185 / 311 CTR 218 (Guj.)(HC)

153 **S. 10B : Export oriented undertakings – Undertaking – Merger of two firms – Firm which is entitled to exemption merged with another firm which is entitled to exemption – New firm is entitled to exemption. [S. 10B(9), 10B(9A)]**

Dismissing the appeal of the revenue the Court held that; firm which is entitled to exemption merged with another firm which is entitled to exemption. Accordingly the new firm is entitled to exemption. Referred Circular No. 1 of 2013, dated January 17, 2013 ([2013] 350 ITR (St.) 34), granted deduction to the undertaking. Therefore, as long as the undertakings remained eligible for deduction under section 10B of the Act, the deduction could not be denied merely on the ground that there had been a merger of the firms which owned the undertakings. (AY. 2009-10)

CIT v. Trident Minerals (2018) 100 taxman.com 161 / (2019) 413 ITR 461 (Karn.)(HC)

154 **S. 10B : Export oriented undertakings – New undertaking using building and machinery on lease from sister concern – "Transfer" Includes Lease – Not entitled to exemption.**

Dismissing the appeal of the assessee the Court held that the assessee-company was formed substantially with the plant and machinery of STPL, which was its sister concern. The Tribunal was justified in holding that the assessee was not entitled to the benefit under S. 10B(2). (AY. 2004-05)

Stabilix Solutions (P.) Ltd. v. ITO (2019) 412 ITR 82 (Ker.)(HC)

155 **S. 10B : Export oriented undertakings – Setting off of carried forward losses – Matter remanded to Assessing Officer to decide afresh in light of decisions. [S. 10A]**

Allowing the appeals the Court held that the contentions raised by the parties before the court were not raised before the Tribunal. That apart, the decision of the Tribunal

was rendered in the year 2007 and the law on the issue had been interpreted by the courts. [*CIT v. Yokogawa India Ltd. (2017) 391 ITR 274 (SC)*] Matter remanded to the Assessing Officer to take a fresh decision after opportunity to the assessee and the Revenue, consider the decisions placed before him and proceed to decide in accordance with law. (AY. 2003-04)
Intimate Fashions (India) P. Ltd. v. ACIT (2019) 412 ITR 615 (Mad.)(HC)

S. 10B : Export oriented undertakings – Deemed exports – Export through third parties – Entitled to deduction. 156
Allowing the appeal of the assessee High Court held that, deemed export of goods through parties is entitled to deduction. Followed *PCIT v. International Stones India (P) Ltd. (2018) 95 taxmann.com 287 (Karn.)(HC)* (AY. 2008-09 to 2011-12)
Metal Closures (P.) Ltd. v. Dy.CIT (2019) 102 taxmann.com 71 / 261 Taxman 162 (Karn.) (HC)
Editorial : SLP of revenue is dismissed Dy. CIT v. Metal Closures (P.) Ltd. (2019) 261 Taxman 161 (SC)

S. 10B : Export oriented undertakings – Manufacture – Purchase of semi-finished garments and making them export worthy – Constitute manufacture – Entitled to exemption. 157
Dismissing the appeal of the revenue the Court held that, purchase of semi-finished garments and making them export worthy, constitute manufacture hence entitled to exemption. Followed, *Aspinwall and Co Ltd. v. CIT (2001) 251 ITR 323 (SC)* (AY.2004-05)
CIT v. A. P. Export (2019) 410 ITR 168 / 175 DTR 66 / 307 CTR 550 (Cal.)(HC)

S. 10B : Export oriented undertakings – Manufacture – Cutting and polishing of diamonds amounts to manufacture – Entitled to exemption. 158
Allowing the appeal of the assessee the Court held that; the process of cutting and polishing diamonds is a complex one requiring specialized knowledge and expertise at every step. Rough unpolished diamonds on the one hand and cut and polished diamonds on the other differ completely in appearance, value and uses. Thus this process of cutting and polishing diamonds brings into existence a new product which is a totally different marketable commodity. It amounts to manufacture. Accordingly, that the assessee, which was engaged in the business of import of rough diamonds and export of finished diamonds after cutting and polishing them, was entitled to exemption. (AY.2001-02)
J. B. Enterprise v. ACIT (2019) 410 ITR 138 / 175 DTR 171 / 307 CTR 415 (Guj.)(HC)

S. 11 : Property held for charitable purposes – Application of income – Adjustment of excess expenditure of earlier years against income of current year amounts to application of income – Entitled to exemption. [S. 2(15), 11(1)(a)] 159
Dismissing the appeal of the revenue the Court held that adjustment of excess expenditure of earlier years against income of current year amounts to application of income-Entitled to exemption. Followed *CIT (E) v. Ohio University Christ College (2018) 408 ITR 352 (Karn) (HC)*. (AY. 2012-13)
CIT(E) v. Agastya International Foundation (2019) 417 ITR 539 (Karn.)(HC)

160 **S. 11 : Property held for charitable purposes – Charitable activities results in a surplus does not mean that assessee exists for profit – If the surplus is ploughed back into the same charitable activities, the assessee cannot be said to be carrying out commercial activities in the nature of trade, commerce or business – Entitled to exemption. [S. 2(15), 12, 12AA]**

The question raised before the High Court was "Whether the Hon'ble ITAT has erred in not taking cognizance of the latest amendment in the nature of the proviso to S. 2(15) of the I.T. Act inserted with effect from 01/04/2009?" After considering the provisions and case laws the High Court held that, the fact that the carrying on of charitable activities results in a surplus does not mean that assessee exists for profit. "Profit" means that owners have a right to withdraw the surplus for any purpose including personal purposes. However, if the surplus is ploughed back into the same charitable activities, the assessee cannot be said to be carrying out commercial activities in the nature of trade, commerce or business. The fact that the assessee has dealings with, & share of profits from, BCCI (a commercial entity) does not affect its charitable status. (AY. 2004-05, 2009-10 to 2012-13)

DIT(E) v. Gujarat Cricket Association (Guj.)(HC) (2019) 419 ITR 561 / 184 DTR 97, www.itatonline.org

DIT(E) v. Baroda Cricket Association (2019) 419 ITR 561 / 184 DTR 97 (Guj.)(HC), www.itatonline.org

DIT(E) v. Saurashtra Cricket Association (2019) 419 ITR 561 / 184 DTR 97 (Guj.)(HC), www.itatonline.org

Editorial : Orders in Gujarat Cricket Association v. JCIT / Baroda Cricket Association v. JCIT, Saurashtra Cricket Association v. JCIT (2019) 202 TTJ 409 / 183 DTR 367 (Ahd.)(Trib.) is affirmed.

161 **S. 11 : Property held for charitable purposes – Amount spent on acquisition of capital assets is allowed as application of income for charitable purposes – Depreciation is allowable. [S. 11(2), 32]**

Dismissing the appeal of the revenue the Court held that,the income of a charitable trust derived from building, plant and machinery and furniture is liable to be computed in normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. The income of the trust is required to be computed under S. 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the trust. Even if the amount spent on acquisition of capital assets had been treated as application of income for charitable purposes, depreciation on such assets is allowable. (AY. 2008-09, 2009-10)

CIT v. Karnataka State Cricket Association (2019) 416 ITR 604 (Karn.)(HC)

162 **S. 11 : Property held for charitable purposes – Depreciation is allowable – Amount transferred to private university – Exemption cannot be denied – Expenditure on foreign travel for purpose of Trust – Held to be allowable. [S. 12AA, 13, 32]**

Court held that in view of the insertion of sub-section (6) in S. 11 with effect from April 1, 2015, which was prospective, the assessee was entitled to depreciation. The transfer of funds had been made to a private university which had been created by a statute.

The transfer was for educational purposes. The Tribunal had rightly considered that the trustees would not be covered under S. 13. Foreign trip after taking into consideration the student exchange programme the Tribunal had come to the conclusion that it was covered under the purpose of the trust object and was done for the educational institution and benefit of the students, and hence the expenses on the foreign trip were rightly allowed.
CIT(E) v. Mahima Shiksha Samiti (2019) 414 ITR 673 (Raj.)(HC)

S. 11 : Property held for charitable purposes – Amount spent on acquisition of capital assets – Allowed as deduction – Depreciation on such assets is also allowable.[S. 32] 163
Court held that the amount spent on acquisition of capital assets is allowable as deduction. Depreciation on such assets is also allowable. Followed *CIT v. Rajasthan and Gujarati Charitable Foundation (2018) 402 ITR 441 (SC).* (AY. 2012-13)
CIT v. Manipal Academy of Higher Education (2019) 415 ITR 361 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Educational Institution – Res judicata – Denial of exemption is held to be not justified. [S. 10(23C)(vi), 12AA] 164
Assessee, an educational institution, was registered under S. 12AA which was allowed exemption under S. 10(23C)(vi) and S.11 for AY. 1999-2000 to 2001-02. AO denied exemption for the AY. 2002-3, 2003-04). CIT(A) allowed the exemption which was affirmed by the Tribunal. High Court also upheld the order of the Tribunal. (AY. 2002-03, 2003-04)
CIT v. Takshila Education Society (2019) 264 Taxman 72 / 178 DTR 182 (Patna)(HC)

S. 11 : Property held for charitable purposes – Golf facilities to its members for promotion of sport – No element of activity of being in the nature of trade, commerce or business – Interest earned from banks or financial institutions on investment of surplus funds arising from charitable activities was exempted from tax. [S. 2(15)] 165
Court held that the main object of assessee-golf club was to provide golf facilities to its members for promotion of sport and there was no element of assessee club being in nature of trade, commerce or business, interest earned from banks or financial institutions on investment of surplus funds was exempted from tax. *CIT v. Common Effluent Treatment Plant (Thane Belapur) Association (2010) 328 ITR 362 (Bom.)(HC)* is distinguished.) (AY. 2009-10)
CIT v. Bombay Presidency Golf Club Ltd. (2019) 264 Taxman 55 / 182 DTR 454 / 311 CTR 578 (Bom.)(HC)

S. 11 : Property held for charitable purposes – Depreciation – Application of income – Eligible depreciation. [S. 32] 166
Dismissing the appeal of the revenue the Court held that the assessee would be entitled to depreciation though the amount was allowed as application of income. Followed, *CIT v. Institute of Banking Personnel Services (2003) 264 ITR 110 (Bom) (HC).* (AY. 2008-09)
DIT v. Society for Applied Microwave Electronic Engineering & Research (2019) 106 taxmann.com 203 / 264 Taxman 82 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, DIT v. Society for Applied Microwave Electronic Engineering & Research. (2019) 264 Taxman 81 (SC)/ 413 ITR 317 (St.)(SC)

167 **S. 11 : Property held for charitable purposes – Artists and actors – Advance paid to purchase leasehold right in auditorium was to be considered as application of income – Entitled to exemption. [S. 2(15) 11(1)(a), 11(5)]**

AO held that advance amount given by assessee was an investment and could not be treated as application of income towards object of trust therefore is not entitled to exemption, which is affirmed by the Tribunal. On appeal High Court held that advance paid by assessee to purchase leasehold right in auditorium is to be considered as application of income within the meaning of S.11(1)(a) hence entitled to exemption. (AY. 2001-02)

Nadigar Sangam Charitable Trust v. ADIT (2019) 263 Taxman 648 / 179 DTR 297 / 310 CTR 483 (Mad.)(HC)

168 **S. 11 : Property held for charitable purposes – Accumulation of income – Entitled to exemption. [S. 2(15)]**

Following the decision *Ahmedabad Urban Development Authority v. ACIT(E) (2017) 396 ITR 323 (Guj.)(HC)* accumulation was allowed and the appeal of the revenue was dismissed. (S. 11) (AY. 2013-14)

CIT (E) v. Ahmedabad Urban Development Authority (2019) 105 taxmann.com 309 / 263 Taxman 456 (Guj.)(HC)

Editorial : SLP is granted to the revenue, CIT (E) v. Ahmedabad Urban Development Authority (2019) 263 Taxman 455 (SC)

169 **S. 11 : Property held for charitable purposes – Company set up for prevention of pollution – Preservation of environment is an object of general public utility – Entitled to exemption. [S. 2(15), 12A, Companies Act, S.25]**

Dismissing the appeal of the revenue the Court held that the Company set up for prevention of pollution is preservation of the environment is an object of general public utility hence entitled to exemption. (AY. 2009-10)

CIT v. Naroda Enviro Projects Ltd. (2019) 419 ITR 482 (Guj.)(HC)

170 **S. 11 : Property held for charitable purposes – Accumulation of income – Form No 10 was filed belatedly – Rejection of claim on technical formalities is held to be not valid – AO is directed to decide the allowability of claim on merits [S. 11(2), 139(9), 143(1), 154]**

Assessee filed its return which was processed under S. 143(1) of the Act. Subsequently, assessee filed application under S. 154 contending that by mistake it had not filed Form No. 10 along with extract of Board Resolution for accumulation of funds for purpose of construction of a temple at a particular property as envisaged under S. 11(2) which in turn permitted assessee to not include said income for taxation purposes. AO rejected assessee's application holding that return filed by assessee was not accompanied with Form No. 10 and Board Resolution, and even if Board Resolution with Form No. 10 had been enclosed with return, such filing would have been beyond time under S. 139(9) and, thus, assessee could not be allowed for accumulation of income under S. 11(2) of the Act. Tribunal upheld the order of the AO. On appeal High Court held that when assessee was entitled to a statutory

benefit, it was incumbent upon concerned authority to examine admissibility of benefit than to foreclose assessee on technicalities. Therefore, order was to be set aside and, matter was to be remanded back to AO to take note of Form No. 10 accompanied by Board Resolution and, thereupon, take a decision on merits. Accordingly the matter was remanded. (AY. 2008-09)
Chandraprabhuji Maharaj Jain Juna Mandir Trust v. DCIT (2019) 266 Taxman 399 / 182 DTR 103 (Mad.)(HC)

S. 11 : Property held for charitable purposes – Registration granted – AO cannot revisit objects again while examining compliance with S.11 of the Act. [S. 2(15), 12A] 171
Dismissing the appeal of the revenue the Court held that once registration was granted to assessee trust under S. 12A the AO while examining compliance with S. 11 cannot revisit objects of assessee again. Followed *ACIT v. Surat City Gymkhana (2008) 370 ITR 214 (SC)*.(AY. 2008-09)
DIT(E) v. Gemological Institute of India (2019) 105 taxmann.com 179 / 263 Taxman 349 (Bom.)(HC)
Editorial : SLP of revenue is dismissed on the ground of low tax effect. DIT(E) v. Gemological Institute of India (2019) 263 Taxman 348 (SC)

S. 11 : Property held for charitable purposes – Application of income – Excess of expenditure of earlier years adjusted against income of relevant accounting year, amounts to application of income – Adjustment will have to be excluded from the income of the trust under S. 11(1)(a). [S. 11(1)(a), 12] 172
Dismissing the appeal of the revenue the Court held that, excess expenditure of earlier years adjusted against income of relevant accounting year, amounts to application of income. Accordingly adjustment will have to be excluded from the income of the trust under S. 11(1)(a).(AY. 2011-12)
CIT v. Chalassani Education Trust (2019) 412 ITR 343 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Statutory authority to manage Ports – Main object is to enable commerce and economy of country – Entitled to exemption – Withdrawal of exemption as local authority – Exemption can be claimed as charitable Trust – Delay in filing the application was condoned as the assessee was enjoying exemption as local authority which was withdrawn. [S. 2(15), 10(20), 12, 12AA] 173
Dismissing the appeal of the revenue the Court held that, assessee is a statutory authority to manage Ports. Main object is to enable commerce and economy of country which is entitled to exemption. Though the exemption was Withdrawn as a local authority, exemption can be claimed as charitable Trust. Delay in filing the application was condoned as the assessee was enjoying exemption as local authority which was withdrawn.
CIT v. Cochin Port Trust (2019) 411 ITR 467 / 178 DTR 248 / 310 CTR 76 (Ker.)(HC)

174 **S. 11 : Property held for charitable purposes – Rent paid to trustees for using land and building – Fair market value – Rent paid to Trustees was not excessive considering the fair market value of the property – Exemption could not be denied. [S. 12, 13(3)]**
Dismissing the appeal of the revenue the Court held that; Rent paid to trustees for using land and building was not excessive considering the fair market value of the property, exemption cannot be denied. (AY. 2010-11)
CIT v. Bholaram Education Society (2018) 100 taxmann.com 508 / (2019) 260 Taxman 369 (Guj.)(HC)
Editorial : SLP of revenue is dismissed CIT v. Bholaram Education Society (2019) 260 Taxman 368 (SC)

175 **S. 11 : Property held for charitable purposes – Failure to file return – Return is filed in pursuance of notice u/s. 148 – Entitled to exemption as applicable to charitable Trust-Failure to produce evidence in support of its claim of electricity expenses – Such amount had to be excluded while considering application of income – S.40(a)(ia), 40A(3) and S. 43B falls in Chapter IV-D which are applicable for computing profits and gains of business or profession and Chapter IV-D is not applicable in respect of charitable trust or institution whose income is to be computed under S. 11 and 12 falling under Chapter-III. S. 37(1), Explanation is not applicable to charitable trust. Capital expenditure is to be allowed as application of income. [S. 12, 37(1), 40(a)(ia), 40A(3), 43B, 139, 139(4A), 147, 148]**
Tribunal held that failure to file return under S. 139(4A) cannot be interpreted to mean that income cannot be computed in case of a charitable trust under S. 11 of the Act. Once return has been filed in response to notice issued under S. 148, provisions of Act shall apply as if such return were a return required to be furnished under S. 139 and, thus, return filed under section 148 is treated as return filed under S. 139, which will include S. 139(4A) of the Act. Once such return is treated as return filed under S. 139, then all provisions of Act shall apply which will include S. 11. A new clause (ba) which has been inserted in section 12A by Finance Act, 2017 to put a further condition w.e.f 1-4-2018 of furnishing return within time allowed under section 139(4A) has been made applicable from assessment year 2018-19 onwards. Failure to produce evidence in respect of electricity expenses, amount to be excluded while computing application of income. S. 40(a)(ia), 40A(3) and S. 43B fall in Chapter IV-D which are applicable for computing profits and gains of business or profession and, thus, they are not applicable in respect of charitable trust or institution whose income is to be computed under Chapter-III and, accordingly, no disallowance or adjustment can be made while determining income of society under S. 11 and 12 of the Act. Penalty was levied by bank for mortgaging a property without permission of prescribed authority on assessee-society by invoking Explanation to S 37 is not applicable to charitable Trust since provisions of Chapter IV-D, i.e., S.28 to 44D are applicable while computing income of business or profession and these provisions are not applicable in respect of charitable institution whose income is to be computed under S.11 and 12 falling under Chapter III of the Act As per S. 11, income of a eligible institution to extent of which such income is applied to charitable purpose in India is not to be included in total income and application of income towards charitable purposes include application towards acquisition of assets, i.e., capital expenditure. (AY. 2006-07, 2009-10)
United Educational Society v. JCIT (2019) 74 ITR 11 / 178 ITD 716 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Accumulation of income – Merger with another society – Revenue failed to bring any evidence on record to establish accumulation of profit – Order of the AO is set aside.[S. 10(21)] 176

Assessee-society, namely EHIRC, Delhi, was formed in year 1981 and its objects were charitable in nature. Income of assessee was exempt under S. 10(21). In 1999, another society by the name of EHIRC, Chandigarh was formed which was not a charitable society. Assessee merged with EHIRC, Chandigarh, under due process of law and all its assets and liabilities vested with the latter. For the relevant year, assessee did not file return of income. AO having regard to amalgamation of assessee with EHIRC, Chandigarh, completed assessment making addition of accumulated profit to assessee's income. Tribunal held that since revenue failed to bring any evidence on record to establish accumulation of profit under S. 11(2) by assessee-society in earlier assessment year, impugned addition made by AO was set aside. (AY.2001-02)

ACIT v. Escorts Heart Institute & Research Centre (2019) 178 ITD 362 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Skill development project of clients / donors for upliftment of rural poor – Denial of exemption is held to be not valid. [S. 2(15), 11(1), 12AA] 177

Assessee-charitable trust was engaged in activities of upliftment of poor, providing training and skill development of poor in rural areas in backward districts of States like Bihar, Jharkhand etc. It is providing services to clients/donors against a fee which is not more than actual cost of projects. These projects were monitored by donors to verify that grants were incurred for intended purpose. AO denied the exemption by invoking proviso to S.2(15) of the Act. CIT(A) allowed the exemption. On appeal by the revenue the Court held that, proviso of S.2(15) is not applicable hence the order of CIT(A) is affirmed. (AY.2011-12)

DCIT(E) v. Professional Assistance for Development Action (PRADAN) (2019) 179 ITD 818 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Educational institution – Income received from sale of property – Application for accumulation of income was not made – Denial of exemption is held to be justified. [S. 11(2)] 178

AO denied the exemption in respect of sale of property on the ground that application u/s. 11(2) of the Act was not made for accumulation of income. Dismissing the appeal of the assessee the Tribunal held that assessee had received an amount of sale consideration by assignor, it could be concluded that assessee had not exercised option under clause (2) of Exp. to s.11(1). Therefore plea of the assessee that amount in question was not factually received during relevant year, was rejected and addition confirmed holding that amount of sale consideration accrued to assessee and was also received by assessee in year. Accordingly the denial of exemption is held to be justified. (AY 2011-12)

Universal Education Foundation v. ADIT (2019) 178 ITD 446 / 202 TTJ 233 / 183 DTR 462 (Mum.)(Trib.)

179 **S. 11 : Property held for charitable purposes – Surplus from the property held for charitable purpose – Cannot be taxed – When such activities done on such property are ancillary to the main object of the charitable organization – Corpus donation from members is entitled to exemption [S. 2(15), 11(1)(d), 12AA]**

Assessee has been granted registration under S. 12AA of the Act. As per the MOA of the organization its main object is to engage itself in establishing harmony between the construction industry and the Govt. bodies, financial institutions for promoting healthy growth and development of the construction industry. To attain this objective it performed certain ancillary activities like organized fairs, exhibitions and several other inter-connected activities. In such fairs there was the participation of members as well as non-members of the organization for certain consideration. It was brought to the notice of the Tribunal that it was expressly mentioned on the invoice that even if any surplus is realised by the assessee, it would be transferred to the "Infrastructure Fund" of the assessee. The Tribunal held as this surplus was realised by the assessee while performing the activities ancillary to the main object, the surplus realised is corpus in nature under S. 2(15) and not income and hence not chargeable to tax in the hands of the assessee. (AY 2012-13)

CREDAI Bengal v. ITO (2019) 56 CCH 123 / 72 ITR 672 (Kol.)(Trib.)

180 **S. 11 : Property held for charitable purposes – Business income Incidental to object of Trust – Providing transport to students and staff working for society is incidental to achieving the object of providing education i.e. object of society and not in the nature of business – Entitled to exemption. [S. 2(15), 11(4A)]**

During the year society charged transport fee for providing facility to students and staff for transport to and from school to respective houses of children in given routes. During assessment proceedings, AO disallowed the said fees on the premise that the aforesaid activity amounts to business in view of proviso to S. 2(15) of the Act and thus assessee would not be entitled for exemption under S. 11(4A) of the Act. AO further noted that surpluses generated from running of transport business were neither distributed among students nor was reduced from fee of next year and the institution can also run without the transport facility. On assesse's appeal to CIT(A) no relief was granted. On assesses appeal to Tribunal held that the activity of running school buses exclusively for the students and staff, is an intrinsic part of the activity of running a school. These activities of the assessee are not in the nature of business in as much as transport is also incidental to attainment main object of Assessee trust of the education Therefore, provisions of S. 11(4A) would not be applicable. (AY. 2010-11)

Delhi Public School Ghaziabad Society v. ACIT (2019) 69 ITR 31 (SN) (Delhi)(Trib.)

181 **S. 11 : Property held for charitable purposes – Sports – Cricket – The commercial exploitation of the popularity of the game and the property/infrastructure held by the assessee is not incidental to the main object but is one of the primary motives of the assessee – Not entitled to exemption – Matter remanded to the file of the AO to ascertain the mutuality in respect of club income. [S. 2(15), 12A]**

The assessee is a cricket association registered under Society registration Act 1860 and also earlier granted registration u/s. 12A of the Act. For the relevant year the assessee received amount by way of subsidy, reimbursement from BCCI, share of TV subsidy and

IPL subvention from BCCI, service charges for IPL, income from members income from international Match, interest from Bank, other income etc. The assessee claimed exemption u/s. 2(15) of the Act on the ground that the object of assessee would fall under the limb advancement of any other object of general public utility and included in the definition of charitable purpose. AO disallowed the claim in view of the amendment to S. 2(15) of the Act, the activities of the assessee were not charitable purpose disallowed the claim u/s. 11(2) of the Act. CIT(A) also affirmed the view of the AO. On appeal the Tribunal held that though the assessee is activity contributing towards the promotion and popularity of cricket, its activities are also concentrated for generation of revenue by exploiting the popularity of the game and towards monopolization and dominant control over cricket to the exclusion of others. The commercial exploitation of the popularity of the game and the property/infrastructure held by the assessee is not incidental to the main object but is one of the primary motives of the assessee. Tribunal held that after verification of the accounts of the assessee as to ascertain which part of the club income and catering services has generated from members of the assessee association and which part of the income is earned from non-members. It is also to be looked in to whether the income from the club house and other facilities is generated from the members only and the receipt from non members is an exception or the income is generated from members is an exception or income is generated from members and non members is normal course of business. Whether the catering services are limited to the members and their guests only or the same also provided to non-members also on commercial basis. The AO after thoroughly examining the facts will decide if the principle of mutuality applies to club income including catering contact in accordance with law. Accordingly the matter is restored to the file of the AO. Tribunal also stated that the observations made in the order will not have any bearing as such on any adjudication in the cases of the BCCI and that the BCCI will have right and liberty to contest its cases irrespective of the observations given above as our findings rests on the pleadings of the parties before us though, the viewpoint of the BCCI has also been considered after giving due opportunity to the BCCI. (AY. 2010-11)
Punjab Cricket Association v. ACIT (2019) 183 DTR 217 / 202 TTJ 137 / (2020) 180 ITD 347 (Chd.)(Trib.), www.itatonline.org

S. 11 : Property held for charitable purposes – Object of general public utility – Activity for planned urban development is not hit by proviso to section 2(15) – Entitled to exemption. [S.2(15),12A] 182
Tribunal held that activity for planned urban development is not hit by proviso to S.2(15) hence, assessee is entitled to exemption. (AY. 2013-14, 2014-15)
Bangalore Development Authority v. Dy.CIT(E) (2019) 73 ITR 711 (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Charging huge amounts for sponsorship fees from corporate entities on advertisement and free passes – Organisation for networking of entrepreneurs is not an educational institution – Membership is not open to general public – Contributors and beneficiaries are different – Not entitled to exemption. [S. 2(15)] 183
Dismissing the appeal of the assessee the Tribunal held that Charging huge amounts for sponsorship fees from corporate entities on advertisement and free passes. Assessee organisation for networking of entrepreneurs is not an educational institution. Tribunal

also held that membership is not open to general public and contributors and beneficiaries are different, hence the assessee is not entitled to exemption. (AY. 2010-11, 2011-12)
Indus Entrepreneurs v. CIT (2019) 70 ITR 19 (Mum.)(Trib.)

184 **S. 11 : Property held for charitable purposes – Trade association – Surplus from Goa Fest – Fest receipt and interest from bank – Entitled to exemption. [S. 2(15)]**
Assessee trade association of advertising agencies organised 'Fest' every year for advancement of its objects specified in Charter of Trust in which it invited eminent speakers from international advertising world as well as from Indian media. Surplus generated out of 'Goa Fest' were accumulated and set apart and same was deposited in bank in form of fixed deposits and saving account. It claimed exemption in respect of receipt and interest. AO denied the exemption which was affirmed by CIT(A). On appeal the Tribunal held that since Fest organised by assessee was clearly towards advancement of assessee's object of general public utility, receipts from said Fest and interest received on money deposited were entitled for exemption. (AY.2011-12)
Advertising Agencies Association of India v. ADIT (2019) 177 ITD 33 (Mum.)(Trib.)

185 **S. 11 : Property held for charitable purposes – Relief for poor does not necessarily mean giving something free of cost to poor and it also includes providing them things at a concessional rate-Social objective of providing plots and sites to economically weaker section of society at affordable and reasonable rates – Held to be charitable purpose-Entitled to exemption. [S. 2(15)]**
Tribunal held that assessee, a statutory body, constituted by an enactment of State Government, for setting up of residential layouts to ensure planned urban development of city and also to accomplish a social objective of providing plots and sites to economically weaker section of society at affordable and reasonable rates, could be said to be providing general public utility services within meaning of S. 2(15). Relief for poor does not necessarily mean giving something free of cost to poor and it also includes providing them things at a concessional rate. Accordingly entitled to exemption. (AY. 2012-13)
Bangalore Development Authority v. ACIT (2019) 176 ITD 833 (Bang.)(Trib.)

186 **S. 11 : Property held for charitable purposes – Application of income – Income from house property – Rental income derived from Trust – Standard deduction at 30 percent is not allowable – Repairs and maintenance expenses incurred on trust property being meant for objects of charitable trust is to be allowed in computing income of the Trust as application of income. [S. 24(a)]**
Tribunal held that while determining income available for application under section 11, income of a trust should be computed under commercial principles without resorting to computation mechanism as provided under respective head of income. Accordingly standard deduction u/s. 24(a) at 30 percent is not allowable. Tribunal held that deduction as to repairs and maintenance expenses incurred on trust property being meant for objects of charitable trust, was to be allowed in computing income available for application. (AY. 2012-13)
Nandlal Tolani Charitable Trust (2019) 176 ITD 769 / 181 DTR 97 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Application of income – Capital gains – Sale of bonds and debentures – Failure to disclose investment made by way of purchase of mutual fund – Deduction is not allowable from capital gains – Accumulation of income – Failure to file any details with regard to availability of funds for making investment in modes specified under S. 11(5), claim could not be allowed. [S. 11(5), 45] 187

Assessee sold certain bonds/debenture and claimed that it had reinvested sale consideration for acquiring mutual funds; therefore, while computing capital gain, amount invested for purchase of mutual fund needed to be allowed as deduction under S. 11(1)(a) of the Act. Tribunal held that such claim was neither discussed by the AO in his assessment order nor emanating from records furnished by assessee before lower authorities. Neither in return of income nor in revised return or revised statement of total income before Assessing Officer, there was any claim as said issue was not placed at time of assessment proceedings. Accordingly the disallowance of claim is held to be justified. Tribunal also held that failure to file revised Form claiming additional amount as accumulated income after 6 years, but failed to file any details with regard to availability of funds for making investment in modes specified under S. 11(5), claim could not be allowed. (AY. 2012-13)

Nandlal Tolani Charitable Trust v. ITO(E) (2019) 176 ITD 769 / 181 DTR 97 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Application of income – Payment to another charitable trust – Exemption cannot be denied merely because the donee trust has not spent the donation during the year itself – Interest accrued on fixed deposit – Deemed application of income – Exemption cannot be denied. [S. 11(2), 12, 12A, 13(3)] 188

Tribunal held that, exemption cannot be denied merely because the donee trust has not spent the donation during the year itself. Tribunal also held that interest accrued on fixed deposits which was not received, to be treated as deemed application of income under clause (2) of Explanation to section 11(1), exemption cannot be denied. (AY. 2013-14, 2014-15)

All Saints School v. ITO (2019) 176 ITD 632 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Application of income more than its gross total income – Accumulation at rate of 15 per cent is not required – Voluntary donations towards corpus fund would be capital receipts hence not includible in its income. [S. 11(1)(a), 12] 189

Dismissing the appeal of the revenue the Tribunal held that, when the Trust had applied more than its gross total income, accumulation at rate of 15 per cent would not arise voluntary donations towards corpus fund would be capital receipts hence not includible in its income. (AY.2010-11)

DCIT v. Shree Surat Jilla Leuva Patidar Samaj Trust (2019) 176 ITD 69 (Surat)(Trib.)

S. 11 : Property held for charitable purposes – kalyanamandapams, school, health centre and library – Donation to Trust – Predominant activity of assessee society is charity – Eligible for exemption. [S. 11(1), 11(4), 12A] 190

Predominant activity of assessee society is charity,income from property held under Trust which is applied for charitable object such as school, health centre, library and donation to another Trust is held to be eligible for exemption. (AY.1987-88 to 2014-15)

AVM Charities v. ITO (2019) 175 ITD 654 / 174 DTR 1 / 197 TTJ 513 (Chenni)(Trib.)

191 **S. 11 : Property held for charitable purposes – Pendency of appeal – Registration was granted – Corpus donation – Matter remanded to AO. [S. 12A, 12AA]**
Tribunal held that as the registration was granted, the matter should go back to the AO for verification whether the donation was towards corpus of the Trust and to decide in accordance with law. (AY. 2012-13)
Goregaon Mahila Mandal v. ITO (2019) 175 ITD 444 (Mum.)(Trib.)

192 **S. 11 : Property held for charitable purposes – Salary paid to trustee – Exclusively working for trust – Earlier years accepted-Denial of exemption is held to be not valid [S. 12A,13(1)(c)]**
Allowing the appeal of the assessee the Tribunal held that,there was violation of provisions of S. 13(1)(c), in view of fact that payment of salary was being made since inception of trust and it had not been disputed by revenue in earlier years and said trustee was exclusively working for trust. Accordingly denial of exemption is held to be not valid. (AY. 2012-13)
Apne Aap Women Worldwide (India) Trust v. ITO (2019) 69 ITR 84 / 175 ITD 381 / 177 DTR 193 / 199 TTJ 447 (Mum.)(Trib.)

193 **S. 11 : Property held for charitable purposes – Registration granted to assessee cricket association, cancelled earlier, had been restored – Exemption cannot be denied – Amounts received by cricket association under TV subsidy from Board of Cricket Control of India (BCCI) being under a resolution which specifically stated that TV subsidies were towards corpus funds and not under any legal obligation were to be treated as corpus donations – Depreciation on capital asset is to be allowed as application of income. [S. 11(1)(d), 12AA, 32]**
Assessee cricket association was denied benefit of S. 11 on ground that registration granted to assessee had been cancelled, however, in view of fact that registration had been restored vide order passed by coordinate bench, applicability of S. 11 would follow. Amounts received by cricket association under TV subsidy from Board of Control for Cricket in India (BCCI) being under a resolution which specifically stated that TV subsidies should henceforth be sent to Member Associations towards corpus funds and not under any legal obligation were to be treated as corpus donations. Claim for depreciation on capital assets was to be allowed,even if amount spent on acquiring depreciable asset was treated as application of income of trust in year of acquisition, depreciation would still be allowable in subsequent years. (AY. 2004-05 to 2007-08)
Gujarat Cricket Association v. ITO (2019) 175 ITD 224 (Ahd.)(Trib.)

194 **S. 11 : Property held for charitable purposes – Activities of publication of newspaper and complementary publication to provide information regarding Government welfare schemes to general public – Not carrying on activity in nature of trade or commerce – Eligible exemption. [S. 2(15), 10(23C)(iv)]**
Tribunal held that the assessee, Society which is engaged in activities of publication of newspaper and complementary publication to provide information regarding Government welfare schemes to general public and its activities had not changed at all since its inception and it was fully eligible for exemption under S. 11 and 12 and, further,

income generated by assessee was utilized fully for purposes of objects of assessee. Accordingly the AO is not justified in holding that assessee was involved in carrying on activity in nature of trade, commerce or business. Assessee is entitle to exemption. (AY. 2009-10, 2010-11)
Madhya Pradesh Madhyam v. ACIT (2019) 174 ITD 751 / 198 TTJ 949 / 178 DTR 180 (Indore)(Trib.)

S. 11 : Property held for charitable purposes – Construction activities – Acting as an agency to generate and propagate innovative housing ideas, production and distribution of innovative building materials, etc is the principal activity-Supervisory charges – Not entitled to exemption. [S. 2(15), 11(4A)] 195
Nirmithi Kendra was a charitable society promoted by Government of Kerala for serving as seminal agency to generate and propagate innovative housing ideas, production and distribution of innovative building materials, etc. During current year, assessee undertook construction activities under State PWD department such as Panchayath Community Hall, Kudumbasree womens hostel, Krishibhavan office, Vayanasala Office etc. in lieu of 2.5 per cent supervision charges. AO denied the exemption on the ground that construction activity carried on by assessee was a business activity. On appeal the Tribunal held that since such activity became principal activity and no more incidental activity, and the assessee had itself carried on a business which was not at all property held under trust, provisions of S. 11(4A) would be applicable, hence denial exemption is held to be justified. (AY.2009-10, 2013-14)
Nirmithi Kendra v. DCIT (2019) 174 ITD 177 (Cochin)(Trib.)

S. 11 : Property held for charitable purposes – Accumulation of income – Application of income – Charitable trust is entitled to accumulate 15% of receipts without considering the expenditure incurred on objects of Trust – When the application of income, is more than receipts of year, excess application of income i.e., expenditure in hands of assessee, can be carried forward to succeeding year. [S. 11(1)(a), 11(2)] 196
Allowing the appeal of the assessee the Tribunal held that, Charitable trust is entitled to accumulate 15% of receipts without considering the expenditure incurred on objects of Trust-when the application of income, is more than receipts of year, excess application of income i.e., expenditure in hands of assessee, can be carried forward to succeeding year. (AY. 2008-09)
Maharshi Karve Stree Shikshan Samstha Karvenagar v. ITO (2019) 174 ITD 591 (Pune) (Trib.)

S. 12A : Registration – Trust or institution – Charitable purpose – Statutory body constituted with the object of promoting development of urban areas – A Charitable institution entitled to registration. [S. 2(15), 11, Karnataka Urban Development Authorities Act, 1987, S.65] 197
Dismissing the appeal of the revenue the Court held that the assessee was a statutory authority created under the Karnataka Urban Development Authorities Act, 1987. The purpose and intent of creation of the assessee was to establish urban areas in Hubli-Dharwad in a planned manner. The assessee being a statutory authority was under

the control of the State Government, which had the power to issue directions to the authority in terms of section 65 of the Act. The directions were necessary or expedient for carrying out the purposes of the Act and it would be the duty of the assessee to comply with such directions. Even the utilization of funds by the assessee was fully controlled by periodical instructions issued by the Government. The funds standing in the name of the assessee were under the absolute control of the Government as the assessee functioned in a fiduciary capacity. Accordingly the assessee is entitled to continue the certificate of registration under S. 12A of the Act.
CIT v. Hubli Dharwad Urban Development Authority (2019) 419 ITR 29 (Karn.)(HC)

198 **S. 12A : Registration – Trust or institution – Grant of benefit of S.11, 12 for the AY. 2011-12 – Application for registration was submitted in AY. 2015-16 – Proviso had to be read along with main proviso and not in isolation and contradiction – Registration can be given from the following financial year in which the application for registration is made, subsequent years and not any previous year. [S.11, 12(2), 12AA]**
Assessee made an application for registration on 15.12.2014 i.e., in AY 2015-16 (FY 2014-15). Assessment in question was of year 2011-12. Matter was pending before ITAT. Tribunal held that the registration is allowable as the matter was pending before the ITAT. Allowing the appeal of the revenue the Court held that on the facts submission of application for registration on 15.12.2014, it would be in contravention of S. 12(2) Court held that by virtue of interpretation taken by ITAT, main provision was made redundant on facts of case, though not permissible. Proviso had to be read along with main proviso and not in isolation and contradiction. Accordingly registration can be given from the following financial year in which the application for registration is made,subsequent years and not any previous year. (AY. 2011-12)
CIT(E) v. Shiv Kumar Sumitra Devi Smarak Shikshan (2019) 310 CTR 714 / (2020) 269 Taxman 163 (All.)(HC)

199 **S. 12A : Registration – Trust or institution – 71% of the receipt were spent in accordance with the object of the Trust – Partial expenditure were spent on religious-purposes – Trust is held to be genuine – Entitle for registration – Benefit of S.11 is not available only to the extent of partial expenditure which were spent on religious. [S. 11]**
Dismissing the appeal of the revenue the Court held that at stage of registration, question of application of income of trust is premature. DIT(E) rejected petitioner's application for registration under S. 12A on ground that 29 per cent of its gross receipts were expended on making donations for religious purposes which was not in accordance with objects of trust. Court held that 71 per cent of receipt of trust were being spent in accordance with its object, it was established that trust was genuine. Court also held that spending a partial expenditure which was not authorized by trust would not make trust non-genuine and only consequences would be that benefit of S. 11 would not be available to that extent.
CIT v. Manekji Mota Charitable Trust (2019) 267 Taxman 16 (Bom.)(HC)

S. 12A : Registration – Trust or institution – Providing basic services of domain name registration charging annual subscription fees and connectivity charges – Incidental to main objects of assessee – Entitled to exemption [S. 2(15), 10(23C)(IV), 260A, Companies Act, 1956, S. 25] 200

Dismissing the appeal of the revenue the Court held that ; the assessee had been incorporated without any profit motive. The services provided by the assessee were of general public utility and were towards membership and connectivity charges and were incidental to its main objects. The assessee (though not a statutory body) carried on regulatory work. Both the appellate authorities had concluded that the assessee's objects were charitable and that it provided basic services by way of domain name registration, for which, it charged subscription fee on an annual basis and also collected connectivity charges. No question of law arose. (AY. 2009-10)

CIT(E) v. National Internet Exchange of India (2019) 417 ITR 436 (Delhi)(HC)

Editorial : SLP is granted to the revenue, CIT(E) v. National Internet Exchange of India (2019) 412 ITR 41 (St.)

S. 12A : Registration – Trust or institution – Anesthesia speciality – Education programme and research work in larger perspective were going to benefit public at large – Entitled for registration. [S. 2(15)] 201

Dismissing the appeal of the revenue the Court held that education programme and research work in larger perspective were going to benefit public at large. Accordingly entitled for registration.

CIT(E) v. Anesthesia Society (2019) 260 Taxman 375 / 183 DTR 221 (Raj.)(HC)

S. 12A : Registration – Trust or institution – Medical relief – Rejection of application for registration merely on the ground that activities envisaged in aims and objects of assessee – Society had not been carried out is held to be not valid – Matter remanded. [S. 2(15), 12AA] 202

Assessee-hospital society was in its nascent stage and was yet to work towards its object, Commissioner (E) was not correct to have rejected its application for registration merely for reason that activities envisaged in aims and objects of assessee-society had not been carried out. Matter remanded to CIT(E) for the examination of objects of the society or institution; and satisfaction about the genuineness of the activities of the society or institution on the basis of inquiries as he may deem fit. (AY. 2017-18)

Anand Isher Amar Charitable Cancer & Multi-Speciality Hospital Society v. CIT (2019) 176 ITD 424 / 180 DTR 170 (Asr.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Bogus donation – Appellate Tribunal remanded the matter for grant of opportunity to assessee to cross examine representative of donor – High Court quashing cancellation of registration on the ground that single instance of bogus donation cannot be the sole ground for cancellation of registration – Order of High Court is set aside and directed the Commissioner to decide on merits. [S. 12AA(3), 80G(5)(vi)] 203

Allowing the appeal of the revenue the Court held that, Appellate Tribunal remanded the matter for grant of opportunity to assessee to cross examine representative of donor.

High Court quashing cancellation of registration on the ground that single instance of bogus donation cannot be the sole ground for cancellation of registration. Order of High Court is set aside and directed the Commissioner to decide on merits. (Note. Judgment of calcutta High Court is reported as (2017) 86 taxmann.com 104 / (2019) 411 ITR 236 (Cal.)(HC)
CIT v. Jagannath Gupta Family Trust (2019) 411 ITR 235 / 307 CTR 1 / 174 DTR 305 / 262 Taxman 313 (SC)

204 **S. 12AA : Procedure for registration – Trust or institution – Delay in filing form No 10-CIT(E) is held to be not justified in rejecting the form no 10 filed belatedly – Delay was condoned – Matter remanded to CIT(E) to grant the registration as per the law. [S. 11(2), 119(2b), 147, 148, Art, 226]**
Assessee trust was formed with an aim to provide rehabilitation to people, who were victims of communal violence. Assessee claimed to have received contribution from the public for providing relief to riot victims. The assessee filed return declaring nil income. Since registration under S. 12AA was not granted as on that date, declaration in Form 10 was not furnished. Return was accepted and an assessment order was passed. A notice under S.148 was issued and a reassessment order was passed determining total income at certain amounts in absence of registration under S. 12AA of the Act. Assessee was granted registration under S. 12AA by an order dated 2-2-2005 with effect from 10-12-1997, pursuant to the order of the Tribunal. On receipt of grant of registration under S. 12AA with retrospective effect, filed Form No. 10 claiming benefit of accumulation of income under S. 11(2) and made an application for condonation of delay in filling Form No. 10. The assessee had filed the Form No. 10 on 27-4-2005 for accumulation of funds in order to enable the assessee to identify the other victims of the riot in a systematic manner. DIT (E.) rejected said petition for condonation of delay. On writ allowing the petition the Court held that since when Form 10 ought to be filed assessee was not enjoying benefit of exemption under S. 12AA and immediately having received declaration under S. 12AA with retrospective effect assessee submitted said Form 10, assessee had explained delay in filing Form 10 satisfactorily, accordingly the CIT(E) is not justified in rejecting application for condonation of delay. Matter remanded. (AY. 1998-99)
Coimbatore Muslim Relief Fund v. DIT(E) (209) 267 Taxman 399 / (2020) 185 DTR 364 (Mad.)(HC)

205 **S. 12AA : Procedure for registration – Trust or institution – Trust formed for distribution of pensionary benefits – Payment of pension is statutory obligation and not charity – Not entitled to registration – Review petition is dismissed. [S. 2(15), Code of Civil Procedure, 1908, O. XL VII R. 1]**
Dismissing the review petition, held that the payment of pension to the retired employees of the Authority, in discharge of the statutory obligation was not a charity or bounty nor was it a conditional payment solely dependent on the will of the Authority. Therefore, the question whether the contribution towards the pension fund was made by the employees or by the employer, i.e., the Greater Cochin Development Authority, had no relevance while considering an application for registration under S. 12AA subject to

the conditions in S. 12A, read with S. 2(15). Even if the entire contribution towards the pension fund was paid by the Authority, the object of the assessee to establish a separate fund in order to operate as a recognised pension fund for the benefit of the managerial, supervisory and other staff of the Authority would not fall within the definition of "charitable purpose" as defined in S. 2(15). Such object of the assessee could not be said to be an activity of "general public utility" attracting the provisions of S. 2(15). (*GCDA Employees Pension Fund Trust v. CIT (2014) 532 (Ker.)(HC)* is reaffirmed)
GCDA Employees Pension Fund Trust v. CIT (2019) 419 ITR 343 (Ker.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Deemed registration – Tribunal allowing the registration to Trust – Held to be valid. [S. 254(1)] 206
Dismissing the appeal of the revenue, the Court held that the examination was not required to be conducted by the CIT(E) at the time of grant of exemption. The Tribunal remanded the matter to the CIT(E). On remand the CIT(E) rejected the application for registration. Tribunal held that once the limitation prescribed under S.12AA of the Act is expired and the consequential default on the part of the CIT(E) in deciding the application would result in deemed grant of registration. On appeal the High Court affirmed the order of the Tribunal. (AY. 2010-11 to 2014-15)
CIT(E) v. Getwell Health and Education Samiti (2019) 419 ITR 353 (Raj.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Prior to 1-4-1997 mere application for registration is sufficient for claim for exemption – S. 12AA inserted w.e.f 1-4-1997 is not retrospective provision. [S. 11, 12A] 207
Dismissing the appeal of the revenue the Court held that the application filed by the assessee was on December 31, 1993 which was before the introduction of S. 12AA which came into effect only from April 1, 1997 hence entitled for exemption. S. 12AA, w.e.f 14-1997 is not retrospective provision. Referred Circular No 762 dt. 18-02-1998 (1998) 230 ITR 12 (St.). (AY. 2008-09, 2012-13)
CIT v. Poorna Prajana Vidya Peetha Prathisthana (2019) 418 ITR 320 (Karn.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Object to help literary persons of different aptitudes or classes, plays written in different languages could be converted into dramas or episodes or T.V. Plays – Cannot be regarded as commercial in nature – Denial of registration is not justified. [S. 2.15, 12A] 208
Assessee trust filed an application for registration. AO rejected the application on the ground that the object to help literary persons of different aptitudes or classes, plays written in different languages could be converted into dramas or episodes or T.V. Plays is commercial in nature. Tribunal allowed the application of the assessee. On appeal by the revenue, the High Court, affirmed the order of the Tribunal.
CIT(E) v. Kanakia Art Foundation (2019) 265 Taxman 281 (Bom.)(HC)
Editorial : Order in Kanakia Art Foundation v. Dy.CIT (2015) 59 taxmann.com 468 / 39 ITR 53 (Mum.)(Trib.) is affirmed.

209 **S. 12AA : Procedure for registration – Trust or institution – An assessee is free to avail registration under any alternative provision if more than one alternatives were available – Rejection of application is held to be not valid. [S. 10(23C)(iiad)]**

Assessee-trust, running a school, filed application for registration under S.12AA of the Act. CIT(E) held that the assessee had been claiming exemption under S. 10(23C)(iiiad) and, therefore, should not have filed an application under S.12AA of the Act. He also held that the assessee was running a school which had not been reflected in byelaws as objects of society as contained in Memorandum of Association. Accordingly, assessee's application for registration was rejected. Tribunal held that as regards first objection, it was of the view that assessee was free to avail registration under any alternative provision if more than one alternatives were available and thus, assessee was eligible for registration under S. 12AA for which it had applied. As regards second objection was concerned, Tribunal concluded that mere non-mentioning of schools and colleges in Memorandum of Association did not disentitle assessee for getting registration under S. 12AA. Accordingly set aside the order passed by CIT(E). On appeal by the revenue High Court affirmed the view of the Tribunal.

CIT v. Beant College of Engineering & Technology (2019) 265 Taxman 449 (P&H)(HC)

210 **S. 12AA : Procedure for registration – Trust or institution – Object of assessee trust was to conduct work in area of research, studies, training, education, health etc. – Charitable in nature – Entitled to registration. [S. 2(15)]**

Dismissing the appeal of the revenue, the Court held that the primary object of assessee trust was to carry out work in area of research, studies, training, education, health etc. are charitable purposes within the meaning of S.2(15) of the Act. Tribunal is justified in allowing the registration.

CIT(E) v. Pratham Institute for Literacy Education & Vocational Training (2019) 108 taxmann.com 312 / 265 Taxman 547 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, CIT(E) v. Pratham Institute for Literacy Education & Vocational Training (2019) 265 Taxman 546 (SC) / 416 ITR 127 (St) (SC)

211 **S. 12AA : Procedure for registration – Trust or institution – Mere resolution of governing body to benefit followers of a particular religion – Cancellation of registration is not justified. [S. 12AA(3), 13(1)(b)]**

The assessee is an educational institution which was granted registration under S. 12AA in April, 1985. A notice to cancel the registration was issued in August, 2011 and the registration was cancelled by the Commissioner and this was confirmed by the Tribunal. On appeal to the High Court, held that the ground for cancellation of registration was that in some of the subsequent governing body meetings some resolutions were passed in benefit of the Christian community. The order of cancellation had been passed by the Commissioner without recording any satisfaction, either on the issue of the activities of the school being not genuine or that they were not being carried out in accordance with the objects for which the institution had been set up. The order of cancellation of registration was not valid.

ST. Michaels Educational Association v. CIT (2019) 417 ITR 469 / 311 CTR 480 / 183 DTR 154 / (2020) 269 Taxman 82 (Pat.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Running of college and educational institutions – Denial of registration is held to be not valid. [S. 10(23C)(vi)] 212
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in directing the CIT(E) to grant exemption to the respondent which is running a college and educational institution.
CIT v. Khatu Ji Para Medical Technology Educational & Research Society (2019) 264 Taxman 300 (P&H) (HC)

S. 12AA : Procedure for registration – Trust or institution – Cancellation of registration cannot be done with retrospective effect – Education – Amounts spent on construction of buildings and acquisition of Television channel for educational purposes – Entitled to exemption – Depreciation is allowable – Proviso inserted w.e.f. 1-4-2015 is not retrospective – High Court has the power to set aside the order of Settlement Commission which is erroneous. [S. 11, 12AA(3), 245D(4), Art. 226] 213
Court held that the Settlement Commission committed an error while adjudicating upon the rectification application filed by both parties. The Settlement Commission, arbitrarily and irrationally based its adjudication on the order dated January 16, 2018, passed by the Department. Thus modification of the original order dated June 30, 2017 on that count was completely perverse and contrary to the provisions of the law. At the time of passing of the original order, the assessee was a registered entity under S. 12A and withdrawal of the approval accorded under S. 10(23C)(v) and (via) as a consequence of cancellation or withdrawal thereof could not have retrospective effect. Court also held that the Settlement Commission held that S. 11(6) restricts the assessee from claiming depreciation. The Commission lost sight of the fact that the provision was inserted in the 1961 Act on April 1, 2015 and therefore, it could only be applied prospectively. Depreciation in respect of the expense claimed by the assessee was for the assessment years 2009-10 to 2014-15 the assessee was entitled to all the benefits under S. 11(1)(a) including set off or carry forward of losses to the subsequent years and depreciation, in respect of expenses incurred for construction of educational buildings in terms and tune with the objects of the trust. The television channel was acquired by the assessee for educational training in journalism and mass communication, as it was offering courses for graduation and post-graduation in "mass communication" and "Journalism". The investment in the television channel should be considered to be in consonance with the objectives and within the purview of the objects of the trust. (AY. 2009-10 to 2015-16)
Indian Medical Trust v. CIT (2019) 414 ITR 296 / 265 Taxman 473 / 311 CTR 19 / 182 DTR 252 (Raj.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Objects relatable to education, medical aid and help to the poor – Denial of registration is not valid. [S. 2(15)] 214
Dismissing the appeal of the revenue the Court held that; where the objects of the trust is relatable to education, medical aid and help to poor in times of calamities, registration of assessee-trust could not be denied for amended objects clarifying running of diagnostic centre on no profit basis.
CIT v. Paramount Charity Trust (2018) 97 taxmann.com 134 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Paramount Charity Trust (2019) 262 Taxman 164 (SC)

215 **S. 12AA : Procedure for registration – Trust or institution – Execution of contract with Railways for cleaning coaches is not charitable purpose – Employment of poor persons would not make it charitable – Cancellation of registration is justified. [S. 2(15)]**
Court held that execution of contract with Railways for cleaning coaches is not charitable purpose and employment of poor persons would not make it charitable. Accordingly cancellation of registration is justified.
Mahatma Gandhi Charitable Society v. CIT (2019) 415 ITR 27 / 176 DTR 41 / 308 CTR 406 (Ker.)(HC)

216 **S. 12AA : Procedure for registration – Trust or institution – Violation of S. 13 is not a ground for cancellation of registration. [S. 13]**
Where the assessee Trust had entered into a transaction with a person referred to in S. 13 and therefore there was a violation of S. 13(1), its effect was to be seen by the AO while carrying out the assessment. Such a violation was not a ground for cancellation of registration. The only grounds for cancellation of registration under S. 12AA are where it is discovered that the activities of the Trust are not genuine or they are not being carried out in accordance with the objects of the Trust.
PCIT v. Ashoka Education Foundation (2019) 174 DTR 377 / 262 Taxman 440 (Bom.)(HC)

217 **S. 12AA : Procedure for registration – Trust or institution – Society imparting training to various officers /officials involved in criminal justice – No profit motive – Entitle for registration. [S.2(15), 12A]**
Dismissing the appeal of the revenue the Court held that, assessee society was constituted by Government for imparting training to various officers / officials involved in criminal justice system with no profit motive at all and whatever funds were generated or received in aid, were utilised for aforesaid public purpose. Entitle for registration. (AY.2010-11)
CIT(E) v. Institute of Correctional Administration (2019) 103 taxmann.com 84 (P&H)(HC)
Editorial : SLP of revenue is dismissed, CIT (E) v. Institute of Correctional Administration (2019) 261 Taxman 556 (SC)

218 **S. 12AA : Procedure for registration – Trust or institution – High Court directing inquiry to the allegations regarding irregularities committed by charitable institution- During pendency of inquiry registration cannot be cancelled. [S. 11]**
Dismissing the appeal of the revenue the Court held that ; during pendency of inquiry, registration cannot be cancelled. Order in *ITO v. Emmanuel Bible Institute Samiti (2011) 11 ITR (Trib.) 593 (Jaipur)* is affirmed.
CIT v. Emmanuel Bible Institute Samiti (2019) 410 ITR 518 / 264 Taxman 42 (Mag.) (Raj.) (HC)
Editorial : SLP of revenue is dismissed CIT v. Emmanuel Bible Institute Samiti (2018) 407 ITR 19 (St.)

S. 12AA : Procedure for registration – Trust or institution – Cancellation of registration – Amendment with effect from 1-6-2010 is enabling cancellation of registration is not retrospective – Cancellation cannot be made with retrospective effect – No allegation of fraud – Notice for reassessment is held to be bad in law. [S. 12A] 219

Allowing the petition, the Court held that amendment made with effect from 1-6-2010 is enabling cancellation of registration is not retrospective. Cancellation cannot be made with retrospective effect. No allegation of fraud hence notice for reassessment is held to be bad in law. (AY.2004-05 to 2007-08, 2010-11)

Auro Lab v. ITO (2019) 411 ITR 308 / 174 DTR 329 / 307 CTR 6 / 261 Taxman 364 (Mad.) (HC)

S. 12AA : Procedure for registration – Trust or institution – Not carrying on any charitable activity during the relevant period cannot be the ground to cancel registration. [S. 12A] 220

Dismissing the appeal of the revenue the Court held that; Trust not carrying on any charitable activity during the relevant period cannot be the ground to cancel registration.

DCIT v. D.R. Ranka Charitable Trust (2019) 260 Taxman 139 (Karn.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Violation of provisions of S.13 cannot be the ground to forfeit exemptions u/s. 11, 12 of the Act and cancellation of registration – Order cancellation of registration was set aside. [S. 11,12, 12A, 13] 221

Assessee-trust was formed with an object of running a hospital and research centre. It was granted registration under S. 12A in year 1979 and since then assessee had been claiming benefit of exemption prescribed under S. 11 and 13 of the Act. Subsequently, Commissioner took a view that manner of investment of trust funds was in violation of provisions of S. 13 of the Act. Accordingly cancelled the registration. On appeal the Tribunal held that, violation of provisions of S. 13 empowers an assessing authority to forfeit exemptions permissible under S. 11 and 12 but such a violation cannot form a ground to cancel registration by passing an order under S.12AA(3) of the Act.

Lilavati Kirtilal Mehta Medical Trust v. CIT (2019) 178 ITD 338 / 201 TTJ 227 / 181 DTR 233 (Mum.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – No defects in the object of the society or doubted the genuineness – Denial of registration is held to be not valid. [S. 2(15), 11] 222

The Assessee was carrying on social, spiritual, & charitable activities of operating a homeopathy dispensary and organizing camps for blood donation & Sermons. The Commissioner denied the registration u/s. 12AA applied by the Assessee by giving certain general remarks. On Appeal, the Tribunal held that the commissioner has to consider the twin requirement (i) objects of the assessee-society, and (ii) the genuineness of its activity. When the commissioner has not pointed out any defect in the object of the society or doubted the genuineness of its activities, the registration u/s. 12AA cannot be denied. (AY. 2017-18)

Acharya Shri Tulsi Kalyan Kendra (Regd.) v. CIT(E) (2019) 72 ITR 14 (Asr.)(Trib.)

223 **S. 12AA : Procedure for registration – Trust or institution – CSR activities are charitable in nature – Eligible for registration. [S. 15, Companies Act, 2013, S. 8]**
Assessee filed application for registration u/s. 12AA of the Act. CIT(E) rejected the application on the ground that complying with the requirement of Corporate Social Responsibility (CSR) of its parent company and, activities carried out by assessee did not partake meaning of public charitable company as defined u/s. 2(15) of the Act. On appeal the Tribunal held that as per S. 8 of Companies Act, 2013, CSR activities are public charitable activities per se. The objects of assessee were to establish and run educational institutions like schools, colleges, apprentice training, practical training classes, vocational training, boarding facilities, NGO, gurukuls, teaching classes, etc., and the same fall under charitable activities in terms of S.2(15). Hence assessee eligible for registration u/s.12AA of the Act.
Escorts Skill Development v. CIT (2019) 178 ITD 32 (Delhi)(Trib.)

224 **S. 12AA : Procedure for registration – Trust or institution – Surplus generated – Registration cannot be denied. [S. 2(15)]**
Allowing the appeal of the assessee the Tribunal held that, when an educational institution carries on activity of education primarily for educating persons, and merely making profit would not lead to conclusion that it ceases to exist solely for educational purposes and becomes an institution for purpose of making profit. Since surplus generated by assessee had been ploughed back for furtherance of its object of carrying out educational activities, hence rejection to grant registration to assessee-society is not justified.
Sanatan Dharam Educational Charitable Society v. CIT (2019) 178 ITD 242 (Asr.)(Trib.)

225 **S. 12AA : Procedure for registration – Trust or institution – Organizing coaching for players, conducting matches at district and State level and organizing camps for players to develop their skill for national and international tournament – Held not to provide any service in nature of trade, commerce or industry – Eligible for registration. [S. 2(15)]**
The assessee society was recognized body for selection of cricket players in the State of Chhattisgarh. The assessee was associate member of BCCI formed solely for promotion of cricket in the State of Chhattisgarh. The main objects of the assessee trust were to encourage sports facilities at district level and to encourage young and talented sportsmen and also to provide facility for cricket among the sportsmen. The assessee was organizing coaching for cricket players, conducting matches at district and State level, organizing camp for the players to develop their skill for national and international tournaments. The assessee filed an application for registration under S. 12AA. The CIT(E) pointed out that the assessee was conducting Indian Premier League (IPL) which was commercial in nature and the assessee gets a share in IPL from BCCI. The Commissioner had rejected the application of the assessee for granting registration under S. 12AA because the assessee was in receipts from the BCCI every year and these were in nature of trade, commerce or business as per proviso to S. 2(15) and, therefore, the assessee was not carrying out any charitable activities. On appeal to Tribunal against the action of the CIT(E), it was held by Tribunal that where assessee-society was set up with object of promoting sport of cricket and to bring out new talent in field of cricket and to organize coaching and camps for

players, conduct matches at district and State level, it could not be said that assessee was providing any service in nature of trade, commerce or industry and assessee was entitled to registration under S. 12AA of the Act.
Chhattisgarh State Cricket Sangh v. Dy. CIT(E) (2019) 178 DTR 369 / 200 TTJ 242 (Raipur) (Trib.)

S. 12AA : Procedure for registration – Trust or institution – Education – Skill enhancement – Entitled to exemption – Rejection of application is held to be not valid. [S. 2(15)] 226
Allowing the appeal of the assessee the Tribunal held that, vocational educational/ training programme run by assessee-society was a systematic programme imparting classroom coaching as well training with focus on employment generation which duly fell within purview and scope of term Education under in S. 2(15) of the Act. Accordingly entitled to registration. (AY. 2018-19)
Unique Educational Society v. CIT (2019) 179 ITD 147 (Chd.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Old denomination notes was found during search on premises of assessee's bank where management of assessee had effective control – Scholarship paid to several students – Had produced several documents in support of said scholarship payments – Non-appearance of certain students for verification – Purchase of plot of land and built a school building – Registration cannot be denied. [S.11, 12A, 13] 227
Tribunal held that old denomination notes were found during search on premises of assessee's bank where management of assessee had effective control. Refusal of registration is held to be not valid,since source of such cash was established to be fees collected from students and such fees was recorded in books of account and cash was physically found in possession of assessee's bank. Assessee had given scholarship to several students and had produced several documents in support of said scholarship payments, mere non-appearance of certain students for verification could not be a sole basis to held that scholarship payments were not genuine so as to withdraw registration granted to assessee under S. 12AA. Assessee had purchased a plot of land and built a school building thereon and carried on its educational activities and fees so received was reflected in its books of account, it could not be said that assessee had made investment in contravention of S. 11(5) so as to withdraw registration granted under S.12AA of the Act. (AY. 2014-15)
St. Wilfred Educational Society v. PCIT (2019) 176 ITD 675 (Jaipur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Possibility of misuse of donations – Approval u/s. 80G cannot be denied. [S. 80G] 228
Tribunal held that merely because the charitable educational institution was prosperous and failed to state as to why there was need for donations and it failed to submit a list of proposed donors, approval under S. 80(5)(vi) could not be denied merely upon possibility of misuse of donations.
Adesh Foundation (Regd.) v. CIT (2019) 176 ITD 506 / 199 TTJ 1015 / 177 DTR 153 (Asr.) (Trib.)

229 **S. 12AA : Procedure for registration – Trust or institution – Order denying registration was passed without providing opportunity of being heard – Order was set aside.**
Where the order denying registration was passed without providing the documents sought to be relied upon by the Commissioner (exemptions) and no opportunity was provided to be heard in relation to those documents, the order ought to be set aside and passed afresh after providing reasonable opportunity to the assessee.
Shri Nath Kidney Foundation Society v. CIT(E) (2019) 197 TTJ 715 / 174 DTR 441 (Asr.) (Trib.)

230 **S. 12AA : Registration – Trust or institution – Power of the CIT is to register or refuse to register the Trust but cannot qualify the Trust as 'general public utility trust' – Tribunal directed the trust to be registered under section 12AA of the Act without any qualification. [S. (2(15), 11, 12, 13]**
The CIT(E) has passed an order under S. 12AA of the Act directing the registration of the trust as 'general public utility trust'. It was argued that CIT(E) was supposed to register the trust or refuse to register the trust but there was no necessity to qualify it as 'general public utility trust'. The taxpayer argued that the exemption under S. 11, 12 and 13 would be available only after the AO was satisfied with the genuineness of the activities carried out. The AO would every year examine whether the activities of assessee fell within the ambit of S. 2(15) or not. Thereby it was submitted that order of CIT(E) should be modified and trust should be registered without any qualification. The Tribunal held that provisions of S. 12AA of the Act provided that if the CIT(E) is satisfied with the object of the trust and genuineness of the activities, an order is needed to be passed in writing accepting or rejecting the trust. Thus the power of the CIT is to register or refuse to register the Trust but cannot qualify the Trust as 'general public utility trust'. The Tribunal held that it is the AO who has to examine every year the activities of the Trust whether they fall within the clauses of charitable activities. Thereby the Tribunal directed the trust to be registered under S. 12AA of the Act without any qualification. Thus the appeal of taxpayer was allowed.
Tata Community Initiatives Trust v. CIT(E) (2019) 69 ITR 96 (SN) (Delhi)(Trib.)

231 **S. 12AA : Registration – Trust or institution – CIT(A) cannot question registration granted by CIT(E). [S. 251]**
Assessee was a Resident Welfare Association enjoying registration u/s. 12AA of the Act. The assessee being a trust registered under S. 12AA of the Act has claimed the entire income receipt as exempt u/s. 11 of the Act. The AO and CIT(A) has held that assessee has wrongly claimed registration u/s. 12AA of the Act and taxed the entire income receipt of the appellant. The Tribunal held that the CIT(E) is authorized to decide the allowability of registration u/s. 12AA of the Act and the CIT(A) has no authority to question the authority of CIT(E.) for granting registration u/s. 12AA of the Act.
Srishti Resident Welfare Association v. ACIT (2019) 69 ITR 9 (SN)(Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Grants and charging management fees – Medical relief for patients and creating awareness about HIV and AIDS for purpose of its eradication are charitable activities – Entitled to registration. [S. 2(15)] 232

Medical relief for patients and creating awareness about HIV and AIDS for the purpose of its eradication are charitable activities in the form of medical relief. Merely because the assessee was a company and receiving grant and also charging management fee for implementing project on behalf of various organisations would not make the activity of the assessee as business activity or non charitable. Denial of registration is held to be not justified. (AY.2010-11)

India HIV / AIDS Alliance v. CIT(E) (2019) 175 ITD 1 / 177 DTR 400 / 200 TTJ 112 (Delhi) (Trib.)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Funds utilised for purchase of car in name of its trustee – Denial of exemption should be limited only to amount which was diverted in violation of S. 13(2)(b) of the Act. [S. 11, 13(2)(b)] 233

Dismissing the appeal of the revenue the Court held that where funds of educational trust were utilized for the purpose of purchase of car in name of its trustee, there is violation of S.13(2)(b), read with S. 13(3) of the Act. However, denial of exemption under S. 11 should be limited only to amount which was diverted for purchase of a car in the name of prohibited person, i.e., trustee of assessee, in violation of S.13(2)(b) of the Act. (AY.2004-05)

CIT(E) v. Audyogik Shikshan Mandal (2019) 261 Taxman 12 (Bom.)(HC)

Editorial: Audyogik Shikshan Mandal v. ITO (2015) 156 ITD 1 (TM) (Pune)(Trib.) is affirmed.

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Exemption cannot be denied unless the revenue proves that the amount paid to persons referred in sub-section (3) of section 13 is in excess of what may be reasonably paid for services rendered. [S. 11, 12AA] 234

Dismissing the appeal of the revenue the Court held that clause (c) of sub section (2) of S. 13 can be invoked, if any amount is paid by way of salary, allowance or otherwise to any person referred to in sub-section (3) out of resources of the trust for services rendered to the trust and the amount so paid is in excess of what may be reasonably paid for such services. The essential requirement for invoking the said provision is that the amount paid was in excess of what may be reasonably paid for the services. On fact the Tribunal has held that payments made to other agencies for similar work, comparable to rates of payment made to related person. Accordingly no substantial question of law. (AY. 2008-09, 2009-10)

CIT v. Sri Balaji Society (2019) 101 Taxman.com 52 / 260 Taxman 246 (Bom.)(HC)

235 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Advancing money for acquiring land and construction of building – Delay in execution of sale deed – Advance of money to employee trust – No violation – Denial of exemption is held to be not valid – Application of income-entitled to depreciation though the cost of asset was allowed as application of income. [S. 11, 12AA, 13(1)(d), 32]**

Advancing money for acquiring land and construction of building. Delay in execution of sale deed. Advance of money to employee trust. There is no violation. Denial of exemption is held to be not valid. The assessee was entitled to claim the cost of the asset as application of income under S. 11. The assessee was eligible for depreciation under section 32 even though the cost of asset was allowed as application of income. (AY.2011-12, 2012-13)

ITO (OSD) v. Shrine Vailankanni Senior Secondary School (2019) 70 ITR 345 (Chennai) (Trib.)

236 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – On same facts exemption was granted earlier years – Denial of exemption is held to be not valid – Payment to trustee – No evidence to show that the payment was excessive or unreasonable – Denial of exemption is not proper. [S. 11, 12A, 13(1)(c)(d)]**

Allowing the appeal of the assessee, the Tribunal held that held, on same facts exemption was granted in earlier years and there was no evidence to show that the payment to trustee was excessive or unreasonable accordingly the denial of exemption is held to be not proper. (AY. 2012-13)

Apne Aap Women Worldwide (India) Trust v. ITO (2019) 69 ITR 84 / 175 ITD 381 / 177 DTR 193 / 199 TTJ 447 (Mum.)(Trib.)

237 **S. 14A : Disallowance of expenditure – Exempt income – In the absence of any exempt income – No disallowance can be made. [R. 8D]**

In the absence of any exempt income, no disallowance is permissible (*CIT v. Essar Teleholdings Ltd (2018) 401 ITR 445 (SC)* followed, *Cheminvest Ltd v. CIT (2015) 378 ITR 33 (Delhi)(HC)* approved). (SLP No.2755/2019, dt. 16.02.2018)

PCIT v. Oil Industries Development Board (2019) 262 Taxman 102 (SC), www.itatonline.org

Editorial : PCIT v. Oil Industries Development Board (2019) 103 taxmann.com 325 (Delhi)(HC) is affirmed. (ITA No. 187/2018 dt 16-02-2018)

238 **S. 14A : Disallowance of expenditure – Exempt income – Tribunal is justified in restricting the disallowance of 5% of exempt income – Rule 8D would not be applicable retrospectively. [R. 8D]**

Dismissing the appeal of the revenue the Court held that, Tribunal is justified in restricting the disallowance of 5% of exempt income – Rule 8D would not be applicable retrospectively. (AY. 2007-08)

PCIT v. Reliance Natural Resources Ltd. (2019) 267 Taxman 644 (Bom.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Remand by the Tribunal is held to be valid – Ad hoc disallowances cannot be made – The court granted liberty to the assessee to raise the contention with regard to the jurisdiction of the Assessing Officer to invoke section 14A(2). [S. 254(1), R. 8D] 239

The High Court held that income had to be disallowed on actual basis and not on ad-hoc estimate basis. Accordingly, the finding rendered by the AO was to be set aside and the matter remanded to the AO to disallow only the actual expenditure incurred in connection with the earning of exempted dividend income. The court granted liberty to the assessee to raise the contention with regard to the jurisdiction of the AO to invoke section 14A(2) and if it was raised it was to be considered by the AO along with other points in accordance with law. (AY. 2001-02, 2002-03)

Polaris Consulting and services Ltd. v. DCIT (2019) 417 ITR 441 (Mad.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Section is not retrospective in operation – Not applicable prior to assessment year 2008-09. 240

The machinery provision for giving effect to section 14A of the Income-tax Act, 1961 came into effect only from the assessment year 2008-09. Hence there can be no application of section 14A prior to assessment year 2008-09. (AY.2006-07)

Federal Bank Ltd. v. DCIT (2019) 417 ITR 694 / (2020) 269 Taxman 190 (Ker.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording satisfaction – Mixed funds – Recording of satisfaction is mandatory – Disallowance is not attracted automatically. [R. 8D] 241

Dismissing the appeal, the Court held that the condition precedent of recording the requisite satisfaction which is a safeguard provided in S. 14A should not be overlooked before applying rule 8D. The contention of the Department that once there were mixed funds, i.e., interest free as well as interest bearing funds with the assessee, rule 8D would be attracted automatically could not be accepted. Order of Tribunal is affirmed. (AY. 2010-11)

CIT v. Gujarat State Fertilizers and Chemicals Ltd. (2019) 416 ITR 13 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Interest – Disallowance can be only on net interest on the loan. [R. 8D] 242

Dismissing the appeal of the revenue the Court held that disallowance can be only on net interest on the loan. (AY. 2008-09)

CIT v. Jubiliant Enterprises P. Ltd. (2019) 416 ITR 58 (Bom.)(HC)

Editorial : SLP is granted to the revenue, CIT v. Jubiliant Enterprises P. Ltd. (2017) 397 ITR 32 (St.)

S. 14A : Disallowance of expenditure – Exempt income – Satisfaction – AO cannot disallow the expenditure far in excess of what has been disallowed, without demonstrating how the working of the assessee is wrong. [R. 8D] 243

Dismissing the appeals of the revenue the Court held that AO cannot disallow the expenditure far in excess of what has been disallowed, without demonstrating how the working of the assessee is wrong. (AY.2009-10)

CIT v. DSP Adiko Holdings Pvt. Ltd. (2019) 414 ITR 555 (Bom.)(HC)

CIT v. DSP HMK Holdings P. Ltd. (2019) 414 ITR 555 (Bom.)(HC)

244 **S. 14A : Disallowance of expenditure – Exempt income – Interest free funds were utilized for making investment – No disallowance can be made. [R. 8D]**
Court held that there is a presumption that interest free funds were utilized for making investment, assessee would not be expected to establish the same and it would be for revenue to establish to the contrary. No disallowance can be made. (AY. 2006-07 to 2009-10)
PCIT v. Ashok Apparels (P.) Ltd. (2019) 264 Taxman 50 (Bom.)(HC)

245 **S. 14A : Disallowance of expenditure – Exempt income – In absence of any exempt income no disallowance can be made. [R.8D]**
Affirming the order of the Tribunal the Court held that In absence of any exempt income no disallowance can be made. Followed *Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)* (AY. 2013-14)
PCIT v. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 180 / 264 Taxman 77 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. GVK Project and Technical Services Ltd. (2019) 264 Taxman 76 (SC)

246 **S. 14A : Disallowance of expenditure – Exempt income – AO cannot reject the disallowances offered by the assessee, without adducing any reasons. [R. 8D]**
The High Court held that the AO cannot reject the disallowances offered by the assessee, without adducing any reasons.
PCIT v. Moonstar Securities Trading and Finance Co. (P.) Ltd. (2019) 105 taxmann.com 274 / 263 Taxman 459 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Moonstar Securities Trading and Finance Co. (P.) Ltd. (2019) 263 Taxman 458 (SC)

247 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be made when there is no income exempt from tax. [R. 8D]**
Dismissing the appeal of the revenue the Court held that, disallowance cannot be made when there is no income exempt from tax. Referred *Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC)* (AY.2009-10)
PCIT v. Caraf Builders and Constructions Pvt. Ltd. (2019) 414 ITR 122 / 261 Taxman 47 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Caraf Builders and Constructions Pvt. Ltd. (2020) 268 Taxman 317 (SC)

248 **S. 14A : Disallowance of expenditure – Exempt income – Sufficient interest free funds in excess of interest bearing fund to make investment – Deletion of disallowance is held to be justified. [R. 8D]**
Dismissing the appeal of the revenue, the Court held that the Tribunal has given the finding that the assessee had sufficient interest free funds in excess of interest bearing funds to make investment which would result in exempt income. Accordingly the deletion of disallowance is held to be justified. (AY. 2008-09)
PCIT v. Premier Finance & Trading Co. Ltd. (2019) 262 Taxman 341 (Bom.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Explanation offered cannot be rejected arbitrarily by the AO. [R. 8D] 249

Dismissing the appeal of the revenue, the Court held that the explanation of assessee and amount offered to tax under said section could not have been rejected by Assessing Officer in an arbitrary manner.

PCIT v. Hero Corporate Service Ltd. (2019) 103 taxmann.com 199 / 262 Taxman 30 (Delhi) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Hero Corporate Service Ltd. (2019) 262 Taxman 29 (SC)

S. 14A : Disallowance of expenditure – Exempt income – Not recorded the satisfaction for not accepting the disallowance – Deletion of addition is held to be justified. [R. 8D] 250

Dismissing the appeal of the revenue, the Court held that the assessee has made suo motu disallowance, however the AO applied the Rule 8D(2) of the Act. Tribunal held that the AO has not recorded the satisfaction for not accepting the disallowance hence deleted the addition. Order of Tribunal is affirmed by High Court. (AY.2009-10)

PCIT v. Bajaj Finance Ltd. (2019) 178 DTR 219 / 309 CTR 28 (Bom.)(HC), www.itatonline.org

S. 14A : Disallowance of expenditure – Exempt income – Applicability of Rule 8D is not mandatory in every case where assessee earns tax free dividend income – Rule 8D cannot be invoked and applied unless Assessing Officer records his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income. [S. 10(34), R. 8D] 251

The assessee had made self disallowance of certain expenditure in order to earn said income. AO without examining and referring to the disallowance or recording his dissatisfaction on disallowance made, invoked rule 8D of 1962 Rules as if it was mandatory. CIT(A) and Tribunal deleted the addition. On appeal by the revenue, dismissing the appeal of the revenue the Court held that unless AO record his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income. This is the mandate and pre condition imposed by sub-section (2) to S. 14A of the Act. Rule 8D is in the nature of best judgment determining, i.e., determination in default and on rejection of the explanation of the assessee in relation to expenditure incurred to earn exempt income. Rule 8D is not applicable by default but only if and when the Assessing Officer records his satisfaction and rejects the explanation of the assessee regarding the disallowance of expenditure. In the present case the assessment order proceeds on a wrong assumption that rule 8D would apply to all cases and is mandatory. Finding of the Tribunal affirming the order of the CIT(A) is in accordance with the law. (AY. 2010-11)

PCIT v. Vedanta Ltd. (2019) 261 Taxman 179 (Delhi)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Unless and until there is receipt of exempted income for concerned assessment year, section 14A is not attracted. [R. 8D] 252

Unless and until there is receipt of exempted income for concerned assessment year, section 14A is not attracted. Circular No 5/2014, dt. 11-2-2014 is considered.

PCIT v. Vardhman Chemtech (P.) Ltd. (2019) 261 Taxman 233 / 179 DTR 35 (P&H)(HC)

253 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income shown during the year – No disallowance can be made. [R. 8D]**
Dismissing the appeal of the revenue, when there is no exempt income shown during the year, no disallowance can be made. (AY.2008-09)
CIT v. DLF Home Developers Ltd. (2019) 411 ITR 378 (Delhi)(HC)

254 **S. 14A : Disallowance of expenditure – Exempt income – Failure to consider contention and factual error – Investment from own funds – Matter remanded to the AO. [S. 254(1), R. 8D]**
Court held that the Dispute Resolution Panel as well as the Tribunal had failed to consider the contentions raised by the assessee as to how S. 14A read with rule 8D(2)(ii) was not attracted. Therefore, there was a factual error. The Assessing Officer was to decide whether it was correct to have disallowed the interest on debentures under S. 14A when the assessee's contention was that the interest expenditure was incurred on debentures issued in the financial year 2008-09 for the specific purpose of acquiring the company in the past and not for investment in future. Furthermore, the Assessing Officer was to consider the submission of the assessee that the interest incurred by it was specifically towards acquisition of shares in the company which was subsequently amalgamated with the assessee and such amalgamation was approved by the court with effect from April 1, 2008. The matter was remanded to the Assessing Officer to decide afresh. (AY. 2012-13) (*Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* referred)
Roca Bathroom Products Pvt. Ltd. v. CIT (2019) 411 ITR 370 / 261 Taxman 197 (Mad.)(HC)

255 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income of relevant year – Instead of taking into account total investment, investment attributable to dividend was required to be adopted and thereafter disallowance was to be arrived. [R. 8D]**
Dismissing the appeal of the revenue the Court held that; disallowance cannot exceed exempt income of relevant year. For computing disallowance under clause (i) of rule 8D(2), numerical B in clause (ii) refers only to average value of entire investment that does not form part of total income. Followed *ACB India Ltd. v. ACIT CIT (2015) 235 Taxman 22 / 374 ITR 108 (Delhi)(HC).* (AY. 2009-10)
PCIT v. Caraf Builders & Constructions (P.) Ltd. (2019) 261 Taxman 47 (Delhi)(HC)

256 **S. 14A : Disallowance of expenditure – Exempt income – Provision is applicable only from the year 2007-08 onwards.**
Court held that, provision is applicable only from the year 2007-98 onwards. (AY. 1996-97 to 2006-07)
Dhanalakshmi Bank Ltd. v. CIT (2019) 410 ITR 280 / 261 Taxman 521 / 177 DTR 48 / 308 CTR 484 (Ker.)(HC)

257 **S. 14A : Disallowance of expenditure – Exempt income – No exempt income earned during the year – Satisfaction is not recorded – No disallowance can be made – Delay of 133 days in filing of appeal is condoned. [S. 115JB, 253(3), R. 8D]**
The assessee had made investments in equity shares of a group company from which no dividend income was earned and hence no exempt income was claimed by assessee.

The AO had invoked S.14A r.w. rule 8D to make disallowance which was confirmed by the CIT(A). On appeal before the Tribunal, the Tribunal noted that the AO had not recorded its satisfaction before invoking Rule 8D and simply invoked provisions of S. 14A r.w. Rule 8D. Further, after placing reliance on the decision of Madras High Court in case of Chettinad Losgistics Pvt. Ltd. (80 taxmann.com 221) and confirmed by Supreme Court (95 taxmann.com 250) and various other judicial precedents held that where no exempt income is earned, no disallowance under S. 14A of the Act can be made. Further, with regards to disallowance under section 14A while computing book profits under section S. 115JB of the Act, the Tribunal after relying on the decision of *ACIT v. Vireet Investments Pvt. Ltd. (2017) 165 ITD 27 (SB) (Delhi)(Trib.)* directed to delete the disallowance made by AO. The Managing director was travelling outside India and therefore there was a delay of 133 days. The Tribunal held that there was no malafide intention of the assessee and if technicalities are pitted against substantial justice, the Court will lean towards substantial justice and the assessee has shown sufficient cause in explaining delay of 133 days in filing of this appeal with Tribunal beyond time prescribed u/s. 253(3) of the 1961 Act. (AY. 2014-15)
Unipres India P. Ltd. v. ITO (2019) 76 ITR 36 (Chennai)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Without recording satisfaction – No disallowances can be made. [R. 8D] 258
The AO can only make disallowance under S. 14A after considering the books of account of the assessee and recording his satisfaction thereupon not otherwise. (AY. 2005-06, 2007-08)
Dy. CIT v. Sahara Care Ltd. (2019) 74 ITR 117 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – For the calculation of average investments only those investments from which exempt income is derived has to be considered. Assessee did not derive any exempt income-matter remitted back to AO. [R. 8D] 259
Assessee made suo moto disallowance under Rule 8D. AO computed disallowance under rule 8D(2)(iii). For the calculation of average investments only those investments from which exempt income is derived to be considered. Assessee did not derive any exempt income, hence matter remitted back to AO. (AY. 2012-13)
Cox & Kings Ltd. v. Addl. CIT (2019) 55 CCH 75 / 69 ITR 45 (SN) (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No disallowance can be made in absence of dividend income. [S. 57(iii), R.8D] 260
The assessee claimed a loss which included the interest on borrowed funds for investment. The investments yielded no dividend which was exempt from the total income. The AO made a disallowance under S. 14A and the balance under S. 57(iii) for diverting funds for non-business purposes. The CIT(A) deleted the addition since there was no dividend earned by the assessee and there was no diversion of funds, for non-business purposes. He held that in the absence of dividend there was no case for making the disallowance under S. 14A. Dismissing the appeal of the revenue the Tribunal held that the AO invoked S. 14A read with rule 8D of the Income-tax Rules, 1962 incorrectly and made the disallowance without the assessee having earned

the dividend. Hence no disallowance was called for under S. 14A in the absence of dividend. (AY. 2012-13, 2013-14)
Dy. CIT v. Kotu Sarat Kumar (2019) 71 ITR 147 (Vishakha)(Trib.)

261 **S. 14A : Disallowance of expenditure – Exempt income – No exempt income earned during the year – No disallowance can be made. [R.8D]**
The assessee had investment in shares. The AO made a disallowance under S. 14A read with rule 8D of the Income-tax Rules, 1962 of one per cent of the average investment. The CIT(A) deleted the addition considering the fact that the assessee had not earned any exempt income during the instant year. Dismissing the appeal of the revenue the Tribunal held that the fact that the assessee had not earned any exempt income during the instant year had not been disputed by the Department. Therefore, there could be no addition under S. 14A. (AY. 2010-11, 2011-12)
Dy.CIT v. Jammu Metalic Oxides Pvt. Ltd. (2019) 72 ITR 449 (Jaipur)(Trib.)

262 **S. 14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – No disallowance can be made. [R. 8D(2)(ii)]**
The AO held that the assessee received dividend income and sought explanation. The assessee explained that it had already disallowed an amount under S. 14A. He was not satisfied with the explanation holding that the disallowance under S. 14A had to be mandatorily made under rule 8D. Accordingly, he disallowed the amount and made an addition. The CIT(A) deleted the addition. On appeal the Tribunal held that a duty was cast upon the AO to examine the claim of the assessee having regard to the accounts and only where the Assessing Officer was not satisfied, which should be on cogent grounds, with the claim of the assessee, could the AO follow the prescribed procedure under rule 8D. Since the AO did not record any satisfaction regarding the claim of the assessee having regard to its accounts, he was not empowered to invoke rule 8D in the first place. Accordingly, the action of the AO of making disallowance thereunder was not justified. On the facts, the assessee had given details of interest expenses, none of which had any nexus with the dividend income. Accordingly, no disallowance under rule 8D(2)(ii) was called for. Evidently, the assessee had already made disallowance under sub-clauses (i) and (iii) of rule 8D(2). Therefore, no further disallowance was called for under S. 14A. (AY. 2006-07 2009-10, 2010-11, 2011-12).
Dy. CIT v. Impulse International P. Ltd. (2019) 71 ITR 28 (SN) (Delhi)(Trib.)

263 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed the exempt income. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that disallowance of expenditure cannot exceed exempt expenditure. (AY. 2011-12)
ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22 / 184 DTR 406 (Kol.)(Trib.)

264 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be made in absence of exempt income. [R. 8D]**
Tribunal held that disallowance cannot be made in absence of exempt income. (AY. 2011-12, AY. 2013-14)
Dy. CIT v. BBF Industries Ltd. (2019) 73 ITR 428 (Chd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Suo moto disallowance – Not recording of dissatisfaction – No disallowance can be made. [R. 8D] 265

Tribunal held that the AO did not specify any cause of dissatisfaction with assessee's working of suo moto disallowance and applied rule 8D mechanically. Accordingly the deletion of disallowance is held to be justified. (AY. 2010-11)

DCIT v. Pidilite Industries Ltd. (2019) 177 ITD 472 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Interest and other charges paid to bank was capitalized in capital work-in-progress account – Addition cannot be made while computing book profit. [S. 115JB] 266

Tribunal held that interest and other charges paid to bank were capitalized in capital work-in-progress account. Accordingly addition cannot be made while computing book profit. (AY.2008-09)

ITO v. Chiripal Poly Films Ltd. (2019) 177 ITD 441 / 202 TTJ 317 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investment in tax free bonds – No nexus between interest bearing funds and investment made in tax free bonds – Exemption cannot be denied. [S. 10(15)(iv)] 267

Tribunal held that where assessee had sufficient own fund to finance investment in tax free bonds and there was no nexus between interest bearing funds and investment made in tax free bonds, exemption claimed on interest income could not have been disallowed. (AY.1997-98)

Standard Chartered Bank v. JCIT (2019) 177 ITD 139 / 200 TTJ 774 / 178 DTR 201 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed the actual expenditure. [R.8D] 268

Tribunal held that disallowance cannot exceed the actual expenditure. (AY. 2011-12, 2012-13)

Tash Investment (P.) Ltd. v. ACIT (2019) 177 ITD 210 / 181 DTR 109 (Ahd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Interest free funds available – Presumption that interest free funds were used for investments yielding tax free income in preference to borrowed funds – Disallowance of expenditure cannot exceed exempt income. [R. 8D] 269

Tribunal held that where the interest free funds available with assessee by way of capital and reserves were far more than investment made in shares yielding exempt dividend income, a presumption would be in favour of assessee for deemed utilization of interest free funds for investments yielding tax free income in preference to borrowed funds. Tribunal also held that disallowance of expenditure cannot exceed exempt income. (AY. 2008-09, 2010-11)

Aditya Medisales Ltd. v. DCIT (2019) 176 ITD 783 (Ahd.)(Trib.)

270 **S. 14A : Disallowance of expenditure – Exempt income – Difference between value of actual investment and value as on balance sheet is not dividend income – Addition cannot be made. [R. 8D]**

Tribunal held that real dividend income alone is exempt from tax and not notional recognition of income at balance sheet date. Therefore, difference between value of actual investment made by assessee in mutual funds and value as on the balance sheet was not dividend income and hence, AO could not invoke S.14A of the Act. (AY. 2015-16)

Apollo Sugar Clinics Ltd. v. DCIT (2019) 176 ITD 724 / 200 TTJ 875 / 182 DTR 142 (Hyd.) (Trib.)

271 **S. 14A : Disallowance of expenditure – Exempt income – Suo moto disallowance which is more than exempt income – No disallowance can be made. [R. 8D]**

Tribunal held that when suo moto disallowance made by the assessee is more than exempt income, no disallowance can be made. (AY. 2011-12)

Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

272 **S. 14A : Disallowance of expenditure – Exempt Income – Assessee used its own interest free funds for making investment in shares and securities yielding exempt income – No disallowance could be made – Strategic investments made by assessee with its group/associated companies – To be considered for disallowance under S. 14A – Disallowance under S. 14A cannot exceed exempt income.[R. 8D]**

Where assessee's own interest free funds were more than investments made by it in shares and securities yielding exempt income and its interest bearing borrowings were for specific purposes and no part of it was invested in securities and, further, AO also concluded that it was in fact mixed funds which were available with assessee, presumption would arise that assessee used its own interest free funds for making investments in shares and securities; thus, there could be no disallowance u/s. 14A. Relying on various decisions of Supreme Court *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* the Tribunal ruled that strategic investments made with group/associated companies etc. cannot be excluded while computing disallowance u/s. 14A and the disallowance cannot exceed exempt income and thirdly that only those investments which yielded an exempt income be only considered while computing disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rule. (AY. 2008-09, 2009-10, 2010-11, 2011-12)

Welspun India Ltd. v. Dy. CIT (2019) 69 ITR 617 (Mum.)(Trib.)

273 **S. 14A : Disallowance of expenditure – Exempt income – Only investment from which assessee has earned exempt income to be considered for disallowance. [R. 8D]**

The Tribunal after relying on the decision of Delhi High Court in the case of *ACB Investment P. Ltd. v. ACIT (2015) 374 ITR 108 (Delhi) (HC)* held that only those investments from which the Assesse had earned exempt income during the year were required to be considered for the purposes of working out the disallowance u/s. 14A of the Act read with rule 8D. (AY. 2008-09, 2009-10, 2010-11)

PTC India Ltd. v. DCIT (2019) 69 ITR 37 (SN.) (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be made if there is no tax free income. [R. 8D] 274
The Tribunal held that when there is no tax free income earned during the year, no disallowance u/s. 14A could be made (AY. 2009-10 to 2014-15)
ACIT v. Orissa Manganese & Minerals Ltd. (2019) 69 ITR 1 (SN) (Kol.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No disallowance could be made where no exempt income was actually earned by the Assessee during the year. [R. 8D] 275
On appeal by the Department, the Tribunal affirmed the order of the Ld. CIT(A) and held that no disallowance u/s. 14A of the Act could be made where no exempt income is actually earned by the Assessee during the year. (AY. 2011-12)
ACIT v. Sodexo Food Solutions India P. Ltd. (2019) 69 ITR 119 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not earned any dividend income – No disallowance can be made. [R. 8D] 276
The assessee had not earned any exempt income during relevant assessment year no disallowances can be made. (AY.2012-13)
Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Stock in trade – Dividend received incidentally – No disallowance can be made. [R. 8D] 277
Allowing the appeal of the assessee the Tribunal held that, even though dominant purpose of acquiring shares is not relevant for purpose of invoking provisions under S. 14A, yet shares held as-stock-in-trade stand on a different pedestal in relation to shares that were acquired with an intention to acquire and retain controlling interest in investee company. Accordingly where assessee purchased shares as stock-in-trade for purpose of trading, mere fact that assessee incidentally received dividend on those shares as declared by investee company, no disallowance can be made. Ratio in *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)*. (AY.2008-09)
Nice Bombay Transport (P.) Ltd. v. ACIT (OSD) (2019) 175 ITD 684 (Delhi)(Trib.) www.itatonline.org

S. 14A : Disallowance of expenditure – Exempt income – No exempt income during assessment year – No disallowance can be made. [R. 8D] 278
Dismissing the appeal of the revenue the Tribunal held that there was no exempt income earned by assessee during assessment year hence no disallowances can be made. (AY.2014-15)
ACIT v. Janak Global Resources (P.) Ltd. (2019) 175 ITD 365 (Chd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Sufficient interest free funds to meet its investments yielding exempt dividend income – Disallowance is held to be not justified. [R.8D] 279
Dismissing the appeal of the revenue the Tribunal held that the assesse had sufficient interest free funds to meet its investments yielding exempt dividend income. Disallowance is held to be not justified. (AY. 2014-15)
ACIT v. A U Financiers (India) Ltd. (2019) 175 ITD 245 / 180 DTR 315 (Jaipur)(Trib.)

280 **S. 14A : Disallowance of expenditure – Exempt income – Suo moto disallowance – Further disallowances made by the AO is held to be not justified. [R. 8D(2)(iii)]**
Tribunal held that the assessee had filed details of expenses which were suo moto disallowed by it which showed that suo moto disallowance included expenses which were coming under purview of rule 8D(2)(iii). Accordingly without verifying the facts disallowance of expenses by applying rule 8D(2)(iii) is held to be not justified. (AY. 2013-14)
Olive Bar & Kitchen (P.) Ltd. v. DCIT (2019) 175 ITD 72 (Mum.)(Trib.)

281 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed the exempt dividend. [R. 8D]**
Tribunal held that disallowance cannot exceed the exempt income. In fact the assessee has suo motu disallowed an amount of ₹ 135,183 against dividend income of ₹ 613,133, further disallowance of ₹ 5,09,728 made by the AO was directed to be deleted. (AY. 2012-13)
Magic Share Traders Ltd. v. DCIT (2019) 174 ITD 230 (Ahd.)(Trib.)

282 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance can be made in the absence of any exempt income earned during the year. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that ; No disallowance can be made in the absence of any exempt income earned during the year. (AY.2012-13)
DCIT v. Piramal Realty (P.) Ltd. (2019) 174 ITD 633 / 198 TTJ 999 / 176 DTR 242 (Mum.)(Trib.)

283 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income, no disallowance can be made. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that; when there is no exempt income, no disallowance can be made. Followed *CIT v. Corrtech Energy (P.) Ltd. (2015) 372 ITR 97 (Guj.) (HC).* (AY. 2012-13)
DCIT v. Mc Fills Enterprise (P.) Ltd. (2019) 174 ITD 667 (Ahd.)(Trib.)

284 **S. 15 : Salaries – Provision made by a company for payment of managerial remuneration – Liable to be assessed as salary.**
Dismissing the appeal of the assessee the Court held that; provision made by a company for payment of managerial remuneration to the Managing Director, liable to be assessed as salary, as definition of word 'salary' under S. 15 includes both 'salary' actually received or accrued to the person concerned. (AY.1999-2000)
V. Ramakrishnan v. DCIT (2019) 263 Taxman 145 (Mad.)(HC)

285 **S. 17(2) : Perquisite – Fringe Benefits – Supply of electricity to employees at concessional rates – Concession to be treated as Fringe Benefit. [S. 2(33B), 15, 192]**
Tribunal held that the supply of electricity to its employees at concessional rates would be treated as perquisite under S. 17(2) of the Act only when the assessee furnishes a certificate of tax deducted at source on salary income of its employees. In the absence of such evidence, the AO could make addition in the hands of assessee as fringe benefit. (AY. 2009-10)
Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Ltd. v. DCIT (2019) 76 ITR 86 / 184 DTR 380 / 202 TTJ 359 (Indore)(Trib.)

S. 22 : Income from house property – Income from other sources – Business income – Firm obtaining flats on lease – Flats sub-leased with furniture and fittings – Income from sub-lease assessable as income from house property and income from other sources – Res judicata is not applicable to income-tax proceedings. [S. 2(13), 28(i), 56] 286

Dismissing the appeal, the Court held that the agreements executed between the assessee and the GAIL were for leasing out the premises, secondly for furnishing of the area leased out and thirdly for maintaining the leased out area. The leasing out of the assets by the assessee simpliciter would not constitute business income. Further, the partner of the assessee-firm had admitted that the property was purchased to let out on rent to GAIL. The assessing authority had also come to the conclusion that no systematic set up was established for doing business activity and the assessee had failed to point out the volume, frequency, continuity and regularity of the transactions. As the assessee did not carry out any systematic, recurring business activity and in organised manner, nor was there any volume, frequency, continuity and regularity of transactions, and only one person was employed by him for the management and to look after the leased property, the taxing authorities had rightly held the receipts to be income from house property and income from other sources and not business income. (AY. 2006-07, 2008-09)

Meeraj Estate And Developers v. CIT (2019) 418 ITR 681 / (2020) 269 Taxman 134 (All.) (HC)

S. 22 : Income from house property – Income from other sources – Arrears of rent – Assessable as income from house property. [S. 25B, 56] 287

Arrears of rent are assessable as income from house property and not as income from other sources. (AY.1985-86, 1996-97 to 2002-03)

CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

S. 22 : Income from house property – Rental income from letting out of stock-in-trade was consistently held to be taxable under the head income from house property – Held, consistency principle to be followed. [S. 28(i)] 288

Following the rule of consistency, rental income of the assessee from the properties forming stock-in-trade would be income from house property and not business income. (AY. 1995-96 to 2009-10)

CIT v. Gopal Das Estates & Housing (P.) Ltd. (2019) 308 CTR 201 (Delhi)(HC)

S. 22 : Income from house property – Deductions – Municipality tax – Cheque issued before end of previous year – Encashment subsequently – Relates back to date of issue – Entitled to deduction. [S. 24] 289

Cheque issued in respect of Municipality tax,before end of the previous year however encashment subsequently. Entitle to deduction as cheque relates back to date of issue. (AY.1985-86, 1996-97 to 2002-03)

CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

290 **S. 22 : Income from house property – Fair rent not available – AO is directed to take let out value of property as per determination value by Cantonment Board to determine annual fair value. [S. 24]**

Tribunal held that when the fair rent is not available. AO is directed to take let out value of property as per determination value by Cantonment Board to determine annual fair value. (ITA No. 2020/Del/2017, dt. 14.06.2019) (AY. 2009-10, 2010-11)

Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib), www.itatonline.org

291 **S. 22 : Income from house property – Owner – SPV promoted by State Housing Board for undertaking construction of apartments – Not an owner of apartments – Annual value of unfinished flats could not be brought to tax. [S. 23]**

Tribunal held that SPV promoted by the State Housing Board for undertaking construction of apartments is not an owner of apartments but its role was limited only to developer who held apartments under construction in trust to be ultimately owned by persons to whom allotments were approved by Board, annual value of unfinished flats could not be brought to tax. (AY. 2011-12, 2012-13)

Bengal DCL Housing Development Co. Ltd. v. DCIT (2019) 177 ITD 402 / 181 DTR 245 (Kol.)(Trib.)

292 **S. 22 : Income from house property – letting out property – Assessable as income from house property and not as business income. [S. 28(i)]**

Tribunal held that income earned from simply letting out property has to be taxed under head income from house property. (AY.2011-12)

Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

293 **S. 23 : Income from house property – Annual value – Interest free deposit – Rented property – Deletion of the 12 per cent interest on the interest-free deposit received by the assessee, to determine the annual letting value of the rented property – Held to be valid. [S. 24]**

Court held that the Tribunal was justified in upholding the order of the CIT(A) directing the AO to delete the 12 per cent interest charged by him, on the interest-free deposit received by the assessee, to determine the annual letting value of the rented property. Followed *CIT v. Tip Top Typography (2014) 368 ITR 330 (Bom)(HC).* (AY. 2008-09)

CIT v. Jubiliant Enterprises P. Ltd. (2019) 416 ITR 58 (Bom.)(HC)

Editorial : SLP is granted to the revenue, CIT v. Jubiliant Enterprises P. Ltd. (2017) 397 ITR 32 (St.)

294 **S. 23 : Income from house property – Annual value – Standard rent-illegal tenant – Deposit of certain compensation on monthly basis in Court, could not form basis to make addition to assessee's rental income in respect of other tenants who are protected under Rent control Act. [S. 22, Delhi Rent Control Act]**

Dismissing the appeal of the revenue the Court held that deposit of certain compensation on monthly basis in Court in respect of one of the tenant who occupied the premises

illegally, could not form basis to make addition to assessee's rental income in respect of other tenants who are protected under Rent control Act. (AY. 2003-04 to 2006-07)
PCIT v. Seth Properties (2019) 262 Taxman 124 (Bom.)(HC)

S. 23 : Income from house property – Annual letting value – Stock in trade – The annual letting value (ALV) of unsold units of properties lying as stock in trade is not assessable as income under the head income from house property. [S. 5, 22, 23(4)] 295
Tribunal held that, The annual letting value (ALV) of unsold units of properties lying as stock in trade is not assessable as income under the head "Income from house property". The deeming provision of S. 23 cannot be extended beyond its ambit so as to cover the heads of income to which it does not operate. Taxing hypothetical income, which is otherwise not sanctioned by any provision under Chapter IV-D, cannot be permitted. (ITA No.1914/PUN/2018, dt. 19.02.2019). (AY. 2015-16)
Shree Balaji Ventures v. ITO (Pune)(Trib.), www.itatonline.org

S. 23 : Income from house property – Annual value – Vacancy allowance – Due to fall in property prices failed to let out the same year after year because of which property remained vacant – Entitle to vacancy allowance. [S. 22, 23(1)(c)] 296
Allowing the appeal of the assessee the Tribunal held that, due to fall in property prices, failed to let out same year after year because of which property remained vacant. Entitle to vacancy allowance. (AY. 2012-13)
Priyananki Singh Sood (Ms.) v. ACIT (2019) 174 ITD 371 / 176 DTR 97 / 198 TTJ 507 (Delhi)(Trib.)

S. 23 : Income from house property – Annual value – Municipal rateable value – Municipal rateable value is a recognised basis for determination of ALV, the AO cannot disregard the municipal rateable value and substitute some expected rent to be received. [S.22] 297
Allowing the appeal of the assessee the Tribunal held that, Municipal rateable value is a recognised basis for determination of ALV, the AO cannot disregard the municipal rateable value and substitute some expected rent to be received. Followed *Tip Top Typography (2014) 368 ITR 330 (Bom.)(HC)* (AY. 2012-13)
Pankaj Wadhwa v. ITO (2019) 174 ITD 479 (Mum.)(Trib.)

S. 24 : Income from house property – Deductions – Business income from renting out its property – Depreciation was allowed – Deduction u/s. 24 is not permissible. [S. 24, 32] 298
Memorandum of Association of assessee-company provided object of earning business income from letting out of property of company. During current year, assessee-company earned income only from renting out its premises and claimed depreciation on building so let out. Assessee also claimed deduction under S. 24 as available in case of income from house property. Dismissing the appeal of the assessee the Court held that since assessee earned income only from renting out its property and there was no other income and further, assessee claimed depreciation, claim of deduction under S. 24 is not allowable. (AY. 2012-13)
Shri Hardoi Baba Roller Flour Mills (P.) Ltd. v. CIT (2019) 415 ITR 498 / 262 Taxman 320 (All.)(HC)

299 **S. 25B : Income from house property – Arrears of rent – Assessable on receipt basis – Provision is not retrospective. [S. 23]**
Arrears of rent is assessable on receipt basis. S. 25B is not retrospective. (AY. 1985-86, 1996-97 to 2002-03)
CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

300 **S. 28(i) : Business income – Capital gains – Sale of shares – 288 transactions – Assessable as business income and not short term capital gains. [S. 2(42B), 45]**
Assessee has shown profit arising from sale of shares as short term capital gain. AO considering large number of transactions assessed the profit as business income. Tribunal affirmed the order of the AO. Dismissing the appeal of the revenue, the Court held that approximately 288 transactions took place for purchase of equity shares throughout the year and about 162 transactions of sale were entered into with various share brokers accordingly the order of the Tribunal is affirmed. (AY. 2008-09)
Rajeev Choudhary (Dr.) v. ACIT (2019) 267 Taxman 618 (MP)(HC)

301 **S. 28(i) : Business income – Capital gains – Capital asset – Agricultural land – Purchase of land from land owners, convert them for non-agricultural use and sell them to companies – Assessable as business income. [S. 2(14)(iii), 45]**
Dismissing the appeal, the Court held that the Tribunal's order, rejecting the assessee's contention that the intention was always to retain the properties acquired as agricultural land and not to treat them as capital assets for the purposes of business, was not unreasonable and unsound. The analysis of facts by the Tribunal was with respect to the facts and the findings were on an application of mind based upon the factual material. Accordingly taxable as business income. (AY. 2008-09)
Sunil Bansal v. ACIT (2019) 415 ITR 236 / 267 Taxman 87 (Raj.)(HC)

302 **S. 28(i) : Business income – Income from house property – Leasing of shops in a mall along with various other facilities – Assessable as business income and not as income from house property. [S. 22]**
Assessee-company is engaged in the business of leasing out shop space in shopping malls. Assesee has shown income received from leasing out of shops and other commercial establishments as business income. AO assessed the income as income from house property. Tribunal held that the assessee is providing various facilities and amenities apart from giving shopping space on lease accordingly assessable as business income. Dismissing the appeal of the revenue the Court held that since it was not a case of giving shops on rent simplicitor rather assessee desired to enter into a business of renting out commercial space to interested individuals and business houses, the amount in question was rightly brought to tax as business income. (AY-2008-09)
PCIT v. Krome Planet Interiors (P.) Ltd. (2019) 265 Taxman 308 (Bom.)(HC)
Editorial : Raj Dadarkar & Associates (2017) 394 ITR 592 (SC) is distinguished.

S. 28(i) : Business income – Income from house property – Shopping mall – Commercial exploitation – Facilities and services – Income derived by assessee by letting out shops in mall had to be assessed as income from business and not as income from house property. [S. 22] 303

Court held that the assessee had earned income not merely by letting out shop rooms but also by providing amenities and facilities at shopping mall. Such amenities and facilities were special facilities for running shopping mall and were meant to attract customers and provide them comfort and convenience of shopping. Accordingly the income derived by assessee by letting out shops in mall had to be assessed as income from business and not as income from house property. (AY. 2009-10)

CIT v. Oberon Edifices & Estates (P.) Ltd. (2019) 263 Taxman 377 / 311 CTR 815 / 184 DTR 56 (Ker.)(HC)

S. 28(i) : Business income – Client code modification (CCM) – Shifting of profits – Addition as income on the basis of alleged doubtful transaction is held to be not valid – Deletion of addition by the Tribunal is affirmed. [S. 69, 143(3)] 304

The assessee is a member of Multi Commodity Exchange of India Ltd. (MCX) and National Commodity and Derivatives Exchange of India. The assessee is carrying on trading activities both on derivatives and delivery based transactions on its own account as well as on behalf of various clients. AO has added the entire amount of doubtful transactions by way of assessee's additional income on the basis of clients code modification. CIT(A) deleted the addition on the ground that all the clients are having PAN and regularly filing their returns and profits were taxed in their hands. Clients are not related parties. Modification was around 3% of the total transactions. All of them were complied with KYC norms. Tribunal affirmed the order of CIT(A). On appeal by the revenue, dismissing the appeal the Court held that, even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses is correct, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. Adding the entire amount of doubtful transactions by way of assessee's additional income is wholly impermissible. The fate of the individual investors in whose cases the Revenue could have questioned the artificial losses is not known. Accordingly the appeal of the revenue is dismissed. (ITA No. 1257 of 2016, dt. 15.01.2019). (AY. 2006-07)

PCIT v. Pat Commodity Service Pvt. Ltd. (Bom.)(HC), www.itatonline.org

Editorial : Order of Mumbai Tribunal in ITO v. Pat Commodity Services P. Ltd (ITA No. 3498, 3499 /Mum/2012 dt. 7-8-2015) (AY. 2006 07, 2007-08) is affirmed.

S. 28(i) : Business income – Leasing the hotel and charging one percentage of total revenue – Assessable as business income and not as income from house property. [S. 22, 23] 305

Assessee leased out its hotel and claimed the amount received is taxable as business income. AO assessed the receipt as rental income. Tribunal held that as the assessee is not receiving any rent but was receiving one per cent of total revenue hence the same is taxable as business income. High Court affirmed the order of the Tribunal. (AY. 2007-08, 2008-09)

CIT v. Plaza Hotels (P.) Ltd. (2019) 107 taxmann.com 287 / 265 Taxman 90 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Plaza Hotels (P.) Ltd. (2019) 265 Taxman 89 (SC).

306 **S. 28(i) : Business income – Unrealised foreign exchange gains – Matter remanded. [S. 145]**
AO made an addition on account of unrealized foreign exchange gain and assessed assessee's income as it followed mercantile system of accounting. CIT(A) and tribunal deleted the addition as profit was only notionally calculated based on foreign exchange rate on the last day of the year. High Court relied on the decision of *CIT v. Woodward Governor India P. Ltd. (2009) 312 ITR 254 (SC)* and remanded the matter to the tribunal for recomputing the assessment. (AY. 2004-05)
CIT v. Kesoram Industries Ltd. (2019) 179 DTR 49 / 104 CCH 437 / (2020) 268 Taxman 446 (Cal.)(HC)

307 **S. 28(i) : Business income – Interest income – Interest on amount advanced to contractor assessable as business income and not as income from other sources. [S. 56]**
Dismissing the appeal of the revenue the Court held that interest earned by assessee on sums lent to contractor constituted its business income and not income from other sources. (AY. 2010-11, 2011-12)
PCIT v. Nabinagar Power Generating Co. (P.) Ltd. (2019) 103 taxmann.com 225 / 262 Taxman 9 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Nabinagar Power Generating Co. (P.) Ltd. (2019) 262 Taxman 8 (SC)

308 **S. 28(i) : Business income – Royalty – Addition cannot be made in respect of which no services were rendered.**
Dismissing the appeal of the revenue the Court held that, the Tribunal is justified in holding that addition cannot be made in respect of which no services were rendered. (AY.2004-05, 2005-06)
PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16 / 411 ITR 595 (Bom.)(HC)

309 **S. 28(i) : Business income – Low production as compared to earlier year, variation in yield ratio meager and in some cases less than one per cent – Addition is not sustainable. [S. 145]**
The Tribunal held that, though the addition made by the AO was not in the nature of a trading addition, it was on account of low production of oil from oil seeds in comparison to the earlier years. The variation in the yield ratio was meager and in some cases it was less than one per cent. The difference was negligible and could be due to various factors including the quality of seed, oil content in the seeds due to climate conditions for a particular season which affects the quality of crop. Hence, there is no basis for sustaining the addition and such ad hoc addition without specifying the basis was not permissible. (AY. 2012-13)
Swastik Oil Industries v. Dy. CIT (2019)76 ITR 392 (Jaipur)(Trib.)

310 **S. 28(i) : Business income – Short term capital gains – Land dealings – Purchase of agricultural land – Conversion into non agricultural for commercial purposes – Transaction of purchase and sale is assessable as business income and not as short term capital gains. [S. 2(13), 2(42B), 45]**
The assessee had declared short-term capital gain in the return of income on sale of the land. The AO assessed the income as business income. CIT(A) affirmed the order of

the AO. On appeal the Tribunal held that intent of S. 2(13) is to define the expression 'business' in an inclusive manner. The expression 'business' as defined in S. 2(13) does not merely include any trade, commerce or manufacture but is elastic and wider to include the adjunct 'adventure in the nature of trade, commerce etc.' Thus, the Legislature has made a conscious inclusion to expand the scope of business to include certain actions akin to 'business' in addition to normal business. The activity of the assessee has engaged the time, attention and the labour of the assessee apart from money. The profit arising on sale which was nearly 30 times of investment in a period of 3-4 years owing to such concerted and planned action. Thus, when a functional test is applied, the transaction of purchase and sale of land has been rightly regarded as business activity by the AO. (AY. 2015-16)
Harshadkumar Amrutlal Patel v. DCIT (2019) 179 ITD 844 (Ahd.)(Trib.)

S. 28(i) : Business income – Purchase of residential housing plot scheme – Providing for common infrastructure and internal road on the said land – Income arising from sale of plots of land is assessable as business income and not capital gains. [S. 2(13), 45] 311

Assessee purchased land and put up residential housing plot scheme on said land while providing for common infrastructure and internal roads, such organized course of commercial exploitation of land etc. on sale of plot of lands the assessee offered the income as short term capital gains. AO assessed the income as business income. Order of the AO is affirmed by the CIT(A) and Tribunal. Followed *P.M. Mohammed Meerakhan v. CIT [1969] 73 ITR 735 (SC)* (AY. 2008-09, 2009-10, 2010-11, 2011-12)
Bhanuben Kantibhai Savalia v. DCIT (2019) 179 ITD 710 (Ahd.)(Trib.)

S. 28(i) : Business income – Letting out shopping mall/business centres by providing a host of services/facilities/amenities – Income derived assessable as business income and not as income from house property. [S. 22] 312

The main object of the assessee company was carrying on the business of letting out its commercial properties. The assessee company constructed a shopping mall/business centre and had let out the said property. Further assessee company maintained and provided necessary service for proper upkeep of such properties in order to earn income by letting and/or leasing thereof. The AO held that income derived from letting out of house property would always be taxable under the head 'income from house property'. The CIT(A) deleted the said addition treating the same as Business Income. Tribunal while dismissing the appeal held that, income is attached to immovable property, cannot be sole criteria for treating such income as income from house property. To find out what is primary object of assessee while exploiting such property, assessee-company had developed shopping malls/business centres on properties owned by it and had let out the same to various users by providing host of services/facilities/amenities in said malls/business centres, it could be said that basic intention of assessee was commercial exploitation of its properties by developing them as shopping malls/business centres and, therefore, income derived from such activities are business income' and not income from house property. (AY. 2012-13, 2013-14)
DCIT v. ATC Realtors (P.) Ltd. (2019) 178 ITD 293 / 184 DTR 1 (Gau.)(Trib.)

313 **S. 28(i) : Business income – Charge of income-tax – Mutuality – Commercial concern – Principle of mutuality is not applicable – Income is chargeable as business income. [S. 4]**

Assessee is carrying out business of advertisement, marketing and publicity for franchisees from whom it received money and against said receipts, expenses were made. Assessee also received contributions from various franchisees. Tribunal held that from franchise agreement submitted by assessee that contribution made by holding company was tinged with commercial considerations. Similarly advertisement made by assessee wherein Pepsi was advertised would also improve sales of Pepsi Foods Ltd., thus, tinged with commercial transactions. Tribunal held that the assessee is not a mutual concern and income of assessee was not tainted with mutuality and therefore chargeable to tax as business income. (AY. 2001-02 to 2003-04, 2006-07, 2008-09 to 2010-11 and 2013-14)

Yumi Restaurants Marketing (P.) Ltd. v. ITO (2019) 179 ITD 480 (Delhi)(Trib.)

314 **S. 28(i) : Business income – Maintenance charges from tenants were not received – Addition is deleted. [S. 23]**

Tribunal held that the AO is not justified in making addition of maintenance charges that were not received from tenants of shop in a mall which is confirmed by tenants, bank statements, TDS certificate and details reflected in Form 26AS. (AY.2012-13)

ACIT v. Akshay Sobti (2019) 177 ITD 92 (Delhi)(Trib.)

315 **S. 28(i) : Business income – Trading in shares – Professionally managed Portfolio Management Services (PMS) – Large number of scrips were traded and period of holding at times was as short as few days – Assessable as business income and not capital gains. [S. 2(13), 45]**

Tribunal held that the assessee had entrusted the task of trading in shares to professionally managed Portfolio Management Services (PMS) to seize favourable market movements which gave an indication that assessee was engaged in business activity. Large number of scrips were traded and the period of holding at times was as short as few days. Accordingly the profit is assessable as business income being adventure in nature of trade. (AY. 2011-12, 2012-13)

Tash Investment (P.) Ltd. v. ACIT (2019) 177 ITD 210 / 181 DTR 109 (Ahd.)(Trib.)

316 **S. 28(i) : Business income – Income from house property – Assessee is not merely letting out its premises for warehousing but were doing complex commercial activity hence to be treated as business income. [S. 22]**

Assessee earned rental income from the warehousing activities and treated the same as business income and claimed expenditure against the same. However, Ld. AO treated the same as Income from House Property and disallowed the expenditure claimed by the assessee against earning of such income. On appeal, CIT(A) treated the rental income as business income. Aggrieved by the order of CIT(A), Revenue filed an appeal before ITAT. The Tribunal dismissed department appeal following the earlier year's order, wherein it was observed that the assessee is not merely letting out its premises for warehousing but were doing complex commercial activity. All the duties cast upon the

assessee was responsible for ensuring the incoming and outgoing of goods apart from providing adequate security. The consideration received by the assessee from client is not for letting the property on rental basis but the consideration received is exclusively for providing the benefits of business service facilities to the client. The customer had no right of occupancy and the assessee had control of the premises. The Tribunal held that as assessee provided round the clock service to the clients from various aspects from letting out of goods, their security etc., rental income will definitely fall within the purview of business income. (AY. 2012-13)
Grand Wood Works and Saw Mills v. ITO (2019) 69 ITR 3 (SN.) (Mum.)(Trib.)

S. 28(1) : Business income – Suppression of income – Future and options – Shares and derivatives – Client code modifications (CCM) – Burden is on the assessee to establish that the client code modifications have been done on the behest of the assessee – Addition cannot be made as suppression of income of the assessee. [S. 143(3)] 317
Tribunal held that the transactions were supported by bills/contract notes and the assessee couldn't have done any client code modifications. The data provided by the A.O. neither pertained to assessee nor any modification was carried out on behest of the assessee. There is nothing on record to establish that the loss transactions were not genuine. Further, assesse is not a registered broker and thus, could not modify the client code. Nothing has been brought on record by the AO to prove that the modifications have been done on the behest of the assessee and thus, the assessee couldn't be held responsible for the modification to the client code. Tribunal also held that no nexus can be established with the losses suffered by the assessee. The connivance/ collusion of the assessee with the share broker could not be established. Accordingly the deletion of addition by the CIT(A) is affirmed. (ITA No 5688/Mum/2017 dt 3-07-2019). (AY. 2010-11)
DCIT v. Vipul D. Shah (UR)(Mum.)(Trib.)

S. 28(i) : Business loss – Shortage of goods – Running of show room – Franchise agreement – Payment made to the company – Loss is held to be allowable. [S. 37(i)] 318
Allowing the appeal of the assessee the Court held that as per the franchise agreement loss to be borne by the assessee. Though no details were furnished payment details were furnished. Court observed that in the business of running a showroom for wearing apparels, shortage of stock is not an unusual phenomenon. Accordingly claim of the assessee is allowed. (ITA No. 918 of 2015 dt. 5-08-2019)
P.H. Kumar & Co v. ITO (2019) CTCJ-September-P. 96 (Delhi)(HC)

S. 28(i) : Business loss – Diminution in value of shares – Loss claimed by assessee by devaluing book value of shares purchased by them, could not be allowed as business loss. [S. 37(1)] 319
Dismissing the appeal of the assessee the Court held that the Tribunal has given specific finding that no case has been made out that there was theft etc. of the shares as no submission in this regard has been made.
Moreover, in the absence of any complaint in this regard with concerned authorities, this aspect does not emerge for adjudication. The learned counsel of the assessee's reliance upon case laws regarding valuation of stock is not relevant here as there is no

dispute that consistently followed method of stock valuation should be adopted and lower of cost or market value should normally be adopted. But, if the system gives unexplained loss of more than 50% of the purchases, such a system cannot be relied upon. The finding of fact given by the Tribunal, hence no substantial question of law. (AY. 2003-04)

Twenty First Century Management Services Ltd. v. ITO (2019) 108 taxmann.585 (Mad.) (HC)

Editorial : SLP of the assessee is dismissed Twenty First Century Management Services Ltd. v. ITO (2019) 266 Taxman 1 (SC)

320 **S. 28(i) : Business loss – Advance of loans – Investment in shares constituted stock in trade – Loss on shares held to be allowable as business loss. [S. 37(1)]**

AO held that loss on sale of shares is capital loss and not eligible for deduction. CIT(A) held that the amounts written off by the assessee were advanced towards working capital ventures which those advances were made and the real character of transactions was akin to those applicable loans and not to equity investments. Loans written off is held to be allowable as business loss. Tribunal reversed the order of CIT(A).

Allowing the appeal, the Court held that according to the memorandum and articles of association of the assessee its main object was to promote, establish and run the State public sector enterprises for electronic items, manage, supervise, finance, advice, assist, aid or collaborate with any association, firm, company, enterprise, undertaking, institution or scheme for the advancement and development of all branches of electronics and of industries and business concerns based on or related to electronics. Thus, the main objects of the assessee were widely couched and included promotion and finance of electronic based industries. The order passed by the Tribunal was set aside and the order passed by the CIT (A) was restored. (AY. 2001-02)

Electronic Corporation of Tamil Nadu Ltd. (ELCOT) v. DCIT (2019) 417 ITR 283 (Mad.) (HC)

321 **S. 28(i) : Business loss – Loss on revaluation of permanent category investments – Held to be allowable as business loss. [S. 260A]**

Dismissing the appeal of the revenue the Court held that Loss of ₹ 16, 84 481 on account of loss on revaluation of permanent category investments is held to be allowable as business loss. No question of law. Followed *CIT v. Union Bank of India, ITA No. 1977 of 2013* dt. 8-02-2016.

PCIT v. State Bank of India (2019) 181 DTR 275 / (2020) 420 ITR 376 (Bom.)(HC), www.itatonline.org

322 **S. 28(i) : Business loss – Loss on sale of bonds – Held to be business loss – No question of law. [S. 260A]**

Court held that sale of bonds were part of the business of trading in shares and securities hence rightly held as allowable as business loss. No substantial question of law. (AY. 1997-98)

CIT v. Appollo Tyres Ltd. (No. 4) (2019) 416 ITR 564 (Ker.)(HC)

S. 28(i) : Business loss – Sale of Fertilizer Bonds received as subsidy from Government in lieu of cash – Allowable as business loss. [S. 2(14)(a)] 323

Dismissing the appeal of the revenue the Court held that loss incurred on Sale of Fertilizer Bonds received as subsidy from Government in lieu of cash is held to be allowable as business loss. (AY. 2009-10)

PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. (2019) 416 ITR 144 / 266 Taxman 19 (Mag) / 311 CTR 556 / 184 DTR 84 (Guj.)(HC)

S. 28(i) : Business loss – Bank guarantee – Loss due to encashment of bank guarantee is allowable as business loss. 324

Dismissing the appeal of the revenue the Court held that loss due to encashment of bank guarantee is allowable as business loss. (AY. 2002-03 to 2005-06)

CIT v. Chandragiri Construction Co. (2019) 415 ITR 63 (Ker.)(HC)

S. 28(i) : Business loss – Embezzlement of cash by director – Recovery of amount or outcome of pending criminal prosecution against director before Metropolitan Magistrate is irrelevant – Allowable as deduction. [S. 36(2), 37(1)] 325

Dismissing the appeal of the revenue the Court held that the embezzlement by one of the directors or an employee of the assessee during the ordinary course of business would be a business loss irrespective of the criminal prosecution of the director or employee. The final outcome of the criminal proceedings or recovery of the amount in question would not determine the claim of the assessee in the assessment year 2012-13 when it was written off as a business loss. The Tribunal had rightly held it to be a business loss as it was treated to be only a pilferage of the assessee company's funds by a director on the board of the company. (AY. 2012-13)

PCIT v. Saravana Selvarathnam Trading and Manufacturing Pvt. Ltd. (2019) 415 ITR 146 (Mad.)(HC)

S. 28(i) : Business loss – Speculative transaction – Damages – Palm oil – Damages paid for not honouring commitments to take delivery against some purchase orders placed on foreign sellers – Allowable as business loss – Not speculative loss. [S. 43(5), 73] 326

Assessee did not honour its commitment to take delivery against some purchase orders placed on foreign sellers consequent upon price of palm oil declining. Damages paid was claimed as business loss. AO held that the loss is speculative loss. Tribunal allowed the loss as business loss. Dismissing the appeal of the revenue, High Court held that when a party in breach accepts claim for damages, what actually happens is disposal of a dispute and not any settlement of kind that is envisaged by word settled used in S.43(5). Accordingly up held that order of the Tribunal.

CIT v. Ambo Agro Products (P.) Ltd. (2018) 257 Taxman 156 (Cal.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Ambo Agro Products (P.) Ltd. (2019) 264 Taxman 167 (SC)

S. 28(i) : Business loss – Revaluation of obsolete inventories – Valuation was supported by technical experts – Allowable as business loss. [S. 145] 327

Assessee reduced value of 313 obsolete items of its stocks and spares which were not used for past five years or more by 50 percent, which was done on basis of

recommendation of committee of experts appointed by the Board of the assesee company. The assessee claimed loss on account of such evaluation of obsolete inventory. The AO disallowed the loss, which was affirmed by the Tribunal. On appeal the Court held that, technical evaluation was conducted on the basis of recommendation of the Committee hence the loss on revaluation is held to be allowable as business loss.
Hindustan Newsprint Ltd. v. ACIT (2019) 262 Taxman 334 / 178 DTR 398 / 310 CTR 93 (Ker.)(HC)

328 **S. 28(i) : Business loss – Main object of the company – Infrastructure – Amended object clause to carry on business of shares futures and options – Speculation – Futures and options – Amendment in object clause to carry on business in futures and options – Loss is allowable as business loss. [S. 43(5), 73]**
Dismissing the appeal of the revenue the Court held that the assessee has amended the object clause to carry on business in futures and options, accordingly the Tribunal is justified in allowing the loss on futures and options allowable as business loss and not as speculation. (ITA No 888 of 2016 dt. 11-12-2018). (AY. 2007-08)
PCIT v. Triforce Infrastructure (India) Pvt. Ltd. (HC)(UR)(Bom.)
Editorial : DCIT v. Triforce Infrastructure (India) Pvt. Ltd. (SMC) (Mum.) (Trib.)(ITA No.1890/Mum/2014 dt. 12-06-2015) is affirmed.

329 **S. 28(i) : Business loss – Trading loss – Purchase and sales through commission agent – Loss held to be non-genuine – Disallowance is held to be justified – CIT(A) can consider the record relating to past assessment, while deciding the appeal. [S. 250, 260A]**
Dismissing the appeal of the assessee the Court held that considering the evidence and based on independent analysis and appreciation of evidence on record the loss was held to be non-genuine. Accordingly the disallowance was held to be justified. Court also held that CIT(A) can consider the record relating to past assessment, while deciding the appeal, but they could not have been made main basis for reversing Assessing Officer's order. (AY.1989-90)
Mathur Marketing (P.) Ltd. v. CIT (2019) 260 Taxman 9 / 173 DTR 74 / 307 CTR 613 / 413 ITR 353 (Delhi)(HC)

330 **S. 28(1) : Business loss – Futures and options – Allowable as business loss. [S. 37(1)]**
Dismissing the appeal of the revenue, the Court held that the Tribunal was justified in directing the Assessing Officer to treat the notional loss incurred on transaction as normal business loss was concluded against the Department by the decision of this court. Followed *CIT v. Bharat R. Ruia (HUF) (2011) 337 ITR 452 (Bom.)(HC)* (AY.2008-09)
CIT v. Hardik Bharat Patel (2019) 410 ITR 202 / 260 Taxman 294 (Bom.)(HC)

331 **S. 28(1) : Business loss – Capital loss – Transaction relating to acquisition of capital asset – Forfeiture of part of earnest deposit – Held to be capital loss and not revenue expenditure. [S. 37(1)]**
Dismissing the appeal, the Court held that, the forfeiture of the amount of ₹ 3,93,327 was a capital expenditure or loss as it was a loss incurred not for the purpose of, or as

an integral part of the profit-earning process, but for acquisition of an asset or a right of permanent character. The loss incurred was in a transaction which related to and for acquisition of a capital asset. For some reason the attempt of the assessee to acquire the plot as a capital asset did not fructify. Hence, the assessee had asked for refund of the deposit paid for acquisition of the capital asset. Forfeiture or deduction while refunding the amount would be a capital loss and not a revenue expenditure. (AY.2001-02)
ICS Systems Pvt. Ltd. v. CIT (2019) 411 ITR 619 / 175 DTR 235 / 261 Taxman 169 / 307 CTR 438 (Delhi)(HC)

S. 28(i) : Business loss – Claim to loss of stocks stored in agents' godowns on account of insect infestation – Assessee giving specific details of purchase of wheat, copies of bills, vouchers – AO ought to have issued summons to entities from whom wheat purchased – Claim not to be rejected on surmises, suspicion and conjecture-Stock loss in trading of wheat allowable. [S. 131] 332

The assessee had purchased wheat which was stored with "pakka arhatias" godowns and as a result of an insect infestation, the quality of the stored wheat deteriorated and could not be sold at market price, leading to a stock loss of ₹ 75,31,781 in the hands of the assessee. However, the Assessing Officer was of the view that such loss was a bogus transaction and was being shown to avoid payment of capital gains tax amounting to ₹ 78,83,716 on the sale of office space for ₹ 2 crores by the assessee.
On appeal, the Tribunal observed that the assessee had provided in tabular form details of the purchase of wheat, copies of bills and vouchers, etc. showing the amount transmitted through RTGS, rate of purchase, labour charges etc. the Assessing Officer should have summoned the "pakka arhatias" godown owners and cross-verified whether the infestation had taken place in all seven godowns. The AO only had a doubt but did not enquire into it. The CIT(A) failed to appreciate that delivery taken by the "pakka arhtias" in the capacity of agent of the assessee was to be construed as actual delivery taken by the assessee. Therefore, the Revenue authorities had failed to bring conclusive evidence for falsifying the claim of the assessee. The AO was directed to accept the loss of ₹ 75,31,781 disclosed by the assesse. (AY.2015-16)
Anju Sharma v. ITO (2019) 76 ITR 350 (Chd.)(Trib.)

S. 28(i) : Business loss – Genuineness of transaction – Amount paid by National housing bank (NHB) to assessee bank-but credited by assessee to the account of one Shri Harshad Mehta (HM) – Subsequently such transaction got burnt in the fire of securities scam – Repayment of such amount to NHB – Not allowable as business loss. [S. 44C] 333

Held that, as the transactions made by the assessee were peculiar and were not transacted in the ordinary course of business and there is nothing to show why the amount was paid and why it was credited to the account of HM (even though the account payee cheques were in the name of assessee bank), the repayment made by assessee bank, even after incurring a loss, cannot be considered as deductible business loss. (AY. 2002-03)
Standard Chartered Grindlays PTY Ltd. v. DDIT(IT) (2019) 183 DTR 105 / 201 TTJ 754 (Delhi)(Trib.)

334 **S. 28(i) : Business loss – Non production of documentary evidence for hiring of trucks – Loss on vehicle is not allowed.**
While dismissing the appeal of the assessee, the Tribunal held that, as there was no truck in the fixed assets and no documentary evidence was furnished in support of the claim. Not produced any documentary evidence and no such trucks were hired by the assessee either from the partners or any other party; hence loss on vehicle is not allowed. (AY. 2012-13)
Swastik Oil Industries v. Dy. CIT (2019) 76 ITR 392 (Jaipur)(Trib.)

335 **S. 28(i) : Business loss – Real estate business – Advance to parties – Amount written off for commercial reasons – Loss is allowable as business loss.**
Tribunal held that advances given to parties were written off for commercial reasons, hence the loss is allowable as business loss. (AY. 2012-13)
ACIT v. Bhosale Builders and Developers P. Ltd. (2019) 74 ITR 67 (SN) (Pune)(Trib.)

336 **S. 28(i) : Business loss – Advance to subsidiary – Subsidiary has gone to liquidation – Loss is allowable as business loss. [S. 2(13), 37(1)]**
When the assessee has advanced funds to its subsidiary and the subsidiary has gone into liquidation then the funds advanced to such subsidiary must be treated as a business loss if they are advanced on the grounds of commercial consideration and commercial expediency. (AY. 2014-15)
Dy. CIT v. Pioneer Investcorp Ltd. (2019) 72 ITR 376 (Mum.)(Trib.)

337 **S. 28(i) : Business loss – Purchase and sale of securities – Loss arising from sale of securities – Allowable as business loss.**
If the assessee is engaged in the sole activity of purchase and sale of securities then such an activity constitutes a business carried on by the assessee and any loss arising upon sale of such securities shall be treated as a business loss. (AY. 2005-06, 2007-08)
Dy. CIT v. Sahara Care Ltd. (2019) 74 ITR 117 (Delhi)(Trib.)

338 **S. 28(i) : Business loss – Loss on account of shifting in securities – Fall in the value of investments allowable as a deduction irrespective of change in classification of investments to comply with RBI guidelines. [S. 37(1)]**
During the year, assessee bank had shifted certain securities from Account for Sale (AFS) to Held to Maturity (HTM) in order to comply with the RBI guidelines in preparation of accounts. AO disallowed the claim on the ground that RBI guidelines are not binding while computing taxable income and the CIT(A) confirmed the same. Before the Tribunal, assessee submitted that as on date of shifting of securities, the diminution in the value of securities was claimed as deduction and investments held by the banking companies are treated as stock in trade and therefore fall in value of securities should be allowed as deduction based on the principle of statutory valuation stock that stock in trade should be valued at cost or market whichever is less. Relying on assessee's own case for previous year and Madras High Court decision in case of *CIT v. Karur Vysya Bank Ltd., (2005) 273 ITR 510 (Mad.)(HC)*, Tribunal held that the fact that the assessee bank has shifted the investment from one category to another is of no relevance, in as

much as, fall in value of investment is held to be allowable as deduction. (AY. 2012-13, 2014-15)
City Union Bank Ltd. v. ACIT (2019) 74 ITR 644 (Chennai)(Trib.)

S. 28(1) : Business loss – Lawyer – Foreign exchange loss – Cash system of accounting – No addition is warranted. [S. 145] 339
Dismissing the appeal of the revenue the Tribunal held that, merely because of the reason that assessee records the invoices prepared in foreign currency at the rate prevailing thereon for control purposes and subsequently off set it whenever the bills are realised by debit or credit to the P & L a/c. Thus no addition is warranted even in cash method of accounting adopted by the assessee. Accordingly the addition made on account of foreign exchange loss is rightly deled by the CIT(A). (AY.2011-12)
Harish Narinder Salve v. ACIT (2019) 181 DTR 121 / 74 ITR 21 (SN) / 178 ITD 800 (Delhi)(Trib.), www.itatonline.org

S. 28(i) : Business loss – Future and options – Shares and derivatives – Client code modifications (CCM) – No stretch of imagination can any AO consider a transaction on the stock exchange as income of a person other than the one who has either actually received monies in his bank account (In case of profit) and /or paid any monies from his bank account (in case of loss) – Burden is on AO to establish that the losses were purchased or that there was payment in cash/cheque for such favors – Client code modification with in 1% of is absolutely normal. [S. 143(3)] 340
Tribunal held that the asseeee is not registered broker on the stock exchange. Only the registered brokers can modify client code (CCM) of their own clients. The AO has not brought on record to establish that the losses were purchased or that there was payment in cash/cheque for such favors. AO has mechanically added amounts as income of the assessee without verifying the records. Tribunal also held that, by no stretch of imagination can any AO consider a transaction on the stock exchange as income of a person other than the one who has either actually received monies in his bank account (In case of profit) and /or paid any monies from his bank account (in case of loss) and nothing has been placed on record by the AO to demonstrate that any proceedings were ever initiated against the assessee by the SEBI or any stock exchange. Client code modification with in 1% of is absolutely normal. Accordingly the loss is held to be allowable as business loss. (ITA No. 5689 /Mum/2017 dt. 13-05-2019). (AY. 2010-11)
DCIT v. Comet Investment Pvt. Ltd. (Mum.)(Trib.) www.itatonline.org

S. 28(i) : Business loss – Advances not recoverable – Write off Advances given to suppliers for purchase of raw materials – Failure to produce evidence to show that the advances were paid in the ordinary course of business – Not allowable as business loss. [S. 36(1)(vii), 36(2)] 341
Dismissing the appeal of the assessee the Tribunal held that, write off advances given to suppliers for purchase of raw materials is held to be not allowable as business loss as the assessee failed to produce evidence to show that the advances were paid in the ordinary course of business. (AY. 2006-07)
Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

342 **S. 28(i) : Business loss – Share transactions – Registered stock exchange – Prevailing market prices – STT paid – Produced contract rates, demat statements and bank statements – Loss cannot be disallowed as bogus.[S. 68]**
Dismissing the appeal of the revenue the Tribunal held that, the assessee had furnished all details of purchase and sale of shares, obligation files of stock exchange and trade files received from stock exchange in which all details were given showing transactions entered into by assessee, Demat transaction and holding statements showing delivery of shares for purchase and sale of shares,copies of contract notes issued by registered share broker for purchase and sale of shares, provided copy of bank statements marking payments made to/received from stock exchange in respect of purchase and sale of shares. Loss cannot be disallowed as bogus loss. (AY. 2013-14)
DCIT v. PRB Securities (P.) Ltd. (2019) 176 ITD 649 (Kol.)(Trib.)

343 **S. 28(i) : Business loss – Future and options loss – Client code modification – Repetitive client code modifications – Client code modifications are tainted with collusive action and manipulation – Loss is held to be bogus – Not allowable as business loss – Reassessment is also upheld. [S.133(6), 147, 148]**
Dismissing the appeal of the assessee the Tribunal held that Unusual & sudden spurt in client code modifications undertaken by brokers was with an intention to evade taxes. In large number of client code modifications, there are no similarity between wrong code and correct code and secondly there are repetitive client code modifications. Thus, client code modifications are tainted with collusive action and manipulations & shall go out of the protection granted by the circulars of NSE/SEBI Followed Rakesh Gupta 405 ITR 213 (P&H) & Ninja Securities followed). Reassessment is also upheld. (ITA No.6534/Mum/2017 (AY. 2010-11)
Time Media & Entertainment LLP v. ITO (Mum.)(Trib.), www.itatonline.org

344 **S. 28(i) : Business loss – Conversion of ECB to share capital – Comprises of two distinct transactions – Foreign exchange loss on difference to be charged to P&L Account – Allowable as revenue loss. [S.37(1), 43, Companies Act, 1956, S.75(1)]**
Assessee has taken a working capital ECB loan from its holding company. The loan was converted into equity shares based on the exchange rate of that day. The loss on account of difference in exchange rate was accounted as revenue loss. AO disallowed the loss and treated repayment of ECB loan and allotment of shares as one transaction. The Tribunal held that allotment of shares by a company in lieu of a genuine debt is in compliance of S. 75(1) of Companies Act, 1956. Conversion of dollar denominated ECB into rupee denominated share capital comprises of two distinct transactions and hence deleted the addition made by the AO. (AY. 2009-10)
Sparrowhawk International Channels India (P) Ltd. v. Dy. CIT (2019) 176 DTR 48 / 200 TTJ 917 (Delhi)(Trib.)

345 **S. 28(i) : Business loss – Held to be not allowable as not carried out any business activity in his individual capacity during the year.**
Tribunal held that the assessee has not carried out any business activity in his individual capacity hence loss is held to be not allowable. (AY. 2005-06)
Rajesh Kumar v. ACIT (2019) 175 ITD 734 / 181 DTR 79 (Bang.)(Trib.)

S. 28(i) : Business loss – Actor – Advance of money to production house – Write off of advances as non recoverable – Film was not successful – Loss is allowable as business loss or as business expenditure. [S. 37(1)] 346

Tribunal held that actor advanced money to a production house run by his wife to produce films in which he acted as hero so as to boost his career, however, films were not successful and his wife suffered loss and advances given by assessee could not be recovered, money advanced by assessee was in nature of business expediency accordingly the write off is allowable as business loss or business expenditure. (AY. 2009-10)

Jackie Shroff v. ACIT (2019) 174 ITD 770 / 197 TTJ 568 / 174 DTR 161 (Mum.)(Trib.)

S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Perquisites – Waiver of loan amount under one time settlement could not be said to be benefit or perquisite arising from business – Not taxable – Waiver of loan amount, which was not claimed as deduction by assessee in earlier years, would not amount to cessation of trading liability – Waiver of loan could not be said to be without consideration hence cannot be taxes as income from other sources. [S.41(1), 56(2)(vi)]. 347

Allowing the appeal of the assessee the Tribunal held that, the very language of the S. 28(iv) speaks about the value of any benefit or perquisite arising from business or exercise of a profession. Now considering the facts and circumstances of the case, though, the loan was taken for the purpose of business but the same was never taken in the course of business or to say that the loan taken was not linked to the trading receipts or the like. Similarly the waiver of the loan amount was not in the course of business or in exercise of a profession. A part of the amount was waived by the bank in a one-time settlement because there were little chances of recovery of the entire amount. This one-time settlement was not done as part of the business activity of the assessee, rather, the transaction of the loan and waiver was a separate transaction. Under the circumstances, the waiver of part of the loan amount cannot be said to be a benefit or perquisite arising from business or profession to the assessee. Tribunal also held that, waiver of loan amount, which was not claimed as deduction by assessee in earlier years, would not amount to cessation of trading liability. Waiver of loan amount could not be said to be without consideration. Accordingly provisions of S. 56(2)(vi) could not be applicable. (AY. 2007-08)

Jai Pal Gaba v. ITO (2019) 178 ITD 357 / 179 DTR 237 (Chd.)(Trib.)

S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Discount received by assessee on buyback of Foreign Currency Convertible Bonds (FCCB) is capital receipt – Not liable to be taxed. [S. 4] 348

Assessee, in terms of RBI Circular No. 39 dated 8-12-2008, sought permission of RBI to buy-back Foreign Currency Convertible Bonds (FCCB), which was granted. Accordingly, assessee purchased 17 bonds at a discount of 25 per cent, and earned discount of certain amount. Assessee claimed that discount received on FCCB buy-back being capital receipt, was not in nature of income. AO treating same as income under S. 28(iv), added same to income. Tribunal held that since assessee had repurchased

certain FCCB at a discount and proceeds of these bonds was utilized partly for investment in foreign subsidiaries and partly for ongoing capitalization programs, gains were on capital account which could not be brought to tax under S. 28(iv) of the Act. Tribunal also held that benefit to be received by assessee has to be in some form other than in shape of money so as to bring same within ambit of S. 28(iv) and since discount amount represented cash/money, provisions of S. 28(iv) were inapplicable. (AY. 2010-11)

DCIT v. Pidilite Industries Ltd. (2019) 177 ITD 472 (Mum.)(Trib.)

349 **S. 28(va) : Business income – Capital or revenue – Sale of a technical concept, that the assessee developed on his own, with respect to website malware monitoring – Test of human probabilities has to be applied to decide whether what is apparent is real – Assessable as business income. [S. 28(v), 45, 55(2)(a)]**

Sale of technical concept claimed as capital receipt as no cost of acquisition was incurred. Dismissing the appeal of the assessee the Tribunal has applied test of human probabilities to decide whether what is apparent is real. A technical concept was conceptualized by assessee-employee to safeguard websites from getting infected with malware against consideration and thereafter, an agreement was entered into between assessee, employer-Indusface India, Indusface Canada, and Trend Micro USA, for sale of all rights in concept so developed/against consideration and claim of assessee was that amount received by assessee from Trend Micro was a capital gain in his hands, but as it had no cost of acquisition, this capital gain was not taxable in nature, since a perusal of Asset Purchase Agreement clearly shows that dominant intention of purchaser for making payment to assessee was to prevent him from engaging in any business which could have competed with business purchased by Trend Micro from sellers, amount received by assessee is revenue receipt in his hands and is taxable as business income under S. 28(va). Further, in any case, cost of acquisition, in case of non compete rights, under S. 55(2)(a) is to be taken as NIL, and, as a corollary thereto, entire receipts is to be taxed in hands of assessee. Tax authorities are not required to put on blinkers while looking at documents. They are entitled to look into the surrounding circumstances to find out the reality. (AY. 2013-14)

Ashish Tandon v. ACIT (2019) 103 taxmann.com 315 / 199 TTJ 137 / 176 DTR 353 (Ahd.)(Trib.), www.itatonline.org

350 **S. 31 : Repairs – Expenditure on replacement of dies and moulds is held to be current repairs. [S. 37(1)]**

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the expenditure on replacement of dies and moulds was to be allowed as current repairs. Followed *CIT v. TVS Motors Ltd. (2014) 364 ITR 1 (Mad.)(HC).* (AY. 2004-05)

CIT v. TVS Motors Ltd. (2019) 417 ITR 236 (Mad.)(HC)

S. 32 : Depreciation – Prior to insertion of Explanation 5 to S. 32 of the Act – Optional and could not be thrust upon the assessee – Matter remanded. 351

On an appeal by the revenue the Court held that High Court had not the benefit of the decision in *Plastiblends India Ltd. v. Add. CIT (2017) 398 ITR 568 (SC),* accordingly the matter is remanded to the High Court. (AY. 2003-04 to 2006-07)

CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466 / 175 DTR 1 / 307 CTR 121 / 261 Taxman 164 (SC)

Editorial : Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd. (ITA Nos. 1550 / 1592 / 1775 and 1881 of 2014 dt. 22-08-2017, 23-08-2017 is affirmed (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

S. 32 : Depreciation – Moulds – Depreciation at 30% or 10% – Glass manufacturing concern – Matter remanded to the Tribunal. [S. 254(1)] 352

Assessee claimed depreciation on moulds used for manufacture of glass at rate of 30 per cent. Tribunal restricted depreciation to 10 per cent. Court held that the Tribunal did not determine whether assessee was a 'glass manufacturing concern' and/or whether manufacturing process involved 'direct fire glass melting in furnaces'. This determination of fact was essential to come to a finding whether assessee was entitled to a higher rate of depreciation of 30 per cent on Moulds. (AY. 1983-84)

Pieco Electronics & Electricals Ltd. v. CIT (2019) 267 Taxman 548 (Cal.)(HC)

S. 32 : Depreciation – Entitled to depreciation in respect of assets which were discarded or scrapped during the previous year – Not necessary that such assets were actually sold during the year. 353

Court held that the assessee is entitled to depreciation in respect of assets which were discarded or scrapped during the previous year, it is not necessary that such asserts were actually sold during the year. (AY. 1983-84)

Pieco Electronics & Electricals Ltd. v. CIT (2019) 267 Taxman 548 (Cal.)(HC)

S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and Set off – Entitle to set off carried forward unabsorbed depreciation against income assessed u/s. 68 of the Act – Prior to Amendment of S. 115BBE with effect from 1-4-2017 – Amendment is not retrospective. [S. 68, 115BBE] 354

The Supreme Court has held that income credited in the business books with respect to which the assessee fails to prove satisfactorily the source and the nature of receipt of the amount, shall be deemed to be receipts from business. The undisclosed income assessed under S. 68 of the Income-tax Act, 1961 need not be treated as income falling totally outside the ambit of the classifications contained in S. 14. S. 115BBE had prohibited allowance of deductions alone, as it stood prior to the amendment with effect from April 1, 2017. The provision was amended with effect from April 1, 2017. The amendment has been made to expressly to provide that no set-off of any loss shall be allowable in respect of income under S. 68 or S 69 or S. 69A or S. or S. 69C or S. 69D. The intention of the Legislature in introducing the amendment, as stated in the Explanatory Notes, is to avoid unnecessary litigation and to expressly provide that no set-off of any loss shall be allowable in respect of income under S. 68. Prior to the amendment no bar

existed with respect to allowing set-off of the carried forward unabsorbed depreciation on fixed assets against income under S. 68. Accordingly the assessee was entitled to set off of carried forward unabsorbed depreciation against income assessed under S. 68 for the AY. 2013-14. (*Lakshmichand Baijnath v. CIT (1959) 35 ITR 416 (SC)*, *A. Govindarajulu Mudaliar v. CIT (1958) 34 ITR 807 (SC) (2017) 391 ITR 253 (St) (312)* (AY. 2013-14)
Vijaya Hospitality and Resorts Ltd. v. CIT (2019) 419 ITR 322 / 180 DTR 305 (Ker.)(HC)

355 **S. 32 : Depreciation – Valuation of investment portfolio – Stock-in-trade – Depreciation is held to be allowable. [S. 145]**
Tribunal held that depreciation on valuation of investment portfolio was allowable by treating investments held by assessee bank as stock-in-trade. High Court upheld the order of the Tribunal. (Followed *Karnataka Bank Ltd. v. ACIT (2013) 356 ITR 549 (Karn.) (HC)* referred CBDT Circular No. 665 dt. 5-10-2013 (1993) 204 ITR 39 (St).
CIT v. Karnataka Bank Ltd. (2019) 110 taxmann.com 128 / 266 Taxman 464 (Karn.)(HC)
Editorial : SLP of revenue is allowed; CIT v. Karnataka Bank Ltd. (2019) 266 Taxman 463 (SC)

356 **S. 32 : Depreciation – Software licence application – Eligible depreciation at 60% – Computer – Interpretation – Entry to be interpreted as in a taxing statute – Full effect should be given to all words used therein – It is impermissible to ignore the description, and denote the article under another entry by a process of reasoning.**
Assessee is engaged in the business of registrar and transfer agent as licensed by SEBI. It was handling large volume of market sensitive data and information which was available through general customized application software for which assessee acquired software licenses. The payment made was capitalized in the books of account and claimed depreciation at 60%. AO allowed the depreciation at 25% which was confirmed by CIT(A). Tribunal allowed the depreciation at 60%. On appeal by the revenue the Court held that The Supreme Court in *Bimetal Bearings Ltd. v. State of Tamil Nadu [1991] 80 STC 167* had pointed out that the 'entry' to be interpreted as in a taxing statute; full effect should be given to all words used therein and if a particular article would fall within a description, by the force of words used, it is impermissible to ignore the description, and denote the article under another entry by a process of reasoning. It was further held that by applying the rule of interpretation, the relevant entry under old appendix I Clause III(5) states that computers including computer software and the Notes under the Appendix defines 'computer software' in clause 7 to mean any computer program recorded on disc, tape, perforated media or other information storage device. Noteworthy to mention that the notes contained in the appendix, the term 'computer' has not been defined. If a particular article would fall within the description by the force of words used, it is impermissible to ignore the word description. Thus, going by the usage of the equipment purchased by the petitioner, a decision is to be taken. Accordingly upheld the order of the Tribunal. Followed *CIT v. Cactus Imaging India (P) Ltd. (2018) 406 ITR 406 (Mad.)(HC)*. (AY. 2012-13, 2014-15)
CIT v. Computer Age Management Services (P.) Ltd. (2019) 267 taxman 146 (Mad.)(HC)

S. 32 : Depreciation – Stock-in-trade – Investment – Bank – Valuation of investment portfolio – Depreciation is allowable in respect of investment held as stock-in-trade. [S. 28(i), 145] 357

Dismissing the appeal of the revenue the Court held that the Tribunal is justified allowing the depreciation on valuation of investment portfolio was allowable by treating investments held by assessee bank as stock-in-trade. Followed C*IT v. Corporation Bank (ITA No. 268 of 2009 dt. 2-12-2014) (Karn.)(HC)* Referred Circular No. 665 dt. 5-10-1993 (1993) 204 CTR 39 (St.).

CIT v. Corporation Bank (2019) 110 taxmann.com 335 / 267 Taxman 113 (Karn.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Corporation Bank (2019) 267 taxman 112 (SC)

S. 32 : Depreciation – Higher rate of depreciation – Motor vehicles – Buses were being run on hire – Entitle for higher rate of depreciation. 358

The assessee had claimed 30 per cent depreciation in terms of New Appendix I, as per item No. III(3)(ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire. AO disallowed the higher depreciation. CIT(A) allowed the claim. Order of the CIT(A) is affirmed by the Tribunal. On appeal by the revenue, High Court affirmed the order of the Tribunal. (AY. 2012-13, 2013-14)

PCIT v. Taj Travels (P.) Ltd. (2019) 267 taxman 124 (P & H)(HC)

S. 32 : Depreciation – Residential flats – Accommodation of employees – Entitle for higher rate of depreciation. 359

Dismissing the appeal of the revenue the Court held that, residential flats built by assessee – company for accommodation of its employees was to be regarded as building used for purpose of business of company and thus, assessee was entitled to claim high rate of depreciation on said flats. i.e., @ 10%. (AY. 200-01)

CIT v. Ashok Leyland Ltd. (2019) 266 Taxman 406 (Mad.)(HC)

S. 32 : Depreciation – Leased assets – Entitle to depreciation – Not proved that the transaction were merely paper transaction – Question of fact. [S. 260A] 360

Assessee claimed depreciation on leased assets. AO rejected assessee's claim holding that lease transactions were not genuine. Tribunal held that assessee had brought on record reliable documentary evidence showing genuineness of lease transactions. Accordingly allowed the depreciation. Appeal of revenue was dismissed by the High Court. (AY. 1996-97)

PCIT v. Ushdev International Ltd. (2019) 110 taxmann.com 22 / 266 Taxman 372 (Bom.) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Ushdev International Ltd. (2019) 266 Taxman 371 (SC) / (2019) 416 ITR 128 (St.)(SC).

S. 32 : Depreciation – Installation of windmill – 80% depreciation allowed on Civil Construction, electrical and other integral part of installations – Held to be allowable. 361

Revenue contended that the depreciation is allowable at 15% and not 80% claimed by the assessee. Dismissing the appeal of the revenue the Court held that windmill was

erected in the desert area of Rajasthan which required special foundation of reinforced cement concrete and that said reinforced cement concrete formed an integral part of windmill. Referred *CIT v. Herdilla Chemicals Ltd. (1995) 216 ITR 742 (Bom.)(HC)* Court followed ITA No. 1326 of 2010 dt. 14-06-2017. (ITA No. 1769 of 2016 dt. 30-01-2019)
PCIT v. Mahalaxmi Infra Projects Ltd. (Bom.)(HC) www.itatonline.org.

362 **S. 32 : Depreciation – Plant and machinery installed for generation of power is eligible for additional depreciation under clause (iia) as electricity is covered within the meaning of 'article or thing'. [S. 32(1)(iia)]**
Electricity is covered within the meaning of 'article or thing' for the purpose of S. 32(1)(iia) and the machinery acquired and installed for generation of thermal power is eligible for additional depreciation under the said clause. Follows Supreme Court in the case of *Andhra Pradesh v. NTPC Ltd. AIR 2002 SC 1895* wherein it was held that electricity is goods for the purpose of sales tax. (AY. 2011-12)
PCIT v. NTPC SAIL Power Co. (P.) Ltd. (2019) 178 DTR 53 / 101 taxmann.com 398 / 308 CTR 838 (Delhi)(HC)

363 **S. 32 : Depreciation – Purchase of business on slump sale – Intangible assets and marketing rights – Depreciation is allowable – Not a related concern – Provisions of S. 40A(2)(b) of the Act cannot be applied. [S. 40A(2)]**
Assessee company purchased a business on slump sale and claimed depreciation on intangible assets and marketing rights of business acquired. AO disallowed the claim for depreciation. Tribunal held that assessee having purchased various assets under business transfer agreement by way of slump sale from not a related concern depreciation is allowable both on intangible assets as well as marketing rights. High Court affirmed the order of Tribunal. (AY. 2004-05)
PCIT v. Bayer Vapi (P.) Ltd. (2019) 264 Taxman 182 (Guj.)(HC)

364 **S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and set-off – Eligible for carry forward and set-off against business profits. [S. 32(2)]**
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in directing the Assessing officer to allow carry forward and set off unabsorbed depreciation against the business profits. (Followed *General Motors India (P.) Ltd. (2013) 354 ITR 244 (Guj.)(HC), PCIT v. Associated Cables (P) Ltd. ITA No. 293 of 2016 dt. 2-08-2018, CIT v. Confidence Petroleum (I) Ltd ITA No. 582 of 2014, CIT v. Milton's (P) Ltd. ITA No. 2301 of 203, Times Guaranty Ltd. v. Dy. DIT, ITA No. 841 of 2011 and 842 of 2011 of 2011).* (AY. 2008-09)
CIT v. Associated Cables (P.) Ltd. (2019) 105 taxmann.com 113 / 263 Taxman 251 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Associated Cables (P.) Ltd. (2019) 263 Taxman 250 (SC)

S. 32 : Depreciation – Additional depreciation – Revision of orders prejudicial to revenue – Tribunal allowed assessee's claim for additional depreciation by following order of jurisdictional High Court – Revision is held to be not valid. [S. 263] 365

AO allowed assessee's claim for additional depreciation. CIT passed revision order and directed the AO to reframe assessment. Tribunal set aside the revisional order. High Court affirmed the order of Tribunal following the jurisdictional High Court in *CIT v. Continental Ware Housing Corporation Nhava Sheva Ltd. (2015) 374 ITR 645 (Bom.)(HC)* and *CIT v. Murli Agro Products Ltd. (2014) 49 taxmann.com 172 (Bom.)(HC)*. Revenue authorities, however, pointed out that Karnataka High Court in *Canara Housing Development Co. v. Dy. CIT (2014) 49 Taxmann.com 98 (Karn.)(HC)* on similar issue had taken a different view. High Court held that the Tribunal was bound by decision of jurisdictional High Court. (AY. 2006-07)

PCIT v. Jitendra J. Mehta (2019) 104 Taxman.com 448 / 263 Taxman 6 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Jitendra J. Mehta. (2019) 263 Taxman 5 (SC)

S. 32 : Depreciation – Unabsorbed depreciation – Set-off of – Benefit of carry forward and set off of unabsorbed depreciation for assessment year 1997-98 is allowed against income of assessment year 2005-06. [S. 32(2)] 366

High Court held that the Tribunal was justified in allowing assessee benefit of carry forward and set off of unabsorbed depreciation for assessment year 1997-98 against income of assessment year 2005-06 which was in accordance with provision of S. 32(2) as amended by Finance Act 2001 with effect from 1-4-2002. (Followed *General Motors India (P.) Ltd. v. Dy. CIT (2012) 25 taxmann.com 364 / 210 taxman 20 (Mag.) (Guj.)(HC)*.

PCIT v. Panchmahal Steel Ltd. (2019) 106 taxmann.com 131 / 264 Taxman 20 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Panchmahal Steel Ltd. (2019) 264 Taxman 19 (SC)

S. 32 : Depreciation – Intangible asset – Non-compete fee – The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to sub-section 32(1)(ii) is wide enough to include non-compete rights – Eligible for depreciation. [S. 32(i(ii)] 367

Dismissing the appeal of the revenue the Court held that, rights acquired under a non-compete agreement gives enduring benefit & protects the assessee's business against competition. The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to sub-section 32(1)(ii) is wide enough to include non-compete rights, hence eligible depreciation. Followed (2018) *PCIT v. Ferromatic Milacron India (P.) Ltd. (2018) 99 Taxman.com 154 (Guj.)(HC)*. (ITA No. 556 of 2017, dt. 11.06.2019)

PCIT v. Piramal Glass Ltd. (Bom.)(HC), www.itatonline.org

S. 32 : Depreciation – Unabsorbed depreciation pertaining to assessment year 1997-98 to assessment year 2001-02 was allowed to be carried forward and adjusted after lapse of 8 assessment years in view of S. 32(2) as amended by Finance Act, 2001 [S. 32(2)] 368

Dismissing the appeal of the revenue the Court held that; unabsorbed depreciation pertaining to assessment year 1997-98 to assessment year 2001-02 was allowed to be

carried forward and adjusted after lapse of 8 assessment years in view of S. 32(2) as amended by Finance Act, 2001. (Followed *CIT v. Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom.)(HC)* (AY. 1997-98 to 2001-02)
CIT v. Bajaj Hindustan Ltd. (2019) 103 taxmann.com 31 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Bajaj Hindustan Ltd. (2019) 261 Taxman 558 (SC)/ 411 ITR 3(St.)(SC)

369 **S. 32 : Depreciation – UPS – Component/equipment connected with computer – Entitle to 60 per cent depreciation.**
Dismissing the appeal of the revenue the Court held that, UPS is Component/equipment connected with computer – Entitle to 60 per cent depreciation. (AY. 2008-09)
PCIT v. Goa Tourism Development Ltd. (2019) 261 Taxman 500 (Bom.)(HC)

370 **S. 32 : Depreciation – Concept of passive user cannot be extended for long period – No allowance of depreciation in particular year – unabsorbed depreciation cannot be carried forward. [S. 32(2)]**
The concept of passive user could not be extended for twenty four years, when the assessee's unit had remained closed, especially when one of the conditions are found from S. 32(1) is the requirement of user of the tangible or other assets, in the previous year in which the deduction or allowance is claimed. Accordingly the assessee is not entitled to set off the carried forward unabsorbed depreciation. (AY. 1985-86, 1996-97 to 2002-03)
CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

371 **S. 32 : Depreciation – Licenses, permits, approvals – Intangible assets – Purchased in slump sale – Depreciation is allowable at rate of 25 per cent.**
Dismissing the appeal of the revenue the Court held that intangible assets in question being permits, licenses and approvals were required for carrying on business of hotel, they fell within meaning of intangible assets under S. 32 which were purchased in slump sale, Tribunal is justified in allowing depreciation. (AY. 2004-05, 2005-06)
PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16 / (2019) 411 ITR 595 (Bom.) (HC)

372 **S. 32 : Depreciation – Unabsorbed depreciation – Set-off – Assessee admitting income from business and profession – Entitled to set off brought forward loss against such income. [S. 32(2)]**
Tribunal held that the assessee had admitted income from business and profession. Therefore, the assessee was entitled to set off the brought forward depreciation against such income. The AO was to verify the fact of income admitted from business and profession and if it was the fact, then he shall allow the brought forward depreciation claim to the extent of availability of income under that head. (AY. 2009-10, 2014-15)
S. Sathyaraj v. ITO (2019) 76 ITR 387 (Chennai)(Trib.)

S. 32 : Depreciation – On runway, isolation parking bay, roads, culverts and drains as buildings – Matter remanded for verification. 373

While deciding the issue, the tribunal observed that, the AO has not stated any reason for his deviating from the direction of the ITAT, nor why the isolation parking bay, roads, culverts and drains do not form part of the assets which were found to be plant, as per directions of the Tribunal. Hence, restored back to the AO for consideration. (AY. 2008-09, 2009-10)

Dy. CIT v. Cochin International Airport Ltd. (2019) 76 ITR 44 (SN) (Cochin)(Trib.)

S. 32 : Depreciation – Set off of unabsorbed depreciation against its current year income from house property and income from other sources. [S. 22, 32(2), 56] 374

Dismissing the appeal of the revenue the Tribunal held that in view of amendment made by Finance Act, 2001, with effect from 1-4-2002, assessee was eligible to claim set-off of unabsorbed depreciation against its current year income from house property and income from other sources. Referred *CIT v. Virmani Industries (P.) Ltd. (1995) 216 ITR 607 (SC)* (AY. 2011-12)

DCIT v. Regency Property Investments (P.) Ltd. (2019) 179 ITD 584 (Mum.)(Trib.)

S. 32 : Depreciation – Effluent treatment plant – Alleged bogus purchases – Entitle to 100% depreciation. 375

The Assessee was an authorised bottler of soft drinks and claimed depreciation of 100% of cost of asset described as effluent treatment plant system. The Assessee failed to submit any evidence for the payment made to vendor towards the purchase of the asset. The AO disallowed the claim on effluent treatment plant system because a bill submitted by the Assessee was bogus. The Ld. CIT(A) allowed the depreciation. On Revenue's appeal, Tribunal observed that the Assessee was to get its effluent treatment plant repaired in accordance with the directions of the Maharashtra Pollution Control board. The inspection carried out after the repair of effluent treatment plant by officials of Maharashtra Pollution Control board contains the evidence of various parts of plants transported and also the payments made by the Assessee was through banking system. Therefore, Tribunal allowed the claim of the Assessee towards the repairs carried out for effluent treatment plant and also its claim for depreciation. (AY. 2008-09)

ACIT v. Indo European Breweries Ltd. (2019) 74 ITR 27 (SN) (Delhi)(Trib.)

S. 32 : Depreciation – Unabsorbed depreciation for the period prior to AY 1997-98 is eligible to be carried forward for more than 8 years. [S. 32(2)] 376

During the previous year relevant to AY 2006-07, the Assessee had claimed set-off of unabsorbed depreciation pertaining to AY 1997-98. The AO observed that the unabsorbed depreciation for AY 1997-98 and earlier years could be carried forward up to a maximum of eight years from the year in which it was first computed. As the said period expired in AY 2005-06, the AO did not allow the set-off as claimed by the Assessee.

On appeal, the CIT(A) relied on the decision of the Hon'ble Gujarat High Court in the case of *General Motors India (P) Ltd v. Dy. CIT (2013) (Guj.)(HC)* wherein it was held that unabsorbed depreciation accumulated upto 01.04.2002 was eligible for set-off as

per the amended provisions of S. 32(2) of the Act. Tribunal affirmed the order of the CIT(A). (AY. 2006-07)
ACIT v. Central Electronics Ltd. (2019) 72 ITR 31 (SN) (Delhi)(Trib.)

377 **S. 32 : Depreciation – Income from house property – Properties continued to form block of assets – Depreciation is not allowable. [S. 2(11)]**
Dismissing the appeal, the Tribunal held that merely because properties continued to form block of assets depreciation is not allowable as there is no business income during the year and the income is assessed as income from house property (AY. 2013-14)
Emco Dyestuff (P.) Ltd. v. DCIT (2019) 178 ITD 111 / 184 DTR 345 (Mum.)(Trib.)

378 **S. 32 : Depreciation – Car purchased in the name of director – Reflected in the balance sheet of the Company – Depreciation is allowable.**
Allowing the appeal of the assessee the Tribunal held that the car was purchased in name of a director in order to reduce incidence of indirect taxes, levies etc., however, it was duly reflected in balance sheet of assessee-company. Accordingly the depreciation is allowable to the company. (AY. 2013-14)
Shree Laxmi Estate (P.) Ltd. v. ITO (2019) 178 ITD 98 (Mum.)(Trib.)

379 **S. 32 : Depreciation – No turnover during the year – Depreciation cannot be disallowed.**
The AO disallowed depreciation on the asset on the ground that the assessee had not carried out any business activity during the year. The CIT(A) deleted the disallowance holding that the assets were business assets of the assessee. On appeal the Tribunal held that merely because there was no turnover during the instant year that could not be a reason for disallowance of depreciation once the asset was already put to use in the preceding years. The depreciation being a statutory allowance cannot be disallowed. (AY. 2010-11, 2011-12)
Dy. CIT v. Jammu Metalic Oxides Pvt. Ltd. (2019) 72 ITR 449 (Jaipur)(Trib.)

380 **S. 32 : Depreciation – POS TERMINALS are in the nature of computers – Entitle to depreciation at 60%. [S. 2(11), 2(13)]**
POS TERMINALS are in the nature of computers and not in the nature of office equipment and would therefore be eligible for depreciation @60% and not 15%. Hon'ble Delhi High Court in the case of *Pr. CIT v. Connaught Plaza Restaurant* has held that POS TERMINALS are in the nature of computers and therefore depreciation is allowable @ 60%. (AY. 2009-10)
Dy. CIT v. Oxigen Services India P. Ltd. (2019) 69 ITR 63 (SN) (Delhi)(Trib.)

381 **S. 32 : Depreciation – LED Panel – Rate of depreciation is allowable as applicable to computer. [Information Technology Act, 2000, [S 2(1)]**
The Tribunal held that the term "computer" has not been defined in the Act. However, it has been defined in S. 2(1) of Information Technology Act. The LED Panel more or less fits to the definition of computer as given in Information Technology Act, 2000 and upheld the order of the CIT(A). (AY. 2006-07)
Dy. CIT v. Kumudam Publications P. Ltd. (2019) 70 ITR 41 (SN) (Chennai)(Trib.)

S. 32 : Depreciation – Business and commercial rights – Goodwill – Intangible Asset – Entitle to depreciation. 382

The assessee company is stated to have dealership of Mercedes-Benz and as per the ongoing business strategy, the assessee company acquired the business of going concern which was holding dealership of Mercedes-Benz in Kolkata. In the process, the excess consideration of ₹ 7.50 crores over and above the value of the tangible assets was claimed to have been incurred for acquiring various business and commercial rights categorized under the head 'goodwill' in the books of the assessee. The assessee claimed depreciation on such 'goodwill' pegged at ₹ 7.50 crores. In the course of the scrutiny assessment, the AO however denied the claim of such depreciation on 'goodwill'. The CIT(A) after consideration of relevant facts found the claim of the assessee to be in consonance with law enunciated by way of judicial precedents. An appeal has been filed at the instance of the Revenue against the order of the CIT(A). The Tribunal held that extra consideration paid for acquisition of assets and the business of the concern represents cost of goodwill. This being so, the assessee would be entitled in law for claim of depreciation. (AY. 2013-14)

Dy. CIT v. Landmark Cars (East) P. Ltd. (2019) 71 ITR 19 (SN) (Ahd.)(Trib.)

S. 32 : Depreciation – Written down value – Valuation report – AO to decide allowable depreciation after considering valuation report submitted for earlier assessment years. 383

Tribunal held that pending consideration of the valuation report filed by the assessee before the Assessing Officer, the Tribunal in the assessee's case for the assessment years 2013-14 and 2014-15 had remitted the matter to the Assessing Officer to examine the valuation reports and decide the issue afresh. The Department had not made any objection to remitting the issue back to the Assessing Officer for the assessment year 2015-16. Accordingly, for the assessment year 2015-16 also, the matter was remanded to the Assessing Officer to decide the allowable depreciation after considering the valuation report submitted for the earlier assessment years. (AY. 2015-16).

Dy. CIT v. Kanishk Metal Recycling Ltd. (2019) 74 ITR 8 (SN) (Chennai)(Trib.)

S. 32 : Depreciation – Goodwill – Intangible Asset – Amalgamation – Matter remanded to CIT(A). 384

The assessee-company is engaged in the business of publication. During the year under consideration, the assessee-company merged itself with its wholly owned subsidiary company. As per the scheme of amalgamation between the assessee and the subsidiary company, the asset was valued. The amalgamation of the assessee with its subsidiary company was approved by the Madras High Court and the Delhi High Court. The assessee claimed depreciation on the goodwill taken on the books of the assessee-company. The Revenue in its appeal against the order of the CIT(A) contended that, since no amount was paid as consideration over and above the net value of the shares of subsidiary company, the question of claiming depreciation on the goodwill does not arise. The Tribunal held that during the course of amalgamation, no amount in excess was paid, hence the order of the CIT(A) is set aside and the entire issue is remitted back to the file of the CIT(A) for reconsideration. (AY. 2012-13)

Dy. CIT v. Macmillan Publishers India P. Ltd. (2019) 71 ITR 8 (SN) (Chennai)(Trib.)

385 **S. 32 : Depreciation – Block of asset – Written down value of asset is reduced to zero or block of asset is empty or it ceases to exist on last date of previous year – Depreciation is not allowable. [S. 2(11), 41(1), 50]**

Dismissing the appeal of the assessee the Tribunal held that where the written down value of asset is reduced to zero or block of asset is empty or it ceases to exist on last date of previous year depreciation is not allowable. (AY. 2012-13)

Aramark India (P.) Ltd. v. DCIT (2019) 179 ITD 133 (Mum.)(Trib.)

386 **S. 32 : Depreciation – Trade mark – Depreciation cannot be rejected on ground that agreement to acquire trademark was entered into on post dated stamp paper. [S. 147, 148]**

Assessee is engaged in the business of wholesale trading and distribution of mobile phones and accessories. The assessee had acquired trademark from Univercell Telecommunications India (P) Ltd. and claimed depreciation on said intangible asset. Genuineness of agreement was doubted on ground that agreement was on post dated stamp paper. AO also questioned necessity of procuring trademark and again giving back to same party for a consideration of 0.01 per cent of turnover. The AO held that that transaction was mala fide and disallowed claim for depreciation. CIT(A) confirmed the order of the AO. Tribunal held that as regards first objection, fact that agreement was entered on post dated stamp paper was immaterial and not germane to decide whether or not transaction was genuine. As regards as commercial expediency was concerned, it was not open to AO to question necessity of incurring an expenditure as he could not step into shoes of assessee to determine as to how business activities were to be conducted. Accordingly the order passed by AO denying assessee's claim for depreciation was set aside. (AY. 2007-08 to 2009-10)

Indus Mobile Distribution (P.) Ltd. v. ITO (2019) 179 ITD 71 (Chennai)(Trib.)

387 **S. 32 : Depreciation – Block of assets – No requirement that business use of each of assets of block to be seen and examined and depreciation to be allowed only in respect of assets used. [S. 2(11), 50]**

The Assessing Officer allowed depreciation on some items and disallowed depreciation on some items in each of two blocks of Building and Plant & Machinery. The Commissioner (A) confirmed the disallowance. On appeal ITAT held that the existence of an individual asset in the block of assets itself amounted to use for the purpose of business. It was not the case of the Assessing Officer that some asset of building block and plant and machinery block did not exist in the respective block of assets. The Assessing Officer had allowed depreciation in respect of some assets included in these two blocks. Hence part disallowance of depreciation in respect of some asset in each of these two blocks was not justified. Moreover none of the three conditions when an individual asset of the block goes out of block were satisfied and therefore depreciation was allowable on both the blocks in full. (AY. 2014-15)

Bharat Mines And Minerals v. A CIT (2019) 70 ITR 684 (Bang.)(Trib.)

S. 32 : Depreciation – Delivery from recognised seller – Denial of depreciation is held to be not justified. 388

Assessee had claimed depreciation on Audi motor car on the ground that car was gifted on 19-6-2009, and therefore, car was first put to use in assessment year 2010-11. Assessee filed copies of gift deed and also letter from Automobile company stating that car was delivered on 19-6-2009. AO denied the depreciation on the ground that the car was registered in assessee's name on 4-2-2009 and thus held that this was second year of car use and therefore assessee should have claimed deprecation for first time in assessment year 2009-10. Tribunal held that assessee having got delivery from recognised seller, and there being no doubt on existence or address of seller, authorities below should have made enquiry from said seller before summarily rejecting veracity of delivery document on mere surmises. Accordingly entitle to depreciation. (AY. 2010-11)

Sonu Nigam v. ACIT (2019) 177 ITD 597 (Mum.)(Trib.)

S. 32 : Depreciation – Depreciation reserve – co-operative society – Bound by the Reserve Bank of India directives – Business of banking – Matter remanded. 389

Tribunal held that the assessee as a co-operative bank was bound by the Reserve Bank of India directives. According to such directives, the assessee had to invest certain amounts in Government securities and to hold the securities till maturity. In the process of acquisition, if there was any premium paid on the face value of the security, the loss had to be amortised. The instructions of the Board were applicable for determining the taxability of an assessee and if the securities acquired by the assessee were under the category held to maturity, the premium paid on acquiring such security was to be spread over the remaining period up to maturity and would be allowed to the assessee in each year. Those instructions were required to be applied to the securities held for trading as well as available for sale. Accordingly the AO was to first determine the issue whether those securities were identifiable under the category "held for trading" or "available for sale", and if so, allow depreciation. Otherwise, the AO could decide the issue in accordance with law. (AY. 2011-12, 2012-13)

Ahmedabad District Co-Operative Bank Ltd. v. DCIT (2019) 70 ITR 428 (Ahd.)(Trib.)

S. 32 : Depreciation – Assessee took over cement undertaking as a going concern for purchase consideration and also issue of shares – AO disallowed depreciation to the extent of shares issued by debiting the goodwill account – Held that, even if the consideration in the form of shares was paid for purchase of goodwill, this payment could be considered as payment for acquiring brands of the demerged company, on which depreciation was allowable. 390

Assessee a public limited company had acquired and taken over the cement undertakings of J.K. Synthetics Ltd. ('JKSL') as a going concern with effect from 4.11.2004, relevant to A.Y. 2005-06, for a purchase consideration of ₹ 467.95 crores and also issue of one share of J.K. Cement Ltd. against ten shares of JKSL, aggregating to ₹ 7,42,69,500/-, free of cost. The assessee company had issued 74,26,950 equity shares of ₹ 10/-each free of cost to the shareholders of JKSL (in terms of rehabilitation scheme and takeover of the cement units) by debiting the goodwill account. It claimed depreciation on the same. AO rejected the assessee's claim, observing that the assessee had not

claimed any depreciation on goodwill, but had allocated the entire amount of share capital issued to the share holders of M/s JKSL free of cost, among all the fixed assets of the assessee company and has thus enhanced the value of the fixed assets, which is not permissible. The ld. CIT(A) reversed the orders of the AO on the ground that issuance of shares was towards part payment of purchase consideration and hence was included in the cost of acquisition of the cement undertaking; that therefore, the assessee could not be deprived of depreciation by merely debiting the issue of shares to the goodwill account. The CIT(A) held in the alternative that even if the consideration in the form of shares was paid for purchase of goodwill, this payment could be considered as payment for acquiring brands of the demerged company, on which depreciation was allowable u/s 32 of the I.T. Act. The Tribunal, following the earlier years Tribunal orders, concurred with the findings of the CIT(A) and allowed the depreciation. (AY. 2012-13)
JCIT v. J. K. Cement Ltd. (2019) 69 ITR 26 (SN)(Luck.)(Trib.)

391 **S. 32 : Depreciation – Additional depreciation – S. 32(1)(iia) would not restrain the assessee from claiming the balance of the benefit of additional depreciation in the subsequent assessment year. [S. 32(1)(iia)]**
During the year under consideration i.e. AY 2012-13, assessee claimed residual 50% additional depreciation on the assets installed in the second half of the assessment year 2011-12. Ld. AO disallowed the same. On appeal to CIT(A) allowed the additional depreciation claim of the assessee. Aggrieved by the same, the revenue filed an appeal before ITAT.
The assessee company claimed additional depreciation on the assets installed in the second half of the assessment year 2011-12. The AO held that additional depreciation is allowed only at 50% on the assets put to use for less than 180 days. He observed that the company wants to claim the residual 50% of the additional depreciation on the assets put to use for less than 180 days in the next assessment year, which is not correct as per provisions of the Act. Finance Act, 2015 has allowed 50% additional depreciation in the next year of put to use effective from 01-04-2015. Since the provision of S. 32 of the Act do not provide for carry forward of the residual additional depreciation in the current assessment year, the claim of additional depreciation was rejected. On appeal, the ld. CIT(A) allowed the assessee's claim, following '*M/s Automotive Coaches & Components Ltd. v. DCIT*', order dated 12.02.2016, passed by the Chennai Bench of the Tribunal in ITA No. 1789/Mds/2014, for A.Y. 2008-09, wherein, it was held that if additional depreciation could not be allowed at the rate of 20% during the year in which the machinery was installed, the balance 50% has to be allowed in the subsequent year, and '*CIT v. Pittal India (P) Ltd. (2016) 129 DTR 153 (Karn.)(HC),* in which, it was held that the proviso to S. 32(1)(iia) of the I.T. Act would not restrain the assessee from claiming the balance of the benefit of additional depreciation in the subsequent assessment year. On further appeal the Tribunal observed that there was no decision contrary to the above decisions and hence there was no error in the CIT(A) order. (AY. 2012-13)
JCIT v. J. K. Cement Ltd. (2019) 69 ITR 26 (SN) (Luck.)(Trib.)

S. 32 : Depreciation – Transit mixer mounted on vehicle eligible for higher rate of depreciation – Trucks on which said RMC was mounted for transporting it to construction site – Not eligible for higher depreciation. [S. 32(1)(iia)] 392

Tribunal held that Transit mixer mounted on vehicle is eligible to be considered as plant and eligible for additional depreciation. However Trucks on which said RMC was mounted for transporting it to construction site is not eligible for higher depreciation. (AY. 2011-12)

Innovative Infrastructure (P.) Ltd. v. DCIT (2019) 176 ITD 868 / 182 DTR 20 (Ahd.)(Trib.)

S. 32 : Depreciation – Co-operative bank – Securities held as 'Available for sale' which was computed and claimed consistently by assessee every year in its profit and loss account – Held to be allowable. 393

Tribunal held that depreciation on securities held as 'Available for Sale' which was computed and claimed consistently by assessee bank every year in its profit and loss account is held to be allowable. (AY. 2010-11)

Malad Sahakari Bank Ltd. v. DCIT (2019) 176 ITD 438 / 182 DTR 350 (Mum.)(Trib.)

S. 32 : Depreciation – Plant and machinery installed by city development authority for water supply project would be eligible for 100 per cent depreciation – Road developed by city development authority for water supply project would be eligible for 10 per cent depreciation. [S. 80IA(4)(1), R. 5] 394

Assessee city development authority formed by State Government installed plant and machinery for water supply project and, thus, same was put to use for purpose of providing infrastructure facility, assessee would be eligible for 100 per cent deduction. Developed road for purpose of construction of water supply project. Road developed by assessee would not fall under item (1) of New Appendix, Part-A under Rule 5 because road cannot be used for residential purpose, such road would also not fall under item (3) of New Appendix, Part-A under Rule 5 because no machinery and plant could be installed on road. Accordingly it would fall under residual item (2) which provides for 10 per cent depreciation (AY. 2008-09 to 2010-11)

ACIT v. Haldia Development Authority. (2019) 175 ITD 263 / 176 DTR 433 / 199 TTJ 249 (Kol.)(Trib.)

S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and set off – Unabsorbed depreciation pertaining to assessment year 1997-98, was allowed to be carried forward and adjusted after lapse of 8 years. [S. 32(2)] 395

Tribunal held that in view of provisions of S. 32(2) as amended by Finance Act, 2001, unabsorbed depreciation pertaining to assessment year 1997-98, was allowed to be carried forward and adjusted after lapse of 8 years. (AY. 2006-07)

Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

S. 35 : Scientific research – Advance paid for research and development equipment is held to be allowable expenditure. [S. 35(1)(iv)] 396

Dismissing the appeal of the revenue the court held that the Tribunal was right in holding that the expenditure related to the advance given for the research and

development equipment was allowable under S. 35(1)(iv). Followed *CIT v. TVS Motors Ltd. (2014) 364 ITR 1 (Mad.)(HC).* (AY. 2004-05)
CIT v. TVS Motors Ltd. (2019) 417 ITR 236 (Mad.)(HC)

397 **S. 35 : Scientific research – Expenditure on scientific research is held to be allowable as deduction – Order of Tribunal is affirmed. [S. 35(2AB)]**
Assessee incurred expenditure on Scientific Research and claimed deduction under S. 35(2AB) of the Act. AO rejected the claim. CIT(A) held that expenditure incurred by assessee on Scientific Research was not entitled to weighted deduction of 1.5 times under S. 35(2AB) as project in question was not duly approved by competent Authority, however, assessee was entitled to normal deduction of 100 per cent expenditure incurred only under S. 35(1)(i) of the Act. Order of CIT(A) is affirmed by Appellate Tribunal. On appeal by the revenue dismissing the appeal the Court held that since claim of weighted deduction at 1.5 times of expenditure incurred by assessee on Scientific Research was not even decided against revenue by Appellate Authorities, there was no occasion for revenue to prefer any further appeal and spending of amount on Scientific Research itself was not disputed by revenue, Appellate Authorities had rightly allowed claim.
CIT v. Rajapalayam Mills Ltd. (2019) 265 Taxman 209 (Mad.)(HC)

398 **S. 35 : Scientific research – Weighted deduction – Research and Development – Expenditure on "Research and Development' facility was allowable even though approval of the concerned Ministry of Central Government was under consideration or awaited. [S. 35(2AB)]**
Assessee submitted that approval from the concerned Ministry of Central Government for the year in question was under active consideration and awaited. The Revenue disallowed assessee's claim on the ground that it did not produce approval from the prescribed authorities for the current year. However, such approval was available for both the periods prior and subsequent to the current year. On appeal to the Tribunal, the assessee produced Form 3CM approving the in-house Research and Development facility. The approval was from 1-4-2003 to 31-3-2005. The Tribunal held that the approval received for the subsequent years as such should be looked into for the earlier years on retrospective basis. The Tribunal granted weighted deduction. On appeal by the revenue dismissing the appeal the Court held that the assessee could not be punished for bureaucratic delay and since approval was on record for period anterior and posterior to year in question, claim of weighted deduction was allowable under S. 35(2AB). (AY. 2003-04)
CIT v. TVS Electronics Ltd. (2019) 419 ITR 187 / 263 Taxman 164 (Mad.)(HC)

399 **S. 35 : Scientific research – Research may be carried on by faculty or students – Research need not produce results – Rejection of application for approval without applying proper guidelines is held to be not valid – Matter remanded. [S. 10(23C), 35(1)(ii), 43]**
The assessee was a trust formed to undertake educational and research activities. It was granted registration as a deemed university with effect from July 3, 1993. It applied for approval under S. 35(1)(ii) of the Act on June 23, 2014. The assessee's application was

rejected. In a writ the Court held that the reasons assigned by the respondents were not in keeping with the statutory requirements. The respondents seemed to have proceeded on the basis that every department of the applicant-university must undertake scientific research. The respondents had also placed undue emphasis on the nature of the research undertaken and its commercialisation. The assessee submitted a significant amount of material showing the activities undertaken by it, including publication of research papers, patents granted, and grants and funds received from various national and international agencies. These had not been considered. In any event, an assessment of the "value" of the research at the hands of the respondents, is not contemplated by the Act or the rules. The question required to be considered by the respondent was whether the activities claimed by the assessee were genuine, and whether the funds being paid to the assessee were intended for the stated purpose. On these, the order was silent. The order was not valid. Matter remanded.
Manipal Academy of Higher Education v. UOI (2019) 413 ITR 412 / 263 Taxman 256 / 179 DTR 177 / 309 CTR 224 (Delhi)(HC)

S. 35 : Scientific research – Revenue expenditure incurred on in-house research and development facility, which was duly approved by competent authority. [S. 35(1)(iv), 35(2AB)] 400
The assessee claimed weighted at 200% u/s. 35(2AB) of the Act in respect of capital expenditure. The AO disallowed the claim. CIT(A) allowed the claim. On appeal by the revenue, the following the ratio in C*IT v. Sandan Vikas (India) Ltd. (2011) 335 ITR 117 (Delhi)(HC)*, Tribunal dismissed the appeal of the revenue. (AY. 2011-12)
ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22 / 184 DTR 406 (Kol.)(Trib.)

S. 35 : Scientific research – Approval granted was cancelled subsequently with retrospective effect – Weighted deduction cannot be denied if there was valid and subsisting approval when donation was given. [S. 35(1)(ii)] 401
Tribunal held that if at the time of giving donation to research institute it had a valid approval granted under S. 35(1)(ii) subsequent withdrawal of such approval would not be a reason to deny deduction claimed by donor. (AY. 2014-15)
Urnish Jewellers v. ACIT (2019) 177 ITD 364 (Mum.)(Trib.)

S. 35AC : Expenditure on eligible projects – Schemes – Promissory estoppel is not available to an assessee against the exercise of legislative power nor any vested right accrues to an assessee in the matter of grant of any tax concession to him – In a taxing statute, a plea based on equity or/and hardship is not legally sustainable – Withdrawal of exemption is valid. S. 35AC(7) is prospective in nature – Provision is valid in law. [S. 35AC(7), Art. 142, 226] 402
The appellant is a Charitable Trust registered under the provisions of the Bombay Public Trust Act, 1950. On 27.09.2014, the appellant filed an application under S. 35AC of the Act to the National Committee for Promotion of Social and Economic Welfare, Department of Revenue, North Block, New Delhi for grant of approval to their hospital project as specified in S. 35AC of the Act so as to enable any "assessee" to incur expenditure by way of making payment of any amount to the appellant for construction

of their approved hospital project and accordingly claim appropriate deduction of such payment from his total income during the previous year. Like the appellant, several persons, as specified in S. 35AC of the Act, also made applications to the Committee for grant of approval to their hospital projects. A notification was issued by the Government of India on 07.12.2015 mentioning therein that the Committee has approved 28 projects as "eligible projects" under Section 35AC of the Act. The name of the appellant appears at serial No. 10 in the notification dated 07.12.2015.

The appellant, received amount by way of donation from several assessees. However due to insertion of S. 35AC(7) from the assessment year 2018-19 by the Finance Act, 2016 with effect from 01.04.2017 the benefit of the exemption was withdrawn. The appellant challenged the validity of the provision S. 35AC(7) with effect from 1-4 2017. High Court dismissed the petition holding that the provision is valid in law. On appeal to supreme Court, the Court held that a plea of promissory estoppel is not available to an assessee against the exercise of legislative power nor any vested right accrues to an assessee in the matter of grant of any tax concession to him. In a taxing statute, a plea based on equity or/and hardship is not legally sustainable. Accordingly the withdrawal of exemption is valid and dismissed the petition.

Prashanti Medical Service & Research Foundation v. UOI (2019) 416 ITR 485 / 180 DTR 209 / 309 CTR 457 / 265 Taxman 504 (SC), www.itatonline.org

Editorial : From the Judgment in Prashanti Medical Service & Research Foundation v. UOI (2017) 399 ITR 450 / 250 Taxman 515 / 157 DTR 241 / 298 CTR 265 (Guj.)(HC)

403 **S. 35D : Amortisation of preliminary expenses – Bank extending financial services is an industrial undertaking – Entitled to benefit. [S. 37(1)]**

Allowing the appeal of the assessee, Court held that the Income-tax Act, 1961 does not define what is "an undertaking" or what is an "industrial undertaking". Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow, legal or technical sense. The expression "industrial undertaking" therefore, should be understood to have been used in S. 35D of the Act in a wide sense, taking in its fold any project or business a person may undertake. Hence a bank extending financial services, would be entitled to amortisation of preliminary expenses in connection with the issue of shares for public subscription. (AY. 1996-97 to 2006-07)

Dhanalakshmi Bank Ltd. v. CIT (2019) 410 ITR 280 / 261 Taxman 521 / 177 DTR 48 / 308 CTR 484 (Ker.)(HC)

404 **S. 35D : Amortisation of preliminary expenses – Deduction granted earlier years – Deduction to be allowed for balance period.**

The deduction once granted to the assessee for earlier years under S. 35D of the Act would entitle the assessee to amortise the expenses for the balance period under the said section as per the decision of the Supreme Court in *Shasun Chemicals and Drugs Ltd. v. CIT [2016] 388 ITR 1 (SC).* (AY. 2005-06, 2007-08)

Dy. CIT v. Sahara Care Ltd. (2019) 74 ITR 117 (Delhi)(Trib.)

S. 35DDA : Amortisation of expenditure – Voluntary retirement scheme – Entitled to claim deduction only to extent of 1/5th only during impugned assessment year against aggregate payment. [S. 147] 405

Allowing the appeal of the revenue the Tribunal held that, only provisions under which deduction has been claimed as well as allowed to assessee is S. 35DDA which provides for deduction only to extent of 1/5th in first year. Provisions of statute being expressly crystal clear, assessee was entitled to claim deduction only to extent of 1/5th only during impugned AY against aggregate payment. (AY. 2004-05)

Dy. CIT v. ICICI Bank Ltd. (2019) 202 TTJ 560 / (2020) 185 DTR 233 (Mum.)(Trib.)

S. 36(1)(iia) : Weighted deduction – Salary paid to blind or physically handicapped persons – Computation – Salary to be taken after allowance of standard deduction. [S. 16] 406

Court held that for the purpose of calculation of weighed deduction under S. 36(1)(iia), income of employees chargeable under head 'salaries' was to be taken as amount after allowance of standard deduction under S. 16 of the Act. (AY. 1983-84)

Pieco Electronics & Electricals Ltd. v. CIT (2019) 267 Taxman 548 (Cal.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Interest – free funds available with assessee is sufficient to meet investment – Presumption is that investments in subsidiaries were out of interest free funds – No disallowance can be made. [S. 14A] 407

Dismissing the appeal of the revenue the Court held that, Interest – free funds available with assessee is sufficient to meet investment. Presumption is that investments in subsidiaries were out of interest free funds, accordingly no disallowance can be made. (AY. 2003-04 to 2006-07)

CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466 / 175 DTR 1 / 307 CTR 121 / 261 Taxman 164 (SC)

Editorial : Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd. (ITA Nos. 1550 / 1592 / 1775 and 1881 of 2014 dt. 22-08-2017 is affirmed (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Interest and finance charges – Loans taken for investment in acquiring controlling interest in a foreign subsidiary which is in the same line of business – Allowable as expenditure. [S. 37(1)] 408

Dismissing the appeal of the revenue the Court held that interest expenditure and finance expenditure incurred on loans taken for investment in acquiring controlling interest in a foreign subsidiary which is in the same line of business of assessee so as to expand the business in foreign country is held to be allowable expenditure. Followed *CIT v. Srishti securities (P) Ltd. (2010) 321 ITR 498 (Bom.)(HC)* (AY. 2008-09, 2009-10)

PCIT v. Concentrix Services (I) (P.) Ltd. (2019) 267 Taxman 625 (Bom.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Interest paid on decommissioning cost recovered from customers was rightly allowed as deduction – No substantial question of law. [S. 260A] 409

Assessee was engaged in the business of establishing nuclear power plants and generating nuclear energy. Power plants so established had a fixed life after which those

plants were required to be decommissioned. Since said exercise required considerable expenditure, Government of India allowed assessee to collect decommissioning costs from its customers. Under another notification issued by Department of Atomic Energy, assessee had to account for 12 per cent interest on such decommissioning charges collected by it. During the relevant year, assessee debited certain amounts towards interest on decommissioning reserves and claimed such interest by way of deduction disallowed the claim. Tribunal held that funds did not belong to assessee but same were used for purpose of business and assessee paid interest to funds at instance of Department of Atomic Energy. Accordingly the Tribunal held that such interest could not be said to be notional interest and expenditure was rightly claimed by assessee by way of deduction. High Court affirmed the order of the Tribunal. (AY. 1992-93)
CIT(LTU) v. Nuclear Power Corpn. of India Ltd. (2019) 108 taxmann.com 310 / 265 Taxman 554 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT (LTU) v. Nuclear Power Corpn. of India Ltd. (2019) 265 Taxman 553 (SC)/ 416 ITR 126 (St.)(SC)

410 **S. 36(1)(iii) : Interest on borrowed capital – Investment in sister concern – Sufficient interest free loans – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that the assessee had sufficient interest free loans. Accordingly the deletion of addition is held to be justified. Followed *CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom.)(HC)* (ITA No. 1248 of 2016, dt. 28.01.2019)
PCIT v. Aegis Limited (Bom.)(HC), www.itatonline.org

411 **S. 36(1)(iii) : Interest on borrowed capital – Investment in share capital of sister concern, with a view to earn dividend income – Expenditure incurred is held to be allowable as deduction.**
Dismissing the appeal of the revenue the Court held that Tribunal found that assessee had made investment which would yield income in form of dividend and therefore, investment was made for purpose of earning income. Accordingly the expenditure incurred for earning such income had to be allowed. (AY. 2008-09)
PCIT v. Premier Finance & Trading Co. Ltd. (2019) 262 Taxman 341 (Bom.)(HC)

412 **S. 36(1)(iii) : Interest on borrowed capital – Acquisition of capital asset – Business of land development for industrial, commercial and residential use – Proviso to S. 36(1)(iii) override provision of S. 145A – Disallowance of claim of interest is held to be justified. [S. 145A]**
The assessee is engaged in the business of land development for industrial, commercial and residential use, acquired loan for purchase of a land for its project. The cost of land and related development expenditure was disclosed as work-in-progress as the company expected to incur further costs on land and infrastructure development. The assessee contended that since it was engaged in the business of real estate, even though interest paid on the borrowed capital to purchase the land in question was capitalised in the books of account and was shown as work-in-progress in the balance sheet, after insertion of S. 145A with effect from 1-4-2017 by the Finance Act, 2018 provided for specific method of valuation of inventory (the land in question) by the assessee and

the interest paid on capital borrowed, irrespective of it being capitalised or not, was required to be allowed as deduction while computing the income for the assessment years in question. The proviso to S. 36(1)(iii) incorporated in Part D of Chapter IV of the Act providing for the Method of Computation of Total Income will override provisions of S. 145A, which is incorporated in Chapter IV of Act relating to procedure for assessment. The words in the proviso to S. 36(1) 'whether capitalised or not' will override the accounting practice followed in the books of account by the assessee. The assessee has admittedly capitalised the interest paid on the borrowed capital in the present case. The assessee has also not claimed that the land in question was put to use in the assessment years in question. Mere purchase of the land in the years in question out of the borrowed capital does not entitle the assessee to claim such interest paid on borrowed capital as a deductible expenditure in the present assessment years merely on the basis of method of accounting prescribed under S. 145A which was brought in the statute to undo the effect of the decision of the Delhi High Court in *Chamber of Tax Consultants v. Union of India (2018) 400 ITR 178 (Delhi)(HC)* which quashed the CBDT Notification No. 87 of 2016 dated 29.9.2016 finding it to be ultra vires. Dismissing the appeal the Court held that method of accounting provided for valuation of inventory under S. 145A does not determine the allowability of the expenditure. The proviso to S. 36(1)(iii), which says that such claim of deduction will be allowed in the assessment years, when it was put to use, will override the provisions contained in S. 145A. Since the position of law and the inter play of the above provisions are very clear, there is no substantial question of law to be arising in the present case for our consideration. Accordingly the interest is not allowable as deduction. (AY. 2010-11, 2012-13)
Mahindra World City Developers Ltd. v. ACIT (2019) 417 ITR 241 / 264 Taxman 328 / 180 DTR 299 (Mad.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Commercial expediency – Inter-corporate deposits – Lower rate charged on inter-corporate deposits than that paid – No disallowances can be made. [S. 37(1)] 413
Dismissing the appeal of the revenue the Court held that the due to commercial expediency, charging of lower rate of interest on inter corporate deposits than that paid by assessee is held to be justified. There cannot be any universal rate or rule in this regard. No question of law arises. (AY. 1994-95)
CIT v. Apollo Tyres Ltd. (No. 2) (2019) 219 ITR 546 (Ker.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Production of milk – Loan for setting up joint venture company with Central Government Agency and State Government entity – Allowable as deduction. 414
Dismissing the appeal of the revenue the Court held that,the setting up of a joint venture company with a Central Government agency and a State Government entity was not beyond the purview of the business operations of the assessee. In such circumstances, the interest paid in respect of the funds borrowed by the assessee had to be regarded as a payment made for the purpose of the business of the assessee and a permissible deduction under S. 36(1)(iii) of the Act. (AY. 2000-01, 2003-04)
CIT v. Keventer Agro Ltd. (2019) 416 ITR 482 (Cal.)(HC)

415 **S. 36(1)(iii) : Interest on borrowed capital – Interest free advance given to associates for the assessees's business – Held, no disallowance required.**
Since the assessee was not eligible to seek license to develop by itself a housing project without acquiring 100 acres of contiguous land, interest free advances were given to the associate companies. The Court held that such advances were for assessee's business and therefore, no disallowance u/s. 36(1)(iii) was required. (AY. 1995-96 to 2009-10)
CIT v. Gopal Das Estates & Housing (P) Ltd. (2019) 308 CTR 201 (Delhi)(HC)

416 **S. 36(1)(iii) : Interest on borrowed capital – Advance to sister concerns without interest – Having sufficient interest free funds – Disallowance of interest cannot be made.**
Dismissing the appeal of the revenue the Court held that the assessee had sufficient interest free funds, accordingly, disallowance of interest cannot be made on the ground that the money was advanced to the sister concerns without interest. (AY. 2011-12, 2012-13)
CIT v. Malhotra Book Depot (2019) 416 ITR 221 (P&H)(HC)

417 **S. 36(1)(iii) : Interest on borrowed capital – Loan to sister concern from non–interest bearing funds – No disallowance can be made.**
Loan to sister concern from non-interest bearing funds. No disallowance can be made. (AY. 2006-07)
CIT v. Harrisons Malayalam Ltd. (2019) 414 ITR 344 / 183 DTR 302 / 266 Taxman 414 / 311 CTR 802 (Ker.)(HC)

418 **S. 36(1)(iii) : Interest on borrowed capital – Capital or revenue – Prior to 2003,interest on capital borrowed for the purpose of capital expenditure is deductible. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, Prior to 2003, interest on capital borrowed for the purpose of capital expenditure is deductible. Followed *India Cements Ltd v. CIT (1966) 60 ITR 52 (SC)*. (AY. 2000-01)
CIT v. Bharat Hotels Ltd. (2019) 410 ITR 417 (Delhi)(HC)

419 **S. 36(1)(iii) : Interest on borrowed capital – Investment in acquiring control of two companies – Disallowance of expenditure on imaginary income and expenditure of subsequent year is held to be not justified – Expenditure is held to be allowable. [S. 14A, 57]**
Assessee borrowed funds in order to acquire control of two companies. Interest paid on borrowed funds was claimed as an allowable expenditure by assessee under S. 36(1)(iii), read with S. 57 of the Act. AO disallowed the claim. Tribunal held that interest payment by assessee in acquiring control of two companies would result in earning exempt dividend income and, therefore, same was not allowable. Allowing the appeal of the assessee the Court held Disallowance of expenditure on imaginary income and expenditure of subsequent year is held to be not justified. Followed *CIT v. Rajeeva Lochan Kanoria (1994) 208 ITR 616 (Cal.)(HC)*.
Vikram Somany v. CIT (2019) 261 Taxman 226 (Cal.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Failure to establish that the expenses related to Hotel business was her proprietorship business – Disallowance was confirmed. 420

Dismissing the appeal of the assessee the Court held that the assessee, failed to establish that the expenses related to Hotel business was her proprietorship business. Accordingly the Disallowance was confirmed.(AY. 2000-01 and 2001-02)

Sangeetha Jain (Smt.) v. ACIT (2019) 414 ITR 61 / 261 Taxman 220 (Karn.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Interest-free loans to sister concerns – Interest-free funds available with assessee more than advance paid to its sister concerns – AO to decide in accordance with supreme court decision. 421

Tribunal held that the Supreme Court in *CIT v. Reliance Industries Ltd. (2019), (2019) 410 ITR 466 (SC)*, *Hero Cycles (P) Ltd v. CIT. (2010) 379 ITR 347 (SC)* and *Munjal Sales Corporation v. CIT, (2008) 298 ITR 298 (SC)* laid down that if the interest-free funds available to the assessee were sufficient to meet its investment, then it could be presumed that the investment were made from the interest-free funds available with the assessee. In the instant case, the interest-free funds available with the assessee were more than the advance paid to its sister concerns. Therefore the issue in hand was remanded to the file of the AO to decide accordingly in terms of the dictum of the Supreme Court. (AY. 2009-10, 2010-11)

Rajinder Kumar Gupta v. DCIT (2019) 76 ITR 324 (Asr.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest paid to relatives and non-relatives – Difference between rate of interest charged by private money-lender and that charged by bank bound to exist – Assessee paying interest after deducting tax at source – AO failed to show that assessee utilised loan for purpose other than business – Interest expenses is held to be allowable. 422

The Tribunal held that the assessee paid interest at 18% to relatives as well as to non-relatives. There was bound to be a difference between the interest charged by the bank and the interest charged by a private lender as for obtaining loans from bank, the assessee needed to maintain a margin and there were other expenses charged by the bank in the form of bank charges, penalty, etc. Therefore, the basis for disallowance made by the authorities was not correct. The assessee had made payments of interest after deducting tax at source and it was not the case of the authorities that the loans were not utilised for business purposes. Therefore, disallowance was deleted. (AY. 2014-15)

Anurag Rastogi v. ITO (2019) 75 ITR 8 (Luck.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Purchase of office spaces – Possession not taken – Interest paid is held to be not allowable as deduction. 423

The assessee is engaged in providing Financial and management consultancy. He claimed deduction on account of interest paid to bank on Loan which was utilized for booking of several office spaces which was shown as investments. AO disallowed the interest, which was confirmed by CIT(A). On appeal the Tribunal held that the assessee has not taken possession of the premises and not used for the purposes of business hence disallowance of interest is held to be justified. (AY. 2013-14)

Sameer Suneja v. ACIT (2019) 178 ITD 498 (Delhi)(Trib.)

424 **S. 36(1)(iii) : Interest on borrowed capital – Rental premium equivalent to 3 months monthly rent – lease rent – Excessive or unreasonable – Matter remanded to AO for reconsideration. [S. 40A(2), Tamil Nadu Buildings (Lease and Rent Control) Act, 1960]**
Tribunal held that, since assessee had paid lease rent advance to its MD and as per Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 rental premium would be equivalent to 3 months monthly rent. S. 30 of the said Act exempts certain type of buildings as enumerated therein. Therefore, AO should reconsider facts in the light of the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Lease rent is reasonable or not the matter was remitted back to AO. (AY. 2013-14, 2014-15, 2015-16)
Lalithaa Jewellery Mart (P.) Ltd. v. ACIT (2019) 178 ITD 503 / 73 ITR 532 (Chennai)(Trib.)

425 **S. 36(1)(iii) : Interest on borrowed capital – Borrowings were utilized for purpose of construction business – No disallowances can be made.**
Allowing the appeal of the assessee the Tribunal held that borrowed amounts were utilised for purpose of construction business, hence disallowance is held to be not valid. (AY. 2013-14)
Shree Laxmi Estate (P.) Ltd. v. ITO (2019) 178 ITD 98 (Mum.)(Trib.)

426 **S. 36(1)(iii) : Interest on borrowed capital – Part of interest capitalised and transferred to pre-operative expenses – Disallowance again on interest amounts to double deduction – Addition to be deleted.**
Held, that admittedly, the assessee had capitallised the interest of ₹ 2.48 crores out of the total interest paid during the year at ₹ 11.98 crores. The assessee had brought forward the interest of ₹ 83.57 lakhs in its pre-operative expenses account pending allocation. Thus the total interest of ₹ 3.32 crores had been transferred by the assessee to pre-operative expenses and the total pre-operative expenses had been allocated to fixed assets. Accordingly the amount of ₹ 7.44 crores had been allocated to the building account out of the pre-operative expenses of ₹ 14.79 crores. The Assessing Officer had ignored the facts produced by the assessee and had disallowed interest of ₹ 1.38 crores out of the total interest, invoking the provisions of S. 36(1(iii) of the Act which amounted to double disallowance. Once the assessee had transferred the interest to pre-operative expenses the disallowance was not sustainable in law. (AY 2010-11)
Dy. CIT v. Metso Minerals (India) Pvt. Ltd. (2019) 70 ITR 655 (Delhi)(Trib.)

427 **S. 36(1)(iii) : Interest on borrowed capital – Sufficient own funds – Interest cannot be disallowed.**
The AO had disallowed certain amount of interest as interest for non-business purpose and interest for capital work-in-progress and capital advance. The Tribunal relying on various decisions and considering the factual matrix observed that the assessee has sufficient own funds and has utilised the funds for the purpose of business with nothing to the contrary being brought on record by the Department. Thus, the Tribunal held that interest cannot be disallowed. (AY. 2011-12, 2013-14)
Dy. CIT v. BBF Industries Ltd. (2019) 73 ITR 428 (Chd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Increase of disallowance of interest in reassessment where disallowance under assessment was made and the majority of the interest free advances were given at the end of the year. [S. 147, 148] 428

The AO had disallowed certain portion of interest in the assessment order originally completed. In the reassessment proceedings, the AO increased the aforesaid disallowance as the assessee had advanced interest free loans to sister concerns. The CIT(A) deleted the addition.

The Tribunal noted that in the case of interest free loans given for non-business purpose, majority of the loans were provided to the partners and pertained to amounts withdrawn by the partner at the fag end of the year and to that extent interest was disallowed in the assessment originally completed by the AO. Thus, the Tribunal dismissed the appeal of the Department in respect of reassessment proceedings. (AY. 2012-13 to 2014-15)

ACIT v. AB Capital (2019) 73 ITR 23 (Kol.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Stock in trade – Housing project – Percentage project completion method – Interest on money borrowed – Added to cost of project. [S. 145, AS 16] 429

Assessee was engaged in business of construction and development of Group housing projects. It followed percentage project completion method for revenue recognition. It did not recognize any revenue during relevant year as it had not achieved prescribed threshold of 25 per cent of total projected construction at close of financial year, however it claimed deduction of interest on money borrowed for purchase of land as stock-in-trade. AO held that since no income had accrued, no expenses were allowable. CIT(A) allowed the claim of the assessee. Tribunal held that since development of plot of land as a housing project to make it saleable where finished residential units would be sold to customers would take its own time and was not an instantaneous activity, in terms of AS-16, any interest cost incurred in relation to and for purchase of such plot of land would be required to be accumulated as part of project cost and could not be claimed in year of incurrence. Accordingly the order of CIT(A) was modified. (AY. 201-15)

ITO v. Khatu Shyam Builders (2019) 177 ITD 643 (Jaipur)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Provision for interest liability – Held to be allowable as deduction – Rule of consistency – It is not open to revenue to accept a judgment in the case of one assessee, and appeal, against the identical judgment in the case of another. It was held that such a differential treatment on the same set of facts was not permissible in law. [S. 43B] 430

Tribunal held that in *UOI v. Kaumudini Narayan Dalal (2001) 249 ITR 219 SC* held that it is not open to revenue to accept the judgment in the case of the assessee in that case and challenge its correctness in the case of another assessee, without just cause. Accordingly following the co-ordinate bench decision and having regard to the fact that the Revenue has not pointed out any reasons whatsoever as to why the co-ordinate bench decision will not apply on this assessment year as well, the conclusions arrived at by the CIT(A) is to be approved. (AY. 2003-04)

DCIT v. Core Healthcare Ltd. (2019) 177 ITD 26 (Ahd.)(Trib.)

431 **S. 36(1)(iii) : Interest on borrowed capital – Interest free loan to subsidiary from interest bearing funds – Proportionate interest payment is disallowable.**
Tribunal held that where the advance is made to subsidiary from interest bearing funds, proportionate interest is to be disallowed. (AY. 2003-04)
DCIT v. Core Healthcare Ltd. (2019) 177 ITD 26 (Ahd.)(Trib.)

432 **S. 36(1)(iii) : Interest on borrowed capital – Advance of security deposit – Substantial interest free funds – No disallowances can be made.**
Tribunal held that the assessee had made payments of certain amount on account of security deposit for uninterrupted supply of certain material for smooth functioning of its business, and, further, assessee had substantial interest free own funds out of which said payment was made, no disallowance can be made. (AY. 2006-07)
Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

433 **S. 36(1)(iii) : Interest on borrowed capital – Investment in group concern – Commercial expediency – Allowable as deduction.**
Advance share application money to its wholly owned subsidiary and to a group concern, to acquire promoter/controlling interest and to facilitate its business interest, it could be said that investment was for commercial expediency and assessee would be entitled to deduction of interest paid. (AY. 2012-13)
Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

434 **S. 36(1)(iii) : Interest on borrowed capital – Advance to sister concern – Sufficient own interest free funds – Presumption would arise that advances made by assessee to its sister concern were out of interest-free funds – No disallowances can be made.**
Dismissing the appeal of the revenue the Tribunal held that when the assessee had sufficient own interest-free funds to make investments, presumption would arise that advances made by assessee to its sister concern were out of interest-free funds. Accordingly no disallowances can be made. (AY. 2014-15)
ACIT v. Janak Global Resources (P.) Ltd. (2019) 175 ITD 365 (Chd.)(Trib.)

435 **S. 36(1)(iii) : Interest on borrowed capital – Interest paid on funds borrowed for the purpose of business activities are allowed as business expenditure/revenue expenditure. [S. 37(1)]**
Assessee, a private company, was engaged in the business of real estate development. During the year, assessee developed a residential project and followed percentage completion method for revenue recognition. Assessee incurred interest expenditure of ₹ 15.37 crores. Since, 37% of the project was found to be completed as per percentage completion method, interest of ₹ 5.68 crores was charged to the profit & loss account. During the course of assessment proceedings, AO noted that loan raised during the year were not used for the business purpose but were diverted to related concerns and no interest was charged from them. Accordingly, AO disallowed the interest expenditure amounting to ₹ 5.68 crores holding that assessee has given interest free funds and advances and share capital to sister concerns. On appeal, CIT(A) confirmed the disallowance stating that AO had clearly given detailed analysis showing the nexus

between interest bearing fund and interest free advances and contention of the assessee that funds had been used for business purpose was not supported by strong evidences. Aggrieved by the same, assessee filed an appeal before the ITAT. The Tribunal observed that as the Assessee was engaged in the real estate business and buying land or acquiring lease of land is business of the Assessee. Funds were given to sister companies to either purchase of land or acquiring lease of land. All funds were given for business purposes and hence no disallowance could have been made. The Tribunal further observed that Assessee having mixed funds, the only presumption arising in favor of assessee is that the amount of advances given is out of the non-interest bearing funds. And thus all the advances even if presumed that they are not given by the assessee for the business purposes did not exceed the funds available with the assessee without interest. The Tribunal thus deleted the disallowance made. (AY. 2014-15)
Gaursons Realty P. Ltd. v. Addl. CIT (2019) 69 ITR 11(SN) (Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest free advances – Notional disallowance – Burden is on revenue to prove that borrowed capital has been used for interest free advance or loan – No disallowance can be made. 436
Tribunal held that the Assessing Officer cannot disallow the interest on notional basis without proving that borrowed capital has been used for interest free advance or loan. (AY. 2011-12)
Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Advance to subsidiary – Commercial expediency – Corporate strategy – Disallowance of part of interest is held to be not justified. 437
Dismissing the appeal of the revenue the Tribunal held that; advance of loan to subsidiary due to commercial expediency and corporate strategy, accordingly disallowance of part of interest is held to be not justified. (AY. 2012-13)
DCIT v. Piramal Realty (P.) Ltd. (2019) 174 ITD 633 / 198 TTJ 999 / 176 DTR 242 (Mum.) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest bearing funds were applied for making investment in equity shares and alleged investment was for non-business purposes – Disallowance of interest is held to be justified. [S. 14A, R. 8D] 438
Dismissing the appeal of the assessee the Tribunal held that, interest bearing funds were applied for making investment in equity shares and alleged investment was for non-business purposes – Disallowance of interest is held to be justified. (AY. 2011-12, 2012-13)
Premier Industries (India) Ltd. v. JCIT (2019) 174 ITD 415 (Indore)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Loan for reconstruction or renovation of its existing cold storage which was destroyed by fire, could not be considered as acquisition of an asset – Interest is held to be allowable. 439
Allowing the appeal of the assessee, loan for reconstruction or renovation of its existing cold storage which was destroyed by fire, could not be considered as acquisition of an asset. Interest paid is held to be allowable. (AY. 2010-11)
K. S. Cold Storage v. ACIT (2019) 174 ITD 485 / 175 DTR 433 / 198 TTJ 905 (Pune)(Trib.)

440 **S. 36(1)(va) : Any sum received from employees – Employees contribution to PF and ESI paid after the due date as per the relevant statutes but before filing of return of income under section 139(1) of the Act is not be disallowed. [S. 43B, 139(1)]**

The AO has made additions for employees' contribution to PF & ESI deposited after the due date as per the relevant statutes but before filing of return of income under S. 139(1) of the Act. The Tribunal referred to the Madras High Court decision in the case of *CIT v. M/s Industrial Security & Intelligence India Pvt. Ltd. (TCA No. 585 and 586 of 2015) dated 24.07.2015* wherein the Division Bench dismissed the department appeal and upheld the Tribunal order which had held that Employees contribution to PF and ESI paid before filing of return of income under S. 139(1) of the Act is not be disallowed under S. 43B. Further the Tribunal also noted a contrary judgement of the Madras High Court decision in the case of *Unifac Management Services (India) Private Limited v. DCIT (WMP 6461 of 2018)* which was given by a single judge of the Madras High Court and noted that various High Courts in India have taken a different view on this Issue.

The Tribunal further referred to the Chennai Tribunal decision in the case of *ACIT v. Carat Lane Trading Pvt. Ltd. (2018) 89 taxmann.com 434 (Chennai)(Trib)* wherein it was held that contribution of employee contribution to PF and ESI by due date of filing return of income u/s. 139(1) will not be hit by provisions of S, 36(1)(va) read with S. 43B of the Act.

Accordingly, following the decision of Division Bench of Madras High Court in the case of *CIT v. M/s Industrial Security & Intelligence India Pvt. Ltd. (supra)* and co-ordinate bench decision in the case of *ACIT v. Carat Lane Trading Pvt. Ltd. (supra)*, the Tribunal has deleted the addition made under S. 36(1)(va) read with S. 43B of the Act. (AY. 2013-14)

Selva Gold Covering Pvt. Ltd. v. DCIT (2019) 76 ITR 37 (SN) (Chennai)(Trib.)

441 **S. 36(1)(va) : Any sum received from employees – Failure to deposit entire amount towards employees contribution on account of PF and ESI with concerned department on or before due date prescribed under relevant statutes – Not entitle to deduction [S. 2(24)(x), 139(1)]**

Tribunal held that failure to deposit entire amount towards employees contribution on account of PF and ESI with concerned department on or before due date prescribed under relevant statutes is not entitle to deduction. (AY. 2013-14)

Eagle Trans Shipping & Logistics (India) (P.) Ltd. v. ACIT (2019) 178 ITD 849 (Delhi)(Trib.)

442 **S. 36(1)(va) : Any sum received from employees – Deposited EPF and ESI contribution late but before due date of filing return – Entitle to deduction – Binding precedent – When decision of jurisdictional High Court is available on issue – Non jurisdictional High Court cannot be followed. [S. 139(1), Art. 227]**

Assessee deposited EPF and ESI contribution late but before due date of filing return. AO invoking provisions of S. 36(1)(va) made addition of that amount. CIT(A) upheld addition relying upon decision of Gujarat High Court in case of *CIT v. Gujarat State Road Transport Corp (2014) 366 ITR 170 (Guj.)(HC)* ignoring the jurisdictional High Court in *CIT v. Hemla Embroidery Mills (P) Ltd. (2014) 366 ITR 167 (Punj. & Har.)*

(HC). Tribunal held that when there is judgement of jurisdictional High Court for any authority within its territorial jurisdiction subjected to its superintendence, decision rendered by High Court is a binding precedent to be followed. (AY. 2013-14)
Gilco Exports Ltd. v. ACIT (2019) 178 ITD 865 (Chd.)(Trib.)

S. 36(1)(va) : Any sum received from employees – Delayed payment of employee's contribution to Provident fund is allowable as a deduction if the same is paid within the due of filing the Return of Income. [S. 139(1)] 443
Tribunal relying on the decision in *CIT v. Ghatge Patil Transports Ltd. (2014) 368 ITR 749 (Bom.)(HC)* held that delay in deposit of employees contribution which is deposited within the due date of filing the return of income was allowable as a deduction. (AY. 2011-12)
ACIT v. Sodexo Food Solutions India P. Ltd. (2019) 69 ITR 119 (Mum.)(Trib.)

S. 36(1)(vii) : Bad debt – Interest allowed – Entitle to claim write off of principal. [S. 36(2)] 444
Dismissing the appeal of the revenue the Court held that when the interest had been in allowed in the past and even in the relevant assessment year, the write off principal amount as bad debt is held to be justified. (AY. 2005-06, 2006-07, 2008-09)
CIT v. Nalwa Sons Investment Ltd. (2019) 416 ITR 263 (Delhi)(HC)

S. 36(1)(vii) : Bad debt – Waiver of right to receive sale consideration from director and family members – Avoid deadlock in management – Family settlement – Partition recognised u/s. 171 – Allowable as bad debt. [S. 171] 445
Dismissing the appeal of the revenue, the Court held that waiver of right to receive sale consideration from director and family members, as per family settlement which was recognised by passing order u/s. 171 and the amount was written off in the books of account. Tribunal was justified in allowing the debt as bad debts. (AY. 2003-04, 2004-05)
CIT v. Millennia Developers (P.) Ltd. (2019) 260 Taxman 142 / 307 CTR 226 / 174 DTR 282 (Karn.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Millennia Developers (P.) Ltd. (2019) 266 Taxman 186 (SC)

S. 36(1)(vii) : Bad debt – Held to be allowable though the principal amount debited never appeared as a debt on account of trade. 446
Following the order in ITA No 1024 of 2018 dt 13-08-2018, in assesses own case appeal of the revenue is dismissed. Order of Tribunal allowing the bad debt is affirmed wherein the Tribunal held that bad debt is held to be allowable though the principal amount debited never appeared as debt on account of trade. (AY. 2003-04)
PCIT v. Gujarat Lease Financing Ltd. (2019) 105 taxmann.com 156 263 Taxman 351 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Gujarat Lease Financing Ltd.

447 **S. 36(1)(vii) : Bad debt – Non-rural banks – written-off – Held to be allowable as deduction. [S. 36(1)(viia)]**
Bad debt written off of non-rural Bank is held to be allowable as deduction. Followed *Catholic Syrian Bank Ltd. v. CIT (2012) 343 ITR 270 (SC)*. (AY. 1996-97 to 2006-07)
Dhanalakshmi Bank Ltd. v. CIT (2019) 410 ITR 280 / 261 Taxman 521 / 177 DTR 48 / 177 DTR 48 (Ker.)(HC)

448 **S. 36(1)(vii) : Bad debt – Provisions for bad and doubtful debts – Reduced from advance account in the balance sheet allowable as deduction to the extent of write off. [S. 36(1)(viia)]**
Allowing the appeal of the assessee the Tribunal held that CIT(A) erred in combining the provisions of S. 36(1)(vii) and S. 36(1)(viia). Tribunal observed that CIT(A) considered only the provisions of bad and doubtful debts debited to profit and loss account and ignored the write off of bad debts debited to provisions for bad and doubtful debts and reduced from advance from the Balance Sheet which also constitutes write off. Accordingly, Tribunal remanded the issue back to the file of the AO for limited purpose of verifying the amount of write off debited to provisions of bad and doubtful debts and reduced from advance account in the balance sheet and allow the same as deduction to the extent of write off. (AY. 2012-13, 2014-15)
City Union Bank Ltd. v. ACIT (2019) 74 ITR 644 (Chennai)(Trib.)

449 **S. 36(1)(vii) : Bad debt – Provision for doubtful debts debited to P&L account also stands reduced from the trade receivables – Held to be allowable as bad debt.**
Tribunal held that from the appellant's balance sheet it can be seen that corresponding amount of the provision for doubtful debts debited by the appellant to P&L account also stands reduced from the Trade Receivables and thus, it held that in such a situation the assessee was entitled to the benefit of deduction under S. 36(1)(vii) of the Act, 1961 as there was actual write off by the assessee in the books. It relied on the Supreme Court judgement in *Vijaya Bank Ltd. v. CIT (2010) 323 ITR 166 (SC)* (ITA No. 6548/Mum/2017 dt 22-05-2019) (AY. 2012-13)
DCIT v. Asian Paints PPG Pvt. Ltd. (Mum.)(Trib.) (UR)

450 **S. 36(1)(vii) : Bad debt – Amounts written off as bad debts – Entitle to deduction. [S. 36(2)]**
Amounts written off as bad debts in its books of account from individual ledgers of borrowers/defaulters and the same is also reflected in the corresponding 'loans and advances (NPA) account" and 'interest receivable' accounts in the balance sheet, assessee was entitled to deduction. (AY. 2010-11)
Malad Sahakari Bank Ltd. v. DCIT (2019) 176 ITD 438 / 182 DTR 350 (Mum.)(Trib.)

451 **S. 36(1)(vii) : Bad debt – Deposits written off for premises taken on lease for business purposes was allowable as a deduction. [S. 36(2)]**
On appeal by the Department, the Tribunal observed that the premises for which the security deposits were given were used for business purposes and the AO, in the alternative, had opined that the said expenditure to be capital in nature which demonstrated that, the

genuineness of the same was not under doubt by the AO. Accordingly, it was held that as the expenditure did not bring into existence any new asset or benefit of enduring nature and expenses being incurred during the course of business, it was revenue in nature and allowable as a deduction to the Assessee. (AY. 2011-12)
ACIT v. Sodexo Food Solutions India P. Ltd. (2019) 69 ITR 119 (Mum.)(Trib.)

S. 36(1)(vii) : Bad debt – Suspension of trading activity on NSEL platform – Receivable from unrealised contract in commodities – Failure to produce documents to show that transactions undertaken by assessee were delivery based – Loss is held to be speculative which cannot be set off against business income – Matter remanded to AO to examine a fresh. [S. 37(1), 43(5)] 452

Assessee was engaged in commodity trading business on NSEL platform. It had entered into several contracts for buying and selling of commodities on NSEL platform. On account of scam that broke out at NSEL, trading activity on NSEL platform was suspended. Thus the, assessee written off certain amount against unrealised sum as bad debt. AO disallowed the claim on ground that transactions undertaken by assessee were in nature of derivative transactions and loss arising therefrom was in the nature of speculative loss which could not be set off against normal business income. Tribunal held that on perusal of sample contract notes available with assessee, it was seen that there was purchase of certain commodity and simultaneous sale of same quantity of commodity so purchased at same time and date of purchase. However, beside contract notes, there was nothing on record to suggest that transactions undertaken by assessee were delivery based transactions. Before allowing claim under S. 36(1)(vii), it was to be determined that transaction undertaken by assessee was delivery based transaction and not a speculative transaction and since, in instant case, aforesaid issue was not clear, matter was to be remanded back to file of AO to examine matter afresh. (AY. 2014-15)
ACIT v. A U Financiers (India) Ltd. (2019) 175 ITD 245 / 180 DTR 315 (Jaipur)(Trib.)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Bad debts written off in accounts is deductible – Determination of Rural branch is to be based on revenue records. 453

Court held that the assessee had actually written off the amounts. In such circumstances, it is only proper that the Assessing Officer verify the balance-sheet of the assessee, produced for the year and decide the question of deduction under S. 36(1)(vii). Followed *Vijay Bank v. CIT (2010) 323 ITR 166 (SC)*. For the determination of non-rural branches shall be only with reference to the revenue records and not solely on the basis of population in an area as demanded by the assessee-bank. The AO rightly computed 10 per cent. of the aggregate advances at ₹ 3,27,15,858. Thus, a total amount of ₹ 45,30,81,080 was arrived at as eligible for deduction. (AY. 2006-07)
Federal Bank Ltd. v. DCIT (2019) 417 ITR 694 / (2020) 269 Taxman 190 (Ker.)(HC)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Allowable only to the extent statutorily prescribed. 454

Dismissing the appeal the Court held that, bad debt written off in the books is allowable only to the extent statutorily prescribed. (AY. 1993-94, 1994-95)
South Indian Bank Ltd. v. CIT (2019) 410 ITR 50 (Ker.)(HC)

455 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Co-operative bank – Eligible for deduction of provision for doubtful debt and loss of assets to extent of 7.5 per cent of business income (computed before making any deduction under this clause and Chapter VIA) [S. 37(1)]**

Tribunal held that assessee Co-operative bank is eligible for deduction under S. 36(1)(viia) to extent of 7.5 per cent of total business income. However since doubtful debts and loss of assets of assessee bank were non-performing assets for a period of more than three years, same were essentially in nature of sticky loans and were to be considered for allowance under S. 37(1) of the Act. (AY. 2009-10)

Malad Sahakari Bank Ltd. v. DCIT (2019) 176 ITD 438 / 182 DTR 350 (Mum.)(Trib.)

456 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – A co-operative bank is entitled to claim deduction of bad debts provided in first part of S. 36(1)(viia)(a) being 7.5 per cent of total income even in absence of rural branches.**

Allowing the appeal of the assessee the Tribunal held that the assessee co-operative bank is entitled to the claim of deduction under S. 36(1)(viia) to the extent of 7.5 per cent of total income even in absence of rural branches. The deduction is allowable subject to satisfying the provisions of said section i.e. making a provision to that extent in the books of account.

[Circular No. 464, dt. 18-7-1986 (1986) 161 ITR 66 (St.)] (AY. 2007-08, 2009-10, 2011-12, 2012-13)

Bhagini Nivedita Sahakari Bank Ltd. v. DCIT (2019) 174 ITD 303 / 176 DTR 329 (Pune)(Trib.)

457 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule Bank – Kerala State Electricity Board is not entitled to deduction of provision created for bad and doubtful debts though such provision is created based on guidelines issued by RBI. [S. 36(1)(vii)], 36(2)]**

Kerala State Electricity Board is not entitled to deduction of provision created for bad and doubtful debts, though such provision is created based on guidelines issued by RBI. (AY. 2009-10)

ACIT v. Kerala State Electricity Board (2019) 174 ITD 21 / 69 ITR 207 / 176 DTR 1 / 198 TTJ 913 (Cochin)(Trib.)

458 **S. 36(1)(viii) : Eligible business – Special reserve – Providing long – term finance for Infrastructure Projects and facilities – Provision for bad and doubtful debts – Held to be allowable. [S. 36(1)(viia)(c)]**

Allowing the appeal of the assessee the Court held that it was an admitted fact that the assessee fell within the definition of a "specified entity" and it carried on "eligible business" as provided under S. 36(1)(viii). Clauses (i) to (ix) of S. 36(1) did not imply that those deductions depended on one another. If an assessee was entitled to the benefit under clause (i) of S. 36(1), it could not be deprived of the benefits of the other clauses. This is how the provision was arrayed. The computation of amount of deduction under both these clauses had to be independently made without reducing the total income by deduction under S. 36(1)(viii). (AY. 2002-03)

Infrastructure Development Finance Co. Ltd. v. ACIT (2019) 412 ITR 115 / 262 Taxman 483 (Mad.)(HC)

S. 36(1)(viii) : Eligible business – Special reserve – Development of housing – Long term finance – Construction/purchase of residential houses – Not entitled to deduction in respect of income from loans given for individual residential houses. 459

The assessee claimed deduction in respect of special reserve under S. 36(1)(viii) of the Act. The AO disallowed the claim of the assessee holding that the assessee had not advanced any loan as long-term finance for development of housing in India, industrial or agricultural development or development of infrastructure facility in India. CIT(A) held that the construction/purchase of individual houses does not tantamount to housing development. Hence, he upheld the action of the AO insofar as the disallowance of the claim of the assessee for advances given for development of housing is concerned under S. 36(1)(viii). Tribunal affirmed the order of CIT(A). (AY. 2012-13)

South Indian Bank Ltd. v. ACIT (2019) 176 ITD 309 (Cochin)(Trib.)

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 judgment after giving an opportunity to the respective assesses. [S. 40A(2), Sugarcane (Control) Order 1966 clauses, 3, 5A] 460

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 decision 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 the 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 judgment after giving an opportunity to the respective assesses. (AY. 1998-99)
CIT v. Tasgaon Taluka Sahakari Sakhar Karkhana Ltd. (2019) 103 taxmann.com 57 / 262 Taxman 176 / 412 ITR 420 / 307 CTR 473 / 175 DTR 345 (SC), www.itatonline.org

461 **S. 37(1) : Business expenditure – Capital or revenue – Pre-Operative expenses – Expenditure incurred on estimate basis could be reduced from dividends – Transfer pricing adjustment to consultancy charges – High Court has failed to independently evaluate the merits – Matter remanded to High Court for fresh consideration. [S. 80M, 92C]**
Allowing the appeal of the revenue the Court held that, whether pre operative expenses allowable as revenue expenses, whether the expenditure incurred on estimate basis could be reduced from dividends and whether transfer pricing adjustment to consultancy charges is justified or not, as the High Court has failed to independently evaluate the merits the departmental appeals, the matter remanded to High Court for consideration afresh. (AY. 2003-04 to 2006-07)
CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466 / 175 DTR 1 / 307 CTR 121 / 261 Taxman 164 (SC)
Editorial : Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd. (ITA Nos 1550 / 1592 / 1775 and 1881 of 2014 dt. 22-08-2017 is reported as (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

462 **S. 37(1) : Business expenditure – Expenditure on temporary structure – Provision for deferred liability – Held to be allowable. [S. 115JB]**
Dismissing the appeal of the revenue the Court held that, expenditure on temporary structures, provisions made for directors' retirement benefit, liability arising out of voluntary retirement scheme etc. is held to be allowable expenditure. Deletion of addition in respect of provision for deferred tax liability holding that the addition resulted into double disallowance is also affirmed. (Arising out of ITA No. 3787/Mum/2009 dt. 29/07/2015) (ITA No. 1658 of 2016, dt. 04/03/2019) (AY. 2002-03)
CIT v. ACC Ltd. (2019) 112 taxmann.com 402 (Bom.)(HC)
Editorial: SLP of revenue is dismissed, CIT (LTU) v. ACC Ltd. (2019) 418 ITR 9 (St) (SC)/ (2020) 269 Taxman 14 (SC)

463 **S. 37(1) : Business expenditure – Volckar Committee Report – Commission paid to Iraqi Government agency for purchase of oil – Held to be allowable expenditure.**
Assessee had purchased oil from Iraq and payments were made by an agent, there being no evidence to suggest that assessee had made any illegal commission payment to Oil Market Organization of Iraqi Government as alleged in Volckar Committee Report, Tribunal's order allowing payment for purchase of oil was to be upheld. There was no evidence that assessee had paid any illegal commission, there was no finding that assessee had made illegal payments and that payments were made by an agent. Since entire issue was based on appreciation of evidence, hence claim is held to be allowable. (Arising out of ITA No. 1347/Mum/2011 dt. 24/04/2015) (ITA No. 1024 of 2016, dt. 15/01/2019)
CIT v. Reliance Industries Ltd (2019) 102 taxmann.com 142 (Bom.)(HC)
Editorial: SLP of revenue is dismissed (SLP No. 16937 of 2019 dt. 19/07/2019) (2019) 416 ITR 124 (St.)(SC)

S. 37(1) : Business expenditure – Legal expenses incurred to protect the directors for complaint filed against them in individual capacity – Not allowable as business expenditure. 464

Dismissing the appeal of the assessee the Court held that the Company was no way involved in the legal proceedings taken against the Directors/share holders in their individual capacities. Accordingly the Tribunal is right in holding that legal expenses incurred to protect the directors for complaint filed against them in individual capacity is not allowable as business expenditure. (ITA No. 1166 to 1172 dt. 6-11-2019) (AY. 2005-06 to 2009-10)

National Refinery Pvt. Ltd. v. ACIT (2019) CTCJ-December-P. 153 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Different treatment in accounts and computation – Allowable as revenue expenditure. [S. 145] 465

Dismissing the appeal of the revenue, held that merely because the assessee has shown capital expenditure in accounts and claimed as revenue in the return, claim of assessee cannot be disallowed. Order of Tribunal is affirmed. Followed *CIT v. Reliance Footprint Ltd.* (ITA No. 948 of 2014 dt. 5-07-2017. (Arising out of ITA No. 1661/Mum/2013 dt. 13-07-206) (ITA No. 985 of 2017 dt. 17-11-2019 (AY. 2008-09)

Reliance Fresh Ltd. v. ACIT (2019) BCAJ-November-P 56 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Proportionate rent and lease premium – Held to be revenue expenditure. 466

Allowing the appeal of the assessee the Court held that the decision relied on by the Tribunal in *JCIT v. Mukund Ltd. (2007) 106 ITD 231 (SB) (Mum.)(Trib.)* is perverse and not applicable to the facts of the appellant. Special Bench of the Tribunal gave its view regarding advance payment of rent to be capital expenditure on findings, *inter alia*, that there was termination clause, by which premature termination did not provide for refund of premium, claimed to be advanced rent. There was no clause in the agreement to show that the amount of ₹ 2.04 crore was paid by the assessee as advance rent for all future years and the lump sum payment of future years rent had been paid to avail some concession for advance payment of rent or for some other business consideration. It is clear from the facts and perusal of terms of leases between assessee and its lessors, such terms are not there between them. Accordingly the ratio is not applicable. That substantial amount of money was paid as premium, claimed and shown by assessee to be advance rents and where rents reserved are as above, it follows there was no contention raised before the Tribunal regarding the rents reserved corresponding to market rate of rent. Accordingly the Court held that rents reserved are depressed rents. (AY. 2008-09)

Balmer lawrie & Co. Ltd. v. CIT (2019) 310 CTR 724 / 181 DTR 401 (Cal.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Foreign currency convertible Bond – (FCCB) issuing expenses – Held to be allowable as revenue expenses. 467

Dismissing the appeal of the revenue the Court held that expenses incurred on issue of Foreign currency convertible Bond (FCCB) for raising loan is held to be revenue expenditure. (AY. 2007-08)

PCIT v Reliance Natural Resources Ltd. (2019) 267 Taxman 644 (Bom.)(HC)

468 **S. 37(1) : Business expenditure – Raising loan – Capital or revenue – Expenses for issuing Foreign Convertible Bond only on interpretation of DTAA – Question of law [S. 260A]**

Revenue urged the following question of law for consideration;

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of expenses of ₹ 28 58, 28, 246 / on the issue of Foreign Currency Convertible Bond without appreciating the fact that expenses were incurred for the issue of FCCB of ₹ 1304.13 Crores which is capital in nature" ?

Question of law is admitted. (ITANO. 623 of 2017 dt. 26-08-2019) (AY. 2007-08)

PCIT v. Reliance Natural Resources Ltd. (2019) 267 Taxman 644 (Bom.)(HC)

469 **S. 37(1) : Business expenditure – Deferred expenditure – No concept of deferred revenue expenditure – Expenditure is allowable as deduction.**

Dismissing the appeal of the revenue the Court held that there is no concept of deferred expenditure hence it is not open to the AO to defer expenses over a period of time. Order of tribunal is affirmed. (AY. 2009-10)

PCIT v. Manugraph India (P) Ltd. (2019) 267 Taxman 437 (Bom.)(HC)

470 **S. 37(1) : Business expenditure – Compensation paid is held to be not allowable – Payment was held to be not genuine – No question of law. [S. 260A]**

Dismissing the appeal the Court held that regarding the sum of ₹ 6,00,60,000 the entire issue was based on appreciation of materials on record. The two revenue authorities and the Tribunal had concurrently come to the conclusion that the claim of expenditure was not genuine. There were major discrepancies in the accounts and the documents presented by the assessee in relation to such claim. Regarding the expenditure of ₹ 4.07 crores also, the AO, the CIT(A) and the Tribunal held that it was not genuine expenditure. Here also the entire issue was based on appreciation of materials on record. The Revenue authorities and the Tribunal concurrently held that the payments were not genuine. The expenditures were not deductible. No question of law arose from the order of the Tribunal. (AY. 2009-10)

Rajkumari Suniel Mutha (Smt.) v. ITO (2019) 417 ITR 295 / (2020) 269 Taxman 70 (Bom.) (HC)

471 **S. 37(1) : Business expenditure – Contribution to State Government towards construction of a bridge – Allowable as revenue expenditure.**

Assessee made a contribution to State Government who had asked mining companies to contribute towards construction of a bridge which would be used by them for transportation of their goods and claimed as revenue expenditure. AO treated the said expenditure as capital expenditure which was upheld by the CIT(A). Tribunal allowed the expenditure as revenue expenditure. On appeal by the revenue High Court upheld the view of the Tribunal. (AY. 2008-09)

CIT v. Salgaocar Mining Industries (P.) Ltd. (2019) 265 Taxman 317 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Fixing of MS sliding gates, different pipes for sprinkler system in main ground, excavation of soil, purchasing of LED replay screen, electric materials etc., for upgrading stadium in accordance with ICC Standards, is revenue in nature. 472

Dismissing the appeal of the revenue the Court held that, expenditure incurred for renovation and interior work of stadium, construction of foundation of camera, staircase, control room, fabrication and erection of structural steels, fixing of MS sliding gates, different pipes for sprinkler system in main ground, excavation of soil, purchasing of LED Reply screen, electric materials etc., for upgrading stadium in accordance with ICC standards, was revenue in nature as assessee did not create a new asset or create a source of enduring benefit and expenditure was for upgradation of existing facilities is revenue in nature. (AY. 2007-08)

PCIT v. Cricket Club of India (2019) 265 Taxman 95 (Bom.)(HC)

S. 37(1) : Business expenditure – Liquidated damages – Compensation for breach of contract where penalty stipulated – section covers cases where amount paid in case of breach – Liability crystallized and cannot be contingent in nature – Allowable as deduction. [Indian Contract Act, 1872, S. 73, 74] 473

Assessee claimed a sum of ₹ 2.38 cr by way of expenses in the nature of liquidated damages as such liability arose out of execution of a contract with HPCL. The contract contained a clause of payment where vendor was liable to pay 0.5% of the total contract value for every week subject to maximum of 5% of the total contract value in case execution of work got delayed. AO disallowed the claim treating the liability as contingent. The tribunal relying on *Bharat Earth Movers Ltd v. CIT (2000) 245 ITR 425 (SC)* allowed the claim of the assessee. The HC held that delay being on the assessee's part the liability had crystalized and it cannot be said to be contingent in nature. Further, S. 74 of the Indian Contract Act ('ICA') does not limit its applicability to penalty stipulated in the contract but would cover cases where amount is paid in case of a breach of contract and reference to S. 73 of ICA would not apply at all as the issue is covered by S. 74 of the ICA. Hence, revenue's appeal was dismissed. (AY. 2007-08)

PCIT v. Atos India P. Ltd. (2019) 179 DTR 41 / 104 CCH 605 (Bom.)(HC)

S. 37(1) : Business expenditure – Year of allowability of expenditure – Method of accounting – Rate of tax is same in both assessment years – Question academic – No question of law. [S. 145, 260A] 474

Court held that the highest rate of Income-tax attracted to both the assessment years 2010-11 and 2011-12 was uniform. Since the rate of Income-tax in the assessment years 2010-11 and 2011-12 was uniform, it was of no consequence to the Revenue whether to allow the expenditure in the assessment year 2010-11 or 2011-12. No question of law. Followed *CIT v. Nagri Mills Co. Ltd. (1958) 33 ITR 681 (Bom.)(HC), CIT v. Aditya Builders Ltd. (2015) 378 ITR 75 (Bom.)(HC), CIT v. Triveni Engineering and Industries Ltd. (2011) 336 ITR 374 (Delhi)(HC), CIT v. Gujarat State Forest Development (2007) 288 ITR 28 (Guj.) (HC).* (AY. 2011-12, 2012-13)

PCIT v. Rajesh Prakash Timblo (2019) 415 ITR 334 / (2020) 185 DTR 34 (Bom.)(HC)
PCIT v. Vidya Rajesh Timblo (2019) 415 ITR 334 / (2020) 185 DTR 34 (Bom.)(HC)

475 **S. 37(1) : Business expenditure – Cash credits – Bogus purchases – Despite admission by the assessee that the purchases were mere accommodation entries, the entire expenditure cannot be disallowed. Only the profit embedded in the purchases covered by the bogus bills can be taxed. The GP rate disclosed by the assessee cannot be disturbed in the absence of incriminating material to discard the book results. [S. 68, 69, 143(3)]**

The AO had made the addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore added to the assessee's income. The Tribunal, however, restricted the said sum to ₹ 2,21,600/-. The Tribunal recorded that the AO has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases. On appeal the High Court held that the Tribunal held that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With the above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. Accordingly the order of Tribunal is affirmed. (ITA No. 413 of 2017, dt. 15.07.2019) (AY. 2005-06)

PCIT v. Paramshakti Distributors Pvt. Ltd. (Bom.)(HC), www.itatonline.org

476 **S. 37(1) : Business expenditure – Cost of print and publicity – cost of production – Feature films – Expenditure were incurred after production and certification of film by Censor Board was received – Not governed by Rule 9A – Allowable as revenue expenditure. [R. 9A 9B]**

AO held that expenditures were incurred by the assessee after issuance of certificate of Censor Board and, hence, he disallowed the assessee's claim holding that such expenditure was not allowable deduction in terms of rule 9A and rule 9B. CIT(A) held that any expenditure which was not allowable under rule 9A could not be granted in terms of S. 37(1) of the Act. Tribunal allowed the claim of the assessee. On appeal by the revenue the Court held that expenditure on cost of print and publicity were incurred after production and certification of film by Censor Board was received. Accordingly the said expenditure is not governed by Rule 9A hence allowable as revenue expenditure. Court also held that even if the Commissioner's contention that the expenditure would fall within rule 9A has to be accepted, there would be no implication of the assessee's tax liability, since in the instant case, the feature film was exhibited long before the completion of 90 days period before the end of financial year. Even as per rule 9A, such expenditure was otherwise allowable. Be that as it may, on interpretation of the relevant statutory provisions, the Tribunal is absolutely correct. (AY. 2006-07, 2009-10)

CIT v. Dharma Productions (P.) Ltd. (2019) 263 Taxman 585 / 308 CTR 809 / 177 DTR 321 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Amount forfeited by seller upon failure to pay full instalments within stipulated time period would be capital expenditure. [S. 28(i)] 477

Dismissing the appeal of the assessee the Court held that the Amount forfeited by seller upon failure to pay full instalments within stipulated time period in respect of a windmill plant for power generation would be capital expenditure. (AY. 2009-10)

Nandkishor Motilal Shah v. CIT (2019) 415 ITR 429 / 263 Taxman 36 (Bom.)(HC)

S. 37(1) : Business expenditure – Year of deduction – Slum development expenditure – Contingent upon authority giving vacant possession of plot – Authority was unable to hand over vacant possession of land – Disallowance of expenditure is held to be justified. [S. 145] 478

Assessee claimed deduction for expenditure towards liability to carry out construction free of cost. Tribunal held that assessee's liability was contingent upon authorities being able to give vacant possession of portion of plot on which such construction would be carried out while record suggested that such portion was occupied by slum dwellers who were resisting their eviction and whatever be reason, Slum Rehabilitation Authority was unable to put assessee on vacant possession in said area for years together. Since liability was contingent and same was not crystallized, same would not be allowed as expenditure. On appeal the High Court affirmed the view of the Tribunal. (AY. 2010-11)

Grace Shelter v. ACIT (2019) 262 Taxman 423 (Bom.)(HC)

S. 37(1) : Business expenditure – Financial services – Sub-brokerage – Disallowance of 10% sub brokerage is held to be justified. 479

Assessee, engaged in business of fee based corporate financial services, claimed sub-brokerage expenses of certain amount. AO disallowed entire expenses as non genuine. Tribunal restricted disallowance to extent of 10 per cent of total expenditure. On appeal the revenue contended that there should be 20 per cent disallowance of expenditure for reason that in a subsequent assessment year 20 per cent of sub-brokerage expenditure was disallowed and same was accepted by assessee. Dismissing the appeal of the revenue the Court held that the volume of business in subsequent assessment year, was not comparable to volume of business in assessment years under consideration. (AY. 2007-08, 2009-2010)

PCIT v. Paramount Financial Services (2019) 261 Taxman 128 (Bom.)(HC)

S. 37(1) : Business expenditure – Illegal Commission – Volcker Committee Report – No finding that the assessee had made payment – Deletion of addition held to be justified. 480

Assessee claimed deduction towards payment for purchase of oil. Revenue claimed that assessee had paid illegal commission to State Oil Marketing Organization, an Iraqi government agency for purchase of oil; therefore, such expenditure was not allowable. However, CIT(A) observed that except for Volcker Committee Report there was no evidence that assessee had paid any such illegal commission, that even in said report, there was no finding that assessee had made illegal payments and that payments were made by an agent. Tribunal confirmed view of CIT(A). Dismissing the appeal of the revenue the Court held that since the entire issue was based on appreciation of

evidence, no question of law arose for consideration from the Tribunal's order allowing payment for purchase of oil. (AY. 2002-03)
CIT-LTU v. Reliance Industries Ltd. (2019) 261 Taxman 283 (Bom.)(HC)

481 **S. 37(1) : Business expenditure – Capital or revenue – Repair and renovation is held to be revenue expenditure. [S. 30]**
Dismissing the appeal of the revenue the Court held that the expenditure incurred towards repairs and renovation of its hotel properties such as dismantling mangalore tiles, laying laterite stones, laying plaster, plaster of paris and painting, waterproofing, replacement of tiles and plumbing was an allowable revenue expenditure. (AY. 2008-09)
PCIT v. Goa Tourism Development Ltd. (2019) 261 Taxman 500 (Bom.)(HC)

482 **S. 37(1) : Business expenditure – Consultancy charges – Statement – Retraction – Merely on the basis of statement recorded in the course of search, which was retracted – No disallowance can be made without bringing on record independent material. [S. 132(4)]**
Dismissing the appeal of the revenue the Court held that, merely on the basis of statement recorded in the course of search, which was retracted, within a short time by filing an affidavit. Subsequently his further statement was recorded he reiterated the stand taken in affidavit. Court held that no disallowance of consultancy charges can be made without bringing on record independent material.
CIT v. Reliance Industries Ltd. (2019) 261 Taxman 358 (Bom.)(HC)
Editorial : SLP is granted to the revenue, CIT v. Reliance Industries Ltd. (2019) 418 ITR 13 (St) (SC)

483 **S. 37(1) : Business expenditure – Expenditure incurred for any purpose which is an offence or which is prohibited by law – Custom redemption fine is held to be not allowable as deduction, in view of explanation I to S. 37(1) of the Act. [S. 69C]**
Allowing the appeal of the revenue, the Court held that customs redemption fine is held to be not allowable as deduction in view of explanation 1 to S. 37(1) of the Act, on concept of expenditure incurred for any purpose which is an offence or which is prohibited by law. Court held that there was ample evidence on record suggesting that assessee had made imports through his direct involvement by using import licence of Rajnikant Brothers and that Ranjikant Brothers was only entitled to service charges and further redemption fine was paid by assessee, assessee could not not disassociate or divest himself from irregularities or illegalities committed in process of importing goods and penalty was levied for infraction of law committed by assessee. Under these circumstances, redemption fine was not an allowable business expenditure. Ratio laid down in *Hazi Aziz & Abdl. Shakoor Bros v. CIT (1961) 41 ITR 350 (SC)* continues to hold the field even post decisions in the case of *Prakash Cotton Mills Pvt. Ltd. v. CIT (1993) 201 ITR 684 (SC)* and *CIT v. Ahmedabad Cotton Mfg. Co. Ltd. (1994) 205 ITR 163 (SC)*. In neither of these two decisions, the ratio laid down in Hazi Aziz, which was a decision of Bench of three Judges,

has been diluted (*CIT v. Pannalal Narottamdas & Co. (1968) 67 ITR 667 (Bom.)(HC)* distinguished) (AY. 1988-89)
PCIT v. Sushil Gupta Legal Representative of Late Mahvir Prasad Gupta (2019) 262 Taxman 41 / 102 taxmann.com 409 / 175 DTR 385 / 307 CTR 681 (Bom.)(HC) www.itatonline.org

S. 37(1) : Business expenditure – Deputation and other cost – Hotel management and marketing fees – Reasonable and necessary to run business – Held to be allowable. 484
Dismissing the appeal of the revenue, held that the expenditure on deputation and cost on Hotel management and marketing fees being reasonable and necessary to run business, allowable as business expenditure. (AY. 2004-05, 2005-06)
PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16 / 411 ITR 595 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Purchase of software – Held to be revenue expenditure. 485
Dismissing the appeal of the revenue the Court held that payment made for acquisition of software utilized for assessee's existing business is revenue expenditure as the US Company has granted license for use of software only in India for limited right of user, without any right to sub license and the software require upgradation or replacement. (AY. 1998-99)
CIT v. Global Tele-Systems Ltd. (2019) 183 DTR 381 (Bom.)(HC)

S. 37(1) : Business expenditure – Amortized premium on investment in govt. Securities held under category "Held to Maturity" (HTM) is held to be revenue expenditure. 486
Dismissing the appeal of the revenue the Court held that amortized premium on investment in govt. Securities held under category "Held to Maturity" (HTM) is held to be revenue expenditure. Followed *CIT v. Thane Bharat Sahakari bank Ltd.* (ITA No. 1117 of 2013 dt. 17-03-2015) ITA No. 1003 of 2016 dt. 29-01-2019.
PCIT v. Laxmi Co-Operative Bank Ltd. (Bom.)(HC)(UR)

S. 37(1) : Business expenditure – Consultancy services – Foreign travelling expenditure of representative – Allowable as business expenditure. 487
Dismissing the appeal of the revenue the Court held that foreign travelling expenditure of representative for expansion of existing business is held to be allowable as business expenditure.
PCIT v. Business Match Services (I) (P.) Ltd. (2019) 260 Taxman 190 (Bom.)(HC)

S. 37(1) : Business expenditure – Joint Venture with State Industrial Corporation – Subsequent winding up of joint venture company – Amount paid as guarantor under the Scheme of BIFR is held to be allowable as deduction. 488
AO held that the liabilities of GPEL could not be treated as business expenditure of the assessee and disallowed the deduction. On appeal the CIT(A) allowed the relief mainly on the basis that it was a legitimate business decision. The joint venture entered into by the assessee-company was with the Government of Gujarat and it was not an arrangement to siphon off the money and the payments had been made in terms of the

settlement approved by BIFR. Order of CIT(A) was up held by the Tribunal. On appeal the Tribunal held that the assessee, as part of implementation of a scheme accepted by the Board for Industrial and Financial Reconstruction had to clear the debt of GPEL as guarantor. The Revenue was not disputing the entries in the books of account and the circumstances considered either by the CIT(A) or the Tribunal. The deduction is held to be justified. (AY. 2001-02, 2002-03)
CIT v. Apollo Tyres Ltd. (2019) 419 ITR 100 (Ker.)(HC)

489 **S. 37(1) : Business expenditure – Capital or revenue – Lease premises – Interior decoration – Capital expenditure – Depreciation is allowable. [S. 32]**
Assessee, running a travel agency, took a premises on lease for carrying out its business operations. During relevant year, assessee incurred certain expenses on interior decoration and office equipments. Assessee claimed deduction of said expenses under S. 37(1). AO rejected assessee's claim on ground that said expenditure was capital in nature and allowed depreciation. Tribunal allowed assessee's claim for business expenditure. On appeal by the revenue the Court held that since expenses were fixed and capital in nature, in terms of Explanation 1 to S. 32, it became immaterial as to whether assessee was owner of premises or it was taken on lease. Accordingly the order of the Tribunal is upheld. (AY. 2003-04)
CIT v. ETA Travel Agency (P.) Ltd. (2019) 266 Taxman 303 (Mad.)(HC)

490 **S. 37(1) : Business expenditure – Contribution to recognized provident fund – Payment of pension to retired employees which had been duly approved and notified by Central Government under 'Tuticorin' Port Trust Employees Regulations, 1979. Said payment being in terms of statutory regulation, would fall within general deductions under S. 37(i) and, same could not be brought under S. 36(1)(iv) and (v) of the Act. [S. 36(1)(iv), 36(1)(v)]**
During relevant year, assessee claimed deductions of amount contributed to recognised pension and gratuity fund under S. 36(1)(iv) and 36(1)(v) respectively. Apart from that, assessee also claimed deduction under S. 37(1) towards actual pension payments made to employees in assessment year in question. AO held that when deduction was allowed towards contribution to recognised superannuation funds, deduction claimed in respect of actual payment is not allowable. CIT(A) held that assessee had actually made monthly pension payments to its retired employees to fulfil statutory obligation and therefore, same could not be denied deduction. Tribunal confirmed the order passed by CIT(A). Court held that the payment of pension to retired employees had been duly approved and notified by Central Government under 'Tuticorin' Port Trust Employees Regulations, 1979. On facts, nature of deduction claimed by assessee in respect of payments made in terms of said statutory regulation would fall within general deductions under S. 37(1) of the Act and same could not be brought under purview of S. 36(1)(iv) and 36(1)(v) of the Act. (AY. 2009-10, 2010-11)
CIT v. V.O. Chidambaranar Port Trust (2019) 266 Taxman 141 / 311 CTR 227 (Mad.)(HC)

S. 37(1) : Business expenditure – Illegal payments – Payment made to the excise department for failure to comply with the direction – Held to be not penal in nature – Explanation 1 to S. 37(1) of the Act is not applicable. [Rajasthan Excise Act, 1950] 491

Assessee is engaged in business of manufacturing of ENA (Extra Neutral Alcohol) and Rectified Spirit. It gave an affidavit to Excise department that excise verification issued by Excise Authority of importing State would be submitted within 90 days of exporting ENA from its distillery. Assessee failed to comply with said condition, it had to make certain payment to State Excise Authority in response to demand notice issued by District Excise Officer. AO held that said payment was penal in nature and disallowed the same by invoking Explanation 1 to S. 37(1) of the Act. Tribunal allowed the claim. High Court up held the order of the Tribunal.

PCIT v. Agribiotech Industries Ltd. (2018) 92 taxmann.com 371 (Raj.)(HC)

Editorial : SLP is granted to the revenue; PCIT v. Agribiotech Industries Ltd. (2020) 269 Taxman 204 (SC)

S. 37(1) : Business expenditure – Expenditure on scientific research – Contribution made to Institute of Road Transport – Though S. 35(1)(ii) is referred – Weighted deduction not claimed – Held to be allowable. [S. 35(1)(ii)] 492

Dismissing the appeal of the revenue the Court held that both lower authorities had rightly allowed the claim and question of applying S. 35(1)(ii) to said contributions did not arise, since assessee had not claimed weighted deduction for one and half times of actual expenses. (AY. 1991-92, 1992-93)

CIT v. Tamilnadu State Transport Corporation (Madurai) Ltd. (2019) 179 DTR 161 (Mad.) (HC)

S. 37(1) : Business expenditure – Legal settlement expenses – Capacity as managing director of the company – Not allowable as business expenditure of the company in his capacity as an advocate against professional income. 493

Assessee was a managing director of Company Indian Magnetics Ltd. He stood personal guarantee in respect of loan taken by company. On account of default in repayment of said loan, assessee in capacity of lawyer, entered into settlement with banks and paid agreed amount. Assessee claimed deduction of legal expenses in respect of aforesaid settlement against income generated through legal profession. AO rejected the claim on ground that said expenditure was of personal nature. Order of the AO is up held by the Tribunal. High Court affirmed the order of the Tribunal. Followed *Shanti Bhushan v. CIT (2011) 11 taxmann.com 181 (Delhi)(HC)*.

Satinder Kapur v. ACIT (2019) 110 taxmann.com 24 / 266 Taxman 378 (Delhi)(HC)

Editorial : SLP of the assessee is dismissed; Satinder Kapur v. ACIT (2019) 266 Taxman 377 (SC)

S. 37(1) : Business expenditure – Social responsibility – Agreement with State Government to construct houses for poor people affected by floods – Held to be allowable on commercial expediency. 494

Allowing the appeal of the assessee the Court held that the assessee was carrying on the business of iron ore and also trading in iron ore. Thus, day in and day out the

assessee would be approaching the appropriate Government and its authorities for grant of permits, licences and as such the assessee in its wisdom and as a prudent business decision had entered into a memorandum of understanding with the Government of Karnataka and incurred the expenditure towards construction of houses for the needy persons, not only as a social responsibility but also keeping in mind the goodwill and benefit it would yield in the long run in earning profit which was the ultimate object of conducting business and as such, expenditure incurred by the assessee would be in the realm of business expenditure. The amounts were deductible. (AY. 2011-12, 2012-13)
Kanhaiyalal Dudheria v. JCIT (2019) 418 ITR 410 / 310 CTR 617 / (2020) 269 Taxman 170 (Karn.)(HC)

495 **S. 37(1) : Business expenditure – Expenditure on higher education of daughter of Director – Higher education is not related to business of the appellant company – Not allowable as deduction.**
Dismissing the appeal the Court held that, expenditure on higher education of daughter of Director is held to be not allowable as deduction, as the higher education is not related to business of the appellant company. In the first round of appeal the Tribunal has remanded the matter to the file of AO to verify the issue, however the appellant has not produced any evidence to support the claim. (AY. 2001-02 to 2004-05)
JBM Industries Ltd. v. DCIT (2019) 418 ITR 502 / 182 DTR 457 / 267 Taxman 411 / 311 CTR 173 (Delhi)(HC)

496 **S. 37(1) : Business expenditure – Capital or revenue – Insurance premium on purchase of new car – Held to be revenue expenditure.**
Dismissing the appeal of the revenue the Court held that the insurance premium paid by the assessee towards purchase of the new car was revenue in nature, and should be allowed in the year in which it was incurred. (AY. 2011-12)
PCIT v. Shah Virchand Govanji Jewellers Pvt. Ltd. (2019) 418 ITR 472 (Guj.)(HC)

497 **S. 37(1) : Business expenditure – Commission paid to directors – Allowed in earlier years – Principle of consistency is followed – Appeal of revenue is dismissed.**
Dismissing the appeal of the revenue the Court held that the payment of commission made by the assessee company to its directors had been allowed for five continuous assessment years. Nothing had been pointed out to show that the position had changed in the year under consideration. Order of Tribunal is affirmed. Followed *CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC), CIT v. Dalmia Promoters and Developers (2015) 5 ITR-OL 277 (SC)* (CA No. 74 of 277 dt. 16-09-2015). (AY. 2011-12)
PCIT v. Shah Virchand Govanji Jewellers Pvt. Ltd. (2019) 418 ITR 472 (Guj.)(HC)

498 **S. 37(1) : Business expenditure – Construction business – Expenditure incurred subsequent to sale of building – Held to be allowable as revenue expenditure. [S. 145]**
Dismissing the appeal of the revenue the Court held that assessee which is engaged in the business of construction and sale of residential and commercial building complexes incurred expenditure for completing its construction during financial year subsequent to sale of building, such expenditure was liable for deduction. Court held that in order

to claim deduction of business expenditure, it is not necessary that amount has been actually paid or expended during relevant accounting year itself and it is sufficient that liability for payment had incurred or accrued during the relevant accounting year and actual payment of amount or discharge of liability may occur in future. (AY. 2009-10)
CIT v. Oberon Edifices & Estates (P.) Ltd. (2019) 267 taxman 118 / 311 CTR 815 / 184 DTR 56 (Ker.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Non-compete fee – Agreement was only for 18 months – Allowable as revenue expenditure. 499
Assessee is engaged in business as Registrar and Transfer Agent licensed by SEBI. It entered into a non-compete agreement and the tenor of agreement was only 18 months. AO treated the payment as capital in nature. Tribunal allowed the claim as revenue in nature. On appeal by the revenue the Court held that it could not be stated that assessee derived any enduring benefit due to payment effected by it to said person for obtaining certain commitments and restricting himself from indulging in any competition with business of assessee or from weaving away employees. therefore, non compete fee had to be treated as a revenue expenditure. Followed *Asianet Communications Ltd v. CIT 2018) 407 ITR 706 (Mad.)(HC)*. (AY. 2014-15)
CIT v. Computer Age Management Services (P.) Ltd. (2019) 267 taxman 146 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure for obtaining Licence to operate telecommunication services – Held to be revenue expenditure. [S. 35ABB] 500
Dismissing the appeal of the revenue the Court held that Expenditure for obtaining Licence to operate telecommunication services is held to be revenue expenditure. Followed *CIT v. Bharati Hexacom Ltd. (2019) 417 ITR 250 (Delhi)(HC)*
CIT v. Bharti Telemedia Ltd. (2019) 417 ITR 248 (Delhi)(HC)

S. 37(1) : Business expenditure – Once prior period income is held to be taxable, prior period expenses are held to be allowable. [S. 145] 501
Dismissing the appeal of the revenue the Court held that the only requirement under S. 37 of the Income-tax Act, 1961 is that the expenses (not capital or personal) should be incurred for the purposes of the business or profession. There is no need to demonstrate that a certain expense relates to a particular income in order to claim such expense. Once prior period income is held to be taxable, prior period expenditure also should be allowed to be set off and the assessee is not obliged in law to indicate any direct or indirect nexus between the prior period income and prior period expenditure. (AY. 2006-07)
PCIT v. Dishman Pharmaceuticals and Chemicals Ltd. (2019) 417 ITR 373 (Guj.)(HC)

S. 37(1) : Business expenditure – Contribution to death relief fund for employees – Entitled to deductions. [S. 40A(9)] 502
The assessee had claimed certain amounts paid to the Labour Welfare Association as allowable under S. 37(1) of the Act. The AO disallowed the claim which was affirmed by Tribunal. On appeal the High Court held that the contribution made by the employer to the Death Relief Fund was an allowable business expenditure in terms of S. 37(1)

in so far as the expenditure was incurred wholly and exclusively for the welfare of its employees and was for the purposes of the business. Similar contributions made by the assessee towards labour welfare had been accepted by the Revenue and no distinguishing features had been brought out before the High Court to persuade it to take a different view in the case of this contribution. The amount contributed was deductible. (AY. 1991-92 to 1995-96, 1998-99)
Madura Coats P. Ltd. v. DCIT (2019) 417 ITR 115 (Mad.)(HC)

503 **S. 37(1) : Business expenditure – Commencement of business – Service sector – Preliminary steps, such as engaging in negotiation or employment of personnel, could be regarded as an activity of commencement of business – Expenditure is held to be allowable.**
Assessee claimed that it had set up a business inasmuch as various preliminary steps had been taken by it which included appointment of key personnel, preparation of draft model development agreement and initiation of process to tender financial and advisory services and claimed deduction of depreciation, preliminary expenses and employee's remuneration. AO held that even though key personnel were engaged, nothing further was done or achieved. Accordingly rejected the claim, which was up held by the Tribunal. Allowing the appeal the Court held that, in case of service sector, where entity has involved itself in various kinds of steps, some of which are preliminary to setting up main substantial commercial venture, linkage between these preliminary steps and nature of ultimate activity may be a relevant factor to be taken into account. Accordingly even certain kinds of preliminary steps, such as engaging in negotiation or employment of personnel, could be relevant even though actual activity might not be involved. (AY. 2013-14)
Indian Railway Stations Development Corporation Ltd. v. PCIT (2019) 265 Taxman 11 (Mag.) (Delhi)(HC)

504 **S. 37(1) : Business expenditure – Setting up of business and starting commercial activities – Commencement of research and development and construction of factory – Business is set up – Entitled to deduction of operating expenses, financial expenses and depreciation – Power of Tribunal. [S. 28(i), 32, 254(1)]**
Court held that once the business is set up the assessee is entitled to deduction of operating expenses, financial expenses and depreciation. Court also held that when there was no dispute with regard to the date on which the assessee had set up its business. the Tribunal had no jurisdiction to unsettle the finding of the date on which the business of the assessee was set up. (AY. 2010-11)
Daimler India Commercial Vehicles P. Ltd. v. DCIT (2019) 416 ITR 343 / 183 DTR 92 (Mad.)(HC)

505 **S. 37(1) : Business expenditure – Capital or revenue – Royalty paid as percentage of sales for obtaining technical Know how for setting up new business – Held to be capital expenditure.**
Dismissing the appeal of the assessee the Court held that, the memorandum of understanding with the foreign company resulted in setting up of a new business in the

shape of joint venture. It was not merely a transfer of technical know-how, but extended to the level of rendering valuable services including the setting up of a factory. Though the royalty was to be paid over a period of seven years, there was no restriction on the assessee to continue with the manufacture and sale of products thereafter also. The expenditure was incurred at the pre-production stage and hence was capital expenditure. *Ratio in Honda Siel Cars (India) Ltd. v. CIT (2017) 395 ITR 713 (SC)* is explained. (AY. 1996-97)
Saboo Berlac Laboratories Ltd. v. ACIT (2019) 416 ITR 389 (P&H)(HC)

S. 37(1) : Business expenditure – Right issue – Collaboration agreement – Year of allowability – Held allowable in the year of receipt of bill and approval – Club membership fee – Allowable as business expenditure. [S. 145] 506
Allowing the appeal of the assessee the Court held that the bill was raised by the stock brokers only on March 10, 1993 though the rights issue had been closed on October 4, 1991 This being the position, it was rightly claimed by the assessee in respect of the assessment year 1993-94. As regards the collaboration agreement with foreign company concluded on 26-1-1992, the approval of Central Government was received only on 13-10-1993 and the approval effective from the date of agreement. Accordingly the royalty payments under the agreement is deductible in the AY. 1993-94. The amount spent for acquiring membership in the clubs stood on a different footing from the amounts incurred for availing of materials supplied or service provided in the clubs. The amount paid to obtain membership of the club was deductible. (AY. 1993-94)
Apollo Tyres Ltd. (No. 1) v. ACIT (2019) 416 ITR 523 / 183 DTR 163 / 311 CTR 981 (Ker.) (HC)
CIT v. Apollo Tyres Ltd. (No. 2) (2019) 416 ITR 546 / 311 CTR 981 (Ker.)(HC)

S. 37(1) : Business expenditure – Royalty – Disallowance of expenses to extent not attributable to previous year relevant to Assessment year is held to be proper – Entitled to deduction for the period in question. 507
Court held that there was nothing illegal or improper on the part of the CIT (A) or the Tribunal in having disallowed the royalty expenses to the extent being attributable to the previous year 1992-93, which could not have been claimed in the assessment year 1993-94. The assessee, instead of claiming the amount in the assessment year 1992-93 claimed it in the assessment year 1993-94, which was not sustainable. No question of law arose. Entitled to deduction for the period in question. (AY. 1993-94, 1994-95)
Apollo Tyres Ltd. (No. 2) v. ACIT (2019) 416 ITR 539 (Ker.)(HC)
CIT v. Apollo Tyres Ltd. (No. 2) (2019) 416 ITR 519 (Ker.)(HC)

S. 37(1) : Business expenditure – Variation in quality or defective goods – No addition can be made – General expenses – Reduction of expenses – Rent to other companies – Same management – Commission paid to investment companies – Amount cannot be assessed in the hands of the assessee. [S. 4] 508
Dismissing the appeal of the revenue, deletion of addition for variation in rate charged for defective or second quality Tyres of different units is held to be justified. Reduction of disallowance of general expenses is a question of fact. Restricting the disallowance of

rent to 50% in respect of rent to other companies having same chairman and managing director is held to be justified. Commission paid by suppliers of assessee to investment companies which are assessed in the assessment of investment companies cannot be assessed in the hands of the assessee. (AY. 1994-95)
CIT v. Apollo Tyres Ltd (No. 2) (2019) 416 ITR 546 (Ker.)(HC)
CIT v. Apollo Tyres Ltd. (No. 3) (2019) 416 ITR 554 (Ker.)(HC)

509 **S. 37(1) : Business expenditure – Contribution to Employees welfare Trust – Allowable as business expenditure. [S. 36(1)(iv), 36(1)(v), 40A(9)]**
Court held that the Tribunal had verified the facts and figures and held that the contribution effected was to an "approved fund" and that the transportation of the employees would otherwise have had to be undertaken by the assessee-company, in terms of the service conditions. No substantial question of law. (AY. 1997-98)
CIT v. Apollo Tyres Ltd. (No. 4) (2019) 416 ITR 564 (Ker.)(HC)

510 **S. 37(1) : Business expenditure – amount paid to the allottees of flat for surrendering of their right therein is revenue in nature and is for the purpose of the business – such expenditure cannot be added to the cost of the stock but is an extraordinary item. [S. 145]**
Assessee had paid amount to the allottees of flat for surrendering of their right therein. The High Court held that such amount was in relation to the stock of the assessee and therefore, revenue in nature. It also held that there is no repurchase of the flat as the title in the property was not transferred to the allottees. Further, such expenditure was held to be an extraordinary item and was therefore, not to be added as the part of cost of stock in trade. Accordingly, since the expenditure was incurred for the purpose of the business, same was held to be allowable. (AY. 1995-96 to 2009-10)
CIT v. Gopal Das Estates & Housing (P) Ltd. (2019) 308 CTR 201 (Delhi)(HC)

511 **S. 37(1) : Business expenditure – advertisement expenses need not be debited to the capital work in progress when assessee follows completed contract method. [S. 145]**
Assessee had incurred certain advertisement and publicity expenses. The Court held that such expenses need not be included in capital work in progress even if the assessee is following completed contract method. As per AS 2, such expenses are usually excluded from contract cost. Accordingly, since the expenditure was incurred for the purpose of the business, same was held to be allowable. (AY. 1995-96 to 2009-10)
CIT v. Gopal Das Estates & Housing (P) Ltd. (2019) 308 CTR 201 (Delhi)(HC)

512 **S. 37(1) : Business expenditure – Interest – Front end fees paid to bank for obtaining loan forms part of interest as defined – Expenditure towards front end fees paid is treated as revenue in nature – Matter remanded. [S. 2(28A), 35D(1)]**
Assessee obtained a new loan and paid fees to the bank as 'front end fees'. Assessee amortized this expense under S. 35D of the Act. AO disallowed assessee's claim. The High Court held that front end fees is part of interest under S. 2(28A) of the Act and front end fees constitutes interest liability which is spread over a period of time. Obtaining such loan and paying interest to service it ensured long term benefit to the

assessee and such expenditure incurred is revenue in nature entitled to be amortized and cannot be capital in nature. High Court remanded back the matter to the tribunal for recomputing assessment. (AY. 2004-05)
CIT v. Kesoram Industries Ltd. (2019) 179 DTR 49 / 104 CCH 437 / (2020) 268 Taxman 446 (Cal.)(HC)

S. 37(1) : Business expenditure – Scientific Research – No weighted deduction claimed of actual expenses – Deduction allowable as business expenditure. [S. 35(1)(ii)] 513
Assessee contended that deduction under S. 35(1)(ii) be allowed on scientific research in respect of contribution to Institute of Road Transport. AO denied the deduction. High Court observed that assessee had not claimed weighted deduction under S. 35(1)(ii) of the Act and although the provisions had been referred in the assessment order entire expenditure deserved to be allowed under S. 37(1) of the Act. Thus, High Court held that both lower authorities had correctly allowed deduction under S. 37(1) of the Act. (AY. 1991-92, 1992-93)
CIT v. The Tamil Nadu State Transport Corporation (Madurai) Ltd. (2019) 179 DTR 161 / 104 CCH 608 (Mad.)(HC)

S. 37(1) : Business expenditure – Setting up of business – Preliminary steps taken including appointment of key personnel to setting up main substantial commercial venture – Linkage between preliminary steps and ultimate activity maybe a relevant factor and assessee's claim for deduction would be allowed. 514
Assessee was incorporated as a Joint Venture to redevelop its railway stations and claimed it had set up business by undertaking various preliminary steps including appointing key managerial personnel, preparation of draft model development agreements and initiated process to tender financial and advisory services. Assessee claimed deduction of depreciation, preliminary expenses and employee's remuneration. AO denied the claim by holding that no business activity was undertaken and only key personnel were engaged. High Court held that where an entity is involved in various steps some being preliminary to setting up main substantial commercial venture, linkage maybe relevant to be taken into account. Therefore even preliminary steps such as engaging in negotiation or employment of personnel would be relevant even though actual activity might not be involved. Thus, assessee set up its business as those steps were for ultimate fulfilment of its purpose and assessee's claim for deduction was allowed. (AY. 2013-14)
Indian Railway Stations Development Corporation Ltd. v. PCIT (2019) 178 DTR 425 / 107 taxmann.com 79 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Replacement of components of existing machinery to maintain efficiency and production capacity – Held to be revenue expenditure. 515
Dismissing the appeal of the revenue the Court held that replacement of components of existing machinery to maintain efficiency and production capacity is held to be revenue expenditure. (AY. 2009-10)
PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. (2019) 416 ITR 144 / 266 Taxman 19 (Mag.) / 311 CTR 556 / 184 DTR 84 (Guj.)(HC)

516 **S. 37(1) : Business expenditure – Accrued or Contingent liability – Provision for warranty on scientific basis – Held to be allowable.**
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the provision for warranty was estimated by the assessee on scientific basis and was therefore allowable. (AY. 2009-10)
CIT v. Stovec Industries Ltd. (2019) 416 ITR 63 (Guj.)(HC)

517 **S. 37(1) : Business expenditure – Commission paid to persons who have referred the students – Disallowance of 50% of commission is held to be justified.**
Court held that the assessee is not able to substantiate the claim for payment of commission hence disallowance of 50% commission is held to be justified. (AY. 2009-10)
Malti Gupta (Smt.) v. CIT (2019) 415 ITR 168 (P&H)(HC)

518 **S. 37(1) : Business expenditure – Capital or revenue – Manufacture of yarn – Replacement of old machinery by purchase and installation of new machinery – Not allowable as revenue expenditure.**
Allowing the appeal of the revenue the Court held that the expenditure incurred by the assessee on replacement of old machinery by purchase and installation of new machinery was not allowable as revenue expenditure. (AY. 1994-95, 1995-96)
CIT v. Kongarar Spinners Ltd. (2019) 415 ITR 103 (Mad.)(HC)

519 **S. 37(1) : Business expenditure – Advertisement expenses – Held to be revenue expenditure.**
The High Court held that the advertisement expenses incurred by assessee is revenue in nature. Followed *CIT v. Pepsico India Holdings India (P) Ltd. (2012) 207 taxman 5 (Mag.) / 21 taxmann.com 165 (Delhi)(HC)*
PCIT v. Matrix Cellular International Service (P.) Ltd. (2019) 106 taxmann.com 125 / 264 Taxman 2 (Delhi)(HC)
Editorial : SLP of revenue is rejected, PCIT v. Matrix Cellular International Service (P.) Ltd. (2019) 264 Taxman 1 (SC)

520 **S. 37(1) : Business expenditure – Capital or revenue – Legal and professional expenses – Litigation expenses – Buy back of shares – Allowable as revenue expenditure.**
Assessee company debited legal and professional expenses incurred in relation to buyback of shares of company from its shareholders which pertained to reduction of share capital of company. AO held that expenditure incurred partook character of capital nature. Tribunal held that expenses incurred were in connection with existing business of assessee company and can not be held to be to enhance capital structure. High Court affirmed the order of the Tribunal (AY. 2004-05)
PCIT v. Bayer Vapi (P) Ltd. (2019) 264 Taxman 182 (Guj.)(HC)

521 **S. 37(1) : Business expenditure – Membership fees paid to club by Chairman and Managing Director of company – Allowable as business expenditure.**
Assessee claimed deduction of membership fees paid to club by its Chairman and Managing Director for increasing business and business development. AO disallowed

such expenditure by holding that club membership fees of director was personal in nature. Tribunal held that since membership allowed the director to interact with its customers the expenditure was incurred wholly and exclusively for the purpose of business and eligible for deduction. High Court affirmed the order of the Tribunal. (AY. 2004-05)
PCIT v. Bayer Vapi (P) Ltd. (2019) 264 Taxman 182 (Guj.)(HC)

S. 37(1) : Business expenditure – Consultancy fee – Investment research services – Paid an amount to its foreign associate entity – Allowable as business expenditure. 522
Assessee is engaged in providing managerial, technical, consultancy and investment research services to two overseas funds. Assessee claimed as revenue expenditure. AO disallowed the claim. Tribunal allowed the claim of the assessee. High Court affirmed the order of the Tribunal. (AY. 2012-13)
PCIT v. Lok Advisory Services (P.) Ltd. (2019) 104 taxmann.com 67 / 264 Taxman 39 (Mag.) (Delhi)(HC)

S. 37(1) : Business Expenditure – Capital or revenue – Repair – Lease premises – Expenditure on construction and renovation of premises taken on Lease – Held to be capital expenditure. [S. 32(IA)] 523
Allowing the appeal of the revenue the Court held that the assessee had incurred substantial expenditure towards renovation leading to enduring benefit. They were not merely repairs. The assessee had also incurred expenditure towards improvement and construction of the building. These could not be termed as "repairs". Accordingly the expenditure incurred by the assessee was capital in nature and came within the mischief of Explanation 1 to S. 32(1) of the Act. (AY. 2002-03, 2003-04)
CIT v. Viswams (2019) 414 ITR 148 / 179 DTR 25 / 263 Taxman 497 / 310 CTR 228 (Mad.) (HC)
CIT v. RM K. Viswanatha Pillai and Sons (2019) 414 ITR 148 (Mad.)(HC)
CIT v Aremaky (2019) 414 ITR 148 (Mad.)(HC)
CIT v. Kjah Enterprises P. Ltd (2019) 414 ITR 148 (Mad.)(HC)
CIT v. K. Sivakuar (2019) 414 ITR 148 (Mad.)(HC)
CIT v. K.V. Nellaiyappan (2019) 414 ITR 148 (Mad.)(HC)

S. 37(1) : Business expenditure – Completion contract method – Compensation paid to allottees of flat who refuse to take up the allotment due to change in Regulation of Municipal Corporation – Allowable as business expenditure – Interest and guarantee commission – Service Charges – Held to be deductible. [S. 145] 524
Court held that the unsold flats that had been surrendered to the assessee were part of its stock-in-trade. In view of Accounting Standard 2 the compensation paid subsequent to the completion of the project was an "extraordinary item". It was not "cost" of completion of the project and therefore, such compensation could not be added to the value of the stock-in-trade of the assessee. Accounting Standard 2 governs valuation of inventories. "Cost" comprises all of the costs of purchase, costs of completion and other costs incurred "in bringing the inventories to their present location and condition". That which was not relevant to bringing the stock to its present condition or location cannot

be a part of its value. The mere fact that the space buyer's agreement or the allotment letter did not mandate payment of compensation would not come in the way of the assessee treating such payment as "revenue expenditure". The assessee had a plausible explanation for making such payment of compensation to protect its "business interests". While it was true that there was no "contractual obligation" to make the payment, it was plain that the assessee was also looking to build its own reputation in the real estate market. Further the mere fact that the recipients treated the payment as capital gains in their hands in their returns would not be relevant in deciding the issue whether the payment by the assessee should be treated as "business expenditure". The payment made by the assessee to the allottees of the flats for their surrendering the rights therein should be allowed as business expenditure of the assessee. That A S 2 would apply to interest and guarantee commission and, with the assessee following the completed contract method, the expenditure incurred subsequent to the completion of the project could not be attributed to work and had to be allowed only as revenue expenditure.) That the service charges were incurred after the completion of the project and would not be part of the capital work-in-progress. Having been incurred at a stage subsequent to the completion of the project it had to be shown as revenue expenditure and was rightly allowed as such by the Tribunal. (AY. 1995-96 to 2009-10)
Gopal Das Estates and Housing Pvt. Ltd. v. CIT (2019) 412 ITR 489 / 263 Taxman 8 / 176 DTR 193 (Delhi)(HC)

525 **S. 37(1) : Business expenditure – Capital or revenue – Preoperative expenditure – New line of business – Business abandoned subsequently – Allowable as revenue expenditure.**
Allowing the appeal of the assessee the Court held that the proper test to be applied was not the nature of the new line of business, which was commenced by the assessee, but unity of control, management and common fund. This issue was never disputed by the AO or the appellate authorities. The authorities had concurrently held that it was the assesse who had commenced the business and the assessee would mean the assessee-company as a whole and not a different entity. Therefore, when there was commonality of control, management and fund, those would be the decisive factors to take into consideration and not the new line of business, namely, the textile business. Before the CIT(A) a specific ground had been raised stating that the AO ought to have appreciated that the decisive factors for allowance were unity of control, management, interconnection, interlacing, interdependent, common fund, etc., and if the above factors were fulfilled, then the expenditure should be allowed even if the project was a new one. The CIT(A) did not give any finding on such a ground raised by the assessee. Therefore, it was incorrect on the part of the Department to contend that such a question was never raised before the appellate authorities. (AY. 2000-01)
Chemplast Sanmar Ltd. v. ACIT (2019) 412 ITR 323 (Mad.)(HC)

526 **S. 37(1) : Business expenditure – Capital or revenue – Expenditure on repair of office room – Held to be capital expenditure.**
Dismissing the appeal of the assessee the Court held that the expenditure incurred was for making repairs to the office building itself, by using plaster of paris. The expenditure

having an enduring benefit to the business of the assessee had to be treated as capital expenditure (AY. 2003-04)
South India Corporation Ltd. v. ACIT (2019) 412 ITR 239 / 177 DTR 337 (Ker.)(HC)

S. 37(1) : Business expenditure – Employee Stock option Plan (ESOP) – Expenditure incurred on allotment of shares under Employee Stock option Plan (ESOP) is held to be allowable as business expenditure. 527
Dismissing the appeal of the revenue the Court held that, expenditure incurred on allotment of shares under Employee Stock option Plan (ESOP) is held to be allowable as business expenditure. (AY. 2008-09)
PCIT v. Lemon Tree Hotels (P.) Ltd. (2019) 104 taxmann.com 26 / 262 Taxman 312 (Delhi)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Lemon Tree Hotels (P.) Ltd. (2019) 262 Taxman 311 (SC)

S. 37(1) : Business expenditure – Non-compete fee paid by assessee to founder of transferor company constituted business expenditure. 528
Dismissing the appeal of the revenue the Court held that, Non-compete fee paid by assessee to founder of transferor company constituted business expenditure. (AY. 2001-02)
ITO v. Smartchem Technologies Ltd. (2019) 103 taxmann.com 359 / 262 Taxman 192 (Guj.)(HC)
Editorial : SLP of revenue is allowed, ITO v. Smartchem Technologies Ltd. (2019) 262 Taxman 191 (SC)

S. 37(1) : Business expenditure – Export business – Remuneration to trustees – Reasonableness of expenditure is to be judged from point of view of businessman and revenue cannot sit in arm chair of businessman to decide what is reasonable and what is not – Held to be allowable. 529
Dismissing the appeal of the revenue the Court held that, reasonableness of expenditure is to be judged from point of view of businessman and revenue cannot sit in arm chair of businessman to decide what is reasonable and what is not and the trustee also offered tax on remuneration received by her. Accordingly, the remuneration is held to be allowable. (AY. 2005-06)
CIT v. Swadeshi Internationals (2019) 261 Taxman 430 (Karn.)(HC)

S. 37(1) : Business expenditure – Foreign travelling expenditure of trustee on tourist visa – Held to be allowable. 530
Dismissing the appeal of the revenue the Court held that the trustee had gone to various countries to expand business of trust and mere fact that he went on tourist visa could not be a ground to conclude that no business was transacted. Deletion of addition is held to be justified. (AY. 2005-06)
CIT v. Swadeshi Internationals (2019) 261 Taxman 430 (Karn.)(HC)

531 **S. 37(1) : Business expenditure – Provision for project expenses – TDS was also deduced – Held to be allowable. [S. 145]**
AO disallowed the claim for provision on the ground that provision is merely contingent liability. Tribunal found that assessee had made provision in respect of work already done by contractor on basis of contract/prevalent rates and the amount which had been debited in profit and loss account, as provision for project expenses, had duly been credited in closing stock and, thus, it had no impact on profit and also the assessee had deducted TDS on amount of provision made, hence, it could not be said that liability was a contingent liability. On appeal, the High Court affirmed the order of the Appellate Tribunal. (AY. 2011-12)
CIT v. Grace Colonizers (P.) Ltd. (2019) 261 Taxman 176 (Raj.)(HC)

532 **S. 37(1) : Business expenditure – Expenditure on software and payment to service provider is allowable as revenue expenditure.**
Expenditure on software and payment to service provider is allowable as revenue expenditure. (AY. 2008-09)
CIT v. DLF Home Developers Ltd. (2019) 411 ITR 378 (Delhi)(HC)

533 **S. 37(1) : Business expenditure – Capital or revenue – Copy right expenses – Only license to use copy right – Allowable as revenue expenditure.**
Dismissing the appeal of the revenue the Court held that the assessee had only license to use copy right. Allowable as revenue expenditure. (AY. 2012-13)
PCIT v. Mobisoft Telesolutions Pvt. Ltd. (2019) 411 ITR 609 (P&H)(HC)

534 **S. 37(1) : Business expenditure – Must be for business purposes – Not necessary that income should have been earned.**
Section speaks only of laying out expenditure, wholly or exclusively for the purpose of business or profession. The expenditure need not be for the purpose of earning profits or gains from business or profession. (AY. 1985-86, 1996-97 to 2002-03)
CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.)(HC)

535 **S. 37(1) : Business expenditure – Finance lease – Operating lease – Accounting Standard 19 – Matter remanded to Appellate Tribunal. [S. 254(1)]**
Court held that; question as to whether a lease is a finance lease or an operating lease depends on substance of transaction rather than its form. On facts the Appellate Tribunal has failed to consider the Accounting Standard 19 issued in year 2001, Accordingly the matter is remanded to Appellate Tribunal. (AY. 2007-08 to 2012-13)
Tristar Container Services Asia (P.) Ltd. v. ACIT (2019) 260 Taxman 277 (Mad.)(HC)

536 **S. 37(1) : Business expenditure – Business promotion – Failure to produce supporting evidence – Disallowance of 50% of expenses are held to be justified.**
Dismissing the appeal of the assessee the Court held that the assessee did not produce material and documents to show that expenditure claimed as deduction was incurred for business purpose. Mere fact that payments were made through credit card would not prove genuineness of said expenditure. Accordingly the Disallowance of 50% of expenses are held to be justified. (AY. 2007-08, 2008-09)
Sandeep Marwah v. ACIT (2019) 260 Taxman 231 (Delhi)(HC)

S. 37(1) : Business expenditure – Commission – No evidence of services rendered – Disallowance is held to be justified [S. 133(6), 260A] 537

Dismissing the appeal the Court held that the assessee has not produced the proof of services rendered, letter of communication etc, accordingly the disallowance of commission is held to be justified. (AY. 2010-11)

Alpasso Industries Pvt. Ltd. v. ITO (2019) 410 ITR 212 / 261 Taxman 442 (Delhi)(HC)

S. 37(1) : Business expenditure – Scientific research – The direction of the State Government for payment of contribution came just before the end of the financial year, entire expenditure is allowable on accrual basis – Claim cannot be disallowed under S. 35(1)(ii) as assessee did not claim weighted deduction. [S. 35(1)(ii)] 538

Held by High Court that, though the contribution made to the Institute of Road Transport was paid after the end of the financial year, since the liability was incurred during the financial year relevant to 1992-93, the same is allowable under S. 37(1) on the basis of mercantile system and there was no question of disallowance by invoking S. 35(1)(ii) since no weighted deduction was claimed by assessee. (AY. 1991-1992, 1992-93)

CIT v. Tamilnadu State Transport Corporation (Madurai) Ltd. (2019) 179 DTR 161 (Mad.)(HC)

S. 37(1) : Business expenditure – Accounts – Rejection – Apportionment of proportionate expenditure between two units – Each of the expenses allocated by the assessee has been rightly reflected in the books of accounts of both the units – AO was not justified in computing profits of both the units on the basis of allocation of proportionate expenditures, in the ratio of their respective turnover to the combined turnover. [S. 10B(7), 145] 539

Held by the High Court that:

1) Tribunal found that the AO has not pointed out any specific defect or mistake in the books of accounts so as to justify invocation of S. 145 of the Act.
2) Activity of non-EOU unit is largely trading, whereas in the case of EOU unit, it is manufacturing and production. Each of the expenses allocated by the assessee has been rightly reflected in the books of accounts of both the units, hence the AO was not justified in computing profits of both the units on the basis of allocation of proportionate expenditures, in the ratio of their respective turnover to the combined turnover. (AY. 2005-06, 2006-07)

CIT v. Mineral Enterprises Ltd. (2019) 310 CTR 612 / 174 DTR 256 (Karn.)(HC)

S. 37(1) : Business expenditure – Contribution to recognized provident fund – Payment of pension to retired employees – As per scheme approved by the Government which had statutory force, hence, it would fall within the general deductions under S. 37(1) and cannot be brought under S. 36(1)(iv) and (v) of the Act. [S. 36(1)(iv), 36(1) (v)] 540

Held by the High Court that:

1) Payment of pension to retired employees was made as per scheme (Employees Retirement Regulations) approved and notified by the Government of India, which has statutory force and the assessee is bound by the terms and conditions contained in the regulations, any infraction or violation will result in various other civil consequences. Hence, the nature of deduction claimed in respect of the

payments made in terms of the statutory regulation would fall within the general deductions under s. 37 and cannot be brought under S. 36(1)(iv) and 36(1)(v);

2) Further, assessee having been granted similar benefit for earlier years, the same cannot be denied for the subsequent years, especially when, the nature of payment is in the same fashion in terms of a statutory regulation. (AY. 2010-11, 2012-13)

CIT v. V.O. Chidambaranar Port Trust (2019) 311 CTR 227 / 180 DTR 329 / 266 Taxman 141 (Mad.)(HC)

541 **S. 37(1) : Business expenditure – Commission to the HUF from whom unsecured loan was borrowed – Commission paid to HUF is an allowable expenditure.**

The assessee firm paid commission to various persons and entities including ₹ 3 lakhs each to Hindu undivided families. The A.O. While finalizing the assessment disallowed the commission paid to the HUF by observing that the same person could not contribute in two capacities simultaneously, i.e., one in the capacity of the firm and another in the capacity of karta of the Hindu undivided family, which is a separate entity and recipient of the commission. On appeal the first appellate authority upheld the view of the AO. On further appeal, the Hon'ble Appellate Tribunal held that both Hindu undivided families had provided unsecured loans to the assessee, and the funds of the Hindu undivided family had been used by the assessee to financially support and enhance its business. In the peculiar facts the contribution of an individual, who helped the firm in two capacities, viz., first in the capacity of the partner and secondly as the karta of the Hindu undivided family could not be segregated satisfying and clearly establishing the factum of the services rendered towards payment of commission to the Hindu undivided family but the factum of use of the Hindu undivided family funds by the firm in the form of secured loan in the business of the assessee. The commission paid by the assessee to the Hindu undivided families was allowable. (AY. 2012-13, 2013-14)

Metalloyods v. ITO (2019) 76 ITR 100 (Cuttack)(Trib.)

542 **S. 37(1) : Business expenditure – Method of accounting – Ad-hoc disallowances of general expenses without rejecting the books of account – No disallowances can be made. [S. 145]**

Tribunal held that the AO had simply disallowed the expenses simply holding that most of the expenses were incurred in cash and hence had disallowed 10 per cent. out of various expenses. He had nowhere pointed out any specific discrepancy in the books of account nor had he rejected the accounts. The AO could not make ad hoc disallowance. (AY. 2014-15)

Indian Coating and Laminating Corporation v. DCIT (2019) 76 ITR 320 (Luck.)(Trib.)

543 **S. 37(i) : Business expenditure – Bogus purchases – Entire purchase and sale transactions duly recorded in regular books of account of all parties – Entire transactions routed through regular banking channels – No incriminating documents with respect to purchases and sales found in search – Purchases are genuine – Addition is held to be not justified. [S. 69C]**

During the course of the search, the managing director had admitted that sometimes bogus purchases and sales were carried out which the Assessing Officer confirmed to

have been undertaken to inflate expenses and reduce taxable income, along with a shortage in stock amount to ₹ 450 Crores approximately. Thus 25 percent of the total purchase price from these parties was added to the total income of the assessee.
On appeal it was observed that the assessee was a trader in dry fruits and other grocery items and used to purchase and sell these items on a regular basis. The entire purchase and sale transactions were duly recorded in the regular books of account of all the parties and were carried out through banking channels. All such supporting documents were filed before the AO and no incriminating documents were found during the search. Further, the books of account were duly audited under the Companies Act and the Income-tax Act and no defect was recognized by the lower authorities. The AO made an addition at the rate of 25 percent of such purchases without conducting any enquiry. However, in the deviation proceedings, he held that no such addition should have been made and further, in the remand proceedings the Assessing Officer held that on enquiry made on test check basis of the 50 per cent. of the items got confirmed. Thus, it could not be said that purchases made from these parties were bogus. *CIT v. Winstral Petrochemicals P. Ltd. (2011) 330 ITR 603 (Delhi)(HC)* relied on. (AY. 2012-13 to 2017-18)
Agson Global Pvt. Ltd. v. ACIT (2019) 76 ITR 504 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Levy of interest for withholding payment of VAT – Compensatory interest u/s. 30(2) – For delay in payment of additional tax under MVAT – Penal interest u/s. 30(4) – Concealment or furnishing of inaccurate particulars of income – Paid by assessee to buy peace and end litigation with MVAT authorities – AO asked to bifurcate these payments – Compensatory interest allowed – Penal Interest disallowed. [MVAT Act, 2002, S. 30(2), 30(4)] 544

During assessment proceedings, AO noted from the Tax Audit Report that assessee had paid a penalty which was not disallowed by it while computing income chargeable to income tax. Assessee submitted that such penalty was paid to avoid litigation with Sales Tax Department on an amount of tax for bogus purchases. AO held that such amount was a penalty levied by Sales Tax Department for violation of law committed by assessee which need to be disallowed u/s 37 and which also was certified by CA in tax audit report. AO completed assessment after making disallowance in this regard. CIT(A) allowed assessees claim. The tribunal held that interest u/s. 30(2) was compensatory in nature for delay in payment of additional tax under MVAT computed from original due date of payment of the MVAT liability due to availment of wrong ITC, on alleged bogus purchases, till said additional tax liability of VAT was paid to the authorities. Whereas, levy of interest u/s. 30(4) of MVAT Act had germane to detection of short payment of VAT by way of concealment or furnishing of inaccurate particulars of income in original return of VAT filed with MVAT Department due to infraction of law, which is detected after commencement of such special events such as audit, inspection, survey, search under MVAT Act. The AO was directed to bifurcate payments of interest made u/s. 30(2) and 30(4) of MVAT Act, allowing only the compensatory interest u/s. 30(2) of MVAT Act. Penal interest u/s. 30(4) of MVAT Act was disallowed. Revenues appeal was partly allowed. (AY. 2009-10, 2012-13)
ACIT v. Gini & Jony Ltd. (2019) 178 DTR 114 / 197 TTJ 322 (Mum.)(Trib.)

545 **S. 37(1) : Business expenditure – Providing gifts to Medical practitioners by pharmaceutical companies – CBDT circular silent about pharmaceutical companies – Circular had no retrospective effect – Prohibition imposed by Indian Medical Council against acceptance of gift is on the medical practitioner and doctor and not on the pharmaceutical companies – Disallowance is deleted.**

During assessment proceedings, AO noticed that assessee had debited an amount to P&L account towards gift/sales promotion expenses. The expenditure incurred was for providing gift to Doctors/Medical Practitioners. As per CBDT Circular No. 5/2012, Medical Practitioners were prohibited from accepting gift, travel facility, hospitality, cash or monetary grant from pharmaceutical companies as per Indian Medical Council Regulation. The AO made addition on ad-hoc basis considering 40% to have been spent for presenting gift articles to doctors in India. The CIT(A) confirmed AO's action. The assessee contended that said gift items bearing assesses name and logo were only for sales promotion. The reason for making an ad-hoc disallowance of 40% was, CBDT Circular No. 5/2012, wherein, prohibition imposed by IMC with regard to acceptance of gift by medical practitioner/doctor which was imposed w.e.f. 10th December 2009. The prohibition imposed by IMC did not talk about pharmaceutical companies. CBDT Circular referred to by Departmental Authorities would not apply retrospectively. Allowing the assessees ground, the tribunal deleted the disallowance made. (AY. 2009-10)

ACIT v. J. B. Chemicals & Pharmaceuticals Ltd. (2019) 177 DTR 378 / 199 TTJ 600 (Mum.) (Trib.)

546 **S. 37(1) : Business expenditure – CSR expenditure – Disallowance in lieu of Explanation 2 to S. 37(1) – No retrospective effect of Explanation 2 – CSR Expenditure allowed.**

Assessee is a Government Company and during the year had claimed CSR Expenses which were incurred at the behest of the State Government for the welfare of public at large. AO made disallowance for the CSR expenses on the ground that the said expense has not been expended wholly and exclusively for the business of the assessee. CIT(A) after considering the submissions rejected the appeal of the assessee and confirmed the order of the AO. Aggrieved by the same, the assessee preferred an appeal before the Tribunal. The Tribunal relied on various coordinate bench decisions rendered in case of National Seeds Corporation Ltd. (ITA No. 6794/Del/2014) and Kerala State Industrial Development Corporation (ITA No. 142/Cochin/2014), and held that expenditure incurred under CSR Scheme is allowable expenditure and explanation inserted in section 37 of the Act shall be operative w.e.f. 1.4.2015 which will not be applicable retrospectively and thus will not be applicable to the year under consideration i.e. AY 2013-14 deleted the addition. (AY. 2013-14)

M. P. State Mining Corporation Ltd. v. ACIT (2019) 57 CCH 502 / 76 ITR 42 (SN) (Indore) (Trib.)

547 **S. 37(1) : Business expenditure – Self made vouchers – Ad-hoc disallowance is not justified. [S. 145]**

While allowing the appeal of the assessee, the Tribunal held that, when the telephones were used in the business premises of the assessee and the expenses were verifiable from

the telephone bills the expenses could not be disallowed on mere suspicion. Similarly, the AO had not doubted the travelling expenditure incurred by the assessee and if the expenses were not found to be excessive having regard to the nature of business and volume of business of the assessee such an ad hoc disallowance on personal element was not justified. Further, in the case of building repair and maintenance expenses, the expenditure was incurred in cash and the assessee had produced only self-made vouchers and in the absence of supporting documentary evidence, the 10 per cent. disallowance of expenditure was justified. If office expenses were paid in cash and supported by the self-made vouchers. If the expenditure was not found to be excessive and it was inevitable for the business of the assessee, petty expenses were incurred by the assessee on day-to-day basis in cash and without any vouchers. Once the expenditure was not found to be excessive having regard to the nature of business and volume of the business of the assessee the ad hoc disallowance was not justified. (AY. 2012-13)
Swastik Oil Industries v. Dy. CIT (2019) 76 ITR 392 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Accrual of liability – Payment of countervailing duty on imported goods – Claim to refund not a ground for treating liability as not accrued – Liability is held to be allowable as deduction. [S. 145] 548
Allowing the appeal of the assessee the Tribunal held that, though the assessee claimed refund of countervailing duty, the claim would not be a ground for treating the liability as not incurred particularly when the assessee already paid the amount. The claim of refund was already rejected by the AO and CIT(A), therefore, when the payment of countervailing duty was not in dispute the payment was otherwise an allowable deduction and could not be added merely because the assessee had claimed a refund. The AO while acting as a quasi-judicial authority can not take advantage of any mistake or the entries made in the books of account. (AY. 2016-17)
Trust Marketing v. ACIT (2019) 76 ITR 119 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Not commenced business operations – lease rentals are allowed to be set off against lease rentals paid as well as excess expenditure allowable for capitalization. 549
The Tribunal while dismissing the appeal of the revenue held that the lease rentals received is allowable for set off against the lease rentals paid. The land on which the lease rental received from and paid was the same. Accordingly the excess expenditure on the same is also allowed to be capitalized as the project of construction of the hotel had not commenced business operations. (AY. 2013-14)
ACIT v. Central Park Infrastructure Development P. Ltd. (2019) 76 ITR 76 (SN) (Delhi) (Trib.)

S. 37(1) : Business Expenditure – Provisions for gratuity and leave encashment made with reasonable certainty on the basis of independent actuarial valuation is allowable. [S. 145] 550
The Tribunal held that, if the provisions towards gratuity and leave encashment were made with reasonable certainty on the basis of independent actuarial valuation, the same is allowable as deduction. (AY 2009-10)
Cochin International Airport Ltd. v. Dy. CIT (2019) 76 ITR 44 (SN) (Cochin)(Trib.)

551 **S. 37(1) : Business Expenditure – Advertisement expenses – Assessee not confronted with fact that notices to parties to whom expenses claimed to have been paid returned unserved – Matter Remanded – AO to decide afresh after confronting assessee and after hearing assessee.**

The Tribunal held that the AO issued notices to the eleven parties to whom the assessee had claimed to have paid advertisement expenses and such notices had returned with the remark that the address was not correct. However, the assessee was not confronted with the fact of the return of notices. Therefore, the issue was remitted to the AO who should redecide the issue after confronting the assessee and after hearing the assessee. (AY. 2014-15)

Anurag Rastogi v. ITO (2019) 75 ITR 8 (Luck.)(Trib.)

552 **S. 37(1) : Business expenditure – Motor car and telephone expenses–Failure to maintain log book – Ad-hoc disallowance of 10% of expenses is held to be justified.**

Tribunal held that the assessee has not maintained any log book to show that the motor car and telephone was not used for personal purposes. Accordingly the ad-hoc disallowance of 10% of expenses is confirmed. (AY. 2012-13 to 2014-2015)

Motilal Laxmichand Sanghavi v. ACIT (2019) 178 ITD 710 (Mum.)(Trib.)

553 **S. 37(1) : Business expenditure – Business came to halt – Dormant – Expenditure in respect of rent, professional charges, audit fees, property tax, etc., was incurred by assessee for purpose of maintaining its legal status and for disposing its assets – Held to be allowable.**

Business of assessee company came to halt in 2010. However, the assessee maintained business premises with an intention to sell its assets. Assessee claimed certain expenditures incurred in respect of rent, professional charges, audit fees, property tax, property maintenance, etc. AO disallowed the expenses on the ground that business of assessee was completely stopped and there was no business carried out by assessee during the year. Allowing the appeal the Tribunal held that after business was stopped, all these expenses had to be incurred for the purpose of maintaining legal status of assessee and proper liquidation of assets of company, same was to to allowed as business expenditure. (AY. 2015-16)

Hirsch Bracelet India (P.) Ltd. v. ACIT (2019) 178 ITD 601 (Bang.)(Trib.)

554 **S. 37(1) : Business expenditure – Partner cannot separately claim expenses against income received from partnership firm. [S. 28(v), 10(2A)]**

The assessee, was a partner in 7 partnership firms from which the assessee was earning income by way of share of profit, remuneration and interest on the capital invested by him in the firms. The assessee claimed expense of ₹ 5.67 lakh against the income received from the partnership firm. As per the assessee, he had employed two persons, one was looking after managerial work and the other one was doing petty work in the capacity of the peon. AO held that such expenses as claimed by the assessee were incurred to meet his personal requirement. Therefore the said expenditure cannot be allowed as deduction. CIT(A) also affirmed the order of the AO. On appeal the Tribunal held that mere fact that assessee had become a partner in firm, would not mean that

he was carrying out any business activity and therefore, question of claiming expenses against income received from firm would not arise. However, in case expenses are incurred by a partner in connection with the business of partnership firm, then said partner can claim reimbursement from partnership firm and, in turn, firm is entitled for deduction of such expenses as allowable under Act. (AY. 2013-14)
Chandra N. Jethwani v. ITO (2019) 179 ITD 663 (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Ad-hoc disallowance of 10% of total expenses – Books of account not rejected – Submitted the details of expenses – Ad-hoc disallowance is held to be not justified. [S. 145] 555
Allowing the appeal of the assessee the Tribunal held that since assessee had submitted complete details of these expenses and no defects in books of account were brought on record by revenue, ad hoc disallowance of these expenses to tune of 10 per cent by AO is held to be not justified. (AY. 2011-12)
TUV India (P.) Ltd. v. DCIT (2019) 75 ITR 364 / 179 ITD 238 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Festival expenditure – Books of account not rejected – Disallowance of 25% of festival expenses cannot be disallowed when books of accounts were duly audited and no discrepancy was found. [S. 145] 556
Tribunal while dismissing the appeal of the revenue held that, books of account had been duly audited and no discrepancy was found by revenue authorities. It was further observed that there was increased turnover and also increased profit during the year, hence, increase in festival expenditure could not be treated as disallowable expenditure. (AY. 2012-2013)
ACIT v. HAL Offshore Ltd. (2019) 178 ITD 272 / 202 TTJ 308 (Delhi)(Trib.)

S. 37(1) : Business expenses – Provision – Provision for expense was based on scientific and reasonable basis and the liability to incur the same was certain – deduction is allowable. 557
The assessee is an Association of Persons ('AOP') of three entities formed with the specific purpose of participating in the tender floated by Bangalore Metro Rail Corporation Ltd., (BMRCL) for laying metro line along with infrastructure facilities in Bangalore. During the relevant previous year, the assessee had created provision for expenses which were certain to be incurred and which were estimated scientifically based on a proportion of total project cost. The assessee had claimed a deduction for such provision of expenses. However, the AO held that the claim for deduction made by the assessee was only on the basis of an estimate and that incurring of expenditure by the assessee was purely contingent and therefore the deduction was not allowed. On appeal, the CIT(A) held that on a perusal of the details submitted by the assessee, the incurring of the expenses in question was a certainty and that the basis on which the liability was estimated was reasonable and therefore the expenditure in question was not a contingent expenditure and had to be allowed as deduction. On appeal by the Department, the Tribunal relying on the decision of the Hon'ble Supreme Court in the case of *Calcutta Co Ltd v. CIT (1959) 37 ITR 1 (SC)* and *Bharat Earth Motors v. CIT (2000) 245 ITR 428 (SC)* held that in the case of the assessee, the incurring of

liability was certain and the basis of quantification of the same was also scientific and reasonable and hence, it upheld the order of the CIT(A) and allowed deduction of provision for expenses. (AY. 2011-12 2012-13)
ACIT v. CEC Soma CICI JV (2019) 72 ITR 570 (Bang.)(Trib.)

558 **S. 37(1) : Business expenditure – Parking fees – Ad-hoc disallowance of 20% of expenses – Books of account not rejected – Disallowance is held to be not valid. [S. 143(3)]**
Dismissing the appeal of the revenue the Tribunal held that disallowance of 20 per cent ad hoc disallowance of parking fee, without rejecting books of account not permissible. (AY. 2012-13, 2013-14)
DCIT v. ATC Realtors (P.) Ltd. (2019) 178 ITD 293 / 184 DTR 1 (Guwahati)(Trib.)

559 **S. 37(1) : Business expenditure – Leave encashment – Provision – Not allowable as deduction. [S. 43B(f)]**
S. 43B(f) is struck down by the Calcutta High Court but the judgment is stayed by the Supreme Court and the the Division Bench of the Tribunal has also examined the issue in Wardex Pharmaceuticals Ltd. and found that the provisions of S. 43B(f) had to be applied. Therefore, the provision for leave encashment cannot be allowed and further the order of the Tribunal in Tamil Nadu Warehousing Corporation may not be applicable to the facts of the case and therefore the provision for leave encashment could not be allowed in view of S. 43B(f). (AY. 2014-15)
Dy. CIT v. Tamil Nadu Civil Supplies Corporation Ltd. (2019) 70 ITR 5 (SN) (Chennai) (Trib.)

560 **S. 37(1) : Business expenditure – Capital or revenue – Software development services – AMP expenses towards Glow Sign Posts – Allowable as revenue expenditure.**
Legal, professional and consultancy expenses for availing software development services are allowable revenue expenditure under S. 37 of the Act. They are allowable expenses since they are of a recurring nature and not of an enduring nature and also no new capital asset is acquired.
AMP expenses towards Glow Sign Posts is allowable expenditure under S. 37 of the Act. AMP expenses towards Glow Sign Posts is also allowable expenditure in view of the decision in *CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi)(HC).* (AY 2009-10)
Dy. CIT v. Oxigen Services India P. Ltd. (2019) 69 ITR 63 (SN) (Delhi)(Trib.)

561 **S. 37(1) : Business expenditure – Asset management company – Set up of business – Approval from SEBI – Expenditure is allowable though it had not actually commenced its business. [S. 2(13)]**
When the assessee has received approval from SEBI to act as an Asset Management Company then it can be said to have set up its business and even though it has not actually commenced its business all business expenses incurred by it are allowable because its business has been set up. (AY. 2013-14)
Dy. CIT v. PPFAS Asset Management P. Ltd. (2019) 72 ITR 41 (SN) (Mum.)(Trib.)

S. 37(1) : Business expenditure – Product registration expenses – Allowable as revenue expenditure. 562

If the assessee has incurred product registration expenses for the purpose of registering its product and is a trader and not a manufacturer and such expenditure is of a recurring nature then such expenses are not towards purchasing a capital asset nor any benefit is derived which is of an enduring nature and therefore such expenses are entirely allowable as revenue expenditure. (AY. 2013-14)

Dy.CIT v. Sharda Cropchem Ltd. (2019) 178 DTR 83 / 71 ITR 141 / 199 TTJ 960 (Mum.) (Trib.)

S. 37(1) : Business expenditure – Expenditure on issue of bonus shares – Held to be allowable as revenue expenditure. 563

Expenditure on issue of bonus shares is held to be allowable as revenue expenditure. (AY. 2013-14)

Dy. CIT v. Sharda Cropchem Ltd. (2019) 178 DTR 83 / 71 ITR 141 / 199 TTJ 960 (Mum.) (Trib.)

S. 37(1) : Business expenditure – Pooja donation – Local entities – Charities – Allowable as business expenditure. 564

Puja donations made by the assessee to various local entities primarily towards community celebrations in order to build goodwill within the community and to ensure smooth conduct of business are allowable as deduction. (AY. 2004-05)

Dy. CIT v. Stewarts and Lloyds of India Ltd. (2019) 74 ITR 677 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Sales promotion expenses – Held to be allowable as business expenditure. [Medical Council (Professional Conducts, Etiquettes and Ethics) Regulation Act, 2002] 565

Expenses incurred by pharmaceutical company on distribution of articles to stockists, distributors, dealers, customers and doctors are allowable as business expenditures. (AY. 2013-14)

Aristo Pharmaceuticals (P.) Ltd. v. ACIT (2019) 178 ITD 147 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Management charges to holding Company – Matter remanded to AO. 566

Tribunal held that assessee failed to provide organizational tree of the parent company vis-à-vis subsidiary and how the consultancy and other services are being rendered to the subsidiary by the holding company. Complete facts have not been brought on record either by the assessee or any investigation have been made by the Revenue. Assessee is harping upon TP study report prepared by its tax consultant and submitted that such charges are being calculated at arm's length, which have not been doubted by the AO. Therefore, Tribunal set aside orders of CIT(A) and remitted the matter to AO for adjudicating afresh directing AO to examine organizational structure of the holding company vis-à-vis the assessee Company and to adjudicate whether nexus was available between payment and services rendered. (AY. 2009-10, 2011-12, 2012-13)

Diamond Crucible Co. Ltd. v. ACIT (2019) 69 ITR 53 (SN) (Ahd.)(Trib.)

567 **S. 37(1) : Business expenditure – Capital or revenue – Development of software – Held to be revenue in nature.**

Expenditure incurred for development of software to increase efficiency of existing business is held to be revenue in nature. (AY. 2012-13)

Cox & Kings Ltd v. Addl. CIT (2019) 55 CCH 75 / 69 ITR 45 (SN) (Mum.)(Trib.)

568 **S. 37(1) : Business expenditure – Pre-operative expenses – advertisement, marketing and promotion expenses to keep products fresh in minds of the public – No enduring benefit – Allowable as revenue expenditure.**

The assessee was engaged in trading in high-end kitchen appliances, cooling and coffee machines and laundry and floor care appliances. The Assessing Officer observed that the assessee had not commenced business during the first seven months of the year 2010-11. He disallowed the expenditure of the first seven months as pre-operative expenses. The CIT(A) deleted the addition on account of pre-operative expenses. On appeal the Tribunal held that (i) the assessee had commenced its business in the previous year relevant to the earlier assessment year. Therefore, the expenses considered as pre-operative expenses by the Assessing Officer had to be treated as legitimate business expenditure for the year 2010-11.

(ii) He was satisfied with the advertisement, marketing and promotion expenses incurred by the assessee. Public memory is very short and companies had to incur advertisement expenditure year after year to keep their products fresh in the minds of the public. Such expenditure could not partake of the character of giving any enduring benefit. The Assessing Officer had erred in treating such expenditure as creating an intangible asset. (AY. 2010-11)

Dy. CIT v. Miele India P. Ltd. (2019) 72 ITR 149 (Delhi)(Trib.)

569 **S. 37(1) : Business expenditure – Liquidated damages – Interest – Breach of agreement and not breach of law – Corporate club membership fees – Allowable as deduction. [S. 35ABB]**

The assessee claimed a deduction under S. 35ABB on account of payments made to the Department of Telecommunications towards liquidated damages and interest thereon. The AO disallowed the claim of the assessee holding that liquidated damages and interest paid thereon were penal in nature and not allowable under S. 35ABB. The assessee claimed deduction of payments to various clubs as membership fee, said to have been incurred wholly and exclusively for the purpose of business. The AO disallowed the amounts observing that the assessee had tried to link the personal expenses with business expenses and that the expenditure incurred in the club were not wholly and exclusively for the purpose of business. The CIT(A) deleted the disallowances. On appeal, held, (i) that the assessee paid liquidated damages and interest thereon due to breach of the agreement and not a breach of law. Thus, the expenditure claimed did not fall within the Explanation to S. 37(1). Since it was incidental to business, it could not be disallowed. (ii) That considering the expenditure incurred and the nature of the industry, the amount incurred by the assessee for corporate club membership fees was for business promotion and no disallowance could be made. (AY. 2010-11).

Dy. CIT v. HFCL Infotel Ltd. (2019) 71 ITR 93 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Interest paid on delayed payment of service tax is compensatory in nature – allowable as deduction. [Finance Act, 1994, S. 75, 76] 570
Dismissing the appeal of the revenue the Tribunal held that interest paid on delayed payment of service tax is compensatory in nature hence allowable as revenue expenditure. (AY. 2013-14)
DCIT v. Sri Radhakrishna Shipping Ltd. (2019) 179 ITD 139 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Club expenses – Club expenses incurred by directors of a company cannot be denied on ground of personal in nature. 571
During the year the assessee claimed deduction of club expenses incurred by directors of company. AO disallowed the claim on ground that said expenditure was of personal nature. CIT(A) allowed the claim. On appeal by the revenue the Tribunal held that nexus of expenditure incurred at club with its business was established by assessee and, in absence of any tenable or cogent material to rebut or controvert the same, disallowance made by AO was not sustainable. (AY. 2011-12)
ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22 / 184 DTR 406 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – DTT subscription to use Deloitte – Brand helped for getting more business – Held to be allowable as business expenditure. 572
Assessee paid DTT subscription to use Deloitte brand. AO held that the expenditure is of capital in nature. CIT(A) allowed the claim as revenue expenditure. On appeal by revenue the Tribunal held that there was nothing on record to suggest that assessee had acquired brand or technology for good and, therefore, it could not be concluded that assessee had incurred expenditure for acquiring an asset of enduring benefit. Accordingly, the subscription paid by assessee to run its business activity more efficiently and profitably was to be allowed as deduction. (AY. 2007-08)
ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22 / 184 DTR 406 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Sale of goods through e-commerce at less than cost price – Transaction bona fide – Loss due to predatory pricing not capital expenditure. 573
The Appellate Tribunal held that there was no provision to disregard the loss declared by the assessee nor a provision by which the Department could ignore the sale price declared by the assessee and proceed to enhance the sale price without any material to show that the assessee had in fact realised a higher sale price. There was no expenditure which was incurred by the assessee and one could not proceed on the basis of a presumption that the profit forgone was expenditure incurred and that the expenditure incurred was for acquiring intangible assets like brand and goodwill. (AY. 2012-13 to 2014-15)
Jt.CIT v. Flipkart India Pvt. Ltd. (2019) 73 ITR 392 / 180 DTR 49 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Expenditure on purchase of Indian premier league cricket match tickets to distribute amongst long standing customers to improve its business relations – Akin to distribution of gifts or articles on special occasions to customers – Deductible. 574
Held, that the assessee's submissions in support of its claim under section 37(1) were that it had purchased Indian Premier League cricket match tickets to distribute them

amongst its long standing customers to garner their goodwill and improve its business relations and therefore, it was its business expenditure. This was a plausible and acceptable submission. This was akin to distribution of gifts or articles on special occasions to the customers and such expenditure had been held to be business expenditure. (AY. 2009-10)
EPE Process Filters And Accumulators Pvt. Ltd. v. Dy. CIT (2019) 70 ITR 586 (Hyd.)(Trib.)

575 **S. 37(1) : Business expenditure – Prior period expenditure – Invoice received and payment made in April 2009 – Amount crystallized during year cannot be treated as prior period item.**
The assessee debited a sum of ₹ 2.83 lakhs under the head "repair and maintenance expenses". The date of invoice was February 3, 2009 and the payment had been made in the month of April 3, 2009. The Assessing Officer disallowed the expenditure as prior period expenditure holding that under the mercantile system of accounting the income and expenditure were required to be accounted for and were allowable in the relevant year to which they relate. The CIT(A) deleted the addition. On appeal, ITAT held that the invoice was received in the month of April 2009 and the payment was made in the month of April 2009. Thus, the amount crystallized during the year and even services were rendered during the year and therefore, the amount could not be treated as prior period item. Hence, the addition of ₹ 2.83 lakhs was to be deleted. (AY. 2010-11)
Dy. CIT v. Metso Minerals (India Pvt. Ltd. (2019) 70 ITR 655 (Delhi)(Trib.)

576 **S. 37(1) : Business expenditure – Labour charges – All details of labourers including addresses and permanent account numbers available with authorities but not verified – Assessee deducting tax at source from payment of labour charges to labourers – late deduction of tax at source – Not a basis for making disallowance.**
The assessee claimed labour expenses of ₹ 19,29,390 and in support filed copies of the bills issued by the labourers. The AO found that some of the bills filed by the assessee amounting to ₹ 13,45,356 pertained to the assessment year 2006-07. Therefore, he disallowed the expenses. The CIT(A) held that the assessee failed to furnish the details for the movement of jewellery to the labourers for carrying out the necessary job work. All the fresh bills issued by the labours were dated March 31, 2009. The assessee had not deducted tax at source in the manner as prescribed under the provision of law. On appeal ITAT held the assessee had deducted the tax at source from the payment of the labour charges to the labourers. If tax had not been deducted in the manner as provided under the statute, the Department is empowered to initiate the proceedings under Chapter XVII of the Act. However, the non-compliance on account of late deduction of tax at source could not be the basis for disallowance. Thus, the assessee could not be penalised if the labourers had raised the bills at the end of the accounting year.
Gold Finch Jewellery Ltd. v. Dy. CIT (2019) 70 ITR 629 (Ahd.)(Trib.)

577 **S. 37(1) : Business expenditure – Provision for warranty – Not justified in disallowing the expenses.**
The assessee was engaged in the business of supplying suspension systems to the motor industry. The AO made a disallowance of ₹ 3,96,03,899 on account of "provision for

warranty". The CIT (A) confirmed the addition holding that there was no need for the assessee to incur such expenditure in the absence of any policy or method to quantify the expenditure. On appeal, ITAT held that conditions were specified for invocation of the warranty by consumers. The assessee had a policy for payments towards the warranty expenses. By the end of the year, the assessee had created provision to the tune of ₹ 97.5 crores out of which about ₹ 81.72 crores was already incurred by the assessee. The sum of ₹ 3,96,03,899 was calculated based on the policy adopted by the company. This policy had not been found erroneous by the authorities in any forum. The unutilised provision was carried forward to the subsequent years by maintaining the opening and closing balances. Therefore, the warranty expenses were deductible. The assessee had maintained this method in principle over the years and it was not to be disturbed casually. (AY. 2011-12)
Tata Autocomp Hendrickson Suspensions Pvt. Ltd. v. DY. CIT (2019) 70 ITR 712 (Pune) (Trib.)

S. 37(1) : Business expenditure – Foreign exchange fluctuation loss – Department accepting that assessee had commenced its business in earlier year – Denial of claim on ground that no business commenced for instant year not justified. 578
Assessee while claiming foreign exchange fluctuation loss had as per the AO in AY 2009-10 commenced business and also substantiated as per the CIT(A) for AY 2010-11. Thus the department having accepted the previous decisions was not justified when the AO for AY 2011-12 held that the assessee had not started any business either during the year or prior to the year. Hence, the assessee had already set up the business.
Dy. CIT v. Albasta Wholesale Services Ltd. (2019) 70 ITR 504 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Deloitte Touche Tohmatsu (DTT) technology subscription – Payment for utilizing brand and technology not being made for acquiring any asset of enduring benefit should be allowed as a revenue expenditure. 579
Dismissing the appeal of the revenue the Tribunal held that annual Deloitte Touche Tohmatsu (DTT) technology subscription paid for utilizing brand and technology not being made for acquiring any asset of enduring benefit should be allowed as a revenue expenditure. (AY 2007-08)
Deloitte Touche Tohmatsu India P. Ltd. v. DCIT (2019) 71 ITR 301 / 179 ITD 78 (Mum.) (Trib.)

S. 37(1) : Business expenditure – Ad-hoc disallowance – Promotion expenses – Disallowance on Ad hoc basis is held to be not valid – Disallowance of part of Salary and wages is held to be not justified. 580
The AO had disallowed 30% of the business promotion expenses as unverifiable. The CIT(A) deleted the addition as the assessee had duly substantiated the reasons for the expenses. The Tribunal held that the assessee had submitted all the bills and vouchers pertaining to the expenses in dispute and the AO could not indicate single instance to show unverifiable element. Thus, the Tribunal dismissed the appeal of the Department. The AO had disallowed 8% of the salary and wages as the assessee had not established

that the expenses were incurred wholly and exclusively for the purpose of business. The CIT(A) deleted the addition based on the explanation submitted. The Tribunal considering material on record considered that the assessee had established business expediency for the expenses. Thus, the Tribunal dismissed the appeal of the Department. (AY. 2012-13 to 2014-15)
ACIT v. AB Capital (2019) 73 ITR 23 (Kol.)(Trib.)

581 **S. 37(1) : Business expenditure – Disallowance of part of employee benefit expenses is held to be not justified.**
The AO had disallowed employee benefit expenses as no business activity was carried out by the assessee. The Tribunal after considering the business of the assessee and various details submitted such as the financials, business model and business history, considered the expenses to be incurred out of commercial expediency. Thus, the Tribunal deleted the disallowance. (AY. 2015-16)
Agencies Rajasthan P. Ltd. v. ITO (2019) 73 ITR 633 / 179 ITD 90 / 180 DTR 113 (Jaipur) (Trib.)

582 **S. 37(1) : Business expenditure – Trade advances – Allowable as deduction. [S. 28(i)]**
Tribunal held that assessee which is engaged in business of processing and exports of marine products, trade advances written off consequent to downfall in business of fishermen to whom advances were made due to cyclone and earthquake, assessee's claim for deduction was to be allowed. (AY. 2007-08, 2008-09)
ACIT v. Hiravati Marine Products (P.) Ltd. (2019) 177 ITD 722 (Rajkot)(Trib.)

583 **S. 37(1) : Business expenditure – Capital or revenue – Acquisition of Set Top Boxes (STB) – Capital expenditure – Depreciation is allowable at 15%. [S. 32].**
Expenditure incurred by assessee, a signals distribution and cable networking company, on installation of set top boxes, being expenditure incurred in connection with profit earning apparatus which generated a permanent source of income for assessee by way of annual service maintenance charges was capital in nature. Depreciation on Set Top Box (STB) is allowable at 15 Per cent. (AY. 2014-15)
ACIT v. Kerala Communicators Cable Ltd. (2019) 177 ITD 623 / 201 TTJ 704 / 183 DTR 313 (Cochin)(Trib.)

584 **S. 37(1) : Business expenditure–Enhanced compensation – Matter set aside to examine lease agreement and whether the assessee is entitled to recover from sub-lessees.**
Tribunal held that neither AO nor CIT(A) had examined lease agreements based on which assessee was entitled to recover enhanced amount of compensation from sub-lessee. It could not be ascertained to what extent assessee was entitled for claim of enhanced compensation as an expenditure. Accordingly the issue was to be remitted to the file of Assessing Officer to examine relevant lease agreement entered into by assessee with its sub-lessee and decide thereupon. (AY. 2012-13, 2013-14)
ACIT v. Rubber Park India (P.) Ltd. (2019) 177 ITD 614 (Cochin)(Trib.)

S. 37(1) : Business expenditure – Reimbursement of salary paid by sister concern – Held to be allowable as deduction. 585

Tribunal held that expenses incurred on account of reimbursement of salary of employees deputed to it by its sister concern in order to facilitate assessee in carrying on its business is held to be allowable as deduction. (AY. 2009-10, 2010-11)

Angre Port (P.) Ltd. v. ITO (2019) 177 ITD 291 / 181 DTR 169 (Pune)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure on scholarship – Held to be revenue expenditure. 586

Tribunal held that in the professional field there are innovative ways visualized by professionals to make themselves visible in the professional circle and to build their own professional profile for generating higher and value – added business such as sponsoring seminars, becoming knowledge partners, setting up prizes and awards, creating competitive award ceremonies, hosting vibrant summits etc. The way professionals promote themselves is changing very fast and benefits of such expenditure are huge and wide. Accordingly expenditure on scholarship is held to be revenue expenditure. (AY. 2011-12)

Harish Narinder Salve v. ACIT (2019) 181 DTR 121 / 74 ITR 21 (SN) / 178 ITD 800 (Delhi)(Trib.), www.itatonline.org

S. 37(1) : Business expenditure – Illegal payments – Fee paid for registration of product in Iraq – Cannot be said to be payment of kickbacks to Iraqi regime for doing business – Allowable as deduction. 587

Tribunal held that fees of ₹ 1.32 lakh paid to Delhi based agent for registration of products in Iraq cannot be said to be kickbacks to Iraqi regime for doing business. Allowable as deduction. (AY. 2003-04)

DCIT v. Core Healthcare Ltd. (2019) 177 ITD 26 (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Commission – Ad-hoc disallowance of 50% – Furnished details of payment – Ad-hoc disallowance is held to be not justified. 588

Tribunal held that when the assessee substantiated payment of commission by submitting vouchers, bills which are hand made disallowance of 50% of expenses only on the basis that the vouchers are handmade is held to be not justified. (AY. 2011-12)

Alkoplus Producers (P.) Ltd. v. DCIT (2019) 177 ITD 150 / 71 ITR 650 / 181 DTR 329 / 201 TTJ 893 (Pune)(Trib.)

S. 37(1) : Business expenditure – Interest bearing loans – Charged interest at 9% – Disallowance of interest at 12% is held to be not justified. [S. 36(1)(iii)] 589

Tribunal held that when the assessee charged 9% on the amount outstanding, the disallowance of interest at 12% is held to be not justified. (AY. 2011-12)

Alkoplus Producers (P.) Ltd. v. DCIT (2019) 177 ITD 150 / 71 ITR 650 / 181 DTR 329 / 201 TTJ 893 (Pune)(Trib.)

590 **S. 37(1) : Business expenditure – Illegal expenses – Distribution of ball pens, medical gifts etc with logo of the company to doctors and hospitals – Allowable as business expenditure – Explanation 1 to S. 37(1) is not applicable.**
Pharmaceutical company, engaged in business of trading and marketing of medicines, incurred expenses towards business promotion by way of organizing medical camps/ blood donation camps/free check up camp, etc., with distribution of ball pens and medical gifts etc with logo of assessee company to doctors and hospitals is allowable as business expenditure. Explanation 1 to S. 37(1) is not applicable. CBDT Circular No. 5 of 2012, dated 1-8-2012 and 'Indian Medical Council Regulations, 2002', imposing prohibition on medical practitioner and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from pharmaceutical and allied health sector industries are not applicable. (AY. 2015-16)
Aishika Pharma (P.) Ltd. v. ITO (2019) 177 ITD 238 (Delhi)(Trib.)

591 **S. 37(1) : Business expenditure – Expenditure incurred on earning on term deposit is allowable as deduction.**
Expenditure incurred on earning on term deposit is allowable as deduction. (AY. 2009-10)
Ashwin S. Mehta v. ACIT (2019) 70 ITR 234 (Mum.)(Trib.)

592 **S. 37(1) : Business expenditure – Sales promotion expenses – Gifts to various customers – No expenditure shall be allowed as deduction in case assessee is unable to establish the nexus between incurrence of expenditure with the business activities.**
The assessee, a Partnership firm, carrying on warehousing business and also engaged in the manufacturing of wooden articles for the use of textile industry. The income derived from these two activities were offered as business income. During the course of assessment proceedings, AO observed that assessee had debited the sum of ₹ 2,04,186/- towards sales promotion expenses in its warehousing business. On verification, AO observed that this expenditure of ₹ 2,04,186/- pertains to purchase of Gold & Silver which were given to various customers for promoting business. The AO disallowed the said expenditure by holding that such expenditure so incurred had got nothing to do with warehousing activity of the assessee. This action of the AO was upheld by the CIT(A). Aggrieved by the same, assessee filed an appeal before the Tribunal. The Tribunal observed that no details were provided to ascertain whether similar items of expenditure in the form of purchase of gold and silver were incurred in the past and whether the expenses were allowed as revenue expenditure by the Department for the earlier years. Though the assessee produced the bills for incurrence of purchase of gold and silver it had not established the nexus between the incurrence of this expenditure vis-a-vis the warehousing revenue derived by it. Hence, disallowance of the claim of ₹ 2,04,186/- towards sales promotion expenses was justified. (AY. 2012-13)
Grand Wood Works and Saw Mills v. ITO (2019) 69 ITR 3 (SN.) (Mum.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Royalty paid for license to use is held to be revenue expenditure. 593

Tribunal held that the assessee had merely obtained access to technical knowledge with regard to technique of production and the right to use of trademarks of the licensor for a year. There was no absolute transfer of the know how and the license granted was neither exclusive nor transferable. It held that this has not led to the benefit of enduring nature and will not constitute 'acquisition of an asset' and any amount for the same will not constitute capital expenditure. Accordingly the appeal of revenue is dismissed. Followed *CIT v. Ciba of India Ltd. (1968) 69 ITR 692 (SC)* (ITA No. 6548/Mum/2017 dt. 22-05-2019) (AY. 2012-13)

DCIT v. Asian Paints PPG Pvt. Ltd. (Mum.)(Trib.)(UR)

S. 37(1) : Business expenditure – Discounts to customers who purchases the medicine from C&F agents – Direct bearing on potential turnover of company – expense would fall within expression wholly and exclusively for purpose of business – Allowable as business expenditure. 594

Tribunal held that discounts paid to customers/ultimate consumers who purchased medicines sold by assessee through its C & F agents has direct bearing on potential turnover of company and the expense would fall within expression 'wholly and exclusively' for the purpose of business. Hence allowable as business expenditure. (AY. 2009-10)

Aditya Medisales Ltd. v. DCIT (2019) 176 ITD 783 (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Replacement of spare parts of machinery – Held to be revenue expenditure. 595

Tribunal held that replacement of spare parts of machinery is held to be revenue expenditure, since said replacement neither brought into existence any new asset nor acquired any advantage of enduring benefit. (AY. 2006-07)

Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Asset management company – Date of approval given by SEBI was to be regarded as the date on which assessee set up its business and was ready to commence said business – Expenses incurred for purpose of business after said date of approval were eligible for deduction. [S. 3, Regulation 21 of the SEBI (Mutual Fund) Regulations, 1996] 596

Dismissing the appeal of the revenue the Court held that, business of assessee was set up and assessee was ready to commence its business once it was approved by SEBI to act as an asset management company in accordance with sub-regulation (2) of Regulation 21 of the 1996 Regulations, which approval was granted by SEBI in favour of assessee on 17-10-2012. Accordingly the assessee is entitled to deduction of admissible business expenses incurred by it on or after 17-10-2012 when business could be said to have been set up by assessee. (AY. 2013-14)

DCIT v. PPFAS Asset Management (P.) Ltd. (2019) 176 ITD 541 (Mum.)(Trib.)

597 **S. 37(1) : Business expenditure – Construction business – Accounting Standard-2 – Justified in debiting all expenses to work-in-progress except expenses related to administration, selling, marketing, etc. [S. 145]**
Tribunal held that the assessee was justified in debiting all expenses to work-in-progress except expenses related to administration of business. Since employee cost, administrative, selling and marketing expenses etc. were revenue expenses not related to construction activity, same would be allowable in year in which they were incurred. (AY. 2007-08)
Macrotech Construction (P.) Ltd. v. ACIT (2019) 176 ITD 530 (Mum.)(Trib.)

598 **S. 37(1) : Business expenditure – Indian subsidiary – Head office – Payment to holding company for providing services – Matter remanded.**
Tribunal held that in order to claim expenses as allowable expenses the assessee had to demonstrate that certain services were provided by Head Office to assessee-subsidiary for which expenditure was incurred at global Head Office level. The AO was required to examine organizational structure of holding company vis-a-vis assessee company and it was to be established that nexus was available between payment and services rendered. Matter remanded. (AY. 2009-10, 2011-12, 2012-13)
Diamond Crucible Company Ltd. v. ACIT (2019) 176 ITD 258 (Ahd.)(Trib.)

599 **S. 37(1) : Business expenditure – Interest – Commercial expediency – Unrelated parties – Payment was made as part of contract – Disallowances cannot be made. [S. 36(1)(iii)]**
Tribunal held that payment of interest was made as part of contract to unrelated parties is held to be allowable as deduction on commercial expediency. (AY. 2011-12).
Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

600 **S. 37(1) : Business expenditure – Prior period expenses – Method of accounting – Bills received during the year – Liability crystallised during the year – Allowable as deduction. [S. 145]**
Tribunal held that, bills received during the year hence liability crystallised during the year. Expenditure is allowable as deduction. (AY. 2011-12)
Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

601 **S. 37(1) : Business expenditure – Deduction for professional fees paid to Individual for professional services was to be allowed only to the extent of services rendered for the benefit of the Assessee and not for other group entities.**
On appeal by the Department, the Tribunal observed that the payment made by assessee should fulfill the conditions of S. 37(1) of the Act and the payments, prima facie, seemed to be part of the acquisition process and therefore, it was imperative to find out the exact nature of services rendered by the individual. Accordingly, the Tribunal sent the matter to the AO for re-adjudication in light of the acquisition agreement. The complete onus to demonstrate that the expenditure qualified for deduction rested on the assessee. If the expenditure was, at all, found admissible, deduction could be allowed only to extent of services being rendered by the individual for the benefit of the assessee only and not for the other entities. (AY. 2011-12)
ACIT v. Sodexo Food Solutions India P. Ltd. (2019) 69 ITR 119 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Corporate social responsibilities – Held to be allowable – Explanation 2 inserted in S. 37(1) with effect from 1-4-2015 is prospective in nature. [S. 35AC, 80G, Companies Act, 2013, S. 135] 602

Expenditure incurred on Corporate social responsibilities is held to be allowable. Explanation 2 inserted in S. 37(1) with effect from 1-4-2015 is prospective in nature. (AY. 2012-13)

National Small Industries Corp. Ltd. v. DCIT (2019) 175 ITD 601 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – RoC fees paid for increase in authorised capital for issuance of bonus shares was revenue expenditure – Matter remanded for verification. 603

The AO disallowed the fees paid for increase in authorised capital by following the ratio laid down by Supreme Court in *Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798 (SC)*. Tribunal held that the Supreme Court in subsequent judgment *CIT v. General Insurance Corpn. (2006) 286 ITR 232 (SC)* has considered similar issue and after considering the ratio of its earlier decision in *Brooke Bond India Ltd. (supra)* had given a categorical finding that if expenditure is incurred in connection with the issuance of bonus shares the same is revenue expenditure. But, one is not aware whether the said particulars are part of assessment proceedings before the AO or not. Therefore, the issue needs to be re-examined by the AO in the light of the decision of Supreme Court in the case of General Insurance Corporation Ltd. Hence, the issue is set aside to the file of the AO to consider the basis of working furnished by the assessee. (AY. 2013-14)

Olive Bar & Kitchen (P.) Ltd. v. DCIT (2019) 175 ITD 72 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Business commenced – Expansion of existing business – Preoperative expenses such as salaries and wages, PF and ESI contribution, travelling expenses, and like other general administrative expenses etc is held to be allowable. [S. 35D(1)(ii)] 604

Allowing the appeal of the assessee the Tribunal held that, preoperative expenses such as salaries and wages, PF and ESI contribution, travelling expenses, and like other general administrative expenses etc is held to be allowable as the assessee has commenced the business and the expenses are for expansion of existing business. (AY. 2013-14)

Olive Bar & Kitchen (P.) Ltd. v. DCIT (2019) 175 ITD 72 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Provision for salary – Sixth Pay Commission – liability on account of payment of revised enhanced salary had neither accrued nor crystallized during relevant assessment year – Impugned Provision made is not allowable as deduction. [S. 145] 605

Tribunal held that provision for payment of arrears of salary on basis of revised pay scales approved by GOI in Sixth Pay Commission, liability on account of payment of revised enhanced salary had neither accrued nor crystallized during relevant assessment year, as the pay revision was finally implemented in 2008. (AY. 2007-08)

Housing & Urban Development Corporation Ltd. v. ACIT (2019) 174 ITD 785 (Delhi)(Trib.)

606 **S. 37(1) : Business expenditure – Interest paid to the Income tax department on delayed payment of Tax deduction at source is allowable as deduction, it is not personal tax. [S. 40(a)(ii)]**
Tribunal held that, interest paid to income-tax department on delayed payment of Tax deduction at source is allowable as deduction, it is not personal tax. Matter was remanded for verification. (AY. 2004-05)
Mukand Ltd. v. ITO (2019) 174 ITD 605 / 198 TTJ 884 / 176 DTR 156 (Mum.)(Trib.)

607 **S. 37(1) : Business expenditure – Education expenses of grandson of director who has contributed to functioning of business – Matter is remanded back for disposal afresh.**
Tribunal held that the disallowance of expenses incurred on education expenses of grandson of director was set aside as the revenue authorities failed to verify the evidence filed by the assessee in support that the grandson of director has contributed to functioning of business. Matter is remanded back for disposal afresh. (AY. 2013-14)
Bansal Alloys & Metals (P.) Ltd. v. ACIT (2019) 174 ITD 62 (Chd.)(Trib.)

608 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Commission or brokerage – Manufacture of goods as per specification – No principal – Agent relationship – Not liable to deduct tax at source – No disallowances can be made. [S. 194H].**
Dismissing the appeal of the revenue the Court held that, manufacture of goods as per specification, there is no principal, agent relationship hence not liable to deduct tax at source. Accordingly no disallowances can be made. (Arising from ITA No. 2087/M/2012 dt. 23-3-2016) (ITA No. 953 of 2017 dt 27-8-2019. (AY. 2009-10)
PCIT v. Sandu Pharmaceuticals Ltd. (2019) BCAJ-October-P. 65 (Bom.)(HC)

609 **S. 40(a)(i) : Amounts not deductible – Interest – Party residing outside India – Exemption from Ministry of Finance – Not liable to deduct tax at source. [S. 10(15)(f), 195]**
The AO disallowed the payment of interest for non deduction of tax at source in respect of payment of interest. Tribunal held that interest payment on foreign currency loan is exempt u/s 10(15) (f) of the Act. On appeal by the revenue, dismissing the appeal the Court held that even if loan taken for working capital, earlier the exemption was given by the ministry of finance hence the order of Tribunal is affirmed.
CIT v. Seven Seas Distillery P. Ltd. (2020) CTCJ-January-P. 86 / (2020) 185 DTR 105 / 312 CTR 272 (Mad.)(HC)

610 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Payments made to foreign law firms as consultancy fee which did not have any fixed base in India – Not taxable in India – Not liable to deduct tax at source. [S. 9(1)(i), 195]**
Dismissing the appeal of the revenue the Court held that, payments to professional law firms by way of consultancy fee which did not have any fixed base in India is not taxable in India hence not liable to deduct tax at source.
PCIT v. Cadila Healthcare Ltd. (2019) 104 taxmann.com 78 / 262 Taxman 301 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Cadila Healthcare Ltd. (2019) 262 Taxman 301 (SC)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Interest – Royalty – Fees for technical services – DTAA-India-Switzerland. [S. 9(1)(vi), 195, Art. 14] 611

The AO made disallowance of u/s 40(a)(i) by holding that payment made to Dr. WS is a payment towards 'fees for technical services' as per Explanation 2 to S. 9(1)(vii) and thus liable for deduction of tax at source u/s 195. He did not accept the contention of the assessee that payment is for 'independent scientific activity' covered by the Article 14 of the DTAA with Switzerland and thus not liable for deduction of tax at source u/s 195. CIT(A) upheld the AO order.

Tribunal held that the same is a covered issue in the case of the assessee for AY 2009-10 wherein it was held that it is apparent that the services are covered under Article 14 of the DTAA and not under Article 12 of DTAA. Further it is not the case of the Revenue that the services provided by the Swiss resident is not professional services as defined under Article 14(2) of DTAA. Further, it is not the case of the Revenue that such services are provided by him from his fixed base in India or he has stayed for more than 183 days in India. Therefore, no tax is required to be deducted on payment made to Dr. WS who is a resident of Swiss Confederation. Therefore, those services are independent, personal services in the nature of independent scientific services & shall be taxable only in Swiss confederation. Hence, no tax is required to be deducted on sum paid by the assessee to Dr. WS u/s. 195. Therefore, the appeal is allowed. (AY. 2012-13)

Poddar Pigments Ltd. v. ACIT (2019) 174 DTR 177 (Delhi)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Royalty – Payment for purchase of copyrighted software – Not royalty – 'Royalty' originally defined in double taxation avoidance agreement not amended – Assessee is not liable to deduct tax for payments made for purchase of off the shelf software. [S. 9(1)(vi), 195] 612

The Tribunal held that the payment made by the assessee for purchase of off-the-shelf software was not in the realm of "royalty" and as the definition of royalty had not been amended under the Double Taxation Avoidance Agreement, the provisions of the Double Taxation Avoidance Agreement being more beneficial were to be applied and there was no requirement to deduct tax at source out of such payment. The disallowance made under S. 40(a)(i) of the Act was not warranted. (AY. 2012-13)

Eaton Technologies Pvt. Ltd. v. Dy. CIT (2019) 75 ITR 675 (Pune)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Fees for Technical Services – Commission agents providing services outside India – Commission payments to non-residents not be treated as income deemed to accrue or arise in India – No disallowance could be made [S. 195] 613

The assessee made payments of commission in foreign currency to non-resident parties, without deducting tax at source under S. 195 on such payments. The assessee contended that these payments were made to the non-residents operating overseas who did not have any presence in India and there was no need to deduct tax at source on such payments. The AO was of the view that since the services were rendered in relation to the assessee's business carried out in India, it was liable to be taxed in India

and accordingly he held that the assessee was under obligation to deduct tax at source on such payments, failing which he disallowed these expenses claimed. The CIT(A) upheld the order of the AO. On appeal for this issue, the Tribunal reversed the order of the CIT(A) on the ground that in the absence of any activity in India by a non-resident commission agent, the commission did not accrue or arise in India and was not taxable in India. Therefore, it was held that the assessee was not under any obligation to deduct tax at source under S. 195 of the Act. (AY. 2010-11, 2011-12)
DCIT v. Tecnotree Convergence Ltd. (2019) 75 ITR 505 (Bang.)(Trib.)

614 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Independent personal services outside India – Not chargeable to tax in India – Not liable to deduct tax at source – DTAA-India-Canada. [S. 9(1)(i), Art. 12, 14]**
Dismissing the appeal of the revenue the Tribunal held that services rendered by non residents are independent personal services outside India hence the assessee is not liable to deduct tax at source. (AY. 2011-12)
DCIT v. Hydrosult Inc. (2019) 175 ITD 525 (Ahd.)(Trib.)

615 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Purchase of bearings – Not liable to deduct tax at source – No disallowances can be made – DTAA-India-USA. [S. 195, Art. 26(3)]**
Dismissing the appeal of the revenue the Tribunal held that, since the payments made on account of purchase of bearings were not in the nature of interest or royalties or fees for technical services or other sum chargeable to tax in India, the assessee was not required to deduct tax at source hence no disallowance can be made. (AY. 2008-09)
ITO v. Filco Trade Centre (2019) 69 ITR 99 (Delhi)(Trib.)

616 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Foreign agent – Commission – No permanent establishment in India – Carrying activities outside India – Payment is neither taxable nor can be treated as payment for rendering any managerial, technical or consultancy services. [S. 9(1), 195]**
Dismissing the appeal of the revenue the Court held that where the non-resident was rendering services outside India, the commission earned by such non-resident for acting as an agent for Indian exporter would not accrue in India. In the case in hand the foreign agents are not residents of India and, thus, squarely covered by the judgment passed by the Apex Court in *CIT v. Toshoku Ltd. (1980) 125 ITR 525 (SC).* (AY. 2012-13)
DCIT v. Mc Fills Enterprise (P.) Ltd. (2019) 174 ITD 667 (Ahd.)(Trib.)

617 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Professional fees – Payment made outside India – Not chargeable to tax in India – Not liable to deduct tax at source – DTAA-India-China. [S. 9(1)(vii), 90(2), 195]**
Dismissing the appeal of the revenue, the Court held that fees for professional services in nature of audit and advisory paid outside India, which is not chargeable to tax in India hence not liable to deduct tax at source. Accordingly no disallowances can be made. (Arising from ITA No. 1918, 1480/M/2013 dt. 18-3-2016) (ITA No. 690 of 2017 dt. 24-9-2019 dt. 24-9-2019. (AY. 2008-09)
CIT v. KPMG (2019) BCAJ-October-P. 55 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Subsidiary company – Reimbursement of expenses – Not liable to deduct tax at source – No disallowance can be made. [S. 195] 618

Dismissing the appeal of the revenue the Court held that, reimbursement of expenses of its subsidiary company for marketing expenses, is not liable to deduct tax at source. No disallowances can be made. (AY. 2009-10)

PCIT v. Manugraph India (P) Ltd. (2019) 267 Taxman 437 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractors – Turnover did not exceed monetary limit prescribed under the Act for tax audit – Not liable to deduct tax at source – Disallowance cannot be made for failure to deduct tax at source. [S. 44AB, 194C] 619

AO held that the assessee had made certain contractual payments without deducting tax at source under S 194C of the Act. Accordingly disallowed payments under S. 40(a)(ia) of the Act. Tribunal held that statutory provisions contained sub-sections (1) and (2) of section 194 C prevailing at relevant time excluded individuals and Hindu Undivided Families from requirement of deducting tax at source as long as their turnover did not exceed limit for statutory audit. On facts the assessee had qualified for exclusion clause and, therefore, requirement of deducting tax at source could not be applied. Accordingly the disallowance was deleted. High Court upheld the order of the Tribunal. (AY. 2007-08)

PCIT v. Vijay S. Poojari (2019) 109 taxmann.com 212 / 266 Taxman 183 (Bom.)(HC)

Editorial : SLP of the revenue is dismissed; PCIT v. Vijay S. Poojari (2019) 266 Taxman 182 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Amendment to S. 40(a)(ia) by Finance Act, 2010 permitting deposit of tax deducted at source till due date for filing return is retrospective in operation. [S. 139(1), 260A] 620

Dismissing the appeal of the revenue the Court held that the amendment to S. 40(a)(ia) by the Finance Act, 2010, was retrospective in operation with effect from April 1, 2005. The various High Courts had taken the view that the provision being a machinery provision, retrospective effect being given to it was appropriate. There was no reason as to why such view should be departed from. No question of law arose. Followed *CIT v. Naresh Kumar (2014) 362 ITR 256 (Delhi) (HC), CIT v. Omprakash R. Chaudhary (2014) 3 ITR –OL 282 (Guj.)(HC) CIT v. Sri Scorpio Engineering Ltd. (2016) 388 ITR 266 (*Karn.)(HC), *CIT v. Virgin Creations. (ITA No. 302 of 2011 dt. 23-11-2011) (Cal.)(HC).* (AY. 2009 10)

CIT v. Shraddha and S. S. Kale, Joint Venture (2019) 417 ITR 439 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission or brokerage – Payment to banks for processing of credit card transactions not liable to deduction u/s. 194H. [S. 194C, 194H] 621

Payments to banks for processing of credit card transactions is not liable for deduction of tax at source u/s. 194H of the Act, as in such transactions, the banks do not act as the 'agents' of the customer and therefore the payments cannot be characterised as commission. The banks enter into such transactions as independent parties. The fee

charged/retained by them is towards provision of banking services, and not brokerage or commission. Appeal of revenue is dismissed. (Followed *CIT v. JDS Apparels P. Ltd. (2015) 370 ITR 454 (Bom) (HC), CIT (TDS) v. Larsen and Toubro Ltd, ITA No. 769 of 2016 dt 4-12-2018 (Bom.)(HC)*. (AY. 2009-10)
PCIT v. Hotel Leela Venture Ltd. (2019) 174 DTR 247 / 307 CTR 466 / (2020) 420 ITR 385 (Bom.)(HC)

622 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – The second proviso to S. 40(a)(ia) is beneficial to the assessee and is declaratory and curative in nature. Accordingly, it must be given retrospective effect. [S. 201(1)]**
Dismissing the appeal of the revenue the Court held that, the second proviso to S. 40(a)(ia) is beneficial to the assessee and is declaratory and curative in nature. Accordingly, it must be given retrospective effect. Followed *CIT v. Ansal Land Mark Township P. Ltd. (2015) 377 ITR 635 (Delhi) (HC). Hindustan Coca Cola Beverages P. Ltd. v. CIT (2007) 293 ITR 226 (SC)* (ITA No. 707 of 2016, dt. 7-1-2019)
PCIT v. Perfect Circle India Pvt. Ltd. (Bom.)(HC), www.itatonline.org

623 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Second proviso to S. 40(a)(ia) of the Act inserted by Finance Act, 2012 is clarificatory and retrospective in nature – No disallowance can be made where the recipient of the amount has already discharged his tax liability therein. [S. 40(a), 139(1)]**
The Question before the High Court was "Whether the second proviso to S. 40(a)(ia) of the Act inserted by Finance Act, 2012 is clarificatory and retrospective in nature and disallowance under S. 40(a)(ia) of the Act by the Tribunal is justifiable where the recipient of the amount has already discharged his tax liability therein?" High court answered the question in favour of the assessee and against the revenue following case laws *CIT v. Ansal Land Mark Township P. Ltd. (2015) 377 ITR 635 (Delhi)(HC) CIT v. Calcutta Export Company (2018) 404 ITR 654 (SC), PCIT v. Manoj Kumar Singh; [2018] 402 ITR 238 (All) (HC), PCIT v. Perfect Circle India Pvt. Ltd. (Bom.)(HC). (ITA No 707 2016 dt. 7-01-2019) PCIT v. Shivpal Singh Chaudhary (2018) 409 ITR 87 (P&H)(HC), Deeva Devi (Smt.) v. PCIT (Karn.)(HC) (WP No. 3928 /2018 dt. 20-02-2018). Distinguished Thomas George Muthoot v. CIT. (2015) 235 Taxman 246 / (2016) 287 CTR 101 (Ker.) (HC) (Approved Rajeev Kumar Agarwal v. Add. CIT (2014) 34 ITR 479 (Agra)(Trib.)*.
CIT v. Anand, S. M. (2019) 311 CTR 795 / 182 DTR 153 (Karn.)(HC)

624 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Sale transaction through dealers on principal – to – principal basis – Dealer could not be considered as commission agent of the assessee – Not liable to deduct tax at source – No disallowances can be made. [S. 194H]**
Dismissing the appeal of the revenue the Court held that, sale transaction through dealers on principal-to-principal basis is not liable to deduction of tax at source. Dealer could not be considered as commission agent of the assessee. Accordingly no disallowances can be made. (AY. 2009-10)
PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. (2019) 416 ITR 144 / 216 Taxman 19 (Mag.) / 311 CTR 556 / 184 DTR 84 (Guj.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Rejection of Books of account – Estimation of profit @ 8% of turnover – No disallowance can be made u/s 40 of the Act. [S. 145(3)] 625

Court held that once the books of account were rejected and the profit was estimated at 8 per cent of the turnover, the books of account could not be relied upon for the purpose of making addition under the provisions of S. 40 of the Act. (AY. 2004-05)

ACIT v. Salauddin (2019) 414 ITR 335 (Pat.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment gateway charges paid to a bank for swiping credit cards are in the nature of fees for banking services and not "commission" or "brokerage" – Not liable to deduct tax at source – No disallowances can be made. [S. 194H, 195(3)] 626

Dismissing the appeal of the revenue the Court held that,payment gateway charges paid to a bank for swiping credit cards are in the nature of fees for banking services and not "commission" or "brokerage". Accordingly, no TDS is deductible from the said charges u/s 194H and no disallowance u/s 40(a)(ia) can be made (*CIT v. JDS Apparels (P) Ltd. (2015) 370 ITR 454 (Delhi)(HC)* followed). (AY. 2009-10)

PCIT v. Make My Trip India Pvt. Ltd. (2019) 263 Taxman 271 / 178 DTR 106 / 308 CTR 833 (Delhi)(HC), www.itatonline.org

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payee filed the return and offered the sum received from the assessee – Second proviso to S. 40(a)(ia) has retrospective effect from 1-4-2010 – No disallowances can be made. [S. 194J, 201] 627

Dismissing the appeal of the revenue the Court held that where assessee made payments and deducted tax at source but failed to deposit such tax deducted at source to government account within due date of filling return for relevant years, since assessee had filed documents in evidence to show that payee had filed return and offered sum received from assessee to tax, impugned disallowance made under S. 40(a)(ia) was to be deleted. (AY. 2011-12)

CIT v. Bhanot Construction & Housing Ltd. (2019) 261 Taxman 262 (Delhi)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Recipients of the interest income had included the income in their return and paid taxes thereon – No disallowance can be made – Second proviso inserted by Finance Act 2012 is retrospective in effect. [S. 201(1)] 628

Dismissing the appeal of the revenue the Court held that the Tribunal is right in holding that, recipients of the interest income had included the income in their return and paid taxes thereon. No disallowance can be made. Second proviso inserted by Finance Act 2012 is retrospective in effect. (AY. 2012-13)

PCIT v. Mobisoft Telesolutions Pvt. Ltd. (2019) 411 ITR 607 (P&H)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Reimbursement of expenses – Federation of International Hockey for arranging for provisional services connected with event of Hockey World Cup – Not liable to deduct tax at source. [S. 9(1)(i), 195] 629

Dismissing the appeal of the revenue the Court held that, reimbursement of payments made by assessee to Federation of International Hockey for arranging for provisional

services connected with event of Hockey World Cup such as travel, hospitality and provision of food etc. merely represented reimbursement of expenses not liable to tax in India, hence not liable to deduct tax at source. (AY. 2010-11)
PCIT v. Organizing Committee Hero Honda FIH World CUP (2018) 100 taxmnn.com 440 / 260 Taxman 180 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Organizing Committee Hero Honda FIH World CUP. (2019) 260 Taxman 179 (SC)

630 **S. 40(a)(ia) : Amounts not deductible – Deduction at source Usance interest – Letter of credit discount charges – Merely in nature of reimbursement of cost incurred by suppliers under agreed arrangements and not interest – Not liable to deduct tax at source. [S. 2(28A), 194A]**
Dismissing the appeal of the revenue the Court held that the assessee had opened LC in favour of its suppliers who had discounted same with bank. On account of early payment, bank had deducted some amount which assessee was liable to reimburse to its suppliers. The assessee had not made payment of interest to bank or to supplier and amount credited to suppliers' account was towards reimbursement of expenses incurred by suppliers. Accordingly the provision of S. 194A is not applicable and no disallowance can be made for failure to deduct tax at source. (AY. 2008-09)
PCIT v. Plastene India Ltd. (2019) 260 Taxman 197 (Guj.)(HC)

631 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Copy editing, indexing and proof reading requiring only knowledge of language and not expertise in subject matter of text – Services rendered by Non – residents not Technical Services – Not liable to deduct tax at source – No disallowances can be made. [S. 195(6)]**
The tribunal held that language translation was not a technical service. Even income from legal services rendered from abroad was not taxable in India without a permanent establishment in India. The copy editing, indexing and proof reading required only knowledge of the language and did not require necessary expertise in the subject matter of text. Thus, the services rendered by the non-residents were not technical services and the payment received by the non-residents from the assessee was not taxable in India. S. 195(6) which requires the assessee to furnish information, did not require the assessee to deduct tax at the time of payment. Therefore, the question of disallowance under S. 40(a)(ia) did not arise for consideration. (AY. 2011-12)
Integra Software Services Pvt. Ltd. v. DCIT (2019) 76 ITR 491 (Chennai)(Trib.)

632 **S. 40(a)(ia) : Amount not deductible – Deduction of tax at source – Payments to Non – resident – Services rendered outside India – Payments outside India – Not taxable in India – No disallowance can be made. [S. 5, 9, 195]**
The assessee paid amount towards selling commission, exhibition expenses and testing expenses to non-resident entities without deduction of tax source. The A. O. disallowed the payments by applying S. 40(a)(ia) by considering Explanation 2 to section 195 that was introduced by the Finance Act, 2012.
The Tribunal noted that the commission paid to non-resident entities in respect of sales effected, services rendered and the payments made were all outside India. The commission could not be held chargeable to tax in India. Similarly, the exhibition

expenses were outside India and not fall in the category of income which has accrued or arisen or deemed to accrue or arise in India. (AY. 2013-14)
JLC Electromet P. Ltd. v. ACIT (2019) 75 ITR 13 / 201 TTJ 811 (Jaipur)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Contractor – Sub-contractor – PAN of transporters at the time of payment – No disallowances can be made. [S. 194C(6), 194C(7)] 633
Dismissing the appeal of the revenue the Tribunal held that all that was required for non-deduction of tax at source on payment to transporters was that the latter furnishes his PAN to the person responsible for paying or crediting the amount to him. The primary onus was thus on the recipient to furnish his PAN to the payer and the payer, on receipt of such PAN, was under a statutory obligation not to deduct tax at source on such payments. Further, the payer was under a statutory obligation to furnish the information in prescribed forms to the Income tax authority. As far as the assessee's non-compliance with S. 194C(7) of the Act were concerned, there were separate penal provisions in terms of S. 234E and S. 271H of the Act. In the instant case, once the assessee was in receipt of PAN and had not deducted tax at source, it had complied with the first statutory obligation cast upon it and could not penalized for non-deduction of tax at source u/s 40(a)(ia) of the Act. Merely because there was a failure by assessee to furnish the prescribed information to the income tax authorities, assessee should not suffer thirty percent of disallowance of expenditure u/s. 40(a)(ia) of the Act. (AY. 2015-16)
ACIT v. Arihant Trading Co. (2019) 72 ITR 11 (SN) (Jaipur)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Burden is on assessee to prove recipient declared income in its gross income – Interest to be calculated for the period of default. [S. 201(1), 201(IA)] 634
The AO held that the assessee had not deducted tax at source and had made a short deduction of tax. Accordingly, he disallowed the sum under section 40(a)(ia) of the Act. The CIT(A) confirmed the order of the AO. On appeal the Tribunal held that according to the special audit report, admittedly the assessee had not deducted tax at source for the payments made. Considering the amendments to S. 40(a)(ia), the assessee had to prove that the recipient had declared the income in its gross income. Since the AO had not initiated proceedings under S. 201(1), the assessee had not submitted any documents. Hence, the AO was directed to delete the addition made under S. 40(a)(ia) and to calculate the interest under S. 201(1A) for the period of default. (AY. 2007-08, 2008-09)
Dy. CIT v. Janapriya Engineers Syndicate Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Amendment to the effect that if tax deducted at source is paid on or before due date for filing return, disallowance not warranted – Retrospective in operation – Remitting tax deduction at source amount before due date for filing return – No disallowance can be made. [S. 139(1)] 635
Tribunal held that the effect of the amendment by the Finance Act, 2010 is that the assessee deducting tax either in the last month of the previous year or first eleven months of the previous year shall be entitled to deduction of the expenditure in the

year of incurring it, if the tax so deducted at source is paid on or before the due date for filing the return under S. 139(1). Merely because an appeal had been preferred against the judgment of the High Court which took the view that the amendment to the provisions of S. 40(a)(ia) by the Finance Act, 2010 with effect from April 1, 2010 was retrospective in its operation and was applicable from April 1, 2005, it could not be the basis not to follow the binding decision of the High Court. Since the tax deduction at source had been remitted on or before the due date of filing of return by the assessee, no disallowance under S. 40(a)(ia) could be made and the entire addition made by the AO should be deleted. (AY. 2005-06).
Dy. CIT v. Janani Tours and Resorts P. Ltd. (2019) 70 ITR 51 (SN) (Bang.)(Trib.)

636 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Payments liable to deduction of tax at source – Brand charges – Whether recipient of brand charges paid taxes – Assessing officer to verify documents filed by assessee – Matter remanded.**
Assessee had made payments as brand charges on which it was liable to deduct tax at source in terms of the provisions of Chapter XVII of the Act but no tax had been deducted. The AO added the sum to the total income of the assessee u/s 40(a)(ia) of the Act. The Commissioner (Appeals) confirmed the order. On appeal, held that the matter was to be restored to the AO to verify documents filed by the Assesee proving taxes had been paid by recipient of brand charges. (AY. 2006-07 to 2009-10)
Amit Jindal v. Dy. CIT (2019) 70 ITR 545 (Chd.)(Trib.)

637 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Payment to film distributors for purchase of films for exhibition – Not liable to deduct tax at source – No disallowances can be made. [S. 9(1)(vi), 194J]**
Dismissing the appeal of the revenue the Tribunal held that, payment to film distributors for purchase of films for exhibition being specifically excluded from the definition of Royalty under S. 9(1)(vi), tax is not deductible under S. 194J of the Act on such payment. Accordingly no disallowances can be made. (AY. 2013-14, 2014-15)
ITO v. Eylex Films Pvt. Ltd. (2019) 71 ITR 332 (Ahd.)(Trib.)

638 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Failure to deduct tax at source – Not allowable as deduction. [S. 2(28A), 194A, 194J]**
During relevant year, Canara Bank bank informed assessee that its account had become NPA, and accordingly CA firm was appointed to conduct stock/receivable audit of its accounts for past three years. Assessee was under obligation to make payment of investigation charges carried out by firm of chartered accountant appointed by bank. Assessee failed to make payment to CA firm, banker made payment to CA firm on behalf of assessee which was recovered by bank from assessee by debiting its accounts in its books of account. AO held that tax had not been deducted at source while making said payments. Accordingly disallowed the payment. Tribunal held that on facts, primary liability of assessee was to make payment to chartered accountant firm and merely because payment was made by bank on behalf of assessee did not mean that transaction was covered under provisions of S. 194A, read with S. 2(28A) of the Act. Disallowance is upheld. (AY. 2007-08, 2008-09)
ACIT v. Hiravati Marine Products (P.) Ltd. (2019) 177 ITD 722 (Rajkot)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Contractors – Payments to dealers in lieu of service coupons – Liable to deduct tax at source – Payees have filed the return and taken in to account sum for computing income and paid the tax – No disallowance can be made – Matter remanded for verification. [S. 194C, 201(1)] 639

Assessee – company was manufacturing automobile vehicles, tractors, etc. At time of sale of vehicle value of service coupons were factored into sale price of vehicles. It entered into back – up contract with its dealers, as per which dealers were obliged to provide free services to vehicles. Assessee made payment to dealers for discharging its obligation by providing such free services. Tribunal held that since payment made by assessee in lieu of service coupons was not reimbursement of expenditure but was payment pursuant to contract, assessee was obligated to deduct tax at source under S. 194C at time of making such payment. The assessee demonstrated compliance of conditions envisaged in second proviso of S. 40(a)(ia) and S. 201(1) i.e. payees have filed the return and taken into account sum for computing income and paid the tax. Accordingly it could not be held to be an assessee in-default, thus no disallowance can be made. Matter remanded for verification. (AY. 2007-08)

Mahindra & Mahindra Ltd. v. DCIT (2019) 177 ITD 699 / 183 DTR 89 (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Wharfage charges – Not rent – Not liable to deduct tax at source. [S. 194I] 640

Tribunal held that wharfage charges paid for providing port facilities for shipment of cargo, to Maharashtra Maritime Board (MMB) for carrying on loading/unloading of goods at waterfront did not amount to rent and not liable to deduct tax at source. Accordingly no disallowance can be made for failure to deduct tax at source. (AY. 2009-10-2010-11)

Angre Port (P.) Ltd. v. ITO (2019) 177 ITD 291 / 181 DTR 169 (Pune)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Payments to transporters – Permanent Account Number and addresses of transporters before the Assessing Officer – Provision of S. 194C(6) is complied with – No disallowance can be made. [S. 194C(6)] 641

Tribunal held that the assessee had submitted the permanent account number and addresses of the transporters before the AO and thus complied with the provisions of S. 194C(6) hence no disallowance can be made. (AY. 2012-13)

Fine Blanking Pvt. Ltd. v. DCIT (2019) 70 ITR 400 (Bang.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – burden is on assessee to prove that recipient had declared the income – AO is directed to calculate the interest only for period of default. [S. 201(1), 201(ia)] 642

Tribunal followed *Hindustan Coca Cola Beverages P. Ltd. v. CIT (2007) 293 ITR 226 (SC)* and held that the burden is on assessee to prove that recipient had declared the income. AO is directed to calculate the interest only for period of default. (AY. 2007-08, 2008-09)

Janapriya Engineers Syndicate Ltd. v. ITO (2019) 70 ITR 370 (Hyd.)(Trib.)
CIT v. Engineers Reddy Homes (P) Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

643 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Interest paid to resident – Failure to deduct tax at source – recipient has shown as income – Second proviso to S. 40(a)(ia) inserted by Finance (No. 2) Act, 2004, with effect from 1-4-2005 is curative and has retrospective effect – No disallowances can be made. [S. 201]**
Tribunal held that for failure to deduct tax at source in respect of interest paid to resident, no disallowance can be made as the recipient of income, has taken into account amount received from payer in computing income as declared in return and has paid due tax on returned income. Second proviso to S. 40(a)(ia) inserted by Finance (No. 2) Act, 2004, with effect from 1-4-2005 is curative and has retrospective effect[S. 40(a)(ia), read with S. 201, of the Act]. (AY. 2006-07)
Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

644 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Contractor – PAN of transporters at time of payment of freight was collected – Disallowance cannot be made. [S. 194C(6), 194C(7)]**
Assessee made payments to transporters towards freight charges without deducting TDS on same on ground that transporters had furnished their respective PANs to assessee at time of payment of freights. Assessing Officer held that the assessee could not furnish PANs of transporter to prescribed Income tax authority as per requirement of S. 194C(7) accordingly disallowed the payment applying the provision of S. 40(a)(ia) of the Act. Tribunal held that provisions of S. 40(a)(ia) which are deeming fiction relating to non-deduction of TDS have to be read in limited context of non-deduction of TDS and same cannot be extended to ensure that even where assessee complies with his statutory obligation not to deduct TDS on receipt of PAN, merely because subsequent obligation in terms of filing of prescribed forms has not been complied with. Accordingly the deletion of addition by CIT(A) is affirmed. (AY. 2015-16)
ACIT v. Arihant Trading Co. (2019) 176 ITD 397 (Jaipur)(Trib.)

645 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Hiring charges for use of cranes – Payment being not contractual – Not liable to deduct tax at source. [S. 194C]**
Assessee firm was engaged in the business of civil construction. Assessing Officer held that payment made to hiring charges for use of crane is liable to deduct tax at source u/s 194C. However, assessee did not deduct tax at source hence the payment was disallowed. Tribunal held that simpliciter payment of hiring charges of cranes could not be brought within sweep of definition of term 'work' hence it was not obligatory on part of assessee to deduct tax at source. (AY. 2013-14)
Bhangal Construction Co. v. ITO (2019) 176 ITD 419 (Asr.)(Trib.)

646 **S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Transportation of goods – Requisite information was furnished u/s. 194C(6) – No disallowance can be made – Amendment made to S. 40(a)(ia) by Finance Act, 2015 is remedial in nature and retrospective in applicability. [S. 194C(6)]**
Tribunal held that the assessee has furnished requisite information u/s 194C(6) hence no disallowance can be made. Amendment made to S. 40(a)(ia) by Finance

Act, 2015 is remedial in nature and retrospective in applicability. (AY. 2012-13 to 2014-15)
Zuberi Engineering Company. v. DCIT (2019) 69 ITR 261 / 175 ITD 557 / 197 TTJ 659 / 179 DTR 25 (Jaipur)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction of tax at source – Project competition method – Provision for expenses – When the payee is not known it is not possible to deduct tax at source on estimated expenditure – Not liable to deduct tax at source – No disallowance can be made. [S. 145] 647
Tribunal held that since the expenditure was only estimated and work would be executed against these expenses in subsequent years, the payee was not known. Hence it was not possible for the assessee to deduct tax at source on the estimated expenditure on work which was to be completed in years to come. The financial statements of a particular project were to be made once in the life of the project, on completion of substantial activity and therefore, the assessee did not have any option but to make estimate for expenses on minor/miscellaneous work. On facts the disallowance made by the Assessing Officer was directed to be deleted based on the fact that the assessee had paid tax at source on or before submission of the return. (AY. 2012-13)
Bengal Peerless Housing Development Co. Ltd. v. DCIT (2019) 69 ITR 217 / 175 ITD 671 / 199 TTJ 1003 (Kol.)(Trib.)

S. 40(b)(ii) : Amounts not deductible – Partner – Remuneration – Partnership Deed mentioning maximum amount payable but payment to individual partner left undecided – Payments to be decided mutually between them – No disallowance made in preceding years – Principle of consistency applied. [S. 40(b)(v)] 648
The assessee debited remuneration to the partners. The AO disallowed it under S. 40(b)(ii) of the Act on the ground that the partnership deed neither specified the amount of remuneration payable to each individual working partner nor laid down the manner of quantifying such remuneration. The CIT(A) confirmed the addition holding that the partnership deed mentioned the maximum amount payable under S. 40(b)(v) but not the amount that had been mutually agreed to be paid as remuneration and the quantum of remuneration to be paid to the individual partners was left undecided, and left to the discretion of the two partners to be decided at a future point in time. On appeal, the Tribunal held that the remuneration to the working partners was duly authorised by the partnership deed and such payment had been made according to the deed of partnership and the amount of remuneration payable and the manner of quantifying such remuneration was to be decided mutually between them from time to time. This disallowance was contrary to the principle of consistency as no disallowance was made in the preceding years and was not sustainable. (AY. 2015-16)
Radius Industries v. ACIT (2019) 75 ITR 547 (Delhi)(Trib.)

S. 40(b)(ii) : Amounts not deductible – Working partner – Remuneration – Bonus – Supplementary partnership deed – Allowable as deduction. 649
Tribunal held that the supplementary partnership deed specifically mentioned about payment of bonus by assessee partnership firm to partners and also specified exact

amount of bonus payable to partners. Accordingly payment of bonus made to partners was in accordance with partnership deed and authorised and same could not be disallowed. (AY. 2011-12)
J. C. Bhalla & Co. v. ACIT (2019) 177 ITD 1 / 182 DTR 195 (Delhi)(Trib.)

650 **S. 40(b)(v) : Amounts not deductible – Partner – Remuneration – Book profit – Despite quantum not specified in partnership deed remuneration paid to partners is held to be allowable.**
AO held that since quantum of remuneration had not been stated in partnership deed, which was mandatory condition, remuneration paid to partner was disallowed by the AO which was confirmed by the CIT(A). On appeal the Tribunal held that S. 40(b)(v) provides that in case payment of remuneration made to any working partner is in accordance with terms of partnership deed and does not exceed aggregate amount as laid down in subsequent portion of section, deduction is permissible. In fact partnership Deed specifically provided that salary/remuneration was to be computed as per S. 40(b)(v) of the Act. Accordingly harmoniously interpreting provisions of S 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners was to be allowable. (AY. 2014-15)
Unitec Marketing Services. v. ACIT (2019) 175 ITD 90 (Mum.)(Trib.)

651 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – TV broadcasting right of cricket match – Cancellation of one match and addition of another match – Addition of price difference in broadcasting rights of matches cannot be made.**
Dismissing the appeal of the revenue the Court held that AO was not justified in making addition of amount of difference between rate of two matches under S. 40A(2) merely for the reason that the broadcasting right of the cancelled match was priced higher than the match that was added.
PCIT v. NEO Sports Broadcast (P.) Ltd. (2019) 264 Taxman 323 (Bom.)(HC)

652 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Payment made by the assessee firm to three sub-contractors out of 21 work contracts given by it was to the relatives of the partners of the firm – 20% disallowance is held to be justified [S. 37(1), 40A(2)(b)]**
Dismissing the appeal of the assessee the Court held that,in present case, as it was found by taxing authorities that payment made by assessee to three sub-contractors out of 21 work contracts given by it was to relatives of partners of firm, as such same was disallowed in view of Clause (b) of S. 40A(2). Accordingly the order of Tribunal confirming the disallowance of 20% of expenditure is affirmed. (AY. 2008-09, 2009-10)
Akrati Promoters And Developers v. DCIT (2019) 183 DTR 204 / (2020) 268 Taxman 83 (All.)(HC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Agreement between assessee and related partnership firm in which one director had substantial interest – Expenditure disallowed in absence of genuineness of the transaction. [S. 40A(2)(b)] 653

Assessee paid research and advisory fees to its sister concern being a partnership firm. AO observed that a director of the assessee had substantial interest and hence payment was made to a person as specified under S. 40A(2)(b)(v) and such payments were unreasonable. CIT(A) allowed the deduction relying on agreement between the parties which showed there was no intention to avoid tax. Tribunal reversed the order of the CIT(A) and held that assessee did not produce documentary evidence to prove genuineness of the transaction. High Court upheld the order of the tribunal and held that no substantial question of law arose in the present case and no merit was found in the assessee's case. (AY. 2003-04)

Patterson & Co. (P.) Ltd. v. Dy. CIT (2019) 179 DTR 193 / 105 taxmann.com 150 (Mad.) (HC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Salaries to directors – Preceding year was accepted by revenue – No extraordinary increase in salary – Disallowance is held to be not justified. 654

Dismissing the appeal of the revenue the Court held that salaries to directors for preceding year was accepted by revenue. There was no extraordinary increase in salary. Accordingly the AO was not justified in considering and comparing remuneration paid in assessment year 2004-05. Deletion of addition by the Tribunal is held to be justified. (AY. 2008-09)

PCIT v. Patel Alloy Steel Co. (P.) Ltd. (2019) 103 taxmnn.com 431 / 262 Taxman 167 (Guj.) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Patel Alloy Steel Co. (P.) Ltd. (2019) 262 Taxman 166 (SC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Payment of interest at 15% to HUF – Payment made to related parties – AO has not established that the payment was excessive and unreasonable – Addition is held to be not valid. 655

The AO restricted the deduction of interest at 12% as against 15% claimed by the appellant. Tribunal held that the AO has not brought any material on record to demonstrate that payment made was excessive and unreasonable having regard to market rate. Accordingly the addition made by the AO is deleted. (AY. 2012-13, to 2014-15)

Motilal Laxmichand Sanghavi v. ACIT (2019) 178 ITD 710 (Mum.)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Rent – Maintenance charges, location, and applicability of relevant provisions – No evidence regarding unreasonableness of rent – No disallowance can be made. [S. 40(2)(b)] 656

The AO restricted the rent to the rate on which another premises was hired by the assessee. The CIT(A) deleted the addition based on the orders in the case of the assessee. He held that there was no excessive or unreasonable payment to related

persons in terms of the provisions of S. 40A(2)(b). On appeal the Tribunal held that since the AO had not considered the payment of the maintenance charges, location, and applicability of the provisions of S. 40A(2)(b) and since no evidence regarding unreasonableness of the rent paid had been brought on record the deletion was justified. (AY. 2006-07 2009-10, 2010-11, 2011-12)
Dy. CIT v. Impulse International P. Ltd. (2019) 71 ITR 28 (SN) (Delhi)(Trib.)

657 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Interest paid for outstanding credit balance – No interest was charged from debtors – Interest paid could not be disallowed.**
Tribunal held that interest paid for outstanding credit balance cannot be disallowed on the ground that no interest was charged from debtors. (AY. 2008-09 to 2011-12)
Aditya Medisales Ltd. v. DCIT (2019) 176 ITD 783 (Ahd.)(Trib.)

658 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Contribution and commission of directors – Directors are paying tax at maximum marginal rate – No disallowances can be made. [S. 36(1)(ii), 37(1), 40A(2)(b), 115-0, Companies Act, 1956, S. 198, 309]**
The AO held that the assessee had paid commission expenses in excess of the market rates and disallowed the amount under S. 36(1)(ii). He considered that amount as excessive and made addition under the provisions of S. 40A(2)(b). For the assessment year 2010-11 he held that the assessee had tried to evade dividend distribution tax under S. 115-O by giving commission which was far more excessive. On appeal the Tribunal held that the assessee was not bound by S. 198 and S. 309 of the Companies Act, 1956 as the assessee was neither a public company nor a private company which was the subsidiary of a public company nor received any payment beyond the provisions of sub-section (1)(a) of S. 309. In terms of the Board resolution a maximum commission of 27 per cent. over the turnover can be paid to the directors whereas the total payments was only 1. 25 per cent. of the value of the export orders achieved by them. The AO had not brought anything on record nor gathered any evidence about the contribution of the directors which went contra to the payments they received. There was no doubt about the qualifications and contribution of the directors for obtaining the orders and increasing the turnover. The payment of commission had been the practice of the company for the past seven years. The directors who had been receiving commission paid tax at the maximum marginal rate and no revenue leakage could also be found based on the tax payments. Increase in personal expenses and comparing it with the increase in directors remuneration could not be accepted as a methodology to calculate the reasonable remuneration. The company could determine the rates of salary, remuneration, commission as long as it did not violate any law in force. Hence the addition made by the AO was deleted. (AY. 2006-07, 2009-10, 2010-11, 2011-12)
Dy. CIT v. Impulse International P. Ltd. (2019) 71 ITR 28 (SN) (Delhi)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Ad hoc disallowance of 50 % of rent – Held to be not justified. 659

Tribunal held that since Assessing Officer had not arrived at an exact figure of disallowance, ad hoc disallowance of 50 % of rent is held to be not justified. (AY. 2006-07)

Bhagwati Gases Ltd. v. DCIT (2019) 176 ITD 609 (Kol.)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Provisions are not applicable to co-operative society. [S. 40A(2)(b)] 660

Provisions of S. 40A(2) are not applicable to co-operative society, accordingly no disallowance can be made for alleged excess payment. (AY. 2009-10)

DCIT v. Ganesh Khand Udyog Sahakari Mandali Ltd. (2019) 174 ITD 135 (Surat)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of jewellery – failure to demonstrate a situation which compelled to make payment in cash – Disallowance is held to be justified. 661

Dismissing the appeal of the assessee, the court held that failure of assessee to demonstrate a situation which compelled to make payment in cash for purchase of jewellery, disallowance is held to be justified. (AY. 2013-14)

Natesan Krishnamurthy v. ITO (2019) 262 Taxman 127 / 178 DTR 177 (Mad.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – During assessment proceedings, assessee submitted revised accounts showing all payments below ₹ 20000 – Not accepted by any lower authority – Held, assessee failed to substantiate its claim – Held, no substantial question of law. [S. 260A] 662

During the assessment proceeding, the assessee was asked to explain cash payment made to one party. Assessee contended that due to the mistake of the accountant, the details were wrongly entered and submitted a revised account wherein all payments were below ₹ 20,000. Such an explanation was not accepted by any lower authority. High Court held that the assessee failed to substantiate its plea of mistake of accountant and the fact that all payments were below ₹ 20,000/–, accordingly, it held that appreciation of same evidence to come at different conclusion does not fall within the realm of substantial question of law. (AY. 2012-13)

Nangal Spun Pipe Co. (P) Ltd. v. CIT (2019) 177 DTR 393 / 108 taxmann.com 127 / 266 Taxman 8 (Mag) / 308 CTR 751 (P&H)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchases were supported by dealers invoice along with valid transit receipt, receipt documents etc – Disallowance is held to be not justified. [R. 6DD] 663

Allowing the appeal of the assessee the Court held that all the purchases made were supported by valid dealer invoices. The CIT(A) having considered the material, recorded a finding that the parties were existent and that their bank accounts were identified. Except one party, all other parties had filed sales tax returns. The bank report would indicate that the demand drafts were admittedly not crossed. However, the payments were credited into the accounts of the payees. The Tribunal was not justified in confirming the disallowance under S 40A(3) of the Act. (AY. 2005-06)

M. K. Agrotech P. Ltd. v. ACIT (2019) 412 ITR 351 / 176 DTR 294 / 308 CTR 275 (Karn.)(HC)

664 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Exceptions – Rule 6DD(k) – Payments during non-banking hours and at weekends for urgent hotel bookings and hotel staff refusing to accept cheque – AO has not considered the factual aspects – Matter remanded. [R. 6DD(k)]**

The assessee was engaged in the business of tours, travels and related activities in and out of India. On the ground that the assessee had made cash payments exceeding ₹ 20,000, the AO invoked the provisions of S. 40A(3) and disallowed deduction of the payments. The CIT(A) confirmed the addition. On appeal, the Tribunal held that the payments had been made in the non-banking hours in the late evening and over the weekend where hotel bookings were urgently required and hotel staff refused to accept cheques. Similarly, certain payments were made to persons where each payment was below ₹ 20,000. Since the AO had not properly considered the factual aspects and had concluded that the assessee had violated the provisions of S. 40A(3), the issue was restored to the file of the AO with a direction to go through the details and decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. (AY 2015-16)

Global Connect Travels P. Ltd. v. ITO (2019) 75 ITR 226 (Delhi)(Trib.)

665 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Agricultural produce – Failure to produce farmers – No disallowances can be made. [R. 6DD(e)]**

The assessee is trading in maize. He purchased maize from cultivators for which payments were made in cash in excess of ₹ 20,000. The AO held that the assessee had not produced details like addresses and identity of the persons to whom cash payments were made except producing bills and their names and the name of their village to which they belonged and such declaration was not enough to prove the case of the assessee. He, therefore, made addition by invoking S. 40A(3) of the Act. On appeal CIT(A) confirmed the addition. On appeal following the decision in *PCIT v. Keshvalal Mangaldas [2018] 257 Taxman 133 (Guj.)(HC)*, held that if there are entries in the books of account and payment is shown to have been made to farmers and when receipts were also produced but the assessee could not produce the farmers/list of farmers for which a reasonable explanation was also given, no addition could be made under S. 40A(3). Accordingly the addition confirmed by the lower authorities is deleted. (AY. 2013-14, 2014-15)

Krishnasa Bhute v. ITO (2019) 179 ITD 824 (Bang.)(Trib.)

666 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of jaggery from farmers – Disallowance is held to be not justified. [R. 6DD]**

Tribunal held that jaggery was produced by farmers who were mostly uneducated and did not know how to operate bank accounts. Books of account of assessee were duly audited and same were not rejected by AO. Disallowance by the AO is held to be not justified. (AY. 2000-01 to 2004-05)

Tum Nath Shaw v. ACIT (2019) 175 ITD 45 (Kol.)(Trib.)

667 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payments were made during public holidays – No disallowance could be made – Payments to agents – No disallowance can be made. [R. 6DDJ, 6DDK]**

Allowing the appeal of the assessee the Tribunal held that payments exceeding ₹ 20,000 for purchase of construction materials on bank holidays, due to business needs to complete the project on time. Disallowance is held to be not justified. Assessee also produced documentary evidences to show that person to whom payments were made in cash in excess of ₹ 20,000 had acted as agent of assessee for purchase of construction material on behalf of assessee, such payments would fall under exception clause of rule 6DD(k) hence no disallowance can be made. (AY. 2006-07 to 2009-10)

Surya Merchants Ltd. v. DCIT (2019) 174 ITD 393 (Delhi)(Trib.)

668 **S. 40A(9) : Expenses or payments not deductible – Contributions to unapproved and unrecognized funds – Held to be allowable if they are genuine in nature. [S. 36(1)(iv), 36(1)(iva), 36(1)(v)]**

Dismissing the appeal of the revenue the Court held that, Even contributions to unapproved and unrecognized funds have to be allowed as a deduction if they are genuine in nature. Provision is not meant to hit genuine expenditure by an employer for the welfare and the benefit of the employees.

PCIT v. State Bank of India (2019) 181 DTR 275 / (2020) 420 ITR 376 (Bom.)(HC), www.itatonline.org

669 **S. 40A(9) : Expenses or payments not deductible – Bonus to employees – Contribution made by assessee – Company to various clubs meant for staff and their families was admissible as deduction. [S. 37(1)]**

Dismissing the appeal of the revenue the Court held that Contribution made by assessee – company to various clubs meant for staff and their families was admissible as deduction. For S. 40A(9) deduction as by paying fee to clubs assessee had no intention to acquire any capital asset or take advantage for enduring benefit of business and it was for running business or for bettering conduct of its business. Followed *CIT v. Indian Petrochemicals Corpn. Ltd. (2016) 74 taxmann.com 163 (Guj.)(HC)*

CIT v. Indian Petrochemicals Corpn. Ltd. (2019) 261 Taxman 251 (Bom.)(HC)

670 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan – Cannot be assessed as cessation of liability or as business income. [S. 28(iv)]**

Dismissing the appeal of the revenue the Court held that the argument of Revenue that loan taken from agents/ dealers is on revenue account or that on waiver of the loan, its character undergoes a change and it becomes on revenue account is not correct. S. 28(iv) & 41(1) cannot apply if the loan is on capital account and the assessee has never claimed any deduction therefor in the past (*Solid Containers Ltd v. Dy CIT (2009) 308 ITR 417 (Bom.)(HC) distinguished, CIT v. Mahindra and Mahindra Ltd. (2018) 404 ITR 1 (SC) followed). (ITA No. 896 of 2017, dt. 25-9-2019)*. (AY. 2009-10)

PCIT v. Colour Roof (India) Ltd. (Bom.)(HC), www.itatonline.org

671 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Old unpaid liability for sundry creditors – Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased – Addition cannot be made.**
Dismissing the appeal of the revenue the Court held that, it is well settled through series of judgments that merely because a debt has not been repaid for over three years, would not automatically imply cessation of liability. Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased. Such liability cannot be termed as bogus. (ITA No. 1288 of 2016, dt. 4-1-2019) (AY. 2010-11)
PCIT v. Pukhraj S. Jain (Bom.)(HC), www.itatonline.org

672 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Merely because period of three years expired from arising of the liability would not automatically mean that the liability has ceased – Order of Tribunal is affirmed.**
Dismissing the appeal of the revenue the Court held that merely because period of three years expired from arising of the liability would not automatically mean that the liability has ceased. Order of Tribunal is affirmed. (ITA No. 1769 of 2016 dt 30-1-2019)
PCIT v. Mahalaxmi Infra Projects Ltd. (Bom.)(HC) www.itatonline.org.

673 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Not claimed any deduction of any trading liability in any earlier year – Addition cannot be made.**
Assessee issued foreign currency bonds in year 1996-97. On account of attack on World Trade Centre on 11-9-2001, financial market collapsed and market price of bonds and debenture was brought down at value less than its face value. Assessee purchased bonds from market and extinguished them. In this process of buyback, it gained ₹ 38.80 crores. AO treated such amount as assessable to tax under S. 41(1). Tribunal held that since assessee had not claimed any deduction of any trading liability in any earlier year, S. 41(1) would not be applicable and no addition could be made on extinguishment of bond. High Court affirmed the order of the Tribunal. (AY. 2002-03)
CIT-LTU v. Reliance Industries Ltd. (2019) 261 Taxman 283 (Bom.)(HC)

674 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Matter remanded to the AO to consider the evidence and pass the order. [S. 260A]**
AO made certain additions to assessee's income under S. 41(1) of the Act in respect of amounts payable to trade creditors. Tribunal confirmed said addition. On appeal the Court remanded matter back to AO to make fresh assessment after giving due and reasonable opportunity of hearing to the assessee to adduce reasonable evidence in said regard. (AY. 2001-02)
V. R. Swaminathan v. ITO (2019) 267 Taxman 208 / 184 DTR 1 (Mad.)(HC)

675 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Sundry creditors shown in books of account – Merely on ground that assessee failed to furnish PAN or correct address of those creditors, additions cannot be made.**
Dismissing the appeal of the revenue, the Court held that merely on ground that assessee failed to furnish PAN or correct address of those creditors additions cannot be made in respect of sundry creditors shown in books of account. (AY. 2011-12)
PCIT v. B. T. Nagraj Reddy (2019) 264 Taxman 228 (Karn.)(HC)

676 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Cash credits – Liabilities doubted – Cannot be taxed u/s. 41(1) [S. 68]**
In the balance sheet the assessee had shown huge amount of sundry creditors. The AO doubted the genuineness of creditors appearing in balance sheet and taxed the said amount u/s. 41(1) of the Act. Tribunal upheld the addition. On appeal allowing the appeal of the assessee the Court held that if existence of liabilities was doubted, same could have been disallowed in year in which it was claimed, or could have been treated as unexplained cash credit in hands of assessee under S. 68, but same could not be taxed under S. 41(1), inasmuch as if liability itself was not genuine, question of remission or cessation thereof would not arise. (AY. 2010-11)
Dattatray Poultry Breeding Farm (P.) Ltd. v. ACIT (2019) 415 ITR 407 / 263 Taxman 324 (Guj.)(HC)

677 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Timber business – Discontinuation of business for more than 10 years – Showing the creditors – Application of common sense principles – Burden of proof on assessee to show subsistence of liability – Liable to be taxed as profits of business.**
Dismissing the appeal of the assessee the Court held that; lapse of ten years of time, coupled with fact that there was a change of business altogether by assessee, and fact that debts had become time barred and no creditor made any claim for recovery from assessee during any of these years, even up to now. Assessing authority is justified in treating the amount as cessation of liability. When a trading liability ceased *de facto* and *de jure* and whether or not such trading liability could be said to have ceased in law so as to apply S. 41(1) depended upon the facts and circumstances of each case. (AY. 2003-04)
West Asia Exports & Imports (P.) Ltd. v. ACIT (2019) 412 ITR 208 / 262 Taxman 372 / 177 DTR 201 / 309 CTR 353 (Mad.)(HC)

678 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Amounts collected by shipping agent for payment to port Trust Authority for the years 1994-99 – Dispute was settled by passing final order fixing the storage charges on January 15, 2016-there was no claim against the amount collected – Amount collected was rightly treated as income of the assessee.**
Allowing the appeal of the revenue the Court held that the Tariff Authority for Major Ports had passed final orders on January 15, 2016 revising the container storage charges at the Chennai Port Trust for the period from July 6, 1994 to August 2001. The Authority had passed detailed and elaborate orders finally fixing the storage charges

receivable. Consequently, the reason given by the assessee relating to pendency of the writ appeal or that the Tariff Authority for Major Ports had not finally determined the storage charges no longer survived. The obligation of the assessee to pay the amounts to the Chennai Port Trust arose immediately the Tariff Authority for Major Ports passed final orders fixing the storage charges on January 15, 2016 and since the assessee had not paid them, the amount in the assessee's hands had to be treated as "income" taxable under S. 41(1). There had been no claim laid against that money. Consequently, the amount could be treated as the assessee's income under S. 41(1), for the assessment years 2001-02 and 2003-04. (AY. 2001-02, 2003-04)
CIT v. Chakiat Agencies Pvt. Ltd. (2019) 413 ITR 113 / 263 Taxman 126 / 179 DTR 265 / 311 CTR 886 (Mad.)(HC)

679 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Refund of sales tax consequent on decision of High Court – Pendency of appeal before Supreme Court – Amount received assessable as income.**
Assessee had in an earlier year paid up an amount of ₹ 88,44,425 as sales tax liability which was refunded to it in the assessment year 2002-03 by virtue of a decision of the jurisdictional High Court. The assessee claimed that the sum had to be kept as a contingent liability since an appeal was pending before the Supreme Court. The Tribunal held that as and when and if the Supreme Court decided against the assessee, the assessee would be able to claim the amount again as expenditure. Dismissing the appeal of the assessee the Court held that sufficient safeguards had been made by the Tribunal and there was no reason to interfere with the directions of the Tribunal. (AY. 2002-03, 2003-04)
South India Corporation Ltd. v. ACIT (2019) 412 ITR 239 / 177 DTR 337 (Ker.)(HC)

680 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Co-Operative bank – Transfer to reserve or provision made in earlier years – Taxable as income [S. 80P(4)]**
Dismissing the appeal of the assessee the Court held that the Tribunal was justified in confirming the addition of ₹ 1,18,99,651 to the income of the assessee based on the finding that transfer to the reserve fund of the excess provision made for establishment and other expenses in earlier years when the business income of the assessee was totally exempt under S. 80P amounted to cessation of those liabilities and therefore, chargeable to tax in the current year under S. 41(1) of the Act. (AY. 2007-08)
Rajasthan State Co-Operative Bank Ltd. v. ACIT (2019) 410 ITR 434 (Raj.)(HC)
Editorial : SLP is granted to the assessee, Rajasthan State Co-Operative Bank Ltd. v. ACIT (2018) 407 ITR 15 (St.)

681 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – No addition can be made if AO has not brought any evidence to show that liability has ceased to exist – No additions can be made unless liability has been written off in books of accounts. [S. 145]**
The AO has made additions under S. 41(1) of the Act stating that the liability has been outstanding since a long time and no transactions have been occurred since then. The Tribunal relied on the Gujarat High Court ruling the case of Bhogilal Ramjibhai Atara

(43 taxmann 313) which has held that even if the liability is found to be non-genuine from the inception then also S. 41(1) of the Act was no solution for it. The Tribunal held that revenue authorities has not shown that the liability has ceased to exist and the assessee has not written back and continue to show the same in liabilities outstanding in the balance sheet. Hence, following the above decision of the Gujarat High court in the case of Bhogilal Ramjibhai Atara (43 taxmann 313), the Tribunal deleted the adjustment made under section 41(1) of the Act. (AY. 2013-14)
Shivacid India Private Ltd. v. ITO (2019) 76 ITR 76 (SN) (Ahd.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Liability on account of trade payable is not written back in profit and loss account – No cessation of liability – Addition cannot be made. [S. 2(12A)] 682
When the assessee has not written back the liability on account of trade payables in its Profit and Loss A/c and proceedings with respect to the winding up of the assessee company are pending before an authority(AAIFR) then no liability can be fastened upon the assessee as there has been no cessation of liability. (AY. 2013-2014)
Dy. CIT v. Pasupati Fabrics Ltd. (2019) 74 ITR 411 (Delhi)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Trade payables outstanding for more than three years in the books – Addition cannot be made as remission or cessation of trading liability. [S. 68] 683
Dismissing the appeal of the revenue the Tribunal held that outstanding trade payables in its books of account for the last three years, addition cannot be made as remission or cessation of trading liability. (AY. 2013-14)
DCIT v. Sri Radhakrishna Shipping Ltd. (2019) 179 ITD 139 (Mum.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – waiver of loan taken by assessee for business purposes – amount returned to profit and loss account – Assessable as business income. [S. (24), 28(iv)] 684
It has been held by the Appellate Tribunal that the waiver of loan was not hit by S. 41(1). If the amount is received in the course of trading transactions even though it is not taxable in the year of receipt, as being of capital character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. Where the assessee received deposits in the course of trading transactions, the amount of such credit balances, which were barred by limitation and which were returned by the assessee to the profit and loss account, were to be assessed as the assessee's income. (AY. 2015-16)
ITO v. Team Front Line Ltd. (2019) 73 ITR 9 (Cochin)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan per se does not amount to cessation of trading liability – Not assessable as income – Matter remanded for verification. [S. 28(iv)] 685
Assessee defaulted in repayment of ₹ 3.62 crores due to bank. During year, settlement with bank was materialized and assessee had finally made to pay ₹ 1.97 crores. Accordingly, balance of ₹ 1.64 crores being remission of capital account was transferred

to general reserve. AO held that waived amount was income under S. 41(1) or 28(iv) of the Act. Tribunal following the judgment in *CIT v. Mahindra and Mahindra Ltd. (2018) 255 Taxman 305 (SC)* held that waiver of loan does not amount to cessation of trading liability. Since authorities below had not given any finding of fact whether whole amount of loan was utilised either for purpose of acquiring a capital asset or for purpose of business activity or trading activity matter was to be remitted back to AO for reconsideration. (AY. 2008-09)
ITO v. Wasan Exports (P.) Ltd. (2019) 177 ITD 115 (Delhi)(Trib.)

686 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Assignment of loan to third party by making a payment in terms of present value of future liability – Surplus resulting from assignment of loan was not cessation or extinguishment of liability as loan was to be repaid by third party – Cannot be assessed as cessation of trading liability. [S. 28(iv)]**
Assessee borrowed loan of ₹ 12 crores from a company. Assessee assigned liability of repayment of loan to third party CPPL by making payment of ₹ 0.36 crores in terms of present value of future liability. Surplus of ₹ 11.64 crores resulting from assignment of loan liability in terms of present value of future liability was credited to profit & loss account under head income from other sources but while computing total income, said income was reduced from income on ground that such surplus represented capital receipt and, therefore, not taxable. AO held that assignment of loan represented income under S. 41(1) or under S. 28(iv) of the Act. Tribunal held that since loan amount was utilized by assessee for purchase of shares and same was not used in relation to trading activity of assessee in its line of business, said surplus could not be treated as revenue receipt. Tribunal also held that surplus resulting from assignment of loan was not cessation or extinguishment of liability as loan was to be repaid by third party and, therefore, could not be brought to tax. (AY. 2000-01)
Cable Corporation of India Ltd. v. DCIT (2019) 177 ITD 223 / 201 TTJ 1009 / 183 DTR 9 (Mum.)(Trib.)

687 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Provision can be invoked only if deduction of the very same sum is allowed in earlier years.**
The assessee, a partnership firm, was carrying on warehousing business and also engaged in the manufacturing of wooden articles for the use of textile industry. The income derived from these two activities were offered as business income. The assessee, a tenant of Bombay Port Trust (BPT), was liable to pay rentals in respect of premises taken on lease from BPT. BPT increased the rentals and which was subject matter of litigation. However, assessee in the past, has provided for the incremental rentals payable to BPT and claimed the same as deductions in the returns filed for the AY 1990-91, 91-92 & 92-93. The same was disallowed by the AO. Thereafter, the rentals were ultimately fixed by the Hon'ble Apex court. The Hon'ble Bombay High Court held that assessee is entitled to deduction only to the extent of rent ultimately fixed by the Hon'ble Apex Court. During AY 2012-13, the assessee wrote back the liabilities representing incremental rentals payable to BPT in the sum of ₹ 17,11,818/- and credited same to its profit & loss account. However while filing return of income

Assessee reduced this sum of ₹ 17,11,818/- on the ground that for the earlier years, the incremental rentals were not allowed as deduction. The AO ignored the order passed by his predecessor pursuant to High Court order and added a sum of ₹ 17,11,818/- of S. 41(1) of the Act on the ground that Tribunal had granted relief to the assessee & hence assessee cannot be given double benefit. The action of the AO was upheld by the CIT(A). Aggrieved by the same, assessee filed an appeal before the Tribunal. The Tribunal observed that provision of S. 41(1) of the Act could be invoked only if deduction of the very same sum has been allowed in earlier years for the assessee, which in the fact of the instant case, was not granted in the earlier order of AO. Hence, there is no double benefit claimed by the assessee and hence addition made u/s 41(1) was deleted. (AY. 2012-13)
Grand Wood Works and Saw Mills v. ITO (2019) 69 ITR 3 (SN) (Mum.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of interest and LIC guarantee fee – Not claimed as deduction in earlier years – Addition cannot be made – Adjustment of carry forward of losses and depreciation – Matter remanded to CIT(A) for readjudication. 688
Tribunal held that, waiver of interest and LIC guarantee fee was not claimed as deduction in earlier years, hence addition cannot be made.
As regards adjustment of carry forward of losses and depreciation. Matter referred back to CIT(A) for readjudication. (AY. 2013-14)
Fertilizer corporation of India Ltd. v. ACIT (2019) 69 ITR 183 (Delhi)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Business of bottling-cum-manufacturing of soft drink – Advances/deposits towards security against bottles & cases – Written off – Addition cannot be made as remission or cessation of liability. [S. 32] 689
Allowing the appeal of the assessee the Tribunal held that amount received as advance or deposit was written off cannot be assessed as remission or cessation of liability. (AY. 2007-08)
Poona Bottling Company (P.) Ltd. v. ACIT (2019) 175 ITD 634 (Pune)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Difference between creditors recorded in his books vis-a-vis balance in books of creditors – Sales and purchases not doubted – Addition is held to be not justified. 690
AO made additions to assessee's income under S. 41(1) in respect of difference between creditors recorded in his books vis-a-vis balance in books of creditors. Tribunal held that sales and purchases made by assessee and the balance of creditors was not doubted hence addition is held to be not valid. (AY. 2000-01 to 2004-05)
Tum Nath Shaw v. ACIT (2019) 175 ITD 45 (Kol.)(Trib.)

S. 42 : Business for prospecting – Mineral oil – Surrender of oil blocks before commencement of commercial production would be treated as surrender for claiming deduction of oil exploration expenditure. [S. 42(1)(a)] 691
Dismissing the appeal of the revenue the Court held that, surrender of oil blocks before commencement of commercial production would be treated as surrender for claiming

deduction of oil exploration expenditure and eligible deduction. Court also observed that S. 42 recognizes the risks of the business of oil exploration which activity is capital intensive and high in risk of entire expenditure not yielding any fruitful result. Entire purpose or enactment would be destroyed if the rigid interpretation of the revenue is accepted. (AY. 2008-09)
PCIT v. Hindustan Oil Exploration Company Ltd. (2019) 264 Taxman 154 (Bom.)(HC)

692 **S. 43(1) : Actual cost – Subsidy – Setting up new industry – Calculation of subsidy on the basis of sales tax or excise duty – Amount of subsidy was not to be deducted from actual cost for purpose of calculating depreciation etc. [S. 4, 32]**
District of Kutch suffered due to devastating earthquake. Subsidy was granted under schemes framed by State and Central Government which was to be given to assessees who set up new industry in Kutch District. Scheme was envisaged to encourage investment which would in turn, provide fresh employment opportunity in district. State Government introduced Sales Tax Exemption/deferment scheme on new investment for specific period. Similarly, Central Government offered Central Excise Exemption Scheme for a specified period. Tribunal held that the amount of subsidy was not to be deducted from actual cost for the purpose of calculating depreciation etc. On appeal by the revenue dismissing the appeal the Court held that even though subsidy was to be calculated on basis of sales tax or excise duty, such subsidy would be capital in nature because same was given for purpose of setting up new industry. Since subsidy was not payment towards acquisition of plant or machinery/capital assets, amount of subsidy was not to be deducted from actual cost under S. 43(1) for the purpose of calculating depreciation etc. (AY. 2009-10)
PCIT v. Welspun Steel Ltd. (2019) 264 Taxman 252 (Bom.)(HC)

693 **S. 43(5) : Speculative transaction – Non-banking financial company – Trading in shares and securities – Loss incurred as a result of trading in shares – cannot be set off against the business of futures and options as it did not constitute profits and gains of a speculative business – Statement by assessee before Assessing Officer that share trading was its sole business during the year – Bound by admission – Interpretation – Intention of legislature to be seen. [S. 73, 143(3)]**
The assessing officer held that in view of the provisions of Section 43(5)(d), activities pertaining to futures and options could not be treated as speculative transactions. The loss from speculation was held not to be capable of being set off against the profits from business. Tribunal also affirmed the view of the AO. High Court affirmed the view of the Tribunal. On appeal the Apex Court held that, the amendment to the Explanation to s. 73 by the Finance (No 2) Act 2014 with effect from 1 April 2015 is not clarificatory or retrospective.
Consequently, loss occurred to the assessee as a result of its activity of trading in shares (a loss arising from the business of speculation) is not capable of being set off against the profits which it had earned against the business of futures and options since the latter did not constitute profits and gains of a speculative business. Statement by assessee before Assessing Officer that share trading was its sole business during the year.

Assessee is bound by admission. While interpreting the section intention of legislature to be seen. (AY. 2008-09)
Snowtex Investment Ltd. v. PCIT (SC) (2019) 414 ITR 227 / 265 Taxman 3 / 308 CTR 665 / 178 DTR 89 (SC), www.itatonline.org
Editorial : Judgment from, PCIT v. Snowtex Investment Ltd. (2017) 87 taxmann.com 356 (Cal.)(HC)

S. 43(5) : Speculative transaction – Hedging contracts with bank – Loss on fluctuation in foreign currency – Interest was paid on fixed rate of 1. 7 percent on loan amount – Not speculative in nature eligible as deduction – Interest is held to be allowable – Premium is held to be allowable on proportionate basis. [S. 36(1)(iii), 37)(1), 40(a)(ia), 195] 694

Assessee has taken loan from its related concern located abroad, entered into hedging contracts with two banks in order to secure itself against loss on fluctuation in foreign currency rate and both banks undertook to pay interest at fixed rate of 1. 7 per cent on loan amount to creditor in lieu of this, and both banks charged a fixed amount determined on basis of interest and premium for hedging risk. AO held that the payment is speculative in nature and loss was not allowable. Alternatively as the tax was not deducted the payment is not allowable in view of S. 40(a) (ia) read with S. 195 of the Act. CIT(A) deleted the addition after getting the remand report and the tax was deducted in respect of interest. As regards the premium he has held that the said amount is not speculative however allowable in next year which is the year of maturity. Allowing the appeal of the assessee the Tribunal held that on premium there is no liability to deduct tax at source and the assessee has rightly claimed the premium on proportionate basis. (AY. 2007-08, 2008-09)
SC Johnson Products (P.) Ltd. v. DCIT (2019) 175 ITD 477 (Delhi)(Trib.)

S. 43(5) : Speculative transaction – Derivatives – Loss incurred on future and option is deemed to be business loss – Loss would be set off against income from business – Explanation to S. 73 is not applicable. [S. 73] 695

Allowing the appeal of the assessee the Tribunal held that, loss incurred on future and option is deemed to be business loss, accordingly Loss would be set off against income from business. Explanation to S. 73 is not applicable. Followed *Asian Financial Services Ltd. v. CIT (2016) 240 Taxman 192 (Cal.)(HC)*. (AY. 2012-13)
Magic Share Traders Ltd. v. DCIT (2019) 174 ITD 230 (Ahd.)(Trib.)

S. 43A : Rate of exchange – Foreign currency – Actual cost – Gains earned on cancellation of forward contracts – Capital in nature and liable to be capitalized towards cost of machinery. [S. 43(1)] 696

Dismissing the appeal of the assessee the Court held that the Tribunal was correct in holding that the gains that arose from cancellation of forward contracts which were connected with foreign loans raised for the purchase of machinery were capital in nature and were liable to be capitalized towards the cost of the machinery under S. 43A(1) read with Explanation 3 thereto. (AY. 1993-94) (AY. 1994-95)
Apollo Tyres Ltd. (No. 2) v. ACIT (2019) 416 ITR 539 (Ker.)(HC)
CIT v. Apollo Tyres Ltd. (No. 3) (2019) 416 ITR 554 (Ker.)(HC)

697 **S. 43A : Rate of exchange – Foreign currency – Provisions are applicable for loss arising on foreign exchange fluctuations only where the capital assets are acquired from outside India – Assets were purchased in India – Loss on foreign exchange is allowable as deduction. [S. 37(1)]**

The Assessee had taken an ECB loan for acquiring capital assets. During the year, the Assessee had incurred loss on account of foreign exchange fluctuation on the said loan. The AO held that the same was capital in nature in view of the provisions of S. 43A of the Act. The DRP directed the AO to delete the addition by holding that the same is allowable in view of the judgment of the Hon'ble Supreme Court of India in the case of *CIT v. Woodward Governor India Private Ltd. (2009) 312 ITR 254 (SC))*. On appeal, the Tribunal observed that the condition for applicability of S. 43A of the Act is that the capital asset is acquired from a country outside India whereas the Asessee had purchased the asset in India and not from a country outside India. Accordingly, it upheld the order of the DRP in treating the same to be revenue in nature. (AY. 2011-12)

DCIT v. Terex India Pvt. Ltd. (2019) 71 ITR 259 (Delhi)(Trib.)

698 **S. 43B : Deductions on actual payment – Interest payable to Banks – Conversion of unpaid interest into funded interest Loan – Not allowable as deduction – Explanation 3C to S. 43B inserted with retrospective effect from 1-4-1989 by the Finance Act, 2006.**

Allowing the appeal of the revenue the Court held that conversion of unpaid interest into funded interest Loan is held to be not allowable as deduction in view of Explanation 3C to S. 43B inserted with retrospective effect from 1-4-1989, by the Finance Act, 2006. (AY. 2001-02)

CIT v. Gujarat Cypromet Ltd. (2019) 412 ITR 397 / 177 DTR 121 / 262 Taxman 93 / 308 CTR 309 (SC) www.itatonline.org

Editorial : Decision in CIT v. Gujarat Cypromet Ltd. (2019) 412 ITR 398 (Guj.)(HC) is reversed.

699 **S. 43B : Certain deductions on actual payment – Payment of interest on delayed payment of custom duty is part of duty – Allowable as deduction in the year of payment. [S. 37(1)]**

Dismissing the appeal of the revenue the Court held that Payment of interest on delayed payment of custom duty is part of duty – Allowable as deduction in the year of payment. Followed *Mahalaxmi Sugar Mills Co. v. CIT (1980) 123 ITR 429 (SC) (ITA No. 809 of 2017, dt. 27.08.2019)*. (AY. 2007-08)

PCIT v. M. J. Export Pvt. Ltd. (Bom.)(HC), www.itatonline.org

700 **S. 43B : Certain deductions on actual payment – Bonus – Allowable as deduction in the year of payment. [S. 37(1)]**

Court held that the amount paid as bonus is deductible in the year of payment. i.e. AY. 2002-03.

CIT v. Apollo Tyres Ltd. (2019) 419 ITR 100 (Ker.)(HC)

S. 43B : Deductions on actual payment – Provision for leave encashment – Not allowable as deduction. [S. 43B(f)] 701

Dismissing the appeal of the assessee the Court held that provision for leave encashment is held to be not allowable. Deduction is allowable on actual payment, hence held to be not allowable. (AY. 2006-07)

Dhanalakshmi Bank Ltd. v. CIT (2019) 410 ITR 280 / 261 Taxman 521 / 177 DTR 48 / 308 CTR 484 (Ker.)(HC)

Editorial : SLP of the assessee is dismissed, Dhanalakshmi Bank Ltd. v. CIT (2019) 266 Taxman 185 (SC)

S. 43B : Deductions on actual payment – Entry tax is held to be allowable as deduction. 702

Dismissing the appeal of the revenue the Court held that the assessee was entitled to deduction of entry tax paid. Followed *CIT v. TVS Motors Ltd. (2014) 364 ITR 1 (Mad.) (HC)*. (AY. 2004-05)

CIT v. TVS Motors Ltd. (2019) 417 ITR 236 (Mad.)(HC)

S. 43B : Deduction on actual payment – Nomination charges levied by State Government emanating from a contract of lease – Not statutory Liability unlike tax, duty, cess or fee – Allowable as deduction on the basis of provision. [S. 37(1)] 703

Court held that the nomination charges specified and prescribed by the State Government through various Government orders were none of the four imposts namely, tax, duty, cess or fees, specified under S. 43B, which had to be paid on time. It was only a contractual payment of lease rental specified by the State Government being the lessor for which both the lessor and the lessee had agreed at a prior point of time to fix and pay such prescription of nomination charges. A mere reference to rule 8C(7) of the Tamil Nadu Minor Minerals Concession Rules, 1959 did not make it a statutory levy, in the realm of "tax, duty, cess or fees". Since section 43B did not apply to the payment of "nomination charges" the question of applying the rigour of payment within the time schedule would not decide the allowability or otherwise of such payment under the section, which would then depend upon the method of accounting followed by the assessee and if the assessee had made a provision for the payment in its books of account and had claimed it as accrued liability in the assessment year in question, it was entitled to the deduction in the assessment year in question without any application of S. 43B of the Act. (AY. 2004-05)

Tamil Nadu Minerals Ltd. v. JCIT (2019) 414 ITR 196 / 178 DTR 369 / 265 Taxman 129 / 310 CTR 746 (Mad.)(HC)

S. 43B : Deductions on actual payment – Provision for Licence fee – Mercantile system of accounting – S. 43B(1)(g) inserted with effect from 1-4-2017 will accordingly apply to assessment year 2017-18 and subsequent assessment years. [S. 43B(1)(g), 145] 704

Dismissing the appeal of the revenue the Court held that liability to pay enhanced license fee was enforced by Railways upon assessee against lands allotted by it in periodical interval and assessee kept making provisions in its returns for said amounts held to be allowable as the assessee is following mercantile system of accounting. Court

held that S. 43B(1)(g) inserted with effect from 1-4-2017 will accordingly apply to assessment year 2017-18 and subsequent assessment years. (AY. 2007-08)
CIT v. Jagdish Prasad Gupta (2019) 414 ITR 396 / 264 Taxman 231 / 178 DTR 403 / 311 CTR 72 (Delhi)(HC)

705 **S. 43B : Certain deductions on actual payment – Excise duty – Unutilised MODVAT Credit as at end of year on inputs purchased, constitutes actual payment and deductible.**
Allowing the appeal of the assessee the Court held that the unutilised MODVAT credit balance as at the end of the year was to be treated as payment of excise duty, and was an allowable deduction. (AY. 1997-98)
Glaxo Smithkline Consumer Healthcare Ltd. v. ACIT (2019) 413 ITR 104 / 307 CTR 601 / 174 DTR 322 (P&H)(HC)

706 **S. 43B : Deductions on actual payment – Employees State Insurance and provident fund dues paid beyond prescribed period – Not allowable as deduction. [S. 2(24)(x), 36(1)(va)]**
Allowing the appeal of the revenue the Court held that Employees State Insurance and provident fund dues paid beyond prescribed period is not allowable as deduction. (AY. 2000-01)
CIT v. Bharat Hotels Ltd. (2019) 410 ITR 417 (Delhi)(HC)

707 **S. 43B : Deductions on actual payment – Approval fee – Allowable only on actual payment – Provision is not allowable – Percentage completion method – Amount disallowed to be reduced from work in progress – Matter remanded. [S. 37(1), 145]**
Tribunal held that approval fee payable to the VUDA for renewal of construction plan and electricity license which was a State Government authority constituted to regulate development of city and large scale construction projects, fall under category of 'fees' u/s. 43B hence allowable on actual payment and not on the basis of provision. The assessee contended that the assessee is following the percentage completion method hence the amount disallowed u/s 43B should be reduced from the work in progress. Tribunal remanded the issue for verification. (AY. 2014-15, 2015-16)
Global Entropolis (Vizag) (P.) Ltd. v. ACIT (2019) 178 ITD 179 / 202 TTJ 384 / 183 DTR 367 (Bang.)(Trib.)

708 **S. 43B : Certain deductions on actual payment – Provision towards gratuity, leave salary, bonus and medical aid of retired staff-not necessary that actual payment had to be made – Deductible. [S. 40A(7)(b)(i)]**
The Assessing Officer disallowed the provision made by the assessee towards gratuity, leave salary, bonus and medical aid of retired staff during the period May, 2011 to January, 2012 on the ground that such sums were allowable only in the year of payment. The CIT(A) upheld the order of the Assessing Officer since assessee could not produce any evidence to prove that these provisions for gratuity represented an ascertained liability during the financial year 2012-13. However, the meaning as given in S. 43B of the Income-tax Act, 1961 could not be said to be the same as in S. 40A(7)(b)(i). Thus, the provision was made for payment in the previous year, it was not necessary

that actual payment had to be made. If such amount was earmarked for payment of gratuity, i.e., the provision was made for payment of gratuity, the amount had to be allowed for deduction. (AY. 2013-14)
Thiruvalla East Co-Operative Bank Ltd. v. ITO (2019) 70 ITR 486 (Cochin)(Trib.)

S. 43B : Deductions on actual payment – Employee's contribution to provident fund allowable if paid before the due date of filing of return. [S. 139] 709
The Tribunal held that employees contribution to PF & ESI paid before the due date of filing return of income was an allowable deduction. (AY. 2009-10 to 2014-15)
ACIT v. Orissa Manganese & Minerals Ltd. (2019) 69 ITR 1 (SN) (Kol.)(Trib.)

S. 43B : Deductions on actual payment – Interest – Disallowance made without making enquiries from State Finance corporation was deleted. 710
Tribunal held that the assessee had categorically stated before Assessing Officer that it had paid interest to M. P. Finance Corporation being a State entity. In such a situation, AO should have verified from M. P. Finance Corporation regarding payment of interest. Since AO failed to make necessary enquiries, impugned disallowance was to be deleted. (AY. 2010-11)
Manish Films (P.) Ltd. v. ITO (2019) 175 ITD 121 (Indore)(Trib.)

S. 43B : Deductions on actual payment – Electricity duty – Disallowance cannot be made in respect of liability of State Electricity Board with regard to amount of electricity duty and surcharge collected by it as an agent of the State of Kerala. [Electricity Supply Act, 1948] 711
Tribunal held that disallowance cannot be made, in respect of liability of State Electricity Board with regard to amount of electricity duty and surcharge collected by it as an agent of State of Kerala. (AY. 2009-10)
ACIT v. Kerala State Electricity Board (2019) 174 ITD 21 / 69 ITR 207 / 176 DTR 1 / 198 TTJ 913 (Cochin)(Trib.)

S. 43CA : Transfer of assets – other than capital assets – Full value of consideration – stock in trade – Agreement value – Stamp valuation – Provision introduced with effect from 1-4-2014 for deeming consideration received on sale of goods/assets on basis of stamp duty valuation would be applicable prospectively – Rejection of books of account is held to be not justified. [S. 50C, 145] 712
Dismissing the appeal of the revenue the Court held that Provision introduced with effect from 1-4-2014 for deeming consideration received on sale of goods/assets on basis of stamp duty valuation would be applicable prospectively. (AY. 2005-06)
PCIT v. Swananda Properties (P.) Ltd. (2019) 267 Taxman 429 (Bom.)(HC)

S. 43CA : Transfer of assets – Other than capital assets – Full value of consideration – Stock in trade – Agreement value – Stamp valuation – Agreement to sell flats/offices – Under construction – No transfer of land or building – Provision is not applicable. [S. 50C] 713
The assessee, engaged in construction of a commercial project, entered into agreement to sell flats/offices (which were under construction) and there was no transfer of any

land or building or both in favour of buyers in year. Tribunal held that provisions of S. 43CA are applicable only when there is transfer of land or building or both. Accordingly agreement to sell entered in to under construction flats provision is not applicable. (AY. 2014-15)
Shree Laxmi Estate (P.) Ltd. v. ITO (2019) 178 ITD 98 (Mum.)(Trib.)

714 **S. 43D : Public financial institutions – Method of accounting – Accrual of income – Real income theory – Interest on NPAs – Even though the special provision in S. 43D for taxing interest income on NPAs on receipt basis does not apply to NBFCs, it does not mean that NBFCs have to offer interest on bad or doubtful debts to tax on accrual basis. Such interest is not taxable on the real income theory. [S. 145]**
Dismissing the appeal of the revenue the Court held that, even though the special provision in S. 43D for taxing interest income on NPAs on receipt basis does not apply to NBFCs, it does not mean that NBFCs have to offer interest on bad or doubtful debts to tax on accrual basis. Such interest is not taxable on the real income theory. (AY. 2009-10)
PCIT v. Bajaj Finance Ltd. (2019) 178 DTR 219 / 309 CTR 28 (Bom.)(HC), www.itatonline.org

715 **S. 43D : Public financial institutions – Co-Operative Bank – Non performing assets (NPA) – Accrual of interest income – Provision is applicable to Co-Operative Societies – Amount transferred to overdue interest Reserve (OIR) by debiting the interest received in profit and loss account, cannot be assessed on accrual basis. [S. 145]**
Dismissing the appeal of the revenue the Court held that the amount transferred to overdue interest Reserve (OIR) by debiting the interest received in profit and loss account in respect of non-performing assets (NPA) cannot be assessed on accrual basis. (Arising from ITA No. 1295/2013 dt. 30-12-2014. (AY. 2009-10)
PCIT v. Solapur District Central Co-Op. Bank Ltd. (2019) 261 Taxman 476 (Bom.)(HC)

716 **S. 44AC : Non-Resident – Head office expenditure – Issue raised first time before Appellate Tribunal – Matter remanded – DTAA-India-UK [Art. 26]**
Tribunal held that assessee not having contested applicability of S. 44C either before AO or before CIT(A) matter was to be remanded back to AO for examining assessee's claim with regard to applicability or otherwise of S. 44C qua article–26 of India-U. K. Tax Treaty. (AY. 1997-98)
Standard Chartered Bank v. JCIT (2019) 177 ITD 139 / 200 TTJ 774 / 178 DTR 201 (Mum.)(Trib.)

717 **S. 44AD : Presumptive taxation – Gross receipts – Assessee partner in firm receiving remuneration and interest – Interest and salary not business income – Assessee not eligible for presumptive taxation. [S. 28(v), 40(b)]**
The Tribunal held that, while 28(v) taxes the interest & salary received by a partnership firm as business income to the extent the same is allowable as deduction u/s. 40(b) to the firm, this 'per se' would not translate such salary & interest to 'gross receipts'/ 'turnover' (for the purpose of section 44AD) to the business of being partners in

firm. In other words, it cannot be construed as gross receipts or turnover of business independently carried on by a partner. Dismissing the appeal of the assessee, the Tribunal upheld the order of the Ld. AO disapproving of application of S. 44AD of the Act to the salary /interest income of the assessee. (AY. 2012-13)
A. AnandKumar v. ACIT (2019) 69 ITR 82 (SN) (Chennai)(Trib.)

S. 44BB : Mineral oils – Computation – Unabsorbed depreciation – Carried forward from earlier year – Cannot be set off against while computing the profits and gains of eligible business u/s. 44BB of the Act. [S. 32(2)] 718
Dismissing the appeal of the assessee, the Court held that Tribunal was justified in rejecting the claim of the assessee for set off of unabsorbed depreciation carried forward from the earlier year while computing the income under S. 44BB of the Act. (AY. 2008-09)
Boskalis International Dredging v. DIT(IT) (2019) 182 DTR 148 (Bom.)(HC)

S. 44BB : Mineral oils – Presumptive tax – Gross receipts on account of – Reimbursement of custom duty, service tax paid earlier would not form part of the aggregate amount and not includible in gross receipts. [S. 2(24), 5, 9, 43B] 719
Dismissing the appeal of the revenue the Court held that the amount reimbursed to the assessee (service provider) by ONGC (service recipient), representing service tax paid earlier by the assessee to the Government of India, would not form part of the aggregate amount referred to in clauses (a) and (b) of sub-section(2) of Section 44BB of the Act. Accordingly provision for services and facilities provided in prospecting or for extraction or production of mineral oils is not to be included in gross receipts for the purpose of presumptive tax. (*DIT v. Mitchell Drilling International Pvt. Ltd. (2016) 380 ITR 130 (Delhi) (HC) CBDT Circular No. 4/2008 dt 28-4-2008 (2008) 300 ITR 92 (St.)* & Circular No. 1/2014 dt. 13-1-2014 (2014) 360 ITR 53 (St.) is followed). Accordingly the appeals are to be listed before the Division Bench, hearing appeals under Section 260-A of the Act, for its disposal in terms of this order. (AY. 2004-05)
DIT(IT) v. Schlumberger Asia Services Ltd. (2019) 414 ITR 1 / 264 Taxman 108 / 177 DTR 126 / 308 CTR 314 (FB)(Uttarkhand)(HC), www.itatonline.org
Smith International Inc. v. Addl. DIT(IT) (2019) 414 ITR 1 / 264 Taxman 108 / 177 DTR 126 / 308 CTR 314 (FB) (Uttarkhand)(HC), www.itatonline.org

S. 44BB : Mineral oils – Presumptive taxation – Services or facilities in the prospecting for or extraction of mineral oils – Cannot be taxed as business profits or royalties – DTAA-India-UK. [S. 2(13), 44DA, Art. 7] 720
What is required under the section is that the services/facilities provided by the assessee should be "in connection with" prospecting etc of mineral oil. Nowhere it is mandated that the services should be provided directly by the party who is engaged in prospecting etc. of mineral oil or is directly a member of the Production Sharing Contract. Therefore, the income cannot be taxed as business profits under Article 7 of the Indo-UK DTAA or under S. 44DA of the Act but has to be taxed under S. 44BB only. (AY. 2010-11)
Dy. CIT v. Technip UK Ltd. (2019) 69 ITR 7 (SN) (Delhi)(Trib.)

721 **S. 44BB : Mineral oils – Non-residents – Business for prospecting / exploration, mineral oil etc. vessels given on hire – Required to be shown to be fitted with necessary equipments, and having technical capacity for use in prospecting for, or extraction or production of mineral oils – Matter remanded.**

Assessing officer did not agree with assessee's claim for applicability of section 44BB. DRP, however, accepted assessee's claim. Tribunal held that it was undisputed that in order to claim applicability of section 44BB, vessels given on hire by assessee were required to be shown to be fitted with necessary equipments, and having technical capacity for use in prospecting for, or extraction or production of mineral oils. However, there was nothing on record to conclusively establish that shipping vessels hired by assessee to PGS Norway and PGS Singapore were fitted with necessary equipments, and had technical capacity for use in prospecting for, or extraction or production of, mineral oils. In absence of any categorical findings by DRP on aforesaid crucial issue, impugned order was to be set aside and matter was to be remanded back to DRP for disposal afresh. (AY. 2010-11)

DCIT v. PGS Geophysical AS (2019) 176 ITD 75 / 201 TTJ 724 (Delhi)(Trib.)

722 **S. 44C : Non-residents – Head office expenditure – Entire expenditure was for purposes of head office – No restrictions in terms could be imposed – Order of Tribunal is affirmed. [S. 260A]**

Assessee bank claimed expenditure under head 'NRI Deposit Mobilization'. According to assessee, said amount was expended towards administrative and other related expenses and entire expenditure was for purposes of head office and, therefore, no restrictions in terms of S. 44C could be imposed. Tribunal accepted assessee's claim. On appeal High court held that in an identical situation for earlier assessment years, revenue had not carried matter due to low tax effect. High Court thus dismissed revenue's appeal in assessment year in question as well. (AY. 2000-01)

CIT v. Hongkong and Shanghai Banking Corpn. Ltd. (2019) 267 Taxman 502 / 111 taxmann.com 284 (Bom.)(HC)

Editorial : SLP of revenue is dismissed as the tax effect involved less than 2 crores, CIT v. Hongkong and Shanghai Banking Corpn. Ltd. (2019) 267 Taxman 501 (SC)

723 **S. 45 : Capital gains – Allotment letter – The allottee gets title to property on issue of allotment letter – the payment of instalments is only a follow-up action – Taking delivery of possession is only a formality – the date of allotment is the date on which the purchaser of a residential unit can be stated to have acquired the property and not on the date of registration of agreement – Assessable as long term capital gains – Entitled to benefit of S. 54F. [S. 2(14), 2(29A), 2(29B), 2(42A), 54, 54F]**

Affirming the order of Tribunal the High Court held that the allottee gets title to property on issue of allotment letter. The payment of instalments is only a follow-up action. Taking delivery of possession is only a formality. The date of allotment is the date on which the purchaser of a residential unit can be stated to have acquired the property and not on the date of registration of agreement. Sale consideration is assessable as long term capital gains. Followed *CIT v. TATA Services Ltd. (1980) 122 ITR*

594 (Bom.)(HC) Circular No. 471 dt. 15-10-1986. (1986) 162 ITR 17 (St.), Circular No. 672 dt. 16-12-1993 (1994) 205 ITR 329 (St.) (AY. 2009-10)
PCIT v. Vembu Vaidyanathan (2019) 261 Taxman 376 / 176 DTR 446 / 308 CTR 302 / 413 ITR 248 (Bom.)(HC), www.itatonline.org
Editorial : SLP of revenue is dismissed PCIT v Vembu Vaidyanathan (2019) 265 Taxman 535 (SC) /Order of DCIT v. Shri Vembu Vaidyanathan, ITA No. 5749/Mum/2013 dt. 29-10-2015 confirmed.

S. 45 : Capital gains – Capital asset – Agricultural land – Land situated at distance of 5 kms from limits of Municipal Corporation – It was not excluded from definition of term capital asset – Agricultural land within jurisdiction of municipality or cantonment board etc., having population not less than ten thousand – Liable to capital gains tax. [S. 2(14)(iii)(a)] 724

Assessee had sold agricultural land and claimed exemption. AO held that land was situated at a distance of 5 kms from limits of Municipal Corporation. AO held that it was not excluded from definition of term capital asset hence liable to capital gains tax. CIT(A) allowed the appeal of the assessee. Tribunal held that sale of agricultural land is a capital asset on ground that land in question was situated at distance of 5 kms from limits of Municipal Corporation and, therefore, it was not excluded from definition of term capital asset. On appeal, High Court also affirmed the order of the Tribunal by observing that a perusal of S. 2(14)(iii) would show that exclusion of agricultural land from term 'capital asset' would be excluded if land falls either under (a) or (b) thereof-Sub-clause (a) would cover any agricultural land which was comprised within jurisdiction of municipality or cantonment board etc. and which had a population of not less than ten thousand. If agricultural land under reference was one which was comprised within jurisdiction of a municipality or cantonment etc. board having population of not less than ten thousand, it would not fall outside the definition of capital asset. Clause (b) would cover any area within such distance not more than 8 kms from local limits of municipality or cantonment board etc. referred to in item (a) as a Central Government may specify under a notification. An agricultural land may fall either in clause (a) or clause (b) or neither but not both. If it happens to be a land comprised within the jurisdiction of municipality or cantonment board etc., having population not less than ten thousand, it would fall under clause (a). When a particular land was not comprised within jurisdiction of municipality or cantonment board etc., as referred to in sub-clause (a), question of applicability or inapplicability of sub-clause (b) would arise. Reference to words "any municipality or cantonment board referred to in item (a)" in sub-clause (b) must be to "any municipality or cantonment board which had a population of not less than ten thousand" which is phrase used in sub-clause (a). Accordingly the appeal of the assessee is dismissed. (AY. 2009-10)
Hari Jasumal Thakur v. CIT (2019) 178 DTR 138 / 309 CTR 530 (Bom.)(HC)

S. 45 : Capital gains – Business income – Sale of shares – Shares settled by settlor – Shares received by way of Employee Stock Option Plan – Assessable as capital gains and not as business income – Entitled to exemption. [S. 10(38), 28(i)] 725

Assessee earned profit on sale of shares which was shown as exempt. AO taxed profit on sale of shares as business income. Tribunal held that the shares in question were

not purchased by assessee trust at all. It was also found that shares in question were settled by settlor of trust who himself had not purchased majority of those shares but had received by way of Employee Stock Option Plan and shares were held by settlor himself for over two years before settling them in trust. Accordingly the Tribunal held that profit arising from sales of shares was to be treated as capital gain exempt from tax under S. 10(38) of the Act. High Court affirmed the order of the Tribunal. (AY. 2010-11)
PCIT v. Vernan (P.) Trust (2019) 107 taxmann.com 432 / 265 Taxman 158 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Vernan (P.) Trust (2019) 265 Taxman 157 (SC)

726 **S. 45 : Capital gains – Transfer – Agreement to sell flats which were yet to be constructed – No transfer has taken place during the year – Not assessable as capital gains. [S. 2(47)(v), Transfer of property Act, 1881, S. 53A]**
AO made addition in respect of capital gain arising from transfer of flats. Tribunal found that during the relevant year an agreement to sell had been executed as flats were yet to be constructed. Tribunal further held that since possession had not been delivered, provisions of S. 53A of Transfer of Property Act, 1881, would not apply and, therefore, sub-clause (v) of S. 2(47) would also not apply. High Court affirmed the order of the Tribunal
CIT v. Sadiq Sheikh (2019) 106 taxmann.com 333 / 264 Taxman 170 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Sadiq Sheikh. (2019) 264 Taxman 169 (SC)

727 **S. 45 : Capital gains – Business income – Sale of shares – Average holding period of 628 days – Assessable as capital gains. [S. 28(i)]**
Dismissing the appeal of the revenue the Court held that, the average period of holding of most of those shares was 628 days. In certain scrips the assessee had incurred loss and that in the earlier years the assessee's investment in shares was assessed under the head capital gains because consistently the assessee had been showing in the balance-sheet that the shares were purchased out of his own surplus funds. Accordingly the Tribunal is right in assessing the gains as capital gains. (AY. 2008-09)
CIT v. Hiren M. Shah (2019) 413 ITR 143 / 264 Taxman 320 (Bom.)(HC)

728 **S. 45 : Capital gains – Sale of shares of subsidiary – Cannot be assessed as slump sale. [S. 2(42C), 50B]**
Assessee sold its entire share holding in its subsidiary UHEL to a third party. AO held that the sale of shares in UHEL to a third party resulted in slump sale of undertaking and computed the capital gains as per S. 50B of the Act. CIT(A) confirmed the order of AO. On appeal the Tribunal held that the transfer of shares by assessee in UHEL was just transfer of shares simplicitor and said transfer of shares could not be considered to be a slump sale of undertaking within the meaning of S. 2(42C) of the Act. On appeal by the revenue High Court upheld the order of the Tribunal. (AY. 2007-08)
PCIT v. UTV Software Communication Ltd. (2019) 261 Taxman 562 (Bom.)(HC)
Editorial : UTV Software Communication Ltd v. ACIT (2016) 157 ITD 71 (Mum.)(Trib.) is affirmed.

729 **S. 45 : Capital gains – Business income – Short term capital gains – Taken delivery of shares and used own funds – Assessable as capital gains and not as business income. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that the assessee had used its own funds in order to purchase shares, had taken physical delivery of shares and in books of account treated the same as an investment. Accordingly the Tribunal is justified in holding that the gain is assessable as short term capital gains.

PCIT v. Business Match Services (I) (P.) Ltd. (2019) 260 Taxman 190 (Bom.)(HC)

730 **S. 45 : Capital gains – Business income – Set of off loss from one transaction against gain form second transaction is held to be allowable. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that the assessee had entered into only two transactions i.e. first was sale of shares of CPPL received from his father as a gift who held these shares as investment and in second transaction he bought shares of HCL Technologies, which he sold and incurred loss. Accordingly, the Tribunal was justified in allowing the set of off loss from one transaction against gain from second transaction (AY. 2007-08)

PCIT v. Adar Cyrus Poonawalla (2019) 260 Taxman 41 (Bom.)(HC)

731 **S. 45 : Capital gains – Business income – No distinction can be made whether borrowed money or own funds – Circular is binding on department – Consistency must be followed – Surplus from sale of shares is assessable as capital gains and not as business income. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that the circular makes no distinction whether the investments made in shares were out of borrowed funds or out of its own funds. That the Department was bound by Circular No. 6 of 2016 dt. February 29, 2016 (2016) 382 ITR 14 (St). However, the stand once taken by the assessee would not be subject to change and consistently the income on the sale of securities which are held as investment would continue to be taxed as long-term capital gains or business income as opted for by the assesse. (AY. 2008-09)

CIT v. Hardik Bharat Patel (2019) 410 ITR 202 / 260 Taxman 294 (Bom.)(HC)

732 **S. 45 : Capital gains – Capital loss – Assignment of loan – Capital asset – Allowable as capital loss. [S. 2(14)(a), 2(47), Wealth tax Act, 1957 S. 2(e)]**

Dismissing the appeal of the revenue the Court held that loan given by assessee to its subsidiary in India by the foreign company constituted capital asset and loss arising on assignment of loan is allowable as capital loss. Followed *Bafna Charitable Trust v. CIT (1998) 230 ITR 864 (Bom.)(HC), CWT Vidur V. Patel (1995) 215 ITR 30 (Bom.)(HC), CIT v. Minor Bababhai Alias Lavkumar Kantilal (1981) 128 ITR 1 (Guj.)(HC). (ITA No. 1366 of 2017 dt 26-08 2019)* (AY. 2002-03)

CIT v. Siemens Nixdorf Information Systems Gmbh (2019) 184 DTR 277 (Bom.)(HC)

733 **S. 45 : Capital gains – Family arrangements – If there is no pre existing right, the family arrangement constitutes a transfer – Merely because dispute involved some family members and such dispute is ultimately settled by filing consent terms, the same cannot be styled as a family arrangement or family settlement so as to hold that the consideration received as a result of such settlement, does not constitute capital gain-Reassessment is also held to be valid. [S. 147, 148, 149, 151]**

Dismissing the appeal of the assessee the Court held that, a family settlement which is a settlement amongst family members in the context of their 'pre existing right' is not a "transfer". Such a settlement only defines a pre existing joint interest as a separate interest. However, if there is no pre existing right, the family arrangement constitutes a "transfer". Merely because dispute involved some family members and such dispute is ultimately settled by filing consent terms, the same cannot be styled as a family arrangement or family settlement so as to hold that the consideration received as a result of such settlement, does not constitute capital gain. *Referred Maturi Pullaiah v. Maturi Narasinham, AIR 1966 SC 1836*. Court also up held the reassessment proceedings. (AY. 1999-2000)

P. P. Mahatme, Power of Attorney, Lorna Margaret Pinto v. ITO (2020) 420 ITR 71 / 268 Taxman 186 / 186 DTR 260 (Bom.)(HC) www.itatonline.org

734 **S. 45 : Capital gains – Transfer of land to developer – No Objection Certificate obtained in June 1994 – Built-up area handed over in financial year relevant to AY. 2001-02 – Transfer took place when agreement for development of land was approved – Cost of construction referred in the agreement is held to be reasonable – Developer providing rent free accommodation is not assessable as capital gains – Sale of land and residential house to developer – Construction of residential house by developer – Entitled to exemption. [S. 2(47)(v), 54, 54F, 269UL, Transfer of Property Act, 1882, S. 53A]**

The question before the High Court was whether the Tribunal was right in the circumstances of the case interpreting the terms of development agreement and rejecting the contention that the entire transfer took place in an earlier year and no potion of the capital gains is taxable in this year. Question is answered in favour of the assessee. Court also held that cost of construction referred in the agreement is held to be reasonable and the developer providing rent free accommodation is not assessable as capital gains. As regards sale of land and residential house to developer and construction of residential house by developer is entitled to exemption. (AY. 2001-02)

P. Madhusudhan v. ACIT (2019) 419 ITR 194 (Mad.)(HC)

735 **S. 45 : Capital gains – Transfer of assets – Depreciable assets – Transfer of business undertaking – Holding company to subsidiary company – Assets of undertaking included intangibles like goodwill, intellectual property etc. their cost of acquisition could not be determined – Charging S. 45 for computation of capital gains did not apply – Not possible to compute capital gains – Not liable to capital gains tax. [S. 2(42A), 48, 50, 50B]**

Assessee had claimed long term capital loss u/s 48 in respect of transfer of business undertaking. AO treated assets as depreciable and applied S. 50 of the Act and treated the transaction as a STCG. CIT(A) held that consideration was not chargeable to capital

gains tax. Tribunal held that entire businesses undertakings were transferred to its subsidiary. Transfer was on an as was where basis. Transfer was genuine, although it was by a holding company to a subsidiary company. Definition of slump sale as per S. 2(42A) was incorporated into statute w.e.f. 1st April, 2000. S. 45 provides that profits or gains from transfer of a capital asset would be chargeable to income tax as capital gains. This gain was deemed to be income in FY in which transfer was effected. Undoubtedly, transfer of undertaking in question was a transfer of a collection of almost entire assets of undertaking and hence, transfer of capital. Since collection of assets of undertaking included intangibles like goodwill, intellectual property etc. their cost of acquisition could not be determined. Since this could not be done, charging S. 45 for computation of capital gains did not apply, hence, it was not possible to compute capital gains. High Court affirmed the order of the Tribunal and dismissed the appeal of the revenue. (AY. 1994-95)

CIT v. Akzo Noble India Ltd. (2019) 181 DTR 121 / 310 CTR 255 (Cal.)(HC)

S. 45 : Capital gains – Revaluation of capital asset and crediting to partners current account and treating it as loan from partners – Amounted to violation of clauses (a) and (c) of proviso to S. 47(xiii). Transaction amounted to transfer of a capital asset – Liability to pay tax on such capital gain would fall not on assessee – Firm but on successor company. [S. 47(xiii) (a), 47(xiii)(b), 47A] 736

A partnership firm was converted into a private limited company. Before such conversion, the land which belonged to the firm, was revalued and the enhanced value of the land was credited to the current account of the partners of the firm. On conversion of the firm as a company, the enhanced value of the land, which was shown in the current account of the partners, was shown as loan from the partners in the hands of the company. The AO treated the enhanced value of land as capital gains of the firm and brought it to tax. Order was affirmed by CIT(A) and Tribunal. On appeal to the High Court held that by revaluation of capital asset and crediting to partners current account and treating it as loan from partners,amounted to violation of clauses (a) and (c) of proviso to S. 47(xiii). Transaction amounted to transfer of a capital asset and liability to pay tax on such capital gain would fall not on assessee – firm but on successor company.

KTC Automobiles v. DCIT (2019) 266 Taxman 117 / 311 CTR 905 / 184 DTR 270 (Ker.)(HC)

S. 45 : Capital gains – Transfer – Allotment letter – Long term – Short term – Assessee in possession of sheds since date of allotment – Assessee Paying Amounts Due Under Agreement – Sale deed executed on 11-1-1996 – Transfer of sheds in same year – Assessable as long-term capital gains. [S. 2(42A), 2(47)(v)] 737

Allowing the appeal the Court held that the agreement between the Corporation and the assessee referred to the assessee as the "lessee purchaser". The agreement specifically stated that the price of the sheds had been tentatively fixed by the Corporation and part of this had already been paid by the assessee and the balance amount was agreed to be paid in instalments. Further, the agreement stated that the Corporation had transferred the property to the assessee by way of lease for the time being with the ultimate object of selling the property to the lessee purchaser, but on the fulfilment of the terms and

conditions laid down therein. There was no allegation that the assessee had flouted the terms and conditions laid down by the Corporation. Considering the totality of the factual matrix, it was to be held that the assessee had been holding the property ever since the date of allotment, i.e., August 11, 1988. It should be treated as a long-term capital asset and the gains arising therefrom should be assessed at low tax effect. (AY. 1997-98)
South India Minerals Corporation v. ACIT (2019) 417 ITR 306 / 266 Taxman 16 / 311 CTR 995 / 184 DTR 306 (Mad.)(HC)

738 **S. 45 : Capital gains – Sale of land and building – Sale of land taxable as long term capital gains and sale of building as short term capital gains [S. 2(29A), 2(29B), 50]**
Dismissing the appeal of the revenue the Court held that sale of land taxable as long term capital gains and sale of building as short term capital gains. (AY. 2009-10)
CIT v. Stovec Industries Ltd. (2019) 416 ITR 63 (Guj.)(HC)

739 **S. 45 : Capital gains – Business income – Profit on sale of investment is assessable as capital gains. [S. 10(38), 28(i)]**
Profit on sale of investment is assessable as capital gains and not as business income. Dividend income is exempt from tax. (AY. 2005-06)
PCIT v. Haryana State Industrial and Infrastructure Development Corporation Ltd. (2019) 414 ITR 632 / 183 DTR 244 / 311 CTR 603 / 108 taxmann.com 540 / 266 Taxman 9 (Mag.)(P&H)(HC)

740 **S. 45 : Capital gains – Business income – Sale of land assessable as capital gains. [S. 4, 28(i)]**
Court held that the Tribunal was right in holding that the sale of land by the assessee was not in the nature of business and therefore the sale consideration could not be treated as business income. The transaction which took place and the land which was sold ultimately was in the name of the assessee. It was the prerogative of the assessee how to dispose of the property. If the property was not transferred to any other entity, it would not go into his account.
CIT v. Hazarilal Goyal (Deceased) (2019) 414 ITR 565 (Raj.)(HC)
Editorial : SLP of revenue is dismissed CIT v. Hazarilal Goyal (Deceased)(2018) 406 ITR 32 (St.)

741 **S. 45 : Capital gains – Capital loss – Loss incurred on account of sale of shares to sister concern – Neither fraudulent nor colourable device – Allowable as capital loss. [S. 260A]**
Court held that Loss incurred on account of sale of shares to sister concern is neither fraudulent nor colourable device. Allowable as capital loss. No question of law. (AY. 2002-03)
CIT v. Parry and Co. Ltd. (2019) 415 ITR 45 (Mad.)(HC)

S. 45 : Capital gains – Capital loss – Loss on sale of shade tree – Capital loss allowed to be carried forward. 742

Loss on sale of shade Tree is not Agricultural loss. Loss is capital loss hence allowed to be carried forward. (AY. 2006-07)

CIT v. Harrisons Malayalam Ltd. (2019) 414 ITR 344 / 183 DTR 302 / 246 Taxman 414/ 311 CTR 802 (Ker.)(HC)

S. 45 : Capital gains – Transfer – Joint Development agreement (JDA) – In the absence of registration, agreement did not fall under S. 53A of the transfer of property Act – Not liable to capital gains tax [S. 2(47)(v) Transfer of Property Act, 1882 S. 53A] 743

Dismissing the appeal of the revenue the Court held that in absence of registration of joint development agreement, agreement did not fall under S. 53A of Transfer of Property Act, 1882 and, consequently, S. 2(47)(v) did not apply. Accordingly not liable to capital gains tax. (AY. 2007-08)

PCIT v. Chuni Lal Bhagat (2019) 103 taxmnn.com 378 / 262 Taxman 210 (P&H)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Chuni Lal Bhagat (2019) 262 Taxman 209 (SC)

S. 45 : Capital gains – Penny Stocks – It is intriguing that the company had meagre resources and reported consistent losses. The astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue – The company was even directed to be delisted from the stock exchange – The assessee's argument that he was denied the right to cross-examine the individuals whose statements led to the inquiry and ultimate disallowance of the long term capital gain claim is not relevant in the wake of findings of fact. [S. 10(38), 68, 115BBE, 260A] 744

The assessee acquired shares at ₹ 12 per share and within 19 months sold at ₹ 720 per share and reported capital gain of ₹ 13, 33,956. All authorities held that when the company suffered heavy losses how the there could be astronomical growth in value of the shares and the company was directed to be delisted from the stock exchange.

Accordingly exemption from capital gain was denied. In an appeal by the assessee it was contended that he was denied the right to cross-examination of the two individuals whose statements led to the inquiry and ultimate disallowance of the long term capital gain. Dismissing the appeal the Court held that AO, CIT(A) and the ITAT have all consistently rendered adverse findings. Court also observed that, what is intriguing is that the company (M/s. Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court held that no substantial question of law arises. (AY. 2014-15)

Udit Kalra v. ITO (Delhi) (2019) 176 DTR 249 / 308 CTR 50 (HC), www.itatonline.org

Editorial : Udit Kalra v. ITO (2019) 176 DTR 257 / 199 TTJ 72 (SMC) (Delhi)(Trib.) is affirmed.

745 **S. 45 : Capital gains – Gains from equities – Entire documentary evidence not disputed and no rebuttal to explanation of assessee – no adverse materials against assessee – No proper enquiry conducted on documentary evidence filed – Assessee entering into genuine transaction of sale and purchase of shares – Entitled to exemption. [S. 10(38), 68, 115BBE]**

The Assessee had entered into a transaction of sale of shares held in a company. The sale took place through Stock Exchange via a registered Stock Broker after payment of Securities Transaction Tax. Assessee claimed exemption under S. 10(38) in respect of the said sale transaction. During the assessment proceeding, the assessee submitted all the relevant documents supporting the purchase of shares made in cash, with sale contract notes and bank statements and dematerialised statements. However, the price of shares skyrocketed without the essential parameters for increase in price. Hence the AO held such transaction to be a sham transaction in the Assessment order passed. The AO treated the gains as unexplained cash credit under S. 68 and taxed the same at 30 per cent under S. 115BBE in the hands of the Assessee. The CIT(A) upheld the AO's order. The Tribunal, on appeal held – Documentary evidence provided cannot be brushed aside on probabilities and suspicions without pointing out the defect therein. Prices of shares depend upon innumerable factors. Reliance placed upon the statement of Investigation Wing cannot be applied to all the cases blindly. Securities and Exchange Board of India in a subsequent decision, absolved the companies involved in artificial rigging of price of shares, this fact vitiates the revenues case. Held that the Assessee is entitled to claim exemption under S. 10(38) of the Act. (AY. 2014-15)

Asha Luthra (Ms.) v. ITO (2019) 76 ITR 432 (Delhi)(Trib.)

746 **S. 45 : Capital gains – Alleged bogus long-term capital gains – Order giving effect to the order of Tribunal – Direction – AO wrongly considered deposits twice against sale of shares – AO has no jurisdiction to look into sale of other shares – Addition is deleted. [S. 254(1)]**

Tribunal held that the AO had wrongly considered the two deposits against the sale of shares which was contrary to the facts available on record. Accordingly the AO had made the addition for the sale of shares is on wrong assumption of facts, hence liable to be deleted. Tribunal also held that there was no ambiguity in the direction of the Tribunal to verify the purchase and sale of shares but the AO in his assessment order had held that the assessee had not declared the sale of shares resulting bogus long-term capital gains though there was no such direction in the order of the Tribunal. Hence, authorities below had exceeded the direction issued by the Tribunal which was unwarranted. (AY. 2001-02)

Cheryl J. Patel v. Dy. CIT (2019) 76 ITR 5 (SN.) (Mum.)(Trib.)

747 **S. 45 : Capital gains – Sale of shares – investigation wing report – Shares were dematerialized and sales had been routed from demat account and consideration had been received through banking channels – Addition cannot be made as cash credits. [S. 10(38), 68]**

Assessee purchased shares of two companies (Esteem and Randers) online through two brokers, namely, ISF and SMC in years 2012 and 2013 and sold said shares in

year 2014 and assessee had shown long-term capital gain from sale of shares and had claimed same as exempt under S. 10(38) of the Act. AO received investigation report of DIT (Investigation) regarding list of companies providing bogus long-term capital gain. He held that the assessee was beneficiary in said list and concluded that assessee had entered into colourable device for avoidance of tax and receipt was nothing but unexplained cash credit. CIT(A) also confirmed the addition. On appeal the Tribunal held that shares of two companies were purchased online, payments had been made through banking channel and shares were dematerialized and sales had been routed from demat account and consideration had been received through banking channels. Neither AO conducted any enquiry nor had brought any clinching evidence to disprove evidences produced by assessee. Accordingly since AO had not conducted a separate and independent enquiry to verify investigation report and these transactions took place much before report of Investigation Wing, assessee had successfully discharged onus cast upon him hence addition u/s 68 is held to be not valid. (AY. 2014-15, 2015-16)
Karuna Garg (Smt.) v. ITO (2019) 178 ITD 823 (Delhi)(Trib.)

S. 45 : Capital gains – Transfer – Conversion – AOP converted into a company limited by shares – New company never remained in existence simultaneously – Not liable to capital gain tax. [S. 2(47)] 748

During the year, assessee-society was converted into a company limited by shares. AO held that there was transfer of assets owned by assessee to another legal entity within the meaning of S. 2(47) which would attract capital gain tax under S. 45(1) of the Act. CIT(A) held that that there was no transfer within meaning of S. 45(1) of the Act because there were no two parties transferor and transferee, accordingly he deleted addition made by the AO. On appeal by the revenue the Tribunal held that till date of conversion, assessee – AOP remained in existence and moment conversion took place, company came into existence. However, AOP and company never remained in existence simultaneously. As per S. 45(1) transfer of capital asset was possible only when there was simultaneous existence of transferor and transferee. In absence of two entities at same time, consideration could not pass from transferor to transferee and, as a result, provisions of S. 45 (1) were not applicable. Accordingly the order of CIT(A) is affirmed. (AY. 2001-02)
ACIT v. Escorts Heart Institute & Research Centre (2019) 178 ITD 362 (Delhi)(Trib.)

S. 45 : Capital gains – Land and building – Right in the lease hold land – Building – Lease hold right assessable under normal provisions of the capital gains – Building being depreciable asset capital gain to be computed as short term u/s. 50 of the Act. [S. 2(11), 2(29A), 2(29B), 2(42A), 50] 749

The Tribunal held that capital gains on Lease hold right is assessable under normal provisions of the capital gains, However building being depreciable asset capital gain to be computed as short term u/s. 50 of the Act. (AY. 2015-16)
Hirsch Bracelet India (P.) Ltd. v. ACIT (2019) 178 ITD 601 (Bang.)(Trib.)

750 **S. 45 : Capital gains – Transfer of immoveable property – Date of execution of registered document is relevant and not date of delivery of possession or date of registration of document – Matter remanded – Method of accounting – AO is to be directed to bring said income to tax on basis of percentage completion method having regard to principles of AS-9. [S. 2(47), 145]**

The assessee – company is in the business of development of real estate. It followed the mercantile system of accounting. During relevant year assessee commenced a project of development and construction of building and received certain advance from the prospective buyers of the flat. The assessee had offered the income only in respect of the flat owners with whom agreement to sell had been entered into. AO held that entering into an agreement and its registration was not necessary for recognition or revenue on advances or on the completed part of the project. Observing that said condition has been dispensed with in cases falling under AS-9, the AO made addition to income shown by assessee. CIT(A) confirmed said addition. On appeal the Tribunal held that as regards the immovable property, it is not conveyed by delivery of possession, but by a duly registered deed. It is date of execution of registered document, not the date of delivery of possession or the date of registration of document which is relevant. Once the executed documents are registered, the transfer will take place on the date of execution of documents and not on date of registration of documents. Followed, *Alapati Venkataramaiah v. CIT (1965) 57 ITR 185 (SC)* Matter remanded. As regards method of accounting the Tribunal held that, where assessee, engaged in business of real estate development, offered income in respect of sale of flats to flat owners with whom agreement to sell had been entered into, AO was to be directed to bring said income to tax on basis of percentage completion method having regard to principles of AS-9. (AY. 2009-10 to 2012-13)

Shankala Realtors (P.) Ltd. v. ITO (2019) 179 ITD 835 (Mum.)(Trib.)

751 **S. 45 : Capital gains – Transfer – Year of taxability – Sale deed was executed on 31-3-2009 – Full payment of sale consideration was received – Registration was done on 1-4-2009 – Capital gain tax is chargeable in assessment year 2009-10 and not in 2010-11. [S. 2(47)(v), 54, 147, Registration Act, S. 47, Transfer of property Act, 1982, S. 53A]**

Agreement to sell property was executed and registered on 16-1-2009 whereby part possession of property had been handed over to purchaser on part payment being made. Sale deed was executed between parties on 31-3-2009 whereby entire terms and conditions were satisfied, full sale consideration was paid and possession of property was handed over to purchaser. Sale deed was registered on 1-4-2009. The assessee showed the capital gain and claimed exemption u/s 54 of the Act in the AY. 2009-10. The assessment was reopened on the ground that the capital gain is chargeable to tax in the AY. 2010-11 and wrongly claimed the exemption. Order of the AO is affirmed by the CIT(A). On appeal the Tribunal held that as per S. 47 of Registration Act states that registered document shall operate from date of its execution. In view of this, transfer of capital asset completed in preceding assessment year 2009-10, and capital gain tax was rightly offered in the AY. 2009-10. Merely because sale deed dated 31-3-2009 was registered on 1-4-2009, it could not be said that transaction of transfer of capital asset took place in assessment year 2010-11. (AY. 2010-11)

Madhu Gangwani (Smt.) v. ACIT (2019) 179 ITD 673 (Delhi)(Trib.)

S. 45 : Capital gains – Taxable in the hands of owner and not in the hands of General Power of Attorney holder. [S. 2(47)] 752

Assessee holding GPA for certain persons sold certain immovable property belonging to them during relevant assessment year. He did not offer capital gains tax on said transaction contending that he had executed sale deed as a General Power of Attorney Holder (GPA) and he had not received any amount from the transaction. The AO held that the assessee had sold the plot to his daughter not only as a GPA holder, but also as a owner of the property and had earned the capital gain therefrom. He accordingly brought the capital gains to tax On appeal, the CIT(A) confirmed the order of the AO. Tribunal held that, since the assessee was not owner of property, capital gain could not be brought to tax in his hand. Followed *Suraj Lamps & Industries (P.) Ltd v. State of Haryana (2012 340 ITR 1 (SC)*. (AY. 2008-09)

Veerannagiri Gopal Reddy v. ITO (2019) 72 ITR 578 / 179 ITD 305 (Hyd.)(Trib.)

S. 45 : Capital gains – Long term capital gain – Off market transaction – Legal requirements complied with – Addition cannot be made as cash credit. [S. 2(47), 68] 753

If the sale of shares has been carried out as an off market transaction then that per se would not make the assessee liable to pay long term capital gains tax if the price at which the sale is made has been intimated to SEBI, the delivery of shares has been carried out, contract notes have been received, and the transaction is carried out through recognized brokers through account payee cheques. Addition cannot be made as cash credit. (AY. 2007-08)

Dy. CIT v. R. K. Commercial Ltd. (2019) 74 ITR 541 (Kol.)(Trib.)

S. 45 : Capital gains – Long term – Period of holding – Date of execution of sale deed to be considered for the holding period and not date of receipt of occupation certificate – Assessable as long term capital gains. [S. 2(42A)] 754

Assessee and other three companies had purchased four commercial properties by way of separate sale deeds. Subsequently all the aforesaid companies amalgamated with assessee and assessee became owner of all the four properties. Subsequently, assessee sold all properties to a Bank and offered the gain derived from such sale as LTCG. AO treated gain derived from sale of such properties as STCG since he computed the holding period for such properties from the date of issue of occupation certificate. However, CIT(A) overruled the same holding that upon execution of sale deeds, the right, title and interest over properties were transferred to Assessee hence assessee should be deemed to be owner of properties from date of execution of registered sale deeds. Tribunal held that merely because occupation certificate was issued by competent authority at a later stage, for whatever reason, it would not mean that assessee has not held property from date of execution of registered sale deeds. Assessee was holding properties from date of execution of registered sale deeds i.e. for a period of more than 36 months prior to date of transfer. Hence gains derived from sale of properties had to be assessed as long term capital gains. (AY. 2010-11)

Crescent Realtors P. Ltd. v. Dy. CIT (2019) 72 ITR 57 (SN) (Mum.)(Trib.)

755 **S. 45 : Capital gains – Capital receipt – Professional goodwill – Business income – Compensation – Amount received against termination of right – Held to be capital receipt. [S. 2(14), 4, 28(ii(a), 55]**

Assessee received certain amount from a company which he claimed as professional goodwill. AO held that said amount was received by assessee on account of relinquishment of his rights in management of a company accordingly taxed under S. 28(ii)(a) of the Act. CIT(A) deleted the addition. On appeal by revenue the Tribunal held that since AO had not established that assessee was a person who was managing whole or substantially whole of affairs of the company, invocation of S. 28(ii)(a) failed. The Tribunal also held that even, assuming that amount received by assessee was relatable to relinquishment of any managerial right, cost of any such managerial right being indeterminate, provisions relating to computation of capital gain were not workable and, consequently, amount could not be taxed under S. 45 of the Act also. (AY. 2009-10)

DCIT v. Dr. Sandeep Dave (2019) 179 ITD 51 / 201 TTJ 683 / 182 DTR 109 (Raipur)(Trib.)

756 **S. 45 : Capital gains – Penny stock – Capital gains cannot be assessed as cash credits – AO failed to bring on record any part of report wherein name of assessee or his broker been named – No action was taken by SEBI against the share broker or against the assessee – Entitled to exemption. [S. 10(38), 54F, 68]**

Tribunal held that the authorities had failed to bring on record any evidence to prove that the transactions carried out by the assessee were not genuine or that the documents furnished in support thereof were not authentic. No specific enquiry or investigation was conducted in the case of the assessee or his broker either by the Investigation Wing or by the AO during the course of assessment proceedings. The assessee had successfully discharged the onus cast upon him by the provisions of S. 68 and such discharge of onus is purely a question of fact. The AO was directed to accept the long-term capital gains. (AY. 2015-16)

Deepak Nagar v. ACIT (2019) 73 ITR 74 (Delhi)(Trib.)

757 **S. 45 : Capital gains – Capital loss – Long term capital gains – Long term capital loss – Set-off is allowed against taxable income. [S. 2(14), 2(39A), 10(38), 45, 70, 71, 72, 74]**

Tribunal held that the fact that "long-term capital gains" on listed shares are exempt from tax does not mean that "long-term capital loss" on such shares is not available for set-off against taxable income. While the gains are exempt, there is no bar against claiming set-off of the loss (*CIT v. J. H. Gotla (1985) 156 ITR 323 (SC)* distinguished, CBDT Circular No. 7/2013 dated 16-7-2013 referred, *Raptakos Brett & Co v DCIT (2015) 69 SOT 383 (Mum) (Trib)* followed) (ITA No. 511/Kol/2017, dt. 1-7-2019)(AY. 2013-14)

United Investment v. ACIT (Kol.)(Trib.), www.itatonline.org

758 **S. 45 : Capital gains – Sale of land – Invested in several small properties – Assessable as capital gains and not as business income. [S. 28(i)]**

Assessee sold a land and invested sale consideration for purchasing several small properties and resold certain properties for reason that he was not expecting much gain from said properties due to certain disputes/non preferred location etc. of these

properties, however, rest of properties were retained by assessee for long term. Assessee has shown the gain as long term capital gains. AO assessed it as business income. Tribunal held that merely because the assessee after sale of large chunk of land purchased many small properties and further sold some properties due to certain reasons, that itself, was not sufficient to hold that assessee was doing regular business in sale and purchase of immovable property. Accordingly assessable as capital gains. (AY. 2009-10)
Munish Singla v. ACIT (2019) 177 ITD 529 (Chd.)(Trib.)

S. 45 : Capital gains – Firm – Retirement – Excess sum paid over and above sum standing to credit of capital account of partner is assessable as capital gains. [S. 2(47), 54EC] 759
Tribunal held that excess amount received by retiring partner over and above sum standing to credit of capital account is assessable as capital gains. However, the computation of the capital gain has been modified by treating value of goodwill also as part of the credit in the partners capital account. Consequently, the capital gain in question was less than ₹ 50 lakhs and since the assessee has been allowed exemption under section 54EC to the extent of ₹ 50 lakhs, no capital gain is exigible to tax in the present case. (AY. 2008-09)
Savitri Kadur v. DCIT (2019) 177 ITD 259 / 181 DTR 265 (Bang.)(Trib.)

S. 45 : Capital gains – Capital loss – Tax planning – Purchase of compulsory convertible Debentures (CCDs) from its subsidiary company and sale to holding company – Loss is held to be genuine and allowable as capital loss. [S. 4, 70] 760
Assessee – company purchased Compulsorily Convertible Debentures (CCD) of company Imperial Consultants & Sec. Pvt. Ltd. (CSL) at ₹ 85 per debenture from its subsidiary company which were later sold to its holding company Kroner Investment Ltd. (KIL) at ₹ 61.88 per debenture resulting in short-term capital loss. AO disallowed the capital loss on ground that transactions of sale and purchase of CCDs which had resulted in loss with related parties of assessee were actually colourable device to set off huge profits earned by assessee during the year. Tribunal held that sale price of CCDs at ₹ 61.88 per debenture was duly supported by an independent valuation report of a chartered accountant which was based on assets and liabilities of ICSL who had suffered huge loss during year. Entire documentation such as details of investments in CCDs of ICSL, certified true copy of Board Resolution giving consent to assessee to invest its funds in securities of ICSL, etc., were furnished by assessee and no flaws were found by revenue in aforesaid documents. Purchase price of ₹ 85 per debenture was kept by assessee to ensure that its subsidiary company did not incur any loss on its investments and it was for commercial reasons. On facts, impugned short-term capital loss suffered by assessee was to be construed as a genuine loss and could not be construed as a colourable device to set off huge profits earned by assessee during the year and same was to be allowed. (AY. 2012-13)
Essar Teleholdings Ltd. v. ACIT (2019) 177 ITD 654 / 182 DTR 209 / 201 TTJ 760 (Mum.) (Trib.)

761 **S. 45 : Capital gains – Penny stocks – Long term capital gains from penny stocks cannot be treated as bogus if the documentation is in order and no fault is found by the AO – Addition is deleted. [S. 38, 111A]**

Tribunal held that LTCG from penny stocks cannot be treated as bogus if the documentation is in order and no fault is found by the AO. Followed *CIT v. Lavanya Land Pvt. Ltd. (2017) 83 taxmann.com 161 (Bom) (HC)*, Ratio in *Sanjay Bimalchand Jain (ITA No 18 of 2017 dt 10-4-2017* distinguished. (AY. 2014-15)

Chandra Prakash Jhunjhunwala v. DCIT (2019) 201 TTJ 831 (Kol.)(Trib.), www.itatonline.org

762 **S. 45 : Capital gains – Penny stocks – Bogus capital gains – 282 times gain in 12 months – The meticulous paper work of routing the transaction through banking channel is futile because the results are altogether beyond human probabilities. [S. 10(38)]**

Dismissing the appeal of the assessee the Tribunal held that, the meticulous paper work of routing the transaction through banking channel is futile because the results are altogether beyond human probabilities. Neither in the past nor in the subsequent years, assessee has indulged into any such investment having huge windfall. Had the assessee been so intelligent qua the intricacies of the share market, he would have definitely undertaken such risk taking activities in the past or future by making such investment in unknown stock. It is a sham transaction to convert undisclosed income into disclosed by evading tax under the garb of LTCG in connivance with entry providers. Gain was assessed as bogus capital gains from Penny Stocks (282 times gain in 12 months. Denial of exemption is held to be justified. (*Pooja Ajmani v. ITO (2019) 177 ITD 127 (Delhi) (Trib.) & Udit Kalra v. ITO (2019) 176 DTR 249 / 308 CTR 50 (Delhi)(HC)* followed. (ITA No. 1881/Del. /2018, dt. 14-6-2019) (AY. 2014-15)

Sanat Kumar v. ACIT (Delhi)(Trib.), www.itatonline.org

763 **S. 45 : Capital gains – Sale of shares – Entry operator – Bogus long term capital gains – Produced sufficient material – Addition cannot be made as cash credits. [S. 10(38), 68]**

Tribunal held that though the Department had contended that it had searched various entry operators alleged to have engaged in giving bogus long-term capital gains none of the entry operators had ever quoted the assessee's name. In the present the assessees had placed sufficient materials on record indicating that they had derived the long-term capital gains from sale of shares. Addition as cash credit is held to be not justified. (AY. 2014-15)

Sangita Jhunjhunwala (Smt.) v. ITO (2019) 70 ITR 247 (Kol.)(Trib.)

764 **S. 45 : Capital gains – Business income – Shares held as investment – Recorded as investment in the books of account at the time of purchase and from year to year – Sale consideration cannot be assessable as business income. [S. 28(i)]**

Tribunal held that at time of purchase of shares, they were recorded and classified under head 'investment' in books of account and were also reflected as such in audited financial statements from year to year and never these shares had been

treated as tradable or stock-in-trade, shares could not be treated as stock-in-trade. Sale consideration is assessable as capital gains and not as business income. (AY. 2011-12)
Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

S. 45 : Capital gains – Non refundable entry fee – Right which is not enforceable by law, cannot be regarded as a capital asset – Actionable claim right cannot be assessed as capital gains – In order to attract the provisions of capital gains it is axiomatic that there has to be an income derived by the assessee on transfer of a capital asset. [S. 2(47)] 765
The AO treated the actionable claim right as capital asset and taxed the same upon exercise of right in March 31, 2014, being the date when set-off was allowed by DoT. CIT(A) upheld the order of the AO. On appeal the Tribunal held that, set off of non-refundable entry fee paid by group company UW to DoT in 2008, against the fresh spectrum fee payable by assessee towards allocation of telecom licenses cannot be regarded as 'transfer' under S. 2(47) of the Act. Further Tribunal rejected Revenue's stand that consequent to the set off, capital asset acquired by assessee was extinguished and thus there was a 'transfer' under S. 2(47) of the Act of a short term capital asset (being held for a period less than 36 months). Tribunal held that 'right' which is not enforceable by law, cannot be regarded as a 'capital asset', thus holds that assessee had not acquired any capital asset from UW under the Actionable Claim agreement since UW did not hold such asset at any point of time. Tribunal ruled in favour of the assessee. (AY. 2014-15)
Telenor (India) Communications Pvt. Ltd. v. CIT (2019) 197 TTJ 1 / 173 DTR 65 (Delhi) (Trib.)

S. 45 : Capital gains – Transfer – Transaction could not be materialised – Possession of land was in dispute – No profit or gain arose – Not liable to tax as capital gain. [S. 2(47)] 766
Allowing the appeal of the assessee the Tribunal held that, transaction could not be materialised and the possession of land was in dispute. Accordingly no profit or gain arose hence not liable to tax as capital gain. (AY. 2011-12)
Appasaheb Baburao Lonkar v. ITO (2019) 176 ITD 115 / 69 ITR 460 / 176 DTR 9 / 198 TTJ 448 (Pune)(Trib.)

S. 45 : Capital gains – Cash credits – Bogus accommodation entries – Penny stock – Sale of shares – Purchase by account payee cheque – Transaction was credited in DEMAT account – Opportunity of cross examination was not given – Sale transaction cannot be treated as bogus merely on the basis of suspicious or surmises – Addition was deleted – Estimation of commission was also deleted. [S. 10 (38), 68, 69C, 132(4)] 767
On the basis of information from Investigation Wing the AO added amount of long-term capital gain as cash credits and also estimated commission. CIT(A) affirmed the order of the AO. On appeal by the assessee, allowing the claim of the assessee the Tribunal held that the shares were purchased by account payee cheque, transaction was credited in DEMAT account, opportunity of cross examination was not given. Accordingly, the sale transaction cannot be treated as bogus merely on the basis of suspicious or surmises. Estimation of commission was also deleted. (AY. 2013-14, 2015-16)
Meghraj Singh Shekhawat v. DCIT (2019) 175 ITD 693 / 197 TTJ 278 (Jaipur)(Trib.)

768 **S. 45 : Capital gains – Sub-tenancy right – Capital asset – Gains on surrender is liable to capital gains tax and not income from other sources. [S. 14, 55(2), 56]**
Assessee received certain sum as consideration for transferring his sub-tenancy rights. AO assessed the same as income from other sources. CIT(A) held that the amount is assessable as capital gains. On appeal by revenue, dismissing the appeal of the revenue the Tribunal held that like tenancy right, a sub-tenancy right is also a capital asset and liable to be chargeable as capital gains and not as income from other sources. (AY. 2014-15)
ACIT v. Dr. Jayesh Keshrichand Shah (2019) 175 ITD 751 / 181 DTR 41 (Mum.)(Trib.)

769 **S. 45 : Capital gains – Long term – Short term – Sale of flat – Date of allotment of flat and not date of giving possession of flat which has to be considered as date for computing holding period of 36 months [S. 2(29A)]**
Tribunal held that for computing the holding period of 36 months it is the date of allotment of flat and not date of giving possession of flat to be considered. (AY. 2008-09)
Richa Bagrodia v. DCIT (2019) 175 ITD 552 (Mum.)(Trib.)

770 **S. 45 : Capital gains – Retirement – Amount received as share value of assets of firm on his retirement are not liable to be taxed either as capital gains or as business income. [S. 2(14), 2(47), 28(v)]**
Allowing the appeal of the assessee the Tribunal held that amount received as share value of assets of firm on his retirement are not liable to be taxed either as capital gains nor as business income. (AY. 2012-13)
James P. D'Silva v. DCIT (2019) 175 ITD 533 / 199 TTJ 739 / 179 DTR 281 (Mum.)(Trib.)

771 **S. 45 : Capital gains – Business income – Merger – investments in mutual funds – Liable to be assessed as capital gains and not as business income. [S. 28(i)]**
On merger all investments in mutual funds are transferred to assessee at book value. Prior to amalgamation such mutual funds were reflected under head 'Investments. Tribunal held that the assessee has shown the Mutual funds as investment in books and it never treated the same as stock-in-trade. Accordingly profit from sale of such mutual funds was to be taxed as capital gain and not as business income. (AY. 2007-08, 2008-09)
SC Johnson Products (P.) Ltd. v. DCIT (2019) 175 ITD 477 (Delhi) (Trib.)

772 **S. 45 : Capital gains – Lease hold rights – Assessable as capital gain – Cannot be claimed as exempt on the ground that it was in respect of agricultural land – Market value on allotment of land. [S. 48, 50C]**
Assessee had received leasehold right in a plot of land by way of an additional compensation allotted by State Government in pursuance of compulsory acquisition of agricultural land long ago in year 1965, belonging to assessee's late father. Assessee had sold said leasehold rights for a consideration of certain amount and, accordingly, computed long term capital gain on said transfer. During the course of assessment proceedings, assessee had taken an alternative plea that since original compensation was exempt from tax because of nature of land acquired being agricultural land, then additional compensation received in subsequent year would also be exempt from tax.

AO rejected assessee's plea and computed capital gain on transfer of leasehold rights in property. Tribunal held that It was a right of assessee in a land belonging to his father against which assessee was allotted leasehold right in a plot and said right could not be considered as agricultural land transferred during year therefore, consideration received on account of transfer of such leasehold right was assessable to tax under head 'capital gain'. (AY. 2007-08)
Pyaribai K Jain v. Add. CIT (2019) 175 ITD 177 (Mum.)(Trib.)

S. 45 : Capital gains – Long term capital gains – Lease – Entire consideration was paid when site was originally allotted in 2001 – Date of holding to be computed from the date of allotment and not from the date of absolute conveyance was made and entitled to deduction u/s. 54F of the Act. [S. 2(42A), 2(47), 54, 54F] 773
Assessee acquired a property from a building society under a lease-cum-sale agreement dated 22-3-2001. Entire consideration was paid when site was originally allotted in 2001. Absolute conveyance was made on 31-8 2014. Assessee sold the site and building on 3-12-2014 and claimed the sale as long term capital gains. AO treated the transaction as short term considering the date of conveyance ie 31-8-2014. On appeal the Tribunal held that date of holding to be computed from the date of allotment and not from the date of absolute conveyance was made on 31-8-2014. Followed *CIT v. Dr. Shakuntala ITA No. 117 of 2006, dt 19-9-2007 (Karn.)(HC)* and *CIT v. A Suresh Rao (2014) 223 Taxman 228 (Karn)(HC)*. (AY. 2015-16)
Bhatkal Ramarao Prakash v. ITO (2019) 175 ITD 144 / 199 TTJ 861 / 180 DTR 100 (Bang.) (Trib.)

S. 45 : Capital gains – Fair market value of land – When exact valuation is not possible reasonably to fix market value of land by averaging value given by assessee and Assessing Officer. 774
Tribunal held that the requirement was always to arrive as near as possible at an estimate of the market value. In arriving at a reasonably correct market value, it may be necessary to take even two or all of those methods into account inasmuch as exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. It would be reasonable to the fix market value of the land by averaging the value given by the assessee and that taken by the AO as on April 1, 1981. (AY. 2009-10)
Mohan Alagappan v. ITO (2019) 69 ITR 1 (Chennai)(Trib.)

S. 45 : Capital gains – Business income – Investment in shares – Demarcated shares as investment in its balance sheet – Profit arising on sale of shares is chargeable to tax as capital gains and not as business income. [S. 28(i)] 775
Tribunal held that the assessee had clearly demarcated shares as investment in its balance sheet. Mere frequency or magnitude of transaction in a systematic manner cannot be criteria to hold that assessee was engaged in a business activity of shares. Income is chargeable to tax as capital gains and not as business income. Referred CBDT circular No. 6/2016, dt 29-2-2016 and Circular No. 4/2007, dt. 15-6-2007. (AY. 2007-08)
Pratish Manilal Modi (HUF) v. ACIT (2019) 174 ITD 736 (Rajkot)(Trib.)

776 **S. 45 : Capital gains – Penny Stocks – Capital gains cannot be treated as bogus solely on the basis that the price of the shares has risen manifold and the reason for astronomical rise is not related to any fundamentals of market – If the transactions are duly proved by trading from stock exchange and the documentation is proper, the gains cannot be assessed as unexplained credit or as unexplained money. [S. 10(38), 68, 69]**

Allowing the appeal of the assessee the Tribunal held that Capital gains cannot be treated as bogus solely on the basis that the price of the shares has risen manifold and the reason for astronomical rise is not related to any fundamentals of market. If the transactions are duly proved by trading from stock exchange and the documentation is proper, the gains cannot be assessed as unexplained credit or as unexplained money. (ITA No. 2766/Del/2018, dt. 26-11-2018). (AY. 2014-15)

Mukta Gupta v. ITO (Delhi)(Trib.), www.itatonline.org

Mohan Lal Agarwal (HUF) v. ITO (Delhi)(Trib.), www.itatonline.org

777 **S. 45 : Capital gains – Cash credits – Bogus long-term capital gains – Penny stocks – Filed evidences for (a) purchase of shares, (b) payment by account payee cheque, (c) balance sheet disclosing investments, (d) demat statement (e) evidence of sale of shares through stock exchange, (e) bank statement reflecting sale receipts, (f) brokers ledger, (g) Contract Notes etc, the gains cannot be treated as bogus on human probabilities, suspicion, conjectures and surmises – Addition as cash credits is deleted. [S. 10(38), 68]**

Allowing the appeal of the assessee the Tribunal held that; the assessee has filed all necessary evidences in support of the transactions. Some of these evidences are (a) evidence of purchase of shares, (b) evidence of payment for purchase of shares made by way of account payee cheque, copy of bank statements, (c) copy of balance sheet disclosing investments, (d) copy of demat statement reflecting purchase, (e) copy of merger order passed by the High Court, (f) copy of allotment of shares on merger, (g) evidence of sale of shares through the stock exchange, (h) copy of demat statement showing the sale of shares, (i) copy of bank statement reflecting sale receipts, (j) copy of brokers ledger, (k) copy of Contract Notes etc. Accordingly the addition as cash credit is held to be not justified. (ITA. No. 2474/Kol/2018, dt. 01.02.2019). (AY. 2014-15)

Mahavir Jhanwar v. ITO (Kol.)(Trib), www.itatonline.org

778 **S. 45 : Capital gains – Unexplained investment – Long term capital gains – Penny stocks – Sale of shares – Accommodation entries – Purchase and sale of shares had been made through Bombay Stock Exchange and through DEMAT account – Sale proceeds to be assessed as long term and cannot be assessed as unexplained investment – Eligible exemption. [S. 10(38), 69, 131]**

Allowing the appeal of the assessee the Tribunal held that the Assessee had purchased and sold shares of a company which amalgamated into another company by order of High Court. AO held that the scrips of Kailash were used by entry providers for providing bogus accommodation entries and that in some other matter in course of proceedings before Investigation Wing, Chartered Accountant had confirmed that he had provided accommodation entry in scrip of Kailash and, consequently, AO treated long-term capital gains under S. 69 of the Act. Allowing the appeal of the assessee the Tribunal held that, the assessee had duly shown transaction in cheques right from purchase to sale of

shares and all transactions had been routed through DEMAT account in Bombay Stock Exchange as per quoted price as on that date. SEBI did not find any prima facie material for manipulation in price of scrip of Kailash. Further, statement of Chartered Accountant could not be sole ground to implicate assessee and justify additions especially when, nowhere assessee had been found to be beneficiary of any kind of accommodation entry in any inquiry by Investigation Wing or any such material had been unearthed by department. Accordingly the long term capital gain shown by assessee was genuine and, consequently liable for exemption under S 10(38) of the Act. (AY. 2014-15)
Vidhi Malhotra v. ITO (2019) 174 ITD 655 (Delhi)(Trib.)

S. 45 : Capital gains – Transfer – Capital asset – Deemed transfer – Amount received on assignment of unregistered agreement of lease hold rights – After the amendment Act 2001 – Not liable to capital gains tax. [S. 2(14), 2(47(v), Transfer of Property Act, 1882, S. 53A, Registration Act, 1908, S. 17, 49] 779
Allowing the appeal of the assessee the Tribunal held that assignment of leasehold rights is not registered, after the amendment Act 2001, unless the document is registered have no effect in law for the purpose of S. 53A of Transfer of property Act and S. 17 and 49 of the Indian Registration Act. By the aforesaid amendment the words 'the contract, though required to be registered, has not been registered, or' in S. 53A of 1882 Act have been omitted. Simultaneously, S. 17 and 49 of Registration Act, 1908 have been amended, clarifying that unless the documents containing the contract to transfer for consideration any immovable property is registered, it shall not have any effect in law; other than for being received as evidence of a contract for specific performance or as evidence of any collateral proceedings not required to be effected by a registered instrument. Accordingly the amount received is not liable to capital gains tax. (AY. 2008-09)
Mallika Investment Co. (P.) Ltd. v. ITO (2019) 174 ITD 386 (Kol.)(Trib.)

S. 45 : Capital gains – Cold storage – Destruction by fire – Insurance claim – Insurance claim received was ₹ 1.35 crores and reconstruction /renovation expenses incurred was ₹ 3.55 crores – Amount received as claim cannot be assessed as short term capital gains [S. 45(IA)] 780
Allowing the appeal of the assessee the Tribunal held that the amount received by the assessee from insurance company as a compensation due to fire on cold storage being destroyed cannot be assessed as capital gains as the insurance claim was ₹ 1.35 crores on account of loss of goods and cold storage plant and actual expenditure incurred on reconstruction/renovation of cold storage was ₹ 3.55 crores. (AY. 2010-11)
K. S. Cold Storage v. ACIT (2019) 174 ITD 485 / 175 DTR 433 / 198 TTJ 905 (Pune)(Trib.)

S. 45 : Capital gains – Business income – Redemption of units of mutual fund – No borrowed capital – Only 15 transactions – Shown as investment in books of account – Assessable as capital gains and not as business income. [S. 28(i)] 781
Tribunal held that intention of assessee was to make investment in mutual fund and not for trading, no borrowed capital was utilised, only 15 transactions during year and shown as investment in books of account therefore, profit earned on redemption of units of mutual funds was to be taxed as short term capital gain. (AY. 2006-07)
ACIT v. Wig Investment (2019) 174 ITD 30 (Delhi)(Trib.)

782 **S. 45 : Capital gains – Joint Development Agreement (JDA) – Mere licence to builder to enter property for purpose of carrying out development – Cannot be regarded as transfer – Capital gain tax is not leviable. [S. 2(47)(v), Transfer of Property Act, 1882, S. 53A]**
Tribunal held that, mere licence to builder to enter property for the purpose of carrying out development, cannot be regarded as transfer. The mere fact that development of the property be done without possession, cannot be the basis to come to a conclusion that possession was delivered in part performance of the agreement for sale in the manner laid down in S. 53A of the Transfer of Property Act. Such possession is on behalf of the assessee and not in the independent capacity of purchaser of the property. Accordingly capital gain tax is not leviable. (AY. 2006-07)
Lakshmi Swarupa (Smt.) v. ITO (2019) 174 ITD 54 (SMC) (Bang.)(Trib.)

783 **S. 45(2) : Capital gains – Conversion of a capital asset into stock-in-trade – Date of conversion of capital asset into stock-in-trade has to be determined either on basis of entry passed in books of account of assessee or intention of assessee to exploit capital asset as stock-in-trade for its business purpose. [S. 45]**
Assessee applied for permission from local authority for plan sanction in the year 1994. Local authority gave permission for construction of the project in year 1998. Thereupon, assessee entered into development agreement with 'B' developers – Since construction of project was completed in assessment year 2008-09, capital gain arising therefrom was offered to tax in said year. Assessing Officer took a view that date on which assessee had filed his application to local authority was to be taken as date of conversion of capital asset into stock-in-trade. Tribunal held that for purpose of S. 45(2), date of conversion of capital asset into stock-in-trade has to be determined either on basis of entry passed in books of account of assesse or intention of the assessee to exploit capital asset as stock-in-trade for its business purpose. Since assessee had filed an application before local authority in year 1994 seeking permission for development of land, AO was right in coming to conclusion that conversion of capital asset into stock-in-trade said to have been taken place in said year itself. So far as year of taxability of capital gain was concerned, since project was completed in all respects in assessment year 2008-09 and thereupon revenue from said project had been recognised, capital gain was payable in assessment year 2008-09. (AY. 2001-02 to 2008-09)
Puran Ratilal Mehta v. ACIT (2019) 175 ITD 190 / 178 DTR 217 / 199 TTJ 607 (Mum.) (Trib.)

784 **S. 45(2A) : Capital gains – Depository – Security – Demat – Multiple accounts – FIFO method – Should be applied to account wise and not person wise. [S. 2(42A)]**
The assessee contended that FIFO method should be applied person wise and not account wise. Tribunal held that it would lead to an anomaly for identification of shares. After the introduction of S. 45(2A) and Depositories Act,1996, those participating in the depositories mechanism will have to accept FIFO as a way of maintaining securities. [Circular No 768 dt 24th June 1998 (1998) 232 ITR 5 (St.)] (AY. 2009-10, 2010-11)
Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org
Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

785 **S. 45(3) : Capital gains – Computation – Revaluation of assets – Transferred to firm – For the purpose of computing capital gains value of assets recorded in books of the firm on date of transfer would be deemed to be full value of consideration received as a result of transfer – Valuation of assets cannot be entertained in appeal. [S. 45, 260A]**

Dismissing the appeal of the revenue the Court held that the Tribunal having factually determined the value of assets transferred to the partnership as on April 1, 2011 and rejected the contention of the Department that the value of assets would have to be taken into consideration, the court could not entertain any appeal under S. 260A of the Income-tax Act, 1961. The right of appeal is not automatic but is conferred by statute. When the statute confers a limited right of appeal only in a case which involves substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal. For the purpose of computing capital gains value of assets recorded in books of the firm on date of transfer would be deemed to be the full value of consideration received as a result of transfer. No question of law arose. Followed *M. Janardhna Rao v. JCIT (2005) 273 ITR 50 (SC)*. (AY. 2012-13) *CIT v. DR. D. Ramamurthy (2019) 410 ITR 236 / 102 Taxman.com 329 / 261 Taxman 435 (Mad.)(HC)*

Editorial : SLP of revenue is dismissed; CIT v. DR. D. Ramamurthy (2018) 408 ITR 18 (St.) / (2019) 261 Taxman 560 (SC)

786 **S. 45(3) : Capital gains – Transfer of capital asset to firm – AOP-BOI – Full value of consideration – Stamp valuation – Deemed full value of consideration shall be considered for the purpose of computation of capital gain as per which the amount recorded in the books of account of the firm shall be taken as a full value of consideration – Provision of S. 50C is not applicable – Special provision of S. 45(3) override the general provision of S. 50C of the Act. [S. 45, 48, 50C]**

The assessee transferred an immoveable property as a capital contribution to ATL Hospitality. The assessee while computing the capital gain on transfer of land in to partnership has taken the value as recorded in the books of the firm as per provision of S. 45(3) of the Act i.e. ₹ 5.60 crores as the full value of consideration deemed to have been received or accrued as a result of transfer of capital asset to the partnership firm. The AO applied the provisions of S. 50C and valued at ₹ 9,41,78,500/- being the value determined by the Stamp Valuation Authority at the time of registration of the supplementary partnership deed. The CIT(A) up held the order of the AO. On appeal the Tribunal held that a plain reading of provisions of S. 45(3) makes it clear that it comes in to operation only on a special cases of transfer between partnership firm and partners and in such circumstances, a deemed full value of consideration shall be considered for the purpose of computation of capital gain as per which the amount recorded in the books of account of the firm shall be taken as a full value of consideration. Though the provision of S. 45(3) is not specific provision it overrides the other provisions of the Act. Importing a deeming fiction provided in S. 50C of the Act cannot extended to another deeming fiction created by the statute by way of S. 45(3) to deal with special case of transfer. Accordingly the finding of the CIT(A) is reversed and appeal of the assessee is allowed. (ITA NO 6050/M/2016, ITA No. 1614/Mum/2016 dt. 29-12-2017. (AY. 2012-13) *Amartara v. DCIT (Mum.)(Trib.) (UR)*

Editorial : Decision in Carlton Hotel Pvt. Ltd. v. ACIT (2009) 122 ITTJ 515 (Luck.) (Trib.) is distinguished, High Court set aside the order of the Tribunal, CIT v. Carlton Hotel Pvt. Ltd. (2017) 399 ITR 611 (All.)(HC), SLP of the assessee is dismissed, Carlton Hotel Pvt. Ltd. v. ACIT (SC). Followed CIT v. Moon Mills Ltd. (1966) 59 ITR 574 (SC), also refer, Shri Sarrangan Ashok v. ITO, ITA No 544 /Chny/2019 dt. 19-8-2019. (AY. 2015-16). D. R. Yadav v. R. K Singh (2003) 7 SCC 110, ACIT v. Moti Ramnanad Sagar, ITA NO 2049/Mum/2017, 1690 /Mum/ 2017 dt, 28-2-2019 (AY. 2012-13), ITO v. Chiraayu Estate & Dev Pvt. Ltd. ITA No. 263/Mum/2010 dt. 24-8-2011 (AY. 2006-07), ITO v. Sheila Sen, ITA No. 554 /Kol/2016 dt. 7-9-2018 (AY. 2006-07), Navneet Kumar Thakkar v. ITO (2008) 110 ITD 525 (Jodhpur) (Trib.)

787 **S. 45(4) : Capital gains – Distribution of capital asset – Retirement – On retirement the amount received does not represent consideration in lieu of relinquishment of his interest in the partnership asset – Addition cannot be made in the assessment of the firm. [S. 45]**

Allowing the appeal of the assessee the Court held that, on retirement the amount received by the partners does not represent consideration in lieu of relinquishment of his interest in the partnership asset. Accordingly the addition cannot be made in the assessment of the firm by invoking S. 45(4) of the Act. On facts the firm continued with other partners. (TA No. 365/ 366 of 2019 dt 8-4-2019) (AY. 2004-05)

National Company v. ACIT (2019) 178 DTR 305 (Mad.)(HC)

788 **S. 45(4) : Capital gains – Conversion of firm to pvt. Ltd. company – revaluation and transfer of assets from firm to company – Same partners as share holders – No dissolution of firm – No transfer – Not liable to capital gains tax. [S. 2(47), 45]**

Dismissing the appeal of the revenue the court held that when the firm converted in to company by revaluation of assets and the partners remained as share holders there is no transfer as contemplated under S. 2(47) and 45(4) of the Act. Accordingly not liable to capital gains tax. Followed *CIT v. Texspin Engineering and Manufacturing Works (2003) 263 ITR 345 (Bom.) (HC)*. (AY. 2009-10)

CIT v. Ram Krishnan Kulwant Rai Holdings P. Ltd. (2019) 416 ITR 123 / 182 DTR 468 (Mad.)(HC)

789 **S. 45(4) : Capital gains – Firm – Retirement of partners – On contribution of the individual property to firm, it becomes the property of the firm – Tribunal is justified in assessing the capital gains in the assessment of the firm. [S. 45]**

Dismissing the appeal of the assessee the Court held that; two partners had furnished a joint letter wherein they stated that they had contributed said property as their share to capital of partnership firm. Partnership firm had become absolute owner of property since that date. Further, both partners had retired from partnership firm and had also executed a release deed in favour of continuing partners. Accordingly the capital gains arising from sale of property was to be taxed in hands of assessee firm and not in case of retired partners. (AY. 2001-02)

S. K. Ravikumar v. ITO (2019) 260 Taxman 288 / 413 ITR 456 / 180 DTR 20 / 310 CTR 212 (Karn.)(HC)

S. 45(4) : Capital gains – Retirement – Allotment to a partner of his share in assets of partnership after deduction of liabilities is not transfer – Not liable to capital gains tax. [S. 2(47)(vi)] 790

Allowing the appeal of the assessee the Court held that, when a partner retires and there is transfer of his interests in the partnership assets to him towards his share in the assets, the same cannot be brought to tax as capital gain by transfer of capital asset. (AY. 2004-05)

National Company v. ACIT (2019) 415 ITR 5 / 263 Taxman 511 / 310 CTR 217 (Mad.)(HC)

S. 45(4) : Capital gains – Distribution of capital asset – Retirement of partner – Amount received by a partner on her retirement from a partnership firm is not liable to capital gain tax. [S. 45] 791

Dismissing the appeal of the revenue the Court held that, amount received by a partner on her retirement from a partnership firm was not liable to capital gain tax. (AY. 2006-07)

Hemlata S. Shetty (Smt.) v. ACIT (2019) 262 Taxman 324 (Bom.)(HC)

S. 45(4) : Capital gains – Distribution of capital asset – Retirement of partner – If new partners come into the partnership and bring cash by way of capital contribution and the retiring partners take cash and retire, the retiring partners are not relinquishing their interest in the immovable property – What they relinquish is their share in the partnership – As there is no transfer of a capital asset, no capital gains or profit can arise. [S. 45] 792

Dismissing the appeal of the revenue the Court held that, if new partners come into the partnership and bring cash by way of capital contribution and the retiring partners take cash and retire, the retiring partners are not relinquishing their interest in the immovable property. What they relinquish is their share in the partnership. As there is no transfer of a capital asset, no capital gains or profit can arise. (*CIT v. A. N. Naik (2004) 265 ITR 346 (Bom.)(HC)* distinguished, Dynamic Enterprises (2013) 359 ITR 83 (FB) (Karn.)(HC) followed). (ITA No. 137 of 2017, dt. 26-3-2019) (AY. 2010-11)

PCIT v. Electroplast Engineers (2019) 263 Taxman 120 / 178 DTR 316 / 310 CTR 238 (Bom.)(HC), www.itatonline.org

S. 45(4) : Capital gains – Distribution of capital asset – Retiring partner – The revaluation of asset being land held by the partnership firm which results into enhancement of value of asset and this enhanced amount credited in capital account of partners and when a retiring partner takes amount in his capital account including enhanced value of asset, it does not give rise to Capital gains. [S. 2(14), 45] 793

There was a difference of opinion amongst the members and the reference was made to third member. The two questions referred for consideration is as under:

"1. Whether on the facts and in the circumstances of case, where on revaluation of asset being land held by the partnership firm which resulted into enhancement of value of asset and this enhanced amount credited in capital account of partners and when a retiring partner takes amount in his capital account including enhanced value of asset, it gives rise to Capital Gain under section 45(4) r.w. Section 2(14) of the Income Tax Act."

2. "Whether on the facts and in the circumstances of the case, is there any transfer of capital asset on dissolution of firm or "other wise" with in the meaning of Section

45(4) r. w. Section 2(14),in case the money equivalent is paid by partnership firm to the retiring partner and whether this money equivalent to enhances portion of the asset revalued constitutes capital asset for the purpose of Section 45(4) r. w Section 2(14) of the Income-tax Act"

Third members held that, the revaluation of asset being land held by the partnership firm which results into enhancement of value of asset and this enhanced amount credited in capital account of partners and when a retiring partner takes amount in his capital account including enhanced value of asset, it does not give rise to Capital gains. Both the questions are answered in favour of the assessee. (ITA Nos 3526 & 3527 MUM/2012, dt. 10-1-2019). (AY. 2006-07, 2007-08)

D. S. Corporation v. ITO (TM) (Mum.)(Trib.) www.itatonline.org

794 **S. 47(iii) : Capital gains – Transaction not regarded as transfer – Gift Transfer of shares made as gift without consideration are not taxable under provisions of capital gains – Income not chargeable under capital gains tax can not be assessed as income from other sources. [S. 45]**

Where the company is permitted by its memorandum/articles of association to make a gift, transfer of shares by way of gift are valid, permissible and genuine and there is no requirement of a gift deed. Such gifts are exempt as per S. 47(iii) of the Act. Followed *Prakriya Pharmacem v. ITO (2016) 238 Taxman 185 (Guj,)(HC).* Income not chargeable under capital gains tax can not be assessed as income from other sources. (AY. 2012-13)

Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

795 **S. 47(vii) : Capital gains – Business income – Income from other sources – Transfer by a share holder in a scheme of amalgamation – Increase in general reserve on transaction related to the composite Scheme of Arrangement and Amalgamation – An anti-abuse provisions which applies only to cases of bogus capital building and money laundering – It does not apply to an amalgamation where shares are allotted at alleged undervaluation – Increase in general reserves due to recording of assets of amalgamating company at FMV not give rise to any real income to the assessee – It is capital in nature – Amendment to S. 47(vii) by FA 2012 w.e.f. 1-4-2013 is clarificatory and retrospective – Addition is held to be not valid. [S. 28(iv), 56(2), (viia)]**

The question before the Tribunal was whether the AO/DRP has erred in making addition u/s 28(iv) of the Act on account of increase in general reserve on transaction related to the Composite Scheme of Arrangement and Amalgamation and investment received on composite Scheme of Arrangement and Amalgamation considered as income u/s 56(2) (viia) of the Act. Tribunal held that anti-abuse provision applies only to cases of bogus capital building and money laundering. It does not apply to an amalgamation where shares are allotted at alleged undervaluation. Increase in general reserves due to recording of assets of amalgamating company at FMV does not give rise to any real income to the assessee. It is capital in nature. Amendment to S. 47(vii) by FA 2012 w.e.f. 1-4-2013 is clarificatory & retrospective. (ITA No. 1148/Del/2017, dt. 22-2-2019) (AY. 2012-13)

Aamby Valley Ltd. v. ACIT (2019) 102 taxmann.com 38 / 198 TTJ 662 (Delhi)(Trib.), www.itatonline.org

S. 48 : Capital gains – Cost of acquisition – Valuation – Valuation adopted for wealth tax is directed to be adopted for the purpose of computing capital gain – Matter remanded. [S. 45] 796

Assessee sold its property and computed capital gain. The AO adopted the value on the basis of the valuation accepted by neighboring area and computed the capital gain. CIT(A) took note of the notification issued by the State Government in the year 2007, giving a heritage tag to the property in the area and, accordingly, allowed the assessee's appeal. On appeal, the Tribunal held that the assessee for the purpose of valuation under the Wealth-tax Act had adopted a certain value and there was no going back on the said valuation as the assessee himself has accepted before the AO that the valuation of the property, as adopted by him, in the Wealth tax assessment may be taken into consideration. However, to the said extent the AO did not grant relief. The reasons assigned by the Tribunal are perfectly legal and valid considering the factual position. However, valuation adopted by the assessee in the Wealth tax assessment was not adopted by the AO. Court held that the reasonable approach would have been to adopt the valuation in the Wealth- tax assessment, since the Tribunal holds that the assessee could not have been taken two different values, i.e., one valuation is under the Wealth tax assessment and another is under Income-tax Act. Therefore to that extent, the assessee is entitled to relief. Accordingly the appeal is partly allowed and the matter is remanded to the AO to compute the capital gain by taking the value of the land at certain amount and the value of the building at certain amount and the AO is directed to redo the assessment to the extent indicated. (AY. 2000-01)

K. E. M. I. Kwaja Mohideen v. ITO (2019) 267 taxman 126 (Mad.)(HC)

S. 48 : Capital gains – Cost of acquisition – Sale of books from inherited Library – Indexation – Failure to prove cost of acquisition as on 1-4-1981 – Estimation of cost of acquisition at thirty per cent of sale price is held to be justified. [S. 45] 797

Dismissing the appeal of the assessee the Court held that the CIT(A) was justified in taking the cost of acquisition of the books inherited and sold at the rate of 30 per cent. of the sale value because the assessee had failed to prove the cost of acquisition. In the absence of cost of acquisition as on April 1, 1981 having been established by the assessees, the benefit of indexation of cost could not be given. The findings of fact on the basis of estimate none the less remained findings of fact and did not give rise to any question of law which warranted interference under S. 260A. (AY. 1995-96 to 1999-2000)

Sivagami Roja Muthiah v. DCIT (2019) 412 ITR 299 (Mad.)(HC)

Vallikannu Nagarajan v. DCIT (2019) 412 ITR 299 (Mad.)(HC)

S. 48 : Capital gains – Cost of acquisition – Guarantee to loan – Mortgage – No diversion of income by overriding title – No part of cost of clearing guarantee could be deducted in computing capital gains. [S. 45] 798

Dismissing the appeal the Court held that the mortgage is created by the owner after he has acquired the property. The clearing off of the mortgage debt by him prior to transfer of the property would not entitle him to claim deduction under S. 47 because in such case he did not acquire any interest in the property subsequent to his acquiring it. (AY. 1995-96)

TMT D. Zeenath v. ITO (2019) 413 ITR 258 / 178 DTR 11 / 263 Taxman 569 (Mad.)(HC)

799 **S. 48 : Capital gains – Cost of acquisition – Indexation benefit on debt instruments – Government securities different from bond and debenture for purpose of third proviso to S. 48 – Benefit of indexation should be granted to assessee on redemption of government securities. [Public Debt Act, 1944. S. 2(a)(i)]**

It has been held by the appellate tribunal that Government securities which were sold during the instant year were stocks being of the nature described in clause (i) of section 2(a) of the Public Debt Act, 1944. Debenture includes bond but it does not include Government securities. One of the fundamental differences between "debenture" and "Government securities" is that "debentures" are issued by a company whereas "Government securities" are issued by the Central or State Governments and not by any other authority or legal entity. The Government had itself adopted a different nomenclature and definition for "bonds" and "Government securities". The appellate authority had not discussed any of the contentions of the assessee claiming that Government securities were not bonds and debentures. The CIT(A) had not explained how Government securities were bonds and debentures. Government securities are not excluded for indexation benefit. Only bonds or debentures were included in the third proviso to S. 48 of the Act. Government securities are entitled to indexation benefits. Government securities are different from bond and debenture for the purpose of the third proviso to S. 48 (fourth proviso after amendment) and therefore the benefit of indexation should be granted to the assessee on the redemption of these Government securities. (AY. 2010-11)

Peerless General Finance and Investment Co. Ltd. v. DCIT (2019) 76 ITR 356 (Kol.)(Trib.)

800 **S. 48 : Capital gains – Cost of improvement of property – Merely making entries in books of account and producing deficient bills – Not sufficient to discharge initial burden of proof on assessee – Failing to establish genuineness of its claim – Claim is rejected. [S. 45]**

During assessment proceedings the AO noted that the assessee, while declaring the income from capital gains, had claimed certain amount towards cost of improvement of the property sold. The assessee produced vouchers, which the AO stated were self-made. He held that no evidence of improvement or tax deduction at source on the payment made was provided by the assessee. Accordingly, he disallowed the deduction claimed by the assessee of the cost of improvement while calculating the capital gains earned. The CIT(A) confirmed the addition observing that merely making entries in the books of account with regard to expenses on improvements and producing bills that run contra to common sense business practices, did not discharge the initial burden of proof on the assessee. On appeal, the Tribunal held that the initial burden of proof rested on the assessee to substantiate his claim of having incurred expenditure on improvement of the property. But the assessee failed on this count. Except for filing copies of invoices of the contractor through whom the work was done, no other evidence was filed by the assessee. Also, the invoices were deficient in several respects. There was no mention of the nature of work done for which the invoices were raised, the address on the invoice was incomplete since letters issued by the Department on the address were returned by the Postal Department with the comment "incomplete address". No evidence regarding payment made to the contractor was filed by the assessee. It was not clear whether the bills raised served as receipts also and even if they did, they did not bear any revenue

stamp to evidence receipt of money by the contractor. The assessee failed on all counts and parameters to establish the genuineness of its claim. The claim of the assessee to improvement in property was rightly disallowed. (AY. 2011-12)
Charanjit Singh v. Add. CIT (2019) 75 ITR 332 (Chd.)(Trib.)

S. 48 : Capital gains – Cost of improvement – Pre-operative expenditure – Not related to transfer of property – related to regular business of assessee – Not allowable as deduction – Brokerage and professional fees – Matter remanded. [S. 45] 801
Assessee has claimed the pre-operative expense as cost of improvement being related to transfer of property. However, AO disallowed the same stating that the same is not related to transfer of property. CIT(A) upheld the action of AO. Tribunal thus disallowed pre-operative expenditure, as it was not in connection with transfer of property but was routine expenditure related to assessee' s business, thus, it could not be treated as expense incurred in relation to the sale of property. The issue of payment of brokerage and professional fees, the Tribunal restored the matter back to the AO to allow the assessee to furnish supporting evidence. (AY. 2010-11)
Crescent Realtors P. Ltd. v. Dy. CIT (2019) 72 ITR 57 (SN) (Mum.)(Trib.)

S. 48 : Capital gains – Loan liability of mortgaged property – Doctrine of over – riding title – Not deductible from sale consideration while computing the capital gains. [S. 4, 45, 47(xii), 48(1), SAFAESI ACT, 2002, S. 13] 802
There was difference of opinion on whether loan liability of mortgaged property is allowable deduction or not. The matter was referred to third member. Third member held that the payment towards discharge of outstanding loan liability out of the sale proceeds of mortgaged property is a mere application of income and not a diversion of sale proceeds by overriding title. The assessee cannot claim such application as deduction for the purpose of computing Capital Gain in terms of S. 48 of the Act. The legal position prevailing prior to SARFAESI Act is also germane even after the enactment of SARFAESI Act. (AY. 2010-11)
Perfect Thread Mills Ltd. v. DCIT (2019) 183 DTR 25 / 202 TTJ 1 (2020) 77 ITR 603 / 181 ITD 1 (TM) (Mum.)(Trib.), www.itatonline.org

S. 48 : Capital gains – Full value of consideration – Sale of shares below market price – Transfer of shares in guise of loan agreements – Consideration was taken at prevailing market rate and not at ₹ 4 per share. [S. 45] 803
Tribunal held that sale of shares of NDTV Ltd to RRPR (P) Ltd at ₹ 4 per share when the market price was ₹ 140 per share was with the sole purpose of pledging the shares for obtaining interest free loans equivalent to the market value of shares under various loan agreements. They got benefit by obtaining interest free loans coupled with call option agreements to transfer the shares and thus consideration which accrued to the assessee on the sale of the shares is not ₹ 4 per share but prevailing market price which has been received through RRPR (P) Ltd. (AY. 2009-10, 2010-11)
Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org
Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

804 **S. 48 : Capital gains – Deduction – Foreign Institutional Investor (FII) – Sale of shares of Indian subsidiary – Legal/professional fees paid to lawyers/accounting firms – Allowable as deduction. [S. 45, 48(1)]**

Tribunal held that professional fees paid to lawyers/accounting firms for services rendered for sale of shares of subsidiary is held to be allowable as deduction while computing capital gains. Referred *CIT v. Shakuntala Kantilal (1991) 190 ITR 56 (Bom.) (HC)*. (AY. 2010-11)

AIG Offshore Systems Services Inc. v. ACIT (2019) 175 ITD 647 / 197 TTJ 765 (Mum.) (Trib.)

805 **S. 48 : Capital gains – Indexation – Cost of improvement – Expenditure on levelling of agricultural land for purpose of irrigation from canal, benefit of indexed cost of improvement was to be granted. [S. 45]**

Tribunal held that expenditure on levelling of agricultural land for purpose of irrigation from canal, benefit of indexed cost of improvement is to be granted. (AY. 2014-15)

Mathur Lal v. ITO (2019) 174 ITD 44 (Jaipur)(Trib.)

806 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Shares received as gift – Indexed cost – Date of acquisition by previous Owner to be considered. [S. 45, 49(1)]**

Dismissing the appeal of the revenue the Court held that the cost of acquisition of the asset should be deemed to be the cost for which the previous owner of the asset acquired it, as increased by any cost of improvement of the assets incurred or borne by the previous owner or the assessee as the case might be. There was no provision under which the cost of acquisition in the hands of the assessee, in cases such as gift, be as of the date of acquisition of the property could be made.

PCIT v. Manoj Bhupatbhai Vadodaria (2019) 413 ITR 159 / 265 Taxman 246 (Guj.)(HC)

807 **S. 49 : Capital gains – Previous owner – Cost of acquisition – At time of filing of return of income on 30-9-2009, sub-clause(e) to section 49(1)(iii) was not in statute as same was inserted by Finance Act, 2012, with retrospectively effective from 1-4-1999 – Provision cannot be applied for computing the capital gains of relevant year. [S. 45, 47(xiii)]**

Assessee acquired land from a partnership firm when all assets and liabilities of said firm was taken over by assessee under succession. It recorded cost of acquisition of said land at ₹ 3.70 crores being value shown in books of partnership firm as on date of succession. Land was sold by assessee for ₹ 2 crores and short term capital loss was declared. However, for determining capital gain in hands of assessee, CIT (A) took cost of acquisition at ₹ 2.50 lakhs being cost of acquisition in hands of partnership firm by applying amended provisions of S. 49(1)(iii)(e) of the Act. On appeal the Tribunal held that since at time of filing of return by assessee on 30-9-2009, sub-clause (e) of S. 49(1)(iii) was not in statute as same was inserted by Finance Act, 2012, even though said amendment was retrospectively effective from 1-4-1999, it could not be applied for computing capital gain in relevant assessment year. (AY. 2009-10)

Utsav Cold Storage (P.) Ltd. v. ITO (2019) 177 ITD 545 / 177 DTR 83 / 199 TTJ 409 (Jaipur)(Trib.)

S. 49 : Capital gains – Previous owner – Cost of acquisition – Shares received on dissolution of Trust – Period of holding of the previous owner i.e. the Trust to be considered – Sale consideration received on sale of shares has to be assessed as long term capital gains. [S. 45, 49(1)(iii)(b), 54F, 68] 808

Dismissing the appeal of the revenue the Tribunal held that, the AO was not justified in treating the sale consideration in the hands of the beneficiary as short term capital gains in respect of shares received on the date of dissolution of Trust. For computing capital gains, period of holding of the previous owner i.e. The Trust to be considered. Sale consideration received on sale of shares has to be assessed as long term capital gains. [ITA NO 583 /Mum/2016 dt 18-1-2019, ITA NO 584/Mum/2016 dt. 18-1-2019 (AY. 2006-07)]

ACIT v. Dhruv Khaitan (Mum.)(Trib.)(UR)

ACIT v. Archana Kahitan (Mrs.) (Mum.)(Trib.)(UR)

S. 50 : Capital gains – Depreciable assets – Block of assets – Sale of flat – Purchase of flat for self – occupation – Sale of premises assessable as short term capital gains. [S. (2(11), 43(6), 45] 809

The assessee sold the flats wherein the written down value was ₹ 3.82 and sale value was ₹ 80.88/-. The AO treated the difference as short-term capital gains. The assessee contended that he has purchased the flat which is partly used for office purposes and claim of depreciation on an asset is not dependent upon its user and that asset is entitled for depreciation the moment it enters the block. Tribunal held that in the instant case it is found that the flats which never entered into the block of depreciable assets as income from the same were being offered under the head income from house property can by no stretch of imagination be said to be entitled for automatic entry into the block of depreciable asset. (AY. 2010-11)

Sonu Nigam v. ACIT (2019) 177 ITD 597 (Mum.)(Trib.)

S. 50 : Capital gains – Depreciable assets – Block of assets – Brought forward business loss and long term capital loss can be set off against short term capital gain computed under section 50 on sale of factory building being depreciable asset. [S. 72, 74] 810

Dismissing the appeal of the revenue the Tribunal held that, brought forward business loss and brought forward long term capital loss can be set off against short term capital gain arising as per section 50 on sale of factory building being a depreciable asset. Followed *CIT v. Manali Investments [2013] / 219 Taxman 113 (Mag.) (Bom.)(HC)*. (AY. 2011-12)

ITO v. Smart Sensors & Transducers Ltd. (2019) 176 ITD 104 (Mum.)(Trib.)

S. 50B : Capital gains – Slump sale – Sale of business undertaking – Assessable as long term capital gain. [S. 2(19AA), 2(42C), 45, 50] 811

Assessee sold its sea food business undertaking for a lump sum consideration as a going concern and contended that what had been sold represented depreciable assets which had to be treated as business receipts only. AO held that it was a case of slump sale within meaning of section 50B and, thus, profit earned by assessee was taxable as long term capital gain. CIT (A) confirmed the order of the AO. Tribunal held that since assessee sold entire undertaking with all its assets and liabilities together with all

licences, permits, approvals, registration, contracts and other contingent liabilities also for a slump price, said sale would fall under purview of S. 50B of the Act. (AY. 2003-04)
Amalgam Foods Ltd. v. DCIT (2019) 177 ITD 606 (Cochin)(Trib.)

812 **S. 50B : Capital gains – Slump sale – As per sale deed, possession of only land and building was handed over and there was no transfer of furniture, fixtures and other equipments – Transaction cannot be regarded as slump sale. [S. 45, 50C]**
In return of income, the assessee – company claimed slump sale of asset of the company at ₹ 2.25 crores. However, as per the stamp valuation authority, value was adopted at ₹ 4.18 crores. The Assessing Officer adopted the value under section 50C and made addition to assessee's income. Which was confirmed by the CIT(A). Affirming the decision of lower authorities, the Tribunal held that the sale deed did not say anything about furniture and fixtures and other gadgets and also as per the deed only vacant possession of building had been handed over by assessee and no other articles machinery etc. Accordingly, the sale cannot be considered as slump sale. (AY. 2010-11)
Manish Films (P.) Ltd. v. ITO (2019) 175 ITD 121 (Indore)(Trib.)

813 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Entire consideration was invested in bonds – The assessee cannot avoid the impact of S. 50C by claiming that his S. 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation – Such interpretation renders S. 50C redundant [S. 45, 48, 54EC]**
Assessee declared capital gains of ₹ 21,19,344 and claimed exemption u/s 54EC of the Act. The stamp authorities valued the share of the appellant at ₹ 76,17,702/-. AO determined the capital gains at ₹ 49,47,344/-. The assessee contended that entire sale consideration of ₹ 25 lakhs was invested in specified bonds and deeming provision of S. 50C is not applicable. CIT(A) allowed the appeal. Tribunal affirmed the view of the AO. On appeal the High Court held that, the assessee cannot avoid the impact of S. 50C by claiming that his S. 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation. Such interpretation renders S. 50C redundant. Order of Tribunal is affirmed. (AY. 2008-09) (ITA No. 981 of 2016, dt. 12-3-2019)
Jagdish C. Dhabalia v. ITO (2019) 176 DTR 417 / 308 CTR 295 / 262 Taxman 453 (Bom.) (HC), www.itatonline.org
Mehul Jagdish Dhabala v. ITO (2019) 176 DTR 417 / 308 CTR 295 (Bom.)(HC) www.itatonline.org

814 **S. 50C : Capital gains – Full value of consideration – stamp valuation – Without hearing objections of assessee, that Fair Market Value of capital asset as per 'Guidance Value' cannot be determined by authorities – Matter remanded to the AO [S. 45.48, 50C (2)]**
Allowing the appeal, the Court held that, provision of S. 50C only enables revenue to adopt Guidance Value declared by State for payment of stamp duty as Fair Market Value under S. 48, but, that Guidance Value cannot, ipso facto, be taken as valuation for purpose of computing Capital Gains Tax liability in hands of assessee/seller.

S. 50C(2) itself provides for reference to Departmental Valuation Officer (DVO) if assesseeo objects to invoking of S. 50C(1). However an assessee cannot be denied an opportunity to raise his objections even against presumptive Fair Market Value under S. 50C(1) or report of DVO under S. 50C(2) and Assessing Authority or Appellate Authorities, whose powers are co-extensive with those of Assessing Authority, cannot refuse to meet those objections point by point. Accordingly the matter was remanded to the Assessing Officer to pass the order after considering the objections of the assessee. (AY. 2012-13)

Jagannathan Sailaja Chitta v. ITO (2019) 417 ITR 61 / 262 Taxman 427 / 308 CTR 713 / 178 DTR 33 (Mad.)(HC)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – FMV to be determined based on prevailing rate in the area as well as comparable sale instances – Matter remanded [S. 45] 815

Assessee sold some property and stamp duty value was taken at the time of the sale deed being executed. Assessee in his return declared sale of one flat. AO observed based on the ITS information that the value of the property sold was determined by the sub-registrar and assessee had sold two properties being a flat and a portion of land. AO adopted full value of consideration based on S. 50C of the Act. DVO had adopted commercial rate for determining FMV of the property whereas in fact the property was in residential area used for commercial purpose. Tribunal held that applying commercial rates on residential property used for commercial purposes was not proper and determination of FMV by DVO required a relook based on prevailing market price based on comparable sale instance. Since, assessee filed additional evidence of site plan, issue of FMV restored to DVO for redetermination. (AY. 2010-11)

Vijay Kumar Patni v. ITO (2019) 73 ITR 36 / 201 TTJ 885 / 181 DTR 1 (Jaipur)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – The payment of higher stamp duty by the vendee did not affect any rights of the assessee – Sale consideration disclosed jointly was far more than the value sought to be adopted for the purpose of stamp duty – Addition is deleted [S. 45] 816

Tribunal held that, stamp duty valuation authority had not adopted the value, and it was the party who agreed to pay stamp duty at an enhanced value. The payment of higher stamp duty by the vendee did not affect any rights of the assessee. The stamp duty valuation authority cannot object to payment of higher stamp duty by the vendees. The area sold by the assessee was far more than the value sought to be adopted for the purpose of stamp duty. Accordingly the addition made by the AO is not justified. (AY. 2012-13)

Mahinabanu Nainabanu Sipai (Jadeja) (Smt.) v. Dy. CIT (2019) 76 ITR 32 (SN) (Ahd.) (Trib.)

Anvarmiya Alamiya Sipai (Jadeja) v. Dy. CIT (2019) 76 ITR 32 (SN) (Ahd.)(Trib.)

Husenmiya Nanumiyan Sipai (Jadeja) v. Dy. CIT (2019) 76 ITR 32 (SN) (Ahd.)(Trib.)

Bhikhumeeya Alammiya Sipai v. Dy. CIT (2019) 76 ITR 32 (SN) (Ahd.)(Trib.)

817 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – When an assessee objects for stamp valuation – AO is bound to make reference to DVO for determination of value of property – Matter remanded. [S. 45, 50C (2)]**
Assessee declared short – term capital gain arising from sale of flat. AO adopted the stamp valuation as deemed consideration. CIT(A) upheld the order of the AO. On appeal the Tribunal held that where assessee objects to adoption of stamp duty value as deemed sale consideration, AO is duty bound to make a reference to DVO under sub-section (2) for determining value of property and thereafter proceed to compute capital gains by following provisions of sub-section (3) of S. 50C of the Act. Accordingly the matter remanded back for disposal afresh. (AY. 2011-12)
Aavishkar Film (P.) Ltd. v. ITO (2019) 178 ITD 613 (Mum.)(Trib.)

818 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Value determined by registering authority – AO is bound to make a reference to Valuation Officer, without objection raised by the assessee – Matter remanded to the AO to refer the matter to Valuation Officer for determination of market value. [S. 45]**
The assessee sold its office premises. The registering authority determined the market value of the assessee's office premises for the purpose of stamp duty at higher value than shown in the agreement. The AO adopted this value as deemed consideration and computed the capital gains. CIT(A) up held the addition. On appeal the Tribunal held that the AO is duty bound to make a reference to the Valuation Officer before adopting the value of assets determined by the stamp valuation authority for the purpose of computing capital gains even without there being any objection raised by the assessee. The AO was directed to decide afresh after making a reference to the District Valuation Officer for determination of the market value of the property sold by the assessee. Relied on *Sunil Kumar Agarwal v. CIT (2015) 372 ITR 83 (Cal.)(HC)* (AY 2007-08)
Ara properties P. Ltd. v. Dy. CIT (2019) 75 ITR 12 (SN) (Kol.)(Trib.)

819 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Lease hold rights – Stamp valuation is not applicable – Addition is held to be not valid. [S. 45]**
Tribunal held that the property sold by the assessee in the building was leasehold property and the addition made by the AO and confirmed by the CIT(A) by invoking the provisions of S 50C is held to be not sustainable. (AY 2007-08)
Ara properties P. Ltd. v. Dy. CIT (2019)75 ITR 12 (SN) (Kol.)(Trib.)

820 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Purchase of property – Applicable to seller and not purchaser – Unaccounted income invested in the purchase of property. [S. 56(2)(x), 132, 153C]**
S. 50C is applicable in the case of the seller of the property to take into consideration the valuation of the property as per the value adopted by the Registration Authority and there is no provision under the Income-tax Act to deal with a situation in respect of the purchase of the property. If there is no other material brought on record to justify the conclusion that Assessee Company made unaccounted investment in purchase of the property no addition can be made. S. 56(2)(x) of the Income-tax Act was inserted into the Act with effect from 1st April 2017 and cannot apply retrospectively.
Dy. CIT v. Sutlej Agro Products Ltd. (2019) 70 ITR 33 (SN) (Delhi)(Trib.)

S. 50C : Capital gains – Full value of consideration – stamp valuation – Date of agreement – Registration – Value adopted or assessed or assessable by stamp valuation authority on date of agreement is to be taken for purpose of computing full value of consideration for such transfer – Matter remanded. [S. 45] 821

Tribunal held that when the date of agreement and date of registration is different the date of agreement is to be taken for the purpose of computing full value of consideration for such transfer. Matter remanded. (AY. 2014-15)

Kishore Hira Bhandari v. ITO (2019) 177 ITD 565 (Mum.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Report of DVO – CIT(A) is bound to issue notice Valuation officer – Matter remanded [S. 45] 822

AO referred case to DVO for proper valuation. DVO determined valuation of property at ₹ 1. 27 crores. AO on basis of DVO's report passed assessment order. CIT(A) without giving notice to DVO up held the order of the AO. On appeal the Tribunal held that CIT(A) is under statutory obligation to serve notice of hearing to DVO. Accordingly the order of CIT(A) is set a side for adjudication on merits in accordance with the scheme of the law, after giving a due and reasonable opportunity of hearing to the assessee as also to the DVO, and by way of a speaking order. (AY. 2013-14)

Lovy Ranka v. DCIT (2019) 177 ITD 321 (Ahd.)(Trib.)

S. 50C : Capital gains – Full value of consideration – stamp valuation – Though the 3rd Proviso to S. 50C, which provides as a safe harbour of 5%, applicable from insertion of s. 50C (1-4-2003) as it is curative in nature. [S. 43CA, 45] 823

Tribunal held that though the 3rd Proviso to S. 50C, which provides a safe harbour of 5%, applies w.e.f. 1-4-2019, it must be interpreted to apply since the insertion of S. 50C (1-4-2003) because it is curative and removes an incongruity and avoids undue hardship to assessees. (AY. 2014-15)

Chandra Prakash Jhunjhunwala v. DCIT (2019) 201 TTJ 831 (Kol.)(Trib.), www.itatonline.org

S. 50C : Capital gains – Full value of consideration – Stamp valuation – The assessee is entitled to challenge the correctness of the DVO's valuation before the CIT(A) and the Tribunal – The DVO has to be given an opportunity of hearing. [S. 45] 824

S. 50C is a deeming provision and the AO is obliged to compute the capital gains by taking the valuation arrived at by the DVO in place of the actual consideration received by the assessee, the assessee is entitled to challenge the correctness of the DVO's valuation before the CIT(A) and the Tribunal. The DVO has to be given an opportunity of hearing. (AY. 2013-14)

Lovy Ranka v. DCIT (2019) 177 DTR 273 / 199 TTJ 670 (Ahd.)(Trib.), www.itatonline.org

S. 50C : Capital gains – Full value of consideration – Stamp valuation – The adoption of stamp valuation as the sale consideration is not justified – The AO has not brought on record that the property under sale was not was under various encumbrances and the assessee was having the absolute marketable title of the said property – Addition not valid. [S. 45] 825

Tribunal held that adoption of stamp valuation as the sale consideration was not justified in absence of any evidence that the sale consideration was more than the value

shown in the agreement. The AO has not brought on record that the property under sale was not was under various encumbrances and the assessee was having the absolute marketable title of the said property. Addition is held to be not valid. (AY. 2011-12)
Sir Mohd. Yusuf Trust v. ACIT (2019) 178 DTR 73 / 199 TTJ 902 (Mum.)(Trib.), www.itatonline.org

826 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Jantri value/ circle rate of land was not higher than sale price agreed by assessee with purchaser, deeming provisions of could not be invoked. [S. 45, 48]**
Since there is no finding that Jantri value/circle rate of land was higher than sale price agreed by assessee with purchaser, deeming provisions of could not be invoked. Matter restored to AO to ascertain the Jantri Value/Circle rate on the rights. (AY. 2010-11)
DCIT v. Nimish Kalyanbhai Vasa (2019) 174 ITD 562 / 199 TTJ 989 / 178 DTR 401 (Ahd.) (Trib.)

827 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Sale of inherited residuary right in the property – No transfer of land or building – Provision of S. 50C is not applicable. [S. 45]**
Tribunal held that sale of inherited residuary right in the property, there is no transfer of land or building hence provision of S. 50C is not applicable, however the cost of acquisition to be taken at nil. (AY. 2010-11)
Maitri Morarji v. ITO (Mum.)(Trib.)(UR) (ITA No. 3864/Mum/2016 dt. 2-12-2018)

828 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Valuation of property submitted by the Assessee was rejected and referred the matter to DVO – Value adopted by the DVO is binding on the Assessing Officer. [S. 45]**
Dismissing the appeal of the assessee the Tribunal held that the DVO, scaled down the fair market value of the plot at ₹ 46.96 lakhs as against stamp value of ₹ 56.19 lakhs after taking into consideration the cumulative effect of all the relevant factors and entertaining the objections taken by assessee. Accordingly the AO was justified in adopting the value determined by the DVO. (AY. 2013-14)
Anil Murlidhar Deshmukh v. ITO (2019) 174 ITD 377 (SMC)(Pune)(Trib.)

829 **S. 50C : Capital gains – Full value of consideration – Date of agreement – Registration – Value adopted or assessed or assessable by stamp valuation authority on date of agreement is to be taken for purpose of full value of consideration – The proviso to S. 50C was inserted by the Finance Act, 2016 with effect from 1-4-2017 is prospective in nature. [S. 2(47)(v), 45]**
Allowing the appeal of the assessee the Tribunal held that, the proviso to S. 50C was inserted by the Finance Act, 2016 with effect from 1-4-2017. Therefore, the question that has to be decided is as to whether the above amendment is prospective in nature i.e., will be applicable from assessment year 2017-18 or is retrospective in nature being curative in nature. The various decisions support the case of the assessee that where the date of the agreement fixing the amount of consideration and the date of registration regarding the transfer of the capital asset in question are not the same, the

value adopted or assessed or assessable by the stamp valuation authority on the date of the agreement is to be taken for the purpose of full value of consideration. Thus, matter was remanded to the file of AO. (AY. 2012-13)
Amit Bansal v. ACIT (2019) 174 ITD 349 (Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Ownership of land – Housing complex was situated on a piece of land which was occupied by Co-operative Housing Society under a long term lease – Exemption cannot be denied in respect of sale of flat in a society. [S. 45] 830
Assessee was an owner of flat in a society. Residential building in which assessee's flat was situated, had been constructed by housing society on leased land. AO denied the exemption on ground that the assessee had not transferred land along with flat. Tribunal allowed the claim. On appeal the Court held that in case of a constructed building of a Co-operative Housing Society, member owns constructed property and along with other members enjoys possessory rights over land on which such building is situated therefore merely because housing complex was situated on a piece of land which was occupied by Co-operative Housing Society under a long term lease, would make no difference.
PCIT v. Rahul Uday Tuljapurkar (2019) 264 Taxman 36 / 180 DTR 132 / 310 CTR 800 (Bom.)(HC)

S. 54 : Capital gains – Profit on sale of property used for residence – Additional cost of construction incurred within stipulated time though not deposited in capital gains account – Entitled to deduction. [S. 45, 54F, 264, Art. 226] 831
Allowing the petition the Court held that the assessee had claimed that it had utilized the disputed sum towards the cost of the additional construction within the period of three years from the date of the transfer and therefore, if such contention were factually correct, the assessee had to be held to have satisfied the mandatory requirement under S. 54(1) to get the deduction. Matter remanded to verify whether the sum was utilized by the assessee within the time stipulated under S. 54(1) for the purpose of construction. If such utilization was found to have been made within such time, the Department was bound to grant deduction. (AY. 2014-15)
Venkata Dilip Kumar (HUF) v. CIT (2019) 419 ITR 298 / (2020) 312 CTR 26 / 185 DTR 45 / 268 Taxman 111 (Mad.)(HC)

S. 54 : Capital gains – Profit on sale of property used for residence – Invested in multiple properties in different locations and in prescribed securities within stipulated time – Entitle to exemption – Amendment with effect from 1-4-2015 restricting exemption to "One Residential House in India" is not retrospective. [S. 45] 832
Allowing the appeal of the assessee the Court held that invested in multiple properties in different locations and in prescribed securities within stipulated time is entitle to exemption. Amendment with effect from 1-4-2015 restricting exemption to "One Residential House in India" is not retrospective. (AY. 2005-06)
Tilokchand and Sons v. ITO (2019) 413 ITR 189 / 308 CTR 364 / 263 Taxman 713 / 177 DTR 165 (Mad.)(HC)

833 **S. 54 : Capital gains – Profit on sale of property used for residence – Exemption is available though the construction of new property was not completed within period of three years. [S. 45]**

Dismissing the appeal of the revenue the Court held that; exemption is available though the construction of new property was not completed within period of three years as the delay was beyond control of assessee because construction was put up by builder. (AY. 2012-13)

PCIT v. Dilip Ranjrekar (2019) 260 Taxman 317 / 177 DTR 158 / 308 CTR 662 (Karn.)(HC)

834 **S. 54 : Capital gains – Profit on sale of property used for residence – No requirement that residential house should be constructed in a particular manner – Only requirement is residential use as against commercial use – Assessee constructing ground floor, first floor and second floor – Assessee keeping rights of ground floor and second floor with roof rights of first floor – Entitled to exemption. [S. 54F]**

The assessee entered into a collaboration agreement with one Mr. K for dismantling an old building and construction of ground floor, first floor and second floor. In terms of the collaboration agreement, the assessee kept the rights of ground floor and second floor with roof rights of the first floor. The assessee declared the fair market value of the property at ₹ 1,25,10,000 for the assessment year 2016-17. After reducing the indexed cost of acquisition at ₹ 21,16,515, he declared long-term capital gains at ₹ 1,03,93,485. The assessee then claimed exemption under section 54 of the Income-tax Act, 1961 at ₹ 1,24,50,000 on the long-term capital gains. The Assessing Officer did not accept the claim of exemption under section 54 on the ground that the assessee had sold the rights of the first floor to the builder and kept the ground and second floors to himself under the collaboration agreement. Therefore, he treated the long-term capital gains on proportionate sale value of the first floor which came to ₹ 34,64,495 (one-third of the long-term capital gains as calculated by the assessee at ₹ 1,03,93,485) as the deemed long-term capital gains on transfer of rights of the first floor to Mr. K and taxed it in the hands of the assessee. The CIT (A) enhanced the income. On appeal Tribunal held that S. 54 and 54F use the expression "a residential house" which is not "a residential unit". S. 54 and 54F require the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which requires the residential house to be constructed in a particular manner. The only requirement is that it should be for residential use and not for commercial use. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under S 54 or S. 54F. It is neither expressly nor by necessary implication prohibited. Thus, the assessee was entitled to exemption. (AY. 2016-17)

Vinod Kumar Sharma v. ITO (2019) 76 ITR 72 (SN) (Delhi)(Trib.)

S. 54 : Capital gains – Investment in a residential house – Assessee constructing nursing home and residential house on land purchased from sale proceeds – Exemption not available in respect of entire land but only on portion of land on which residential house constructed and appurtenant thereto – Authorities failing to compute vacant land appurtenant to residential house – Assessing officer to consider all these aspects for purpose of computing exemption – Assessee entitled to benefit of indexation. [S. 45] 835

The assessee purchased land from the sale proceeds of property held by him, and constructed a nursing home and residential house thereon. On the residential house, he claimed exemption under S. 54F of the Income-tax Act, 1961. The Assessing Officer restricted the deduction under S. 54F of Act to the proportionate amount utilized for construction of the residential house. The CIT(A) thus upheld the disallowance made by the AO. On appeal before the Tribunal, the assessee contended that, exemption was to be granted on the total land and portion of building used for residential purposes as against exemption under S. 54F restricted by the AO to the proportionate area of land used for residential purposes. The Tribunal rejected the argument of the assessee and held that section 54F is very clear in respect of exemption being available to the assessee, in respect of either purchase of residential property or construction of residential property within the period of limitation prescribed therein. However, the AO while computing the capital gains, had allowed ₹ 33,41,839 as the cost of land appurtenant to the residential house for which there was no basis. The CIT(A) mentioned that the land on which the residential house constructed was ₹ 586.96 sq.m out of the total land 2543.25 sq.m. the Lower authorities failed to compute the vacant land appurtenant to the residential house and hence, the AO was directed to consider all these aspects for the purpose of computing the exemption under S. 54F and capital gains payable by the assessee. The assessee was eligible for the benefit of indexation in computing the capital gains. (AY. 2012-13)

Dr. Anjanaiah v. ACIT (2019) 75 ITR 315 (Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Investment within specified time is eligible for exemption – law does not require that the assessee must investment same money in specified asset. [S. 45] 836

Assessee sold a residential house property and invested sale consideration for purchasing another house property. And claimed the exemption. Exemption was originally was allowed. Thereafter the AO reopened the assessment on ground that sale proceeds were deposited in a joint account of assessee with his wife and were further converted in fixed deposits and investment was made from another bank account which was assessee's account where professional receipts were deposited, thus, assessee had not utilized sale consideration from sale of old property to purchase new property, consequently the assessee was not entitled to claim exemption. On appeal the CIT (A) also confirmed the disallowance of exemption. On appeal the Tribunal held that law does not require assessee to hold on to very same money and demonstrate that very same money was utilized in acquisition of asset and requirement of law is that money so available to assessee to that extent on which exemption under S. 54 was claimed ought to be invested in acquisition of specific asset within stipulated time. (AY. 2008-09)

Keshav Dutt Shreedhar v. DCIT (2019) 179 ITD 679 (Chd.)(Trib.)

837 **S. 54 : Capital gains – Profit on sale of property used for residence – Exemption can be claimed on transfer of any number of residential houses provided the capital gain arising thereon is invested in a proper manner within the prescribed time limit. [S. 45]**
The assessee had purchased three flats on the same floor of the building by three separate agreements. Subsequently, the three flats were combined into a single residential flat. During the relevant previous year, the assessee had sold the combined residential flat under three sale agreements on account of legal requirements. The assessee had claimed deduction under S. 54 of the Act for the long term capital gains arising on sale of the aforesaid combined residential flat. However, the AO held that the assessee had sold three flats by way of three separate agreements and accordingly, allowed deduction under S. 54 of the Act only on sale of one flat and taxed the long term capital gains arising on sale of the balance two flats. On appeal, the CIT(A) held that the three adjoining flats were merged and made into one residential unit and the assessee also used it as one residential house. There is one electricity meter in respect of the three flats. Further, the CIT(A) observed that there is no restriction under S. 54 of the Act that exemption is allowable only in respect of sale of one residential house. Accordingly, the CIT(A) held that even if the assessee sells more than one residential houses in the same year and the capital gain is invested in a new residential house, the claim of deduction cannot be denied if the other conditions of S. 54 are fulfilled. On appeal by the Department, the Tribunal upheld the findings of the CIT(A) relying on the decision of the Hon'ble Bombay High Court in the case of *CIT v. Devdas Naik (2014) 366 ITR 12 (Bom) (HC)*. (AY 2011-12)
ACIT v. Bipin N. Sagar (2019) 70 ITR 16 (SN) / 176 DTR 43 / 198 TTJ 649 (Mum.)(Trib.)

838 **S. 54 : Capital gains – Profit on sale of property used for residence – Short term – Long term – Date of acquisition – Date of allotment letter and not conveyance deed – Entitle to exemption. [S. 2(29A), 2(29B), 2(42A), 2(42B), 45, 54F]**
The assessee sold a plot of land and claimed exemption u/s. 54 of the Act. The exemption was denied on the ground that it was short term capital gain which was affirmed by the CIT(A). On appeal the Tribunal held that in terms of Circular No. 471 dated October 15, 1986 the date when the letter of allotment was issued shall be considered as the date of acquisition of the asset. Merely because there was a change in the nature of immovable property, the principles for determining the date of acquisition could not change. The AO was directed to consider the date of allotment on May 31, 2002 as the date of acquisition of the asset. Thus what was transferred by the assessee was a long-term capital asset and not a short-term capital asset. The profit or gain on sale of the asset shall be considered as long-term capital gains. Relied *PCIT v. Vembu Vaidyanathan (2019) 413 ITR 248(Bom)(HC)*. Accordingly the assessee is held to be entitle to deduction under S. 54 or 54F of the Act. Matter remanded to CIT(A) to decide the issue. (AY. 2013-14)
Bhawna Sharma (Smt.) v. Dy. CIT(IT) (2019) 75 ITR 7 (SN) (Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of two adjacent flats – Could be treated as one residential house – Matter remanded for verification. [S. 45] 839

Assessee HUF filed the return claiming exemption under S. 54 in respect of investment made in two new flats. AO restricted exemption to half of investment i.e. for one flat. CIT(A) confirmed the addition. Before the Tribunal it was contended that purchase of two flats which were adjacent to each other and with purpose to use as duplex to be used by assessee for residential purpose. Tribunal held that while considering residential house, intention of assessee at time of purchase or construction of property is relevant. Accordingly purchase of two adjacent flats to be used for residential house as a duplex, matter was to be remanded back for considering whether aforesaid two flats could be treated as one residential house for purpose of claiming deduction. (AY. 2014-15)

Pramod Sahai Bhatnagar, HUF v. ACIT (2019) 177 ITD 799 / 182 DTR 10 / 202 TTJ 127 (Jaipur)(Trib.)

S. 54 : Capital gains – Purchase of residential property at Dubai – No condition that investment to be made in India during year 2014-15 – Entitled to exemption. [S. 45] 840

Held, that prior to the amendment there was no explicit requirement that the investment in the new residential house was to be made only in India. Only pursuant to the amendment to S. 54 by the Finance (No. 2) Act, 2014 with effect from April 1, 2015 was the entitlement of an assessee to the exemption restricted providing that the new residential house purchased or constructed shall be situated in India. As the entitlement of an assessee to claim exemption under S. 54 was not qualified by any such condition, the claim of exemption so raised by him under S. 54 in respect of the new residential house that was purchased by him at Dubai was in order. (AY. 2014-15)

ITO v. Mahesh Gobind Dalamal (2019) 70 ITR 599 (Mum.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Right of allotment – Surrender of rights – Held more than three years – Compensation assessable as long term capital gains – Entitle to exemption in relation to investment in new flat. [S. 2(47)(ii), 45, 47] 841

Dismissing the appeal of the revenue the Tribunal held that compensation received by the assessee in respect of surrender of allotment letter which is held for more than three years is assessable as long term capital gains. As the assessee invested the amount in new flat is entitle to exemption. Followed *CIT v. Ram Gopal (2015) 372 ITR 498 (Delhi) (HC)* (AY. 2012-13)

ACIT v. Ashwin S. Bhalekar (2019) 74 ITR 5 (Mum.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Failure to obtain possession of plot with in period of three years – Exemption cannot be denied. [S. 45] 842

Assessee sold a residential house and invested sale consideration for purchase of plot for purpose of construction of residential house thereon and claimed exemption under S. 54 of the Act. AO disallowed the claim on the ground that the assessee had neither purchased a house nor constructed a house within period of three years. Tribunal held that since, inspite having made payment for plot within stipulated period, developer

failed to give possession of plot and thus, assessee could not construct residential house within a period of three years from date of sale of property by assessee because of reasons beyond control of assessee, amount utilized by assessee for acquisition of plot was to be construed as amount invested in purchase / construction of residential house. Accordingly entitled for exemption. (AY. 2015-16)
Varun Seth v. ACIT (2019) 177 ITD 499 / 182 DTR 1 (Delhi)(Trib.)

843 **S. 54 : Capital gains – Profit on sale of property used for residence – Due to ignorance the deduction is claimed u/s. 54F instead S. 54 – Exemption cannot be denied. [S. 54F]**
Tribunal held that merely because assessee, by ignorance of law or mistake has claimed deduction under S. 54F instead of S. 54, such ignorance of law/mistake on part of assessee cannot be utilized to its disadvantage by AO; AO is duty bound to allow deduction to assessee if assessee is eligible for such deduction under provisions of Act. (AY. 2013-14)
ACIT v. Jai Kumar Gupta (HUF) (2019) 177 ITD 558 (Mum.)(Trib.)

844 **S. 54 : Capital gains – Profit on sale of property used for residence – Booking of semi – finished flat with builder – Carry out internal fit-outs to make it liveable on its own – Treated as construction of property and not purchase of property – Entitle to exemption. [S. 45]**
Assessee sold a residential property and invested sale consideration for booking a semi-finished residential flat with a builder and claimed exemption u/s 54 of the Act. AO disallowed the claim on grounds that the assessee had acquired new property beyond period of one year prior to date of transfer prescribed. CIT(A) allowed the claim. On appeal by the revenue the Tribunal held that booking a semi-finished flat with builder who constructed unfinished bare shell of flat in which assessee had to carryout internal fit outs on its own to make it liveable, was to be considered as a case of construction of new flat and not purchase of a flat. Accordingly eligible for exemption. (AY. 2012-13)
ACIT v. Seema Sobti (2019) 177 ITD 370 / 181 DTR 132 (Delhi)(Trib.)

845 **S. 54 : Capital gains – Profit on sale of property used for residence – Exemption cannot be denied on the ground that investment in new flat is out of loan funds if other conditions are fulfilled. [S. 45]**
Assessee sold a jointly held flat wherein her share of capital gain amounted to ₹ 55,82,426/-. Assessee made investment of ₹ 98,90,358/- in purchase of new flat and accordingly claimed exemption u/s 54 of the Act. AO reduced exemption u/s 54 to ₹ 48,90,358/-on the ground that investment in new house included housing loan of ₹ 50,00,000/-availed from CITI Bank. CIT(A) upheld the order of Ld. AO. Aggrieved by the same, assessee filed an appeal before ITAT. The Tribunal observed that the housing loan was disbursed much after the purchase of new house it was evident from the loan sanction letter of CITI bank as well as bank statement. Thus housing loan was not utilized for the purchase of new house. The Tribunal further held that if the assessee purchases new house with in the stipulated time period mentioned in S. 54 of the Act, assessee is entitled to claim deduction u/s 54 of the Act irrespective of whether or not money invested in the purchase of new house property is out of sale consideration

received from the transfer of original asset. The Tribunal allowed assessee's appeal. (AY. 2011-12)
Hansa Shah v. ITO (2019) 69 ITR 334 (Mum.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Investment of consideration for booking a semi – finished flat with a builder – Treated as construction of property and not purchase of property – Entitle to exemption [S. 45] 846
Assessee sold residential property and utilized sale consideration for booking a semi-finished flat with a builder by periodic payment of instalments and assessee had to carry out internal fit-outs to make said flat liveable on its own, same was to be treated as case of construction of property and not purchase of property. Entitle to exemption. (AY. 2012-13)
ACIT v. Akshay Sobti (2019) 177 ITD 92 (Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Deposit in Capital gain account scheme – Payment to developer within prescribed time – Possession was not obtained – Consumer Redressal Commission had put stay on developer – Exemption cannot be denied – Amount deposited in capital gain account also cannot be taxed though the amount was not utilized with in specified time limit. [S. 45, 54(2)] 847
Assessee had invested sale consideration of ₹ 62.63 lakhs in residential flat and deposited ₹ 19 lakhs in Capital Gain Account Scheme. Assessing Officer disallowed deduction of ₹ 62.63 lakhs on premise that neither assessee had taken possession of new flat nor purchase deed was executed in favour of assessee within period of three years and also disallowed deduction of ₹ 19 lakhs deposited in capital gain account on ground that assessee had not utilised same within prescribed period. Tribunal held that the assessee had made payment for purchase of flat to developer within stipulated period. However, assessee could not obtain possession and got purchase deed executed within period of three years as there was a complaint filed against developer with National Consumer Dispute Redressal Commission which had put stay on developer. The assessee could not utilise amount in capital gain account scheme due to stay on developer. Since delay in obtaining possession and getting purchase deed executed and failure to utilise amount in capital gain scheme was on account of developer and was by reason beyond control of assessee, exemption under S. 54 could not be denied. (AY. 2012-13)
Bal Kishan Atal v. ACIT (2019) 176 ITD 330 (Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Investment in purchase of new residential property up to date of filing of his revised return – Entitle to exemption. [S. 139(5)] 848
The assessee would be entitled to claim exemption under S. 54 to extent he had invested capital gain on sale of old residential flat towards purchase of new residential property up to date of filing of his revised return of income under S. 139(5) of the Act. (AY. 2013-14)
Rajendra Pal Verma v. ACIT (2019) 176 ITD 211 / 178 DTR 169 / 199 TTJ 873 (Mum.) (Trib.)

849 **S. 54 : Capital gains – Profit on sale of property used for residence – Deduction is available when the construction of flat is completed within three years from the date of sale of property and not from the date of commencement of construction. [S. 45]**
Allowing the appeal of the assessee the Tribunal held that Deduction is available when the construction of flat is completed within three years from the date of sale of property and not from the date of commencement of construction. (ITA NO. 265/Mum/ 2015 dt. 31-8-2018) (AY. 2009-10)
Amritlal B. Sahu v. ITO (Mum.)(Trib.) (UR)

850 **S. 54B : Capital gains – Land used for agricultural purposes – Sale of new asset of agricultural land within lock in period of three years – Withdrawal of exemption is held to be valid – Capital gains is chargeable to tax in the year in which transfer of asset is affected. [S. 45]**
Dismissing the appeal of the assessee the Court held that the AO and the appellate authorities had properly analysed the provisions of S. 54B and also the factual aspects. After acquiring the new agricultural land (rural or urban), if the new agricultural land was transferred with in a period of three years from the date of the purchase, then the tax exemption allowed earlier, (i.e. with respect to the first transaction of sale of urban agricultural land) would be withdrawn. In such a case, the assessee would be required to pay tax on the exemption claimed earlier. If the assessee's contention was accepted, the very intent and purpose of the beneficial provisions would be defeated and an assessee would sell an agricultural land, invest in a new asset which was not a capital asset (in the assessee's case the agricultural land in rural area which was not exigible to capital gains tax) and sell the new asset immediately thereafter which process would render section 54B otiose. The entire object of requiring an assessee to hold the land for a particular period would be frustrated. The other contention of the assessee that the capital gains, if any was required to be taxed in the AY. 2006-07 was also untenable. The charge of capital gains was on the transfer effected on December 1, 2003 for which the relevant assessment year was 2004-05. The charge was not in respect of the transfer of the new asset. (AY. 2004-05)
Hitesh Mansukhlal Bagdai v. ACIT (2019) 419 ITR 276 (Guj.)(HC)

851 **S. 54B : Capital gains – Land used for agricultural purposes – No proper finding regarding character of land – Matter remanded. [S. 45, 254(1), Bombay Tenancy and Agricultural Lands Act, S. 43, 63]**
Court held that the Revenue authorities got confused between S. 43 of the Bombay Tenancy and Agricultural Lands Act on the one hand and S. 63 of the said Act on the other. It is axiomatic under the Bombay Tenancy and Agricultural Lands Act that when permission is granted by the authorities concerned for sale of agricultural land to a non-agriculturist, the land does not cease to be an agricultural land merely because of such permission being granted. If the conditions of the permission were not complied with, the land in respect of which permission was granted under S. 63 would revert to its original character of agricultural land. On the one hand, the Revenue authorities stated that the agreement to sell was invalid as it was between an agriculturist and a non-agriculturist and such agreement could not have been executed in favour of the

purchaser, being a non-agriculturist, without the permission of the competent authority. However, ultimately when the permission was granted by the authority despite such agreement to sell and when the assessee transferred the land, the Revenue authorities stated that the land was non-agricultural. There was no proper finding regarding the character of the land. Matter remanded. (AY. 2013-14)
Kishorbhai Harjibhai Patel v. ITO (2019) 417 ITR 547 / 310 CTR 153 / 266 Taxman 46 / 181 DTR 65 (Guj.)(HC)

S. 54B : Capital gains – Land used for agricultural purposes – Denial of exemption on the basis of report of inspector and statement of bataidar is held to be justified. [S. 45] 852
Assessee sold and transferred land to a real estate developer and claimed exemption under S. 54B of the Act. Lower authorities held that the said land was not used for agricultural purposes during preceding two years before date of transfer of land. Hence not entitle to exemption. It was contended before the Tribunal that it had undertaken agricultural activities for two years on sharing basis through a person on crop sharing (batai) basis. However, 'bataidar' could not even give correct location where land was situated. There was contradiction in statement made by so called bataidar and assessee. Based on spot inquiry report of Inspector of income-tax, Tribunal denied exemption. Order of Tribunal is affirmed by the High Court.
Rajiv Dass v. DCIT (2019) 414 ITR 37 / 103 taxmann.com 192 / 264 Taxman 40 (Mag.) / 307 CTR 429 (Delhi)(HC)

S. 54B : Capital gains – Land used for agricultural purposes – Agricultural land was converted into residential plots and not used for agricultural purpose – Deduction is not entitle. [S. 45] 853
Tribunal held that since land was converted in to residential colony, it was no more an agricultural land therefore, even if land sold was treated as capital asset, it had lost its character of agricultural land not being used for agricultural purpose. Accordingly the deduction is not available. (AY. 2014-15)
Sheetal Kataria v. PCIT (2019) 179 ITD 171 (Jaipur)(Trib.)

S. 54B : Capital gains – Land used for agricultural purposes – Land purchased in the name of assessee's son – Exemption cannot be denied. [S. 45] 854
Tribunal held that exemption under S. 54B could not be denied for the reason that the eligible agriculture land had been purchased in the name of the assessee's sons. The assessee sold the agricultural land and out of the sale proceeds, he purchased other piece of land in his name and in the name of his sons for agricultural purposes within the stipulated time. It was not the case of the Department that from the sale proceeds of the agricultural land earlier owned by the assessee, the land was purchased for any other purpose than the agricultural purpose. Hence, exemption under S. 54B of the Act was to be allowed even if the new agricultural land was purchased in the name of family members. (AY. 2011-12)
Balu Vitthal Kharate v. ITO (2019) 70 ITR 315 (Pune)(Trib.)

855 **S. 54B : Capital gains – Agricultural land – Land was used for agricultural purposes – Land classified as agricultural land Jowar crop was grown – Eligible exemption [S. 2(14), 45]**
Tribunal held that land was used for agricultural purposes, land was classified as agricultural land and Jowar crop was grown. Accordingly capital gain arising from sale of such land was eligible for exemption. (AY. 2008-09)
Murtuza Shabbir Jamnagarwala v. ITO (2019) 175 ITD 494 (Pune)(Trib.)

856 **S. 54B : Capital gains – Land used for agricultural purposes – Purchase of agricultural land prior to sale of agricultural land – Exemption is not available – Stamp duty paid is to be considered as part of cost of purchase of agricultural land [S. 45]**
Tribunal held that purchase of agricultural land prior to sale of agricultural land owned by the assessee exemption is not available. Stamp duty paid by assessee is to be considered as part of cost of purchase of agricultural land. (AY. 2014-15)
Mathur Lal v. ITO (2019) 174 ITD 44 (Jaipur)(Trib.)

857 **S. 54EC : Capital gains – Investment in bonds – Part consideration in escrow account-Invested in the year of receipt – Entitle to exemption. [S. 45]**
Dismissing the appeal of the revenue the Court held that the part consideration which is kept in the escrow account to avoid litigation is taxable in the year of receipt. The assessee has made investment with in specified time the entitle to exemption. (AY. 2008-09)
CIT v. Mahipinder Singh Sandhu (2019) 416 ITR 175 / 182 DTR 369 / 311 CTR 116 (P&H) (HC)

858 **S. 54EC : Capital gains – Investment in bonds – Transferable Development Right (TDR) – Acquisition of immovable property is capital asset – Period of holding of TDR was to be calculated from date of acquisition of assessee's property by municipality. [S. 2(14), 43(5), 45, 48]**
In 1986, assessee's immovable property was acquired by municipal corporation. Assessee got a right in Transferable Development Right (TDR) in lieu of acquisition of his immovable property. No TDR was allotted for long. On 17-8-1996, assessee entered into a MoU with third party for transfer of right in TDR though there was no TDR in hand Surplus derived from transfer of TDR rights had been assessed under head capital gains. In 2004, said MoU was cancelled be cause purchaser was not willing to wait any more because of delay in allotment of TDRs by competent authority. The assessee got a new buyer for right in TDR and, accordingly, one more MoU was entered into and right in TDR was transferred. The assessee invested the amount in capital gain bonds and claimed exemption u/s. 54EC of the Act. The AO held that the transfer of right in the TDR is held to be short term capital gain and denied the exemption u/s. 54EC of the Act. On appeal the CIT(A) held that gain on sale of TDR is speculative gain and assessed u/s 43(5) of the Act and denied the exemption u/s 54EC of the Act. On appeal the Tribunal held that as TDR was inextricably linked with immovable property and it flew from transfer of immovable property, TDR was a capital asset within meaning of S 2(14) of the Act. Accordingly the surplus from transfer of TDR would be capital gains;

not speculative business profit. The fact that assessee had derived right in TDR by virtue of acquisition of immovable property by municipal authorities in year 1986 and such right was conferred on assessee from date of acquisition of property, subsequent can collation of sale of TDR to third party could not be considered as purchase of TDR from a third party and, therefore, for purpose of determination of period of holding, period of holding of asset from date of acquisition of property by municipal authorities had to be considered, and date, when MoU was cancelled in year 2004 was not to be considered. If investments were made in NABARD Capital Gain Bonds, exemption claimed by assessee under S. 54EC was to be allowed. (AY. 2005-06)
Adi D. Vachha v. ITO (2019) 179 ITD 356 (Mum.)(Trib.)

S. 54EC : Capital gains – Investment in bonds – Investment of ₹ 50 lakhs each in two different financial years – Eligible for exemption. [S. 45] 859
Tribunal held that investments a sum of ₹ 50 lakhs each in two different financial years within a period of six months from date of transfer of capital asset is eligible for exemption. (AY. 2012-13)
ACIT v. Seema Sobti (2019) 177 ITD 370 / 181 DTR 132 (Delhi)(Trib.)

S. 54EC : Capital gains – Investment in bonds – Chartered Accountant firm – Capital gains from sale of its client relationships and goodwill pertaining to its business of internal audit and risk consultancy (IARC) practice – Investment in specified bonds – Eligible to exemption. [S. 2(14), 28(va)45, 55(2)(a)(ii)] 860
Firm of chartered accountants, transferred its client relationship and goodwill pertaining to its business of internal audit and risk consultancy (IARC) practice to an international firm for consideration of certain amount and invested the consideration in specified bond. Entitle to exemption. (AY. 2011-12)
J. C. Bhalla & Co. v. ACIT (2019) 177 ITD 1 / 182 DTR 195 (Delhi)(Trib.)

S. 54EC : Capital gains – Investment in bonds – Investment of ₹ 50 lakhs each in two different financial years within a period of six months from date of transfer of capital asset – Eligible for exemption. [S. 45] 861
Investment of ₹ 50 lakhs each in two different financial years within a period of six months from date of transfer of capital asset is eligible for exemption. Amendments made to S. 54EC by the Finance Act, 2014 will applicable from 1-4-2015 in relation to assessment year 2015-16 and the subsequent years. (AY. 2012-13)
ACIT v. Akshay Sobti (2019) 177 ITD 92 (Delhi)(Trib.)

S. 54F : Capital gains – Capital asset – Investment in a residential house – Booked a flat in January 1981 – Right in the flat was sold in the year 2005 – Allowable deduction. [S. 2(14), 45] 862
AO rejected assessee's claim on ground that assessee had sold a flat which was in nature of residential unit and therefore, S. 54F would not apply. Tribunal held that the assessee had booked a flat far back in January, 1981 and till time, she sold her rights in flat in year 2005, completion of construction was nowhere in sight. Tribunal thus taking a view that it was not a case of sale of residential property, allowed assessee's

claim for deduction. Dismissing the appeal of the revenue, the Court held that, sale of flat booked by itself is not sale of residential property and thus Assessee was entitled for exemption u/s 54F. (AY. 2006-07)
CIT v. Kalpana Hansraj (2019) 261 Taxman 294 / 176 DTR 217 / 307 CTR 797 (Bom.)(HC)

863 **S. 54F : Capital gains – Investment in a residential house – The assessee is entitled to the withdrawal of the amount deposited under Sub-Section (4) of Section 54F of the Act under the capital gain account subject to deduction of tax applicable to the case on hand. [S. 45, 54F(4)]**

Petitioner had sold two properties. From the sale consideration amount, ₹ 1,15,00,000/- was deposited by the petitioner in the Capital Gain Account Scheme, 1988. There turn of income for the Assessment year 2013-14 was filed on 14-7-2013 and exemption was claimed under S. 54F of the Act. In the meantime, the petitioner had purchased a flat for ₹ 21,32,470/- (including stamp duty and registration) on 20-8-2013 before the expiry of three years from the date of the transfer of the capital asset. The revenue issued the notice impugned, to bring the unutilized capital gain to tax as per S. 54 F(4) of the Act. In other words, the unutilized amount (₹ 1,15,00,000 - ₹ 21,32,470 deducting exemption) after the expiry of three years from the date of transfer of the original capital is proposed to be subjected to tax under S. 45 of the Act. On writ the petitioner argued that the scope of S. 54F(4) of the Act and the proviso thereof is not properly appreciated by the respondent. The petitioner had deposited the sale consideration received on transfer of certain capital assets in the capital gain account scheme with the bankers and utilized ₹ 21,32,470/-out of ₹ 1,15,00,000/- capital gain amount deposited which squarely falls under the proviso to S. 54F(4) of the Act. High Court held that the respondent failed to interpret the phrase 'wholly or partly' enumerated in the proviso in a right perspective. According to the petitioner, the amount deposited under S. 54F(4) of the Act if utilized partly for the purchase or construction of the new asset within three years, then the unutilized amount shall not be liable to tax under S. 45 of the Act. It is clear that the proviso appended to S. 58[4][f] has to be read as a whole along with the Clauses [a] and [b] there in which would explain the real intendment of the phrase "not utilized wholly or partly". In the context, the proviso to S. 54 F[4] becomes an integral part of the enactment acquiring the tenor and colour of the main provision. To make the provision workable, the arguments of the petitioner that the Clauses [a] and [b] of the proviso need not be addressed to, cannot be countenanced for the reasons aforesaid. Thus, it can be held that on reading of the provision as a whole along with Clauses [a] and [b] to the proviso, the intention of the Legislature would be gathered that the unutilized capital gain amount under S. 54 F[4] has to be charged under S. 45 as income of the previous year, after the expiry of three years from the date of sale of the capital asset which in the present case is the assessment year 2016-17. In the circumstances, the assessee is entitled to the withdrawal of the amount deposited under Sub-Section (4) of Section 54F of the Act under the capital gain account subject to deduction of tax applicable to the case on hand. (AY. 2016-17)(SJ).
P. N. Shetty v. ITO (2019) 181 DTR 97 / 310 CTR 359 / 266 Taxman 15 (Karn.)(HC)
Editorial : Division bench of High Court affirmed the order of the single judge, in P. N. Shetty v. ITO (2020) 268 Taxman 226 / (2020) 186 DTR 165 (Karn.)(HC)

S. 54F : Capital gains – Investment in a residential house – Transfer includes extinguishment of rights – Agreement to sell land and purchaser given possession in August 2010 – Sale deed executed in July 2012 – Purchase of residential house in April 2010 – Entitled to exemption. [S. 2 (47)(iii), 45, 54F] 864

The assessee entered into an agreement to sell agricultural land at ₹ 4 crores on August 13, 2010. An amount of ₹ 10 lakhs towards the earnest money was received by the assessee as part of the agreement. On October 15, 2011, possession of the land was handed over by the assessee to the purchasers of the land. On July 3, 2012, the sale deed came to be executed by the assessee in favour of the purchaser of the land. The assessee had purchased a new residential house in April 2010. The assessee claimed benefits under S. 54F and 54B which were denied by the Tribunal. Dismissing the appeal of the revenue the Court held that, the assessee had purchased the new residential house in April 2010. The agreement to sell which had been executed on August 13, 2010 could be considered as the date on which the property, i.e., the agricultural land had been transferred. Hence entitled to exemption. (Ratio in *Sanjeev Lal v. CIT (2014) 365 ITR 389 (SC)* is explained) (AY. 2013-14)

Kishorbhai Harjibhai Patel v. ITO (2019) 417 ITR 547 / 310 CTR 153 / 266 Taxman 46 / 181 DTR 65 (Guj.)(HC)

S. 54F : Capital gains – Investment in a residential house – Deduction under 54 and 54F can be claimed on the sale of one property. [S. 45, 54] 865

The assessee sold certain property and earned long term capital gain. In there turn of income, the assessee claimed deduction under S. 54 and 54EC of the Act. The assessee also made a claim under S. 54F before the CIT(A). Held that there is no bar that deduction cannot be claimed under section 54 and 54F on the sale of a single property as long as there is no double claim on the same amount. Further, the fact that claim under S. 54F was made before the CIT(A) for the first time will not disentitle the assessee as long as the claim is sustainable in law. (AY. 2013-14)

ACIT v. Ramani Joseph (Smt.) (2019) 179 DTR 338 / 200 TTJ 522 (Chennai)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Assessee Incurring Expenditure within stipulated period and constructing house incurring cost of construction – Rejection of claim without enquiry to verify actual cost of construction and period of construction of house is not justified. [S. 45] 866

The assessee sold property valued at ₹ 13,22,629 for the purpose of stamp duty, for a consideration of ₹ 10 lakhs during 2007-08. The valuation amount was considered for the purpose of calculating capital gain under Section 50 of the Act. The AO allowed the exemption under S. 54 to the extent of ₹ 6.60 lakhs for which the assessee purchased the residential plot but denied the exemption to the extent of ₹ 9,19,435 towards the cost of construction of the new house on the ground that the assessee had not produced any supporting evidence to show that the house was completed within the stipulated period provided under section. On appeal, the CIT (A) confirmed the order passed by the AO since no valuation report of the constructed house was filed. However, the Tribunal held that bank account statement showing withdrawal of money from time to time as well as various bills and vouchers towards purchase of construction material

which were produced by the assessee showed that construction was completed within the stipulated time under S. 54F. Further, the Assessing Officer had not disputed the fact that the house was finally constructed by the assesse although there was dispute regarding the cost of construction. Thus, rejection of the claim of the assesse without any enquiry and based on suspicion was not justified after the assesse had produced evidence of construction. (AY. 2007-08)
Anil Vijay v. ITO (2019) 76 ITR 315 (Jaipur)(Trib.)

867 **S. 54F : Capital gains – Hindu Undivided Family (HUF) – Property purchased in the name of individual for convenience – Part of the common pool – Protected assessment attains finality – Same income cannot be taxed twice again.**
The assessee and his late father purchase property from a common pool of funds belonging to the Hindu Undivided Family (HUF). The property was taken in their name for convenience purpose but formed part of the common pool along with other properties. This fact could be verified by the partition deed, filed with the authorities. Assessee, along with ten others, entered into a development agreement with a builder. No capital gain tax was offered. After a survey, the assessee filed a belated revised return offering capital gains to tax and claiming exemption u/s 54F. Before the AO the assessee contested that it was co-owner of 20 per cent, while HUF members owned the other 80 per cent. The department had passed protective assessment orders in the hands of HUF members that have now become final. The AO did not accept the contention while holding the property to be registered in the name of the assessee he would be liable to capital gain tax. CIT(A) accepted that the property belonged to HUF and its members, in whose hands the protected assessment was carried out. There is no challenge to the protected assessment in the hands of the HUF members, that has now become final. Tribunal approved the order of the CIT(A), besides holding that the department was aware of the partition deed. (AY. 2008-09)
ITO v. Bongu Janardhan Rao (2019) 75 ITR 214 (Hyd.)(Trib.)

868 **S. 54F : Capital gains – Investment in a residential house – Developer failed to deliver possession – Delay in construction is not attributable to the assessee – Entitled to exemption. [S. 45]**
Tribunal held that as per the agreement with the developer, the developer was supposed to hand over the possession of plot within 18 months from the date of the allotment letter. However, the developer did not deliver possession. Since the delay was not on the part of the assessee but on the part of the developer which is beyond the control of the assesse. Exemption is allowed to the assessee. (AY. 2013-14)
Abodh Borar v. ITO (2019) 76 ITR 30 (SN) (Delhi)(Trib.)

869 **S. 54F : Capital gains – Investment in a residential house – Purchase of flat from builder – Date of allotment to be taken as date of acquisition of property – House consisted of several independent units – Exemption cannot be denied – New house need not be purchased exclusively in the name of the assessee – Invested prior to date of filing of return u/s. 139(4) – Eligible for exemption. [S. 45, 139(1), 139(4)]**
Allowing the appeal of the assessee the Tribunal held that, while determining claim for deduction under S. 54F in respect of purchase of flat from builder, date of issuance

of allotment letter by builder has to be taken as date of acquisition of property. In respect of purchase of a residential house, mere fact that said house consisted of several independent units could not be a ground for denying the exemption. For claiming exemption the new house need not be purchased by assessee in his own name exclusively. In order to claim deduction under S. 54F, new residential house need not be purchased by assessee in his own name or exclusively in his name. Sale proceeds utilised in acquisition of new residential house prior to filing of return u/s. 139 (4) is eligible for exemption. (AY. 2011-12)
Kamal Murlidhar Mokashi (Mrs.) v. ITO (2019) 179 ITD 265 (Pune)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Payments towards purchase of house property – Deduction is available up to date of filing of return of income prescribed u/s. 139(4). [S. 45, 139(1), 139(4)] 870
Allowing the appeal of the assessee the Tribunal held that in respect of payments made to purchase of residential house the deduction is available up to date of filing of return prescribed u/s. 139(4) of the Act. (AY. 2012-13)
Vatsala Asthana (Smt.) v. ITO (2019) 179 ITD 297 (Delhi)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Part ownership in property – Not considered absolute ownership – Assesse eligible on the date of transfer of original asset – Exemption is allowed. [S. 45] 871
Dismissing the appeal of the revenue the Tribunal held that the term owns more than one residential house used in S. 54F (1) has to be strictly construed and accorded to its literal meaning. Hence, it would not include partial or fractional ownership. Thus the assesse was eligible for deduction u/s. 54F on the date of transfer of original asset. Followed *ITO v. Shri Rasiklal N. Satra (2006) 98 ITD 335 (Mum) (Trib). ITA No. 3788/Mum/2016 (Mum.)* dt. 31.01.2018- 'F' Bench.
DCIT v. Shri Dawood Abdulhussain Gandhi (Mum.)(Trib.) (UR) www.itatonline.org

S. 54F : Capital gains – Investment in residential house – Purchase – Constructed in phased manner and payments was linked to stage of construction, it is a purchase and not construction of new asset – Exemption is allowable. [S. 45] 872
The assessee claimed u/s 54F in respect of capital gains on sale of shares in respect of apartment buyer's agreement entered with SEPL for purchase of a new residential apartment as per which the assessee was required to make a payment which was paid by assessee on various dates. The AO held that assessee had not purchased the new flat but had made payment towards installment to the builder for construction of the property, therefore, as the new asset was constructed then time limit is there, i.e., the date of sale of original asset till the expiry of 3 years thereafter applied. The assessee had started investing in the new asset from 3 years and 11 months before the date of sale. Around 90% of the total investment in the new asset was made before the date of sale of the original asset. The AO held that assessee was not eligible for deduction u/s. 54F of the Act. Tribunal held that, assessee had sold shares, entered into an agreement with a builder for purchase of new residential flat which was constructed by builder in phased manner and payment of which was linked to stage of construction, it was a case of purchase and not construction of new asset hence eligible for deduction. Beneficial

provision and should be liberally interpreted. (Followed *CIT v. Bharti Mishra (2014) 265 CTR 374 (Delhi) (HC) & CIT v. Kuldeep Singh (2014) 270 CTR 561 (Delhi)(HC)* followed). (AY. 2011-12)
Kapil Kumar Agarwal v. DCIT (2019) 178 ITD 255 / 72 ITR 353 (Delhi)(Trib.), www.itatonline.org

873 **S. 54F : Capital gains – Investment in a residential house – Claim was raised first time before the Tribunal – Matter remanded for adjudication. [S. 254(1)]**
Before the Tribunal the assessee had raised a claim towards his entitlement for claim of deduction under S. 54F in respect of an investment that was made by him towards purchase of a property, vide a registered agreement. It had placed on record copy of purchase deed in support of his aforesaid entitlement towards deduction under S. 54F. Tribunal remanded the matter to AO for adjudication. (AY. 2014-15)
Kishore Hira Bhandari v. ITO (2019) 177 ITD 565 (Mum.)(Trib.)

874 **S. 54F : Capital gains – Investment in a residential house – Capital gain account scheme – Deposited before expiry of date of filing of return u/s. 139(4) – Entitle to exemption. [S. 45, 139(4)]**
Assessee claimed deduction under S. 54F against deposit of amount in Capital Gain Account Scheme. AO rejected the claim for deduction on ground that assessee did not deposit amount in said scheme before expiry of time period provided under S. 139(1) of the Act. Tribunal held that S. 54/54F states that unutilised portion of capital gain on sale of capital asset should be deposited before date of furnishing return of tax under S. 139 of the Act accordingly the amount deposited before expiry of date of filing of return u/s. 139(4) is entitle to exemption. (AY. 2013-14)
ITO v. Nilima Abhijit Tannu (2019) 177 ITD 308 (Mum.)(Trib.)

875 **S. 54F : Capital gains – Investment in a residential house – Construction of house – Single house constructed by assessee within three years of sale of land – Entitle for exemption. [S. 45]**
AO denied exemption on grounds that assessee was owner of more than one residential property and secondly new residential house was not constructed within three years from date of sale of land. Tribunal held that except a share in ancestral house, assessee did not possess any other residential property on date of sale of land and, further, assessee furnished approved plan of municipal corporation regarding one single house constructed by assessee within three years of sale of land. Accordingly entitle for exemption. (AY. 2009-10)
Munish Singla v. ACIT (2019) 177 ITD 529 (Chd.)(Trib.)

876 **S. 54F : Capital gains – Investment in a residential house – Not depositing unutilised amount of capital gains in capital gains Scheme Account by date of filing of return – Not entitled to exemption. [S. 45]**
Tribunal held that the assessee was not entitled to the claim of deduction under section 54F of the Act as the assessee had failed to deposit the unutilised amount of capital gains in the Capital Gains Scheme account by the date of filing of the return. (AY. 2013-14)
Sameer Vithalrao Ghanwat v. ITO (2019) 70 ITR 341 (Pune)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Property was co-jointly owned in name of wife – Could not be treated as absolute owner – Exemption cannot be denied. [S. 45] 877

Assessee filed his return claiming deduction under S. 54F in respect of capital gain arising from transfer of capital assets. AO held that at time of transfer of capital asset, assessee was owner of two residential houses out of which one he had jointly purchased with his wife. Accordingly denied the exemption. On appeal the Tribunal held that word 'own' in S. 54F would include only case where a residential house is fully and wholly owned by assessee and, consequently, would not include a residential house owned by more than one person. Since a residential property was co-jointly owned in name of assessee and his wife, he could not be treated as absolute owner of said property and, thus, deduction under S. 54F could not be denied. Followed *Seth Banarsi Dass Gupta v. CIT (1987) 166 ITR 783 (SC)*. (AY. 2010-11)

Ashok G. Chauhan v. ACIT (2019) 176 ITD 717 / 200 TTJ 659 / 180 DTR 94 (Mum.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Full value of consideration – No requirement that sale proceeds alone is to be utilised for making deposit in capital gains scheme – Only one house property as on date of sale of plots – Only net consideration is required to be appropriated towards purchase of new asset. [S. 45, 48, 50C] 878

Tribunal held that the deeming fiction provided under S. 50C in respect of the term "full value of consideration" was to be applied only to S. 48. The meaning of "net consideration" in S. 54F(1) was not governed by the meaning of "full value of consideration" as mentioned in S. 50C. The AO could not adopt the deemed consideration arrived at under S. 50C while computing the deduction of the assessee for the purpose of S. 54F and had to take into account only the "net consideration". Investment is sufficient compliance for claiming exemption though the construction of house property is not completed is entitle to exemption. The investment made by the assessee may be sourced other than entirely from the capital gains. (AY. 2012-13)

Sabita Devi Agarwal (Smt.) v. ITO (2019) 69 ITR 231 (Kol.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Belated construction or possession would not be a ground to deny claim of exemption – Two separate flats purchased by assessee had two separate entrances, treated as one residential house – Entitle to exemption. [S. 45] 879

Dismissing the appeal of the revenue the Tribunal held that, belated construction or possession would not be a ground to deny claim of exemption. Two separate flats purchased by assessee had two separate entrances, treated as one residential house. Entitle to exemption. (AY. 2013-14)

ITO v. Saroj Rani Gupta (Smt.) (2019) 176 ITD 109 (Kol.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Capital Gains Scheme Account – Bank account was opened only for the purpose of depositing compensation received in his hand and the amount was utilised for purchase of plot of land and partial construction thereon – Entitle to exemption. [S. 45] 880

Assessee received certain compensation on compulsory acquisition of his land by RIICO. In return of income, assessee offered said receipts to tax as long term capital

gains and claimed exemption under S. 54F on account of sale consideration deposited in Capital Gain Account Scheme 1988. AO held that the said account was not a Capital Gain Scheme Account and, therefore, denied exemption under S. 54F of the Act. On appeal the Tribunal held that the entire compensation stood deposited in savings bank account maintained with HDFC bank which was opened specifically for purpose of depositing compensation received by assessee and withdrawals had been limited to extent of purchase of plot of land and partial construction. Therefore, assessee's claim for deduction under section 54F could not have been denied on ground that amount of compensation received had not been deposited in Capital Gains Account. Further, fact that said bank account of assessee was attached by Department, there was no way assessee could have met deadline for constructing new house, being three years from date of transfer of original asset. Accordingly claim of deduction was allowed. (AY. 2009-10)

Goverdhan Singh Shekhawat v. ITO (2019) 175 ITD 272 / 175 DTR 353 / 198 TTJ 1 (Jaipur)(Trib.)

881 **S. 54F : Capital gains – Investment in a residential house – Investment in single house but bifurcated with two door numbers for ground and first floor – New house purchased in the joint name of wife and son entitle to deduction – Property need not be purchased by assessee in his own name for claiming exemption. [S. 2(42A), 2(47), 45]**

Assessee sold a house site in previous year and invested sale proceeds in another property and claimed exemption under S. 54F. AO disallowed the claim on the ground that as per description of property purchased by assessee it consisted of two doors and he was of view that assessee purchased two house properties, hence could not be allowed deduction under S. 54F. On appeal Tribunal held that entire property constituted single house but was bifurcated with two door numbers for ground and first floor with common entrance in ground floor only to earmark share of beneficiaries. Accordingly entitle to deduction. Tribunal also held that for claiming deduction of capital gains under S. 54F, new residential house need not be purchased by assessee in his own name. Assessee purchased new house in joint names of himself, his wife and son, he would been titled to benefit of deduction under S. 54F. (AY. 2015-16)

Bhatkal Ramarao Prakash v. ITO (2019) 175 ITD 144 / 199 TTJ 861 / 180 DTR 100 (Bang.) (Trib.)

882 **S. 54F : Capital gains – Investment in a residential house – purchasing land before period of one year prior to sale of another capital asset – Not entitle to exemption. [S. 45]**

Tribunal held that purchasing capital asset i.e. land before period of one year prior to sale of another capital asset is not entitle to exemption. (AY. 2013-14)

Parswanath Padmarajaiah Jain v. ACIT (2019) 175 ITD 55 (Bang.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Deduction cannot be rejected only on the ground that the builder failed to construct construction with in prescribed time. [S. 45] 883

Allowing the appeal of the assessee the Tribunal held, deduction cannot be rejected only on the ground that the builder failed to construct construction with in prescribed time. Also the expenditure incurred for completing the finishing the house cannot be segregated from the act of purchasing semi-finished apartment. (AY. 2011-12)

Dr. Kushagra Kataria v. DCIT (2019) 174 ITD 648 (Delhi)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Deduction cannot be denied only on the ground that bills and vouchers were not produced, when the inspector had visited the site and reported the construction of new house [S. 45] 884

Allowing the appeal of the assessee the Tribunal held that deduction cannot be denied only on the ground that bills and vouchers were not produced, when the inspector had visited the site and reported the construction of new house. (AY. 2009-10)

Govind Gangadhar Sabane v. ITO (2019) 174 ITD 577 (Pune)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Though new asset purchased within prescribed period had been let out would still be entitled to claim deduction [S. 45] 885

Dismissing the appeal of the revenue the Tribunal held that though new asset purchased within prescribed period had been let out would still be entitled to claim deduction. The amendment to proviso to S. 54F made by Finance Act, 2000 as clarified by Circular No. 794, dt. 9-8-2000 (2000) 245 ITR 121 (St) which is the Explanatory Note to Finance Act, 2000. (AY. 2013-14)

ACIT v. Ishita Mohatta (Mrs.) (2019) 174 ITD 407 (Kol.)(Trib.)

S. 55 : Capital gains – Capital receipt – Cost of improvement – Cost of acquisition – 'Know-how under development' does not created a right – If the know – how is not registered, no rights are conferred – Cost of acquisition of will be not ascertainable – As computation mechanism fails, capital gains will not be chargeable. [S. 35, 41(3), 45, 55(2)(a)] 886

The assessee has transferred a know-how under development (i.e. the know-how was not complete and would require further work and development to become commercially exploitable) and claimed the consideration as exempt capital receipt. The Assessing Officer taxed the receipt as taxable u/s 41(3) as sale of asset representing capital expenditure of scientific nature covered u/s 35. On appeal, the CIT (A) held that S. 41(3) will not apply as the know-how was a self-generated asset and thus deduction u/s 35 could not have been claimed. However, the receipt from transfer of the know-how will be taxable as capital gains. Further, based on the provisions of S. 55(2)(a), the CIT(A) held that the cost of acquisition will be Nil in case of 'right to manufacture, produce or process any article or thing'. Aggrieved, the assessee and the Revenue were in appeal against the CIT(A) order. The Tribunal held that the know-how is only under development and does not generate a right. Further, as the know-how was not registered,

right cannot be conferred upon the owner. Thus, the Tribunal held in case of know-how under development, cost of acquisition cannot be Nil in terms of S. 55(2)(a). As the cost of acquisition is not ascertainable, capital gains would not be chargeable. (AY. 2006-07)
Bharat Serums and Vaccines Ltd. v. ACIT (2019) 73 ITR 205 / 181 DTR 321 (Mum.)(Trib.)

887 **S. 55 : Capital gains – No cost of acquisition – Transfer of trade mark – Cost of acquisition is not ascertainable – Not liable to tax [S. 2(14), 4, 45, 48, 55(2)(a)]**
Dismissing the appeal of the revenue the Tribunal held that, though the trade mark is a capital asset which was transferred by an agreement for a period of two years, as the cost of acquisition is not ascertainable receipt is capital receipt and not liable to capital gains tax. (AY. 1998-99)
ITO v. Modern Home Care Products Ltd. (2019) 174 ITD 209 / 197 TTJ 377 / 174 DTR 209 (Delhi)(Trib.)

888 **S. 55A : Capital gains – Reference to valuation officer – Cost of acquisition – Filing valuation report – Refusal to make reference to valuation officer is not proper – Matter remitted to Assessing Officer for reference to valuation officer. [S. 45]**
Court held that the Assessing Officer should have made a reference to the Valuation Officer under S. 55A in respect of the cost of acquisition of the land sold by the assessee. Even before the AO, the assessee had produced the report of a registered valuer and the assessee had based his claim on the estimate made by a registered valuer. The AO had not shown any reason whatsoever to have rejected the valuation made by the registered valuer. The matter was remitted to the AO to make a reference under S. 55A to the Valuation Officer. (AY. 2006-07)
C. V. Sunny v. CIT (2019) 415 ITR 127 / 179 DTR 115 / 309 CTR 291 / 265 Taxman 19 (Mag.) (Ker.)(HC)

889 **S. 55A : Capital gains – Reference to valuation officer – Only where Assessing Officer of opinion that Valuation of Registered Valuer Less than fair market value of property – Amendment to S. 55A is not retrospectively applicable. [S. 45]**
Held that reference to the Departmental Valuation Officer under S. 55A of the Act was to be made only when the value of the property disclosed by the assessee was less than the fair market value. If the value adopted by the assessee of the property was much more than the fair market value, there was no question of reference to the Departmental Valuation Officer. The present case pertained to the assessment year 2011-12 and the financial year 2010-11 and the amendment to S. 55A was brought into effect from July 1, 2012, effective from the assessment year 2012-13 and that amendment was not retrospectively applicable. (AY. 2011-12)
Balu Vitthal Kharate v. ITO (2019) 70 ITR 315 (Pune)(Trib.)

890 **S. 56 : Income from other sources – Capital or revenue – Amount received for relinquishing secretary ship of educational society cannot be treated as a capital receipt – Assessable as income from other sources. [S. 4, 45]**
Amount received by assessee for relinquishing secretary ship of educational society cannot be treated as a capital receipt. The question of the principle of capital asset being

invoked does not arise. The receipt is assessable as income from other sources. It may have been a different matter if it was a case of life time appointment of the assessee as Secretary of the concerned Institution but no such evidence was produced by the assessee. (BP 1-4-1990–14-7-2000)
H. S. Ramchandra Rao v. CIT (2019) 419 ITR 480 / 311 CTR 945 / 184 DTR 305 (SC) www.itatonline.org
Editorial : Order in CIT v. Ramachandra Rao (2011) 330 ITR 322 (Karn.)(HC) is affirmed.

S. 56 : Income from other sources – Issue of shares at premium – Fair market value of shares – AO has to undertake exercise of determining fair market value of shares – Matter remanded. [S. 56(2)(viib), 119] 891
Assessee-company was formed with two shareholders. One of shareholders introduced a sum of ₹ 23.32 crores in company through banking channels and from said money, she was allotted 10100 shares at a premium of ₹ 23,086 per share. AO held that since shares in question were issued at a premium far in excess of Fair Market Value of shares in favour of shareholder, same was clearly 'Income from other sources' in hands of closely held company which was covered by clause (viib) of section 56(ii) of the Act. Tribunal held that the benefit had only passed on her daughter shareholder, other 50 percent shareholder and there is no scope in the Act to tax cash or asset transferred by a mother to her daughter. On appeal by the revenue Court held that AO has to undertake exercise of determining fair market value of shares. Matter remanded. Court also observed that the assessee may also seek necessary clarification from the Central Board of Direct Taxes on administrative side. (AY. 2014-15)
CIT v. Vaani Estates (P.) Ltd. (2019) 264 Taxman 310 / 310 CTR 12 / 180 DTR 90 (Mad.) (HC)

S. 56 : Income from other sources – Issue of shares at premium – Provisions require the value of assets to be at FMV regardless of the book entries – Valuation of share premium on issue of unquoted equity shares by closely held company basis such FMV justified. [S. 56(2)(viib)] 892
Held by the Tribunal that, S. 56(2)(viib) itself provides for determination of FMV based on value of underlying assets. Hence, such fair value once substantiated, all the assets, whether recorded in books or not, appearing in the books at their intrinsic value or not, has to be valued at FMV and would be replaced with the book value for the purposes of valuation of share premium on issue of unquoted equity shares. The valuation got done after the issue of shares is really of no consequence. (AY. 2014-15).
Unnati Inorganics (P) Ltd. v. ITO (2019) 183 DTR 333 / 202 TTJ 347 (Ahd.)(Trib.)

S. 56 : Income from other sources – Share premium – Valuation of shares – Fair Market Value – Valuation considers various factors and not only balance sheet – Rejection of evidence is held to be not valid. [S. 56(2)(viib), R. 11UA] 893
Assessee issued 70 lakh equity shares of ₹ 10/- each at a premium of ₹ 5 per share, receiving a total premium of ₹ 3.5 Crores. A.O. invoked the provisions of S. 56(2)(viib) and determined the fair market value of each share at ₹ 6.65/-. The premium received was

added back to the total income of the assessee. The CIT(A) rejected the valuation of the assessee and A.O. and applied rule 11UA to determine the value at ₹ 10.05/-. The assessee challenged the order before the Tribunal. The assessee submitted that it had obtained the permission of the competent authority for the change of land use from agricultural to institutional for art, culture and convention centre. The total area of the land was 51366.94 sq. yards, while the circular rates of the institutional area were ₹ 22,000/-per sq. yard. The total value of land would come to ₹ 113 crores. After adding the total assets (9.18 lakh) and reducing the total liability of ₹ 46.56 crores, net asset value comes to ₹ 66.54 crores. If the net asset value is divided by the number of equity shares issued (10.10 lakh), the value of each share is ₹ 658.83 crores. The Tribunal accepted the assessee submissions, held the valuation of the shares should be made based on various factors and not merely on the financials/balance sheet as done by lower authorities. Further, it held that valuation could not be rejected, where it demonstrated the fair market value of the asset is more than the value of the balance sheet. (AY. 2014-15)

India Convention and Culture Centre Pvt. Ltd. v. ITO (2019) 75 ITR 538 / 111 Taxmann.com 252 (Delhi)(Trib.), www.itatonline.org

894 **S. 56 : Income from other sources – Immovable property – Power of attorney executed in assesses favour – Assessee transferred full rights in respect of a plot without any consideration – Power of attorney was executed to maintain the property – No transfer of property. [S. 56(2)(vii)(b)]**

A Power of Attorney was executed by Smt. Harsharan Kaur, in assessee's favour. The assessee transferred full rights in respect of a plot without any monetary consideration to one Sh. Deepak Pal Singh. The Ld. AO held that value of said plot equal to stamp duty value was chargeable to tax as "income from other sources" u/s 56(2)(vii)(b) and made additions accordingly. The Ld. CIT(A) observed that the assessee was given a general POA duly registered with the Registrar. Therefore, the assessee had acquired various rights including the right to sell. The Tribunal held that a general Power of Attorney was given to assessee to maintain property, it could not be said that assessee had received property and was liable to pay tax on stamp duty value of said property, and hence would not give right to assessee in his individual capacity to acquire any right, title or interest in property. A power of attorney was not an instrument of transfer in regard to any right, title or interest in an immovable property and accordingly deleted the addition (AY. 2010-11)

Gurdev Singh v. ITO (2019) 177 DTR 267 / 199 TTJ 535 (Asr.)(Trib.)

895 **S. 56 : Income from other sources – Definition of relative – Includes Adopted child – "blood relative" is not mandatory. [S. 56(2)(vi)]**

It was the case of the assessee that out of his natural love and affection the donor has gifted amount to the assessee from his income/capital. The gifts were not liable to income tax in his hands under Income Tax Act as they were 'capital receipts'. S. 56(2)(vi) also exclude gifts from individuals from certain specified relatives including 'brother-in-law' from the purview of taxation. Since the donor resides in Mumbai, it was not possible for him to come down to Baroda before the AO within such short notice. Although It was categorically mentioned in the said reply that the donor was a regular

tax payer and is regularly assessed to tax for these years, the AO added ₹ 5,00,00,000/- in the hands of the assessee. The Learned CIT(A) deleted the addition. The Department contested that, the assessee is not a blood relative of Mr. N. It was submitted by the assessee that the assessee is an adopted child under the Hindu Law, mainly Hindu Adoption and Maintenance Act, 1956 the assessee is having same status as of the own child of a spouse in this case. Tribunal held that as the details of the donor starting from PAN number, capital gain statement, bank statement and others is annexed to the paper book, which was duly placed before the authorities below. It appears that when Shri NS not brought to the Learned AO by the assessee no further enquiry was conducted by him, no record against the assessee was also brought. Apart from that, the creditworthiness and/or genuineness of the transaction though doubted by the Learned AO, the same has not been proved by any cogent document in favour of the revenue. Further that, whether the gift so received by the assessee from his brother-in-law is exempted from tax under S. 56 of the Act has been considered on a wrong notion. Instead of relative as provided by the statute, "blood relative". Hence, the Revenue's appeal is dismissed. (AY. 2008-09, 2009-10)
Dy. CIT v. Arvind N. Nopany (2019) 174 DTR 313 (Ahd.)(Trib.)

S. 56 : Income from other sources – HUF – Gift – Amount received as gift from 'HUF', being its member, is a capital receipt not liable to tax – Revision is held to be not valid. [S. 4, 10(2), 56(2)(vii), 263] 896

The assessee received a gift of ₹ 5,90,000/-from his 'HUF'. The AO held that since the amount of said gift was more than ₹ 50,000/-, hence, the same was exigible to tax as 'income from other sources' under S 56(2)(vii) of the Act. Subsequently, in course of reassessment proceedings, assessee submitted that 'HUF' being a group of relatives, hence, the gift by the 'HUF' to an individual is nothing but a gift from group of relatives and as per the exclusion clause 56(2)(vii) a gift from relative was not exigible to taxation. The AO accepted the contentions raised by the assessee and accordingly assessed the income of the assessee at the returned income. CIT set aside the order passed by the AO and held that the 'HUF' did not fall in the definition of relative in case of an 'individual' as provided in Explanation to clause (vii) to S. 56(2) as substituted by Finance Act, 2012 with retrospective effect from 1-10-2009. That though, the definition of a relative in case of a 'HUF' was extended to include any member of the 'HUF', yet, in the said extended definition, the converse case was not included that is to say in the case of individual, the 'HUF' had not been mentioned in the list of relatives. The Commissioner thus formed a view that though a gift from a member thereof to the 'HUF' was not exigible to taxation as per the provisions of S. 56(2)(vii), however, a gift by the 'HUF' to a member exceeding a sum of ₹ 50,000/-was taxable. Accordingly set aside the order of the AO and directed the AO to make assessment afresh. On appeal the Tribunal held that the property of the 'HUF' neither cannot be said to belong to a third person nor can be said to be in 'corporate entity', rather, the same is the property of the members of the family. It is because that the share of each of the individual member in the property or income of the 'HUF' is not determinate, hence, the family, as such, is treated as separate entity for taxation purposes. 'HUF' otherwise is not recognized as a separate juristic person distinct from the members who

constitute it. A member of the 'HUF' has a pre-existing right in the family properties. A Coparcener has a pre-existing right and interest in the property and can demand partition also, however, the other members of the 'HUF' have right to be maintained out of the 'HUF' property. On division, the share in the estate/capital of the 'HUF' cannot be treated as income of the recipient, rather, the same will be a capital receipt in his hands. Accordingly the amount received by the assessee from the 'HUF', being its member, it is a capital receipt in his hands and is not exigible to tax. (AY. 2011-12)
Pankil Garg v. PCIT (2019) 178 ITD 282 (Chd.)(Trib.), www.itatonline.org

897 **S. 56 : Income from other sources – Gift – Difference in valuation in fair market value of property and value adopted by the AO is less than 1% – Deletion of addition is held to be justified. [S. 56(2)(viia)]**
Dismissing the appeal of the revenue the Tribunal held that Difference in valuation in fair market value of property and value adopted by the AO is less than 1%. (AY. 2013-14)
DCIT v. Jain Housing (2019) 178 ITD 814 (Chennai)(Trib.)

898 **S. 56 : Income from other sources – Shares at premium – Valuation of shares – FMV of shares was estimated after considering intangible assets like goodwill, know – how, patents, copyrights, trademarks, licences, franchises, etc – Re valuation of shares by the AO is held to be not justified. [S. 52(viib)]**
Assessee issued shares having face value of ₹ 10 per share at premium of ₹ 1590 per share. The AO held that, share premium was much higher than value estimated under rule 11UA and therefore he determined excess amount as income of assessee u/s. 56(2)(viib) of the Act. On appeal Tribunal held that, FMV of shares was estimated after considering intangible assets like goodwill, know-how, patents, copyrights, trademarks, licences, franchises, etc. AO had not found any specific fault in valuation of shares made by assessee. When the AO has not found any defect or error in the valuation of shares by the assessee-company, it may not be necessary to apply the method of valuation prescribed under rule 11UA. Hence, revaluation of shares by the AO under rule 11UA was unjustified. (AY. 2013-14, 2015-16)
Lalithaa Jewellery Mart (P.) Ltd. v. ACIT (2019) 178 ITD 503 / 73 ITR 532 / 182 DTR 337 / 201 TTJ 1123 (Chennai)(Trib.)

899 **S. 56 : Income from other sources – Bonus shares – Provisions of S. 56(2)(vii)(c) would not apply to bonus shares. [S. 56(2)(vii)(c)]**
The assessee received bonus shares from BIPL without taking any consideration for these shares and 1,47,357 right shares were allotted to the assessee at the face value of ₹ 10 per share. The AO applied provisions of S. 56(2)(vii) and made an addition on account of the difference between the fair market value of the bonus shares received by the assessee and the actual consideration at which they were allotted to the assessee as income from other sources. The CIT (A) deleted the addition stating that provisions of S. 56(2)(vii)(c) would not apply to bonus shares. On appeal the Tribunal up held that order of the CIT (A). (AY 2010-11)
DCIT v. Mamta Bhandari (Smt.) (2019) 178 ITD 89 (Delhi)(Trib.)

S. 56 : Income from other sources – Share Premium – Share application money received from non-residents – Provisions of S. 56(2)(viib) is not applicable – Additions cannot be made as cash credits. [S. 56(2)(viib), 68] 900

Assessee received share application money from non-residents. The AO held that act of receiving share application money in excess of authorized share capital of assessee was not in accordance with law and, therefore, money received could not be considered as towards share application money accordingly he treated money received from non-residents as income of assessee and brought same to tax under head income from other sources. The Tribunal. Held that, the details of receipt of share application money on various dates given. Further assessee had applied to the ROC for increase in authorized share capital of equity shares and application money received from various share applicants was converted into equity shares under Board Resolution allotting shares to the various share applicants. Hence, there is no provision for invoking S. 68. Further provisions of S. 56(2)(viib) are applicable only for receipt of consideration for issue of shares from a resident and not in the case of a non-resident. (AY. 2015-16)

Edulink (P.) Ltd. v. ITO (2019) 178 ITD 174 (Bang.)(Trib.)

S. 56 : Income from other sources – Interest income – Bank deposits – Assessable as income from other sources and not as income from business. [S. 28(i)] 901

Assessee earned interest income of certain amount from bank deposits and loans given to several related parties. The AO held that interest income earned on parking of funds with banks and loans was taxable as income from other sources u/s. 56. Affirming the view of the AO the Tribunal held that, since assessee had failed to demonstrate any business compulsion to make bank deposits or advance loans nor did it show that such deposits and loans were integral part of its business activities, hence interest income earned by assessee is taxable as income from other sources. (AY. 2014-15, 2015-16)

Global Entropolis (Vizag) (P.) Ltd. v. ACIT (2019) 178 ITD 179 / 202 TTJ 384 (Bang.)(Trib.)

S. 56 : Income from other sources – Valuation – Start-up – Shares issued at premium – DCF method – Commercial expediency has to be seen from point of view of businessman – Addition is held to be not justified. [R. 11UA(2)] 902

Tribunal held that as per clause (i) of the Explanation to section 56 the FMV is to be determined in accordance with such method as may be prescribed. The method to determine the FMV is further provided in rule 11UA(2). The assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method. The assessee being a 'start-up company' having lot of projects in hand had adopted DCF method to value its shares. If the statute provides that the valuation has to be done as per the prescribed method and one of the prescribed methods has been adopted by the assessee, then AO has to accept the same and in case he is not satisfied, then there is no express provision under the Act or rules, where AO can adopt his own valuation in DCF method or get it valued by some different Valuer. Accordingly, appeal of the assessee was allowed and the addition was deleted. (AY. 2015-16)

Cinestaan Entertainment (P) Ltd. v. ITO (2019) 180 DTR 65 / 200 TTJ 459 / 177 ITD 809 (Delhi)(Trib.), www.itatonline.org

903 **S. 56 : Income from other sources – Valuation of unquoted equity shares on 31-3-2014 – If balance sheet was not drawn up by auditor on 31-3-2014, assets and liabilities in balance sheet of immediately preceding year, i.e., 31-3-2013 should be adopted. [S. 56(2)(viib), R. 11UA]**

Tribunal held that while valuing unquoted equity shares on 31-3-2014, if the balance sheet was not drawn up by auditor on 31-3-2014, assets and labilities in balance sheet of immediately preceding year i.e. 31-3-2013 should be adopted. (AY. 2014-15)

Sadhvi Securities (P.) Ltd. v. ACIT (2019) 179 ITD 197 (Delhi)(Trib.)

904 **S. 56 : Income from other sources – Foreign company – DCF Method – Receipt of property less than aggregate fair value of the property – S. 56(2)(viia) cannot apply to a foreign company as Rule 11U(b)(ii) (prior to 1-4-2019) which defines "balance sheet" was not applicable to a foreign company – If the computation provisions cannot apply, the charging section cannot apply. The amendment to Rule 11U with effect from 1-4-19 is prospective in nature – Rejection of DCF method is held to be not proper. [S. 56(2)(viia), Rule 11UA(b)(ii)]**

The AO made addition u/s. 56(2)(viia) of the Act by treating the difference between the fair value of the shares and the purchase price of shares of the shares by the assessee. CIT(A) confirmed the order of the AO. Tribunal held that rejection of DCF method is held to be not proper. Tribunal held that S. 56(2)(viia) cannot apply to a foreign company as Rule 11U(b)(ii) (prior to 1-4-2019) which defines "balance sheet" was not applicable to a foreign company. If the computation provisions cannot apply, the charging section cannot apply. The amendment to Rule 11U with effect from 1-4-19 is prospective in nature. (Followed *CIT v. B. C. Srinivasa Shetty (1981) 128 ITR 294 (SC), CIT v. Official Liquidator Palai Central Bank Ltd(In liquidation) (1985) 1 SCC 45)*. (ITA No. 1703/Mum/2019, dt. 16.10.2019)(AY. 2015-16)

Keva Industries Pvt. Ltd. v. ITO (2020) 186 DTR 134 / 203 TTJ 672 (Mum.)(Trib.), www.itatonline.org

905 **S. 56 : Income from other sources-The assessee has the option to determine the fair market value of shares either under the Discounted cash flow (DCF) method or the Net Asset Valuation (NAV) method. [S. 56(2)(viib), R. 11UA]**

Allowing the appeal of the assessee the Tribunal held that, the assessee has the option to determine the fair market value of shares either under the DCF method or the NAV method. The assessee's choice is binding on the AO. While the AO can scrutinize the working, he cannot discard the assessee's method and substitute another method (*Vodafone M-Pesa Ltd. v. PCIT [2018] 92 taxmann.com 73 (Bom.)* referred) followed *Rameshwaram Strong Glass (P) Ltd v. ITO (2018) 172 ITD 571 (Jaipur) (Trib) DCIT v. OZoneland Agro Pvt. Ltd. (Mum.)(Trib.)* www.itatonline.org, *Medplus Health v. ITO (ITA No 871 /Hyd /2015, Regal Builtech Pvt. Ltd. v. ACIT (7505/ Del/ 2018)* (ITA No. 3521/ Mum/2018, dt. 22.08.2019)(AY. 2013-14)

Narag Access Pvt. Ltd. v. DCIT (Mum.)(Trib.), www.itatonline.org

S. 56 : Income from other sources – Preference shares – Premium – Valuation is to be made as per Rule 11UA(1)(c) – Matter set aside. [S. 56(2)(vii)(b), R. 11UA(1)(c)] 906

Assessee issued preference shares of ₹ 100 each at premium of ₹ 100 per share. AO determined fair market value of preference shares at ₹ 150. 39 per share and excess amount is brought to tax u/s. 56(2)(vii)(b) of the Act, which was confirmed by the CIT(A). On appeal the Tribunal held that the valuation of the preference shares, the valuation should be determined as per rule 11UA(1)(c) which required the assessee to obtain a report from a merchant banker or a Chartered Accountant to determine the price which preference shares would fetch if sold in the open market on the valuation date. Accordingly the matter is set aside to the file of the Assessing Officer who shall determine the value of the preference shares as per the NAV method based on formula. (AY. 2013-14)

Ginni Global (P.) Ltd. v. ACIT (2019) 177 ITD 278 / 182 DTR 44 / 201 TTJ 524 (Jaipur)(Trib.)

S. 56 : Income from other sources – Gift – Property – Purchase of a piece of land as stock-in-trade – Not property – Provision is not applicable – Matter is set aside. [S. 45, 56(2)(vii)(b)(ii)] 907

Assessee is engaged in real estate business who purchased a piece of land as its stock-in-trade. AO invoked provisions of S. 56(2)(vii)(b)(ii) adopting full value of sale consideration as adopted by stamp authority. Tribunal held that provisions of S. 56(2)(vii) have application to property which is in nature of a capital asset of recipient and, therefore, same would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient. Accordingly the order of the AO is set aside. (AY. 2015-16)

Satendra Koushik v. ITO (2019) 177 ITD 286 (Jaipur)(Trib.)

S. 56 : Income from other sources – AO can scrutinize the valuation report and determine a fresh valuation either by himself or by calling from independent valuer to conform the assessee but the basis has to be DCF method. 908

During the course of assessment proceedings, AO noted that assessee company collected ₹ 2,45,02,463/-as securities premium on issue of shares. AO asked assessee to substantiate the share premium so collected. In response, assessee submitted certificate obtained by Chartered Accountant. The valuation adopted by the assessee found to be as per DCF. However, AO held that the valuation of the assessee cannot be accepted without verifying the credibility of the data provided by the assessee. Accordingly, AO rejected the valuation of the assessee and adopted NAV method and thus made an addition of ₹ 1,12,21,109/-. On appeal, CIT(A) upheld the order of AO. Aggrieved by the same, assessee appealed before the ITAT. The Tribunal held that AO can scrutinize the valuation report and if he is not satisfied with the explanation of the assessee, he has to record the reasons and basis for not accepting the valuation report submitted by the assessee. Only thereafter, he can go for own valuation or to obtain the fresh valuation report from an independent valuer and confront the same to the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. Further for scrutinizing the valuation report, the facts and data available on the date of valuation only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections. The Tribunal further held that primary onus to prove the correctness of the valuation report is on the assessee as

he has special knowledge and he is privy to the facts of the company and only he has opted for this method. Hence, he has to satisfy about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method, scientific study and applicable Guidelines regarding DCF Method of Valuation. With this observations the Tribunal restored the matter back to AO for a fresh decision. (AY. 2014-15)
Innoviti Payments Solutions P. Ltd. v. ITO (2019) 69 ITR 33 (SN.) / 175 ITD 10 / 178 DTR 355 / 199 TTJ 626 (Bang.)(Trib.)

909 **S. 56 : Income from other sources – Excess share premium – Second level subsidiary of a company in which public are substantially interested – Addition cannot be made. [S. 2(18), 2(24), 56(2)(viib), R. 11UA]**
During year, assessee-company issued shares at premium of ₹ 990 per share. AO added excess share premium collected to income of assessee by invoking provisions of S. 56(2)(viib) of the Act. Tribunal held that the assessee was second level subsidiary of a company in which public was substantially interested hence would not fall under S. 56(2)(viib) of the Act. Accordingly the addition made by AO was not justified. (AY. 2015-16)
Apollo Sugar Clinics Ltd. v. DCIT (2019) 176 ITD 724 / 200 TTJ 875 / 182 DTR 142 (Hyd.) (Trib.)

910 **S. 56 : Income from other Sources – Purchase of shares at ₹ 4 per shares when the market price was ₹ 140 per share – Failure to explain by credible evidence or any reason or no motive for tax evasion – Difference is held to be taxable as income. [S. 56(2)(vii)(c)]**
The assessee's purchase of shares of NDTV Ltd at ₹ 4 per share from RRPR Holdings Pvt Ltd when the market price of the share was ₹ 140 is a benefit taxable u/s 56 (2) (vii). The argument that as it is a transaction between closely related parties, there is no motive of tax evasion & S. 56 (2) does not apply is not acceptable. The assessee has failed to explain by credible evidence any reason of buying shares of the company at Rs. 4 per share when the quoted price was ₹ 140 & so the assessee cannot say that there was no motive of tax evasion. Even otherwise, S. 56 (2) deems such differences/receipts as income. (AY. 2009-10, 2010-11)
Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org
Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

911 **S. 56 : Income from other sources – Share premium – Fair market value of shares (FMV) – Discounted Cash Flow (DCF) – Book value – Consistently followed the method valuing the shares at discounted cash flow – Share premium cannot be taxed – Addition is deleted. [S. 56(2)(viib), R. 11UA]**
Assessee-company issued shares at a premium of ₹ 140 per share for face value of ₹ 10 each share by following Discounted Cash Flow' method (DCF). It received ₹ 2.8 crores as share premium. Assessing Officer applied 'Book value' method and computed value of shares of assessee at ₹ 2.36 and 'nil' on 1-4-2012 and 31-3-2013, respectively

and taxed share premium. CIT (A) deleted the addition. Dismissing the appeal of the revenue, the Tribunal held that for immediately succeeding year viz., assessment year 2014-15 revenue itself had accepted DCF method of valuation of shares. Allowing the appeal of the assessee the Tribunal held that in absence of any distinguishing facts, revenue could not have whimsically declined to accept method of valuation of shares for year under consideration; and AO was incorrect in adopting an inconsistent approach of valuation. Accordingly the CIT(A) is justified in deleting the addition (AY 2013-14)
ACIT v. Enterprises Business Solutions (P.) Ltd. (2019) 176 ITD 324 / 200 TTJ 268 / 179 DTR 321 (Asr.)(Trib.)

S. 56 : Income from other sources – Capital gains-Income chargeable under specific head cannot be assessed under residuary head as income from other sources. [S. 45, 47(iii)] 912
Income assessable under capital gains can be brought under capital gains only it cannot be assessed under the residuary head as income. (AY. 2012-13)
Jayneer Infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 179 TTJ 179 (Mum.)(Trib.)

S. 56 : Income from other sources – Share premium – Amount received in excess of fair market value of shares – S. 56(2)(viib) which seeks to tax amount received in excess of fair market value of shares is applicable only from assessment year 2013-14. [S. 56(2)(viib), 68] 913
Share premium received in excess of fair market value of shares cannot be brought to tax during the relevant year. S. 56(2)(viib) which seeks to tax amount received in excess of fair market value of shares only applies from assessment year 2013-14. (AY. 2012-13)
Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

S. 56 : Income from other sources – Gift – Assesse was transferor and not recipient and shares in question were those of listed companies-provisions of S. 56(2)(viia) would not apply. [S. 56(2)(viia)] 914
Provisions of S. 56(2)(viia) apply in a case where a company receives shares of private limited companies for without or inadequate consideration. Assessee was transferor and not recipient and moreover shares in question were those of listed companies provisions of S. 56(2)(viia) could not apply. (AY. 2012-13)
Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

S. 56 : Income from other sources – Fair Market Value – DCF method – Closely held company – The fact that the company is loss-making does not mean that shares cannot be allotted at premium. The DCF method is a recognised method though it is not an exact science & can never be done with arithmetic precision. The fact that future projections of various factors made by applying hindsight view cannot be matched with actual performance does not mean that the DCF method is not correct. [S. 56(2)(viib) / Rule 11UA] 915
The fact that the company is loss-making does not mean that shares cannot be allotted at premium. The DCF method is a recognised method though it is not an exact science

& can never be done with arithmetic precision. The fact that future projections of various factors made by applying hindsight view cannot be matched with actual performance does not mean that the DCF method is not correct. (AY. 2013-14, 2014-15)
India Today Online Pvt. Ltd. v. ITO (2019) 176 ITD 459 / 178 DTR 17 / 199 TTJ 681 (Delhi)(Trib.), www.itatonline.org

916 **S. 56 : Income from other sources – Joint venture company of Central and State Government – Metro Rail project – Fixed deposit with Bank – Not assessable as income from other sources. [S. 4]**
Dismissing the appeal of the revenue the Tribunal held that, entire fund entrusted and interest accrued therefrom on deposits in bank though in name of assessee had to be applied only for purpose of welfare of State. Accordingly the interest earned on bank deposit could not be brought to tax under head income from other sources. (AY. 2010-11, 2011-12)
ITO v. Kolkata Metro Rail Corpn. Ltd. (2019) 175 ITD 347 (Kol.)(Trib.)

917 **S. 56 : Income from other sources – Share premium – For purpose of sub-rule (2) of rule 11UA, an auditor cannot be account of assessee – company. [S. 44AB, 56(2)(viib), 288(2)]**
For purpose of sub-rule (2) of rule 11UA, an auditor cannot be accountant of assessee-company, therefore, where person who valued shares of assessee-company was none other than person who signed audit report under section 44AB, Assessing Officer was justified in ignoring valuation report submitted by assessee and determining fair market value on basis of NAV. Share of 10 was valued at ₹ 400 i.e. Premium of ₹ 390 was rejected. Tribunal also observed that share was valued at ₹ 100 per share as on 2-2-2012 and on 15-11-2013 at ₹ 400 per share. (AY. 2014-15, 2015-16)
Kottaram Agro Foods (P.) Ltd. v. ACIT (2019) 175 ITD 159 / 199 TTJ 402 / 177 DTR 370 (SMC) (Bang.)(Trib.)

918 **S. 56 : Income from other sources – Interest income earned on depositing surplus funds in FDRs is assessable as income from other sources and not as business income. [S. 28(i)]**
Tribunal held that the assessee was engaged in business of real estate development and construction, interest income earned by him from depositing surplus funds in FDRs could not be considered as business receipts rather same was taxable as 'income from other sources'. (AY. 2001-02 to 2008-09)
Puran Ratilal Mehta v. ACIT (2019) 175 ITD 190 / 178 DTR 217 / 199 TTJ 607 (Mum.) (Trib.)

919 **S. 56 : Income from other sources – Compulsory cumulative convertible Preference Shares (CCCPS) at huge premium – Voting right on various resolutions – Matter restored to CIT(A) to consider all terms of issue of preference shares and decide a fresh in terms of rule 11UA. [S. 56(2)(viib), R. 11UA(2)(a)]**
Assessee-company allotted Compulsory Cumulative Convertible Preference Shares (CCCPS) at a premium of ₹ 490 per share to various parties. AO referred to valuation report of Chartered Accountants which was obtained by assessee for valuation of shares as per DCF method at ₹ 516 per share. AO held that the said certificate obtained by

assessee from CA was a self-serving document because valuation had been done by CA on basis of projections made and certified by management. AO also held that as per rule 11UA(2)(a), fair market value of each share was ₹ 56.17 and since, share premium was received at rate of ₹ 490 per share, he made addition of differential amount to assessee's income. In appeal CIT(A) confirmed the addition. On appeal the Tribunal held that in view of fact that as per Letter of Offer holder of preference share was also given voting right on various resolutions, it became necessary to look into all terms of issue of preference shares so as to find out whether receipt of share premium in question was for issue of preference shares or for issue of equity shares. Accordingly the matter was to be remanded back for disposal afresh in terms of rule 11UA. (AY. 2015-16)
2M Power Health Management Services (P.) Ltd. v. ITO (2019) 175 ITD 64 (Bang.)(Trib.)

S. 56 : Income from other sources – Agricultural land – Gift – Agricultural land is an immovable property – Stamp valuation – It is immaterial whether they fall under definition of capital asset or stock-in-trade – Chargeable as gifts. [S. 2(14), 50C, 56(2)(viib), 69] 920

Tribunal held that provisions of S. 56(2)(vii)(b) refer to any immovable property and same is not circumscribed or limited to any particular nature of property. Accordingly the agricultural lands fall under definition of an immovable property for the purpose of S. 56(2)(vii)(b) of the Act. It is immaterial whether they fall under definition of capital asset or stock-in-trade. Accordingly the addition made as unexplained investment is affirmed. (AY. 2014-15)
ITO v. Trilok Chand Sain (2019) 174 ITD 729 / 199 TTJ 395 / 177 DTR 76 (Jaipur)(Trib.)

S. 56 : Income from other sources – Share holder – Close relatives – Transactions between close relatives provisions of S. 56(2) (vii)(c) is not applicable – Revision on the basis of audit objection is held to be not valid. [S. 56(2)(vii)(c), 263] 921

The assessee was holding 76 percent of total shareholder in Jai Maakali Poultry Products Pvt Ltd. There were total seven shareholders in the company and all of them were close relatives either legal ascendants or descendants. Company issued shares at rate of ₹ 100 per share under rights issue. Assessee alone had applied for rights issue and company had allotted shares to assessee. Fair market value of shares was ₹ 416. 38 per share. PCIT passed the revisional order on the ground that the assessee had received shares for value lesser than book value, therefore, provisions of S. 56(2)(vii)(c) would be attracted and differential amount between book value and price paid by assessee for shares required to be brought to tax under head income from other sources. On appeal the Tribunal held that the in instant case, transaction of transfer of shares was within family and close relatives, proviso to S. 56(2)(vii)(c) could not be applied. Tribunal also held that revision on the basis of audit objection is held to be not valid. (AY. 2013-14)
Kumar Pappu Singh v. DCIT (2019) 174 ITD 465 / 175 DTR 198 (Vishakha)(Trib.)

S. 57 : Income from other sources – Interest – Intercorporate deposits (ICDS) – Interest received is held to be taxable as income from other sources – Interest paid to sister concern is held to be allowable as deduction. [S. 56] 922

Dismissing the appeal of the revenue the Court held that interest received on inter-corporate deposits (ICDs) was brought to tax as 'income from other sources'. Interest

paid on sum borrowed from a sister concern is held to be allowable as deduction. (AY. 2011-12)
PCIT v. Jubilant Energy Nelp-V-(P.) Ltd. (2019) 261 Taxman 194 / 178 DTR 365 (Delhi)(HC)

923 **S. 57 : Income from other sources – Deductions – Interest from bank – Bank charges – Failure to establish directly related to earning of interest income from banks. [S. 56, 57(iii)]**
Dismissing the appeal of the assessee, the Tribunal held that failure to establish directly related to earning of interest income from banks bank charges cannot be allowed as deduction. (AY. 2011-12)
Dinesh H. Valecha v. DCIT (2019) 178 ITD 701 (Mum.)(Trib.)

924 **S. 62 : Transfer irrevocable for a specified period – Revocable after three years – Income arising by virtue of a revocable transfer of assets would be chargeable to tax as income of transferors and would be included in their total income – Trust cannot be taxed as an AOP at maximum marginal rate. [S. 61(1), 62(2), 164]**
Dismissing the appeal of the revenue the Court held that, the Tribunal is justified in holding that, funds were transferred by beneficiaries to a trust created by State Government were revocable after three years, provisions of S. 62(2) is attracted accordingly the income arising by virtue of a revocable transfer of assets would be chargeable to tax as income of transferors and would be included in their total income. Income cannot be assessed in the assessment of the Trust at maximum marginal rate of tax applicable to Associate of Persons (AOP) by invoking S. 164 in respect of contributions received by the trust. Tribunal also justified in applying the provisions of S. 62 to conclude that income arising by virtue of a revocable transfer of assets would be chargeable to tax as income of transferors and would be included in their total income. Accordingly the funds transferred by beneficiaries viz., 3 companies, to trust created by Settlor, viz., State of Tamil Nadu, were revocable after specified period of three years, provisions of S. 62(2) is attracted. Court also held that since number of shares, extent of benefits and their identity had not been disputed, there was no question of applying provisions of said S. 164 of the Act. (AY. 2008-09, 2009-10)
CIT v. Tamilnadu Urban Development Fund (2019) 263 Taxman 318 / 181 DTR 139 / 310 CTR 491 (Mad.)(HC)
Editorial: SLP of revenue is dismissed, CIT v. Tamilnadu Urban Development Fund (2020) 269 Taxman 5 (SC)

925 **S. 64 : Clubbing of income – Minor child – Provision coming into force with effect from 1-4-1976 cannot be given retrospectivity and be made applicable to previous accounting year 1975-76 corresponding to assessment year 1976-77. [S. 64(1)(iii)]**
Question before the larger Bench was "whether the Tribunal was correct in holding that the share income of the minor sons of the assessees from the partnership was to be computed in the hands of their father in the assessment year 1976-77, under S. 64(1)(iii) when the accounting year of the assessees had come to an end on August 10, 1975 and on December 31, 1975 respectively". Court held that for deciding the liability under a particular provision of the Act, the date of accrual of the income

would be relevant. If the provision comes into force in a particular financial year, it would apply to the assessment for that year but cannot be made applicable in respect of assessment for a previous year. S. 64(1)(iii) was introduced with effect from April 1, 1976. The tax liability under the provision could therefore be charged on the assessee, in the assessment which was to be made for that accounting year, i.e., 1976-77, which would be done in the assessment year 1977-78. The Amending Act introducing a new tax liability which came into force with effect from April 1, 1976 could not be given retrospectivity and be made applicable to the previous accounting year, i.e., 1975-76 corresponding to the assessment year, i.e., 1976-77. Matter was remanded to division Bench for disposing the matter. (AY. 1976-77)

Loknath Goenka v. CIT (2019) 417 ITR 521 / 266 Taxman 199 / 311 CTR 269 / 183 DTR 10(FB) (Patna)(HC)

Narmada Devi v. CIT (2019) 417 ITR 521 / 266 Taxman 199 / 311 CTR 269 / 183 DTR 10 (FB) (Patna) (HC)

Editorial : Judgment in Badri Prasad v. CIT (1990) 185 ITR 307 (Patna) (HC) is overruled.

S. 64 : Clubbing of income – Minor child – Guardian of minor is representative assessee – Income of minor assessable in hands of guardian – Upon death of parents income of minor child is to be taxed in hands of grandfather. [S 2(7), 2(31), 64(IA), 160(1)(ii), 148] 926

Court held that guardian of minor is representative assessee. Income of minor assessable in hands of guardian. Return of income filed by the grandfather, RPS, on behalf of the minor as nil. On the basis of such return only an intimation of assessment under S. 143(1)(a) of the Act was issued by the assessing authority. In order to bring to tax such escaped income, the assessing authority rightly invoked S. 147 / 148. Upon death of parents income of minor child is to be taxed in hands of grandfather as per S. 64(IA) of the Act. (AY. 1995-96 to 1999-2000)

R. P. Sarathy v. JCIT (2019) 414 ITR 161 / 263 Taxman 149 / 177 DTR 33 / 308 CTR 247 (Mad.)(HC)

CIT v. Minor M. Pranuthi (2019) 414 ITR 161 / 177 DTR 33 / 308 CTR 247 (Mad.)(HC)

S. 68 : Cash credits – Appeal – Supreme Court – Principal Officer – Bogus share capital – Ex-parte order – Service of notice – Authorised representative – Recall of ex-parte order – A power of attorney holder is an agent and Principal Officer u/s 2(35) – If a Chartered Accountant is granted a Power of attorney holder service upon him of a notice is valid – If a notice is duly served upon the litigant through its authorized representative, and it was provided sufficient opportunity to appear before the Court and contest the matter but the litigant choses to let the matter proceed ex-parte, the order cannot be recalled. [S. 2(35), 261, 262, 282, 288, Art. 136] 927

Application was filed for re-call of the judgment dt. 5-3-2019 in C.A. No. 2463 od 2019 *PCIT v. NRA Iron & Steel Pvt. Ltd (2019) 412 ITR 161 (SC)* on the ground that the applicant company was not served with the Notice of SLP at the registered office of the company, nor was a copy of the SLP served on the applicant company. The applicant learnt the judgment dated 5-3-2019 passed by the Court from a news clipping published

in the in the Economic Times on 7-3-2019 and the application for re-call was filed on 12-3-2019. The applicant on inspection found that the affidavit of service by the Revenue department on 19-12-2018 showed an acknowledgement receipt by Mr Sanjeeva Narayan the Chartered Accountant of the appellant company on 13012-2018. Chartered Accountant affirmed the receipt of the service however due to health not handed over the copy to the applicant. In an affidavit filed by the revenue it was brought to the notice of the Court that Mr Sanjeev Narayan has appeared before the tax authorities even after surgery. Court held that Mr Sanjeev Narayan admittedly being the power of Attorney holder of the Applicant, NRA Iron & Steel Pvt. Ltd. for the AY. 2009-10, was the agent of the assessee and hence and hence notice could be served on him as the agent of the assessee-company. Court also observed that Mr. Narayan appeared before the Income-tax authorities to represent the applicant company and its sister concerns on various dates prior to his surgery i.e. on 14-12-2018, 21-12-2018, 28-12-2018 and 29-12-2018. Court also held that a power of attorney holder is an agent and Principal Officer u/s 2(35). If a Chartered Accountant is granted a power of attorney holder, service upon him of a notice is valid. Accordingly the Court held that the applicant company having failed to make out any credible or cogent ground for Re-call of the judgment dt 05-03 2019, the application for recall is dismissed. (CA N0. 2463 of 2019, dt. 25. 10. 2019). (AY. 2009-10) (Judgement in *CIT v. NRA Iron & Steel (P) Ltd (2019) 412 ITR 161 /307 CTR 353/ 175 DTR 289/ 103 taxmann.com 48 (SC)* is affirmed.
PCIT v. NRA Iron & Steel Pvt. Ltd. (2019) 418 ITR 449 / 311 CTR 263 / 183 DTR 60 / (2020) 268 Taxman 1 (SC), www.itatonline.org
Editorial: Review petition, application for seeking open court oral hearing is rejected as dismissed. NRA Iron & Steel Pvt. Ltd. v. PCIT CA no 2463 / 2019 dt 4-02 2020 (SC)

928 **S. 68 : Cash credits – Bogus share capital / premium – The assessee is under legal obligation to prove the receipt of share capital / premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee – Mere mention of income tax file number of an investor is not sufficient to discharge the onus – Credit worthiness of the investor companies was not discharged – Order of AO is confirmed.**
Allowing the appeal of the revenue the Court held that; The practice of conversion of un-accounted money through cloak of Share Capital / Premium must be subjected to careful scrutiny especially in private placement of shares. Filing primary evidence is not sufficient-The onus to establish credit worthiness of the investor companies is on the assessee. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the assessee company at high premium of ₹ 190 per share even though the face value of the share was ₹ 10 per share. None of the so-called investor companies established the source of funds from which the high share premium was invested. Mere mentioning of the income tax file number of an investor is not sufficient to discharge the onus under S. 68 of the Act. Credit worthiness of the investor companies was not discharged. The assessee is under legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee. (AY. 2009-10)

(Note : Application to Re-call the judgment is dismissed. *PCIT v. NRA Iron & Steel Pvt. Ltd. (SC), www.itatonline.org (CA No. 2463 of 2019, dt. 25-10-2019)*
PCIT v. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 / 262 Taxman 74 / 175 DTR 289 / 307 CTR 353 (SC), www.itatonline.org
Editorial : PCIT v. NRA Iron & Steel Pvt. Ltd. (Delhi)(HC) (ITA No. 244 of 2018 dt 26-2-2108)

S. 68 : Cash credits – Advance received – Produced bank statements and other details produced – Discharged the burden – Deletion of addition as cash credits is held to be justified. 929
Dismissing the appeal of the revenue the Court held that, the assessee discharged to burden by producing bank statements and other details. Ratio laid down in *CIT v. P. Mohanakala (2007) 291 ITR 278 (SC)* is held to be not applicable. (AY. 2008-09)
PCIT v. Skylark Build (2019) 180 DTR 266 (Bom.)(HC)

S. 68 : Cash credits – Share application money – Share premium – Failure to produce share investors – Initial burden is not discharged – Addition is held to be justified. 930
During relevant year, assessee-company issued shares at huge amount of premium. AO took a view that share application money was nothing but assessee's unexplained cash credit. Tribunal also confirmed the addition. On appeal it was noted that assessee was given ample opportunities to produce share investors but it failed to do. Even in response to notices issued to share applicants, only some of them responded and they also failed to supply necessary details and documents to establish their genuine investment in assessee-company. It was also apparent that assessee-company had carried out no business during entire period, except for collection of share application money. It was also noticed that before issuance of payment by share applicants, deposits were made in their bank accounts and immediately investments in purchase of assessee's shares were made. Accordingly as the assessee failed to discharge initial burden order of Tribunal is affirmed. (AY. 2007-08)
Royal Rich Developers (P.) Ltd. v. PCIT (2019) 265 Taxman 99 (Mag.) / 184 DTR 293 (Bom.)(HC)

S. 68 : Cash credits – Loan – Accommodation entries – Creditor admitting loan was not genuine – Retraction of admission after more than two years – No evidence was produced to prove genuineness of loan – Order of Tribunal is affirmed – No substantial question of law. [S. 36(1)(iii), 131, 133A, 260A] 931
Dismissing the appeals of the assessee the Court held that, it was an admitted position that Moxdiam was indulging in accommodation entries. The majority of the activities of Moxdiam were of accommodation entries. It was the assessee which sought to assert a deviation from Moxdiam regular activity to contend that in the assessee's case it was not an accommodation entry, but a genuine loan. The burden on the assessee to show the genuineness of the entry was thus heavier. Such a burden could not be casually shifted. Merely because certain entries had been shown in the books of account of Moxdiam they could not be held to be conclusive and must be construed in the light of all surrounding circumstances. The genuineness of the loan transaction, financial capacity,

and the surrounding circumstances were some criteria for determination in such matters. Further though sought to be retracted, the admission before the officers was a significant circumstance. Further, Bharat Jain had retracted his statement after two years and eight months. Such retraction was rightly held not bona fide. An admission made during a survey of such proceedings could be relied upon by the AO. Two authorities and the Tribunal had evaluated each piece of evidence to conclude that this transaction was not a genuine loan transaction. The nature of the transaction would depend on the facts and circumstances. The view taken by the Tribunal on the assessment of evidence was not perverse, and merely because another view was possible by re-appreciating the evidence, it could not give rise to a question of law as envisaged under S. 260A. (AY. 2007-08, 2008-09)
Swastik Realtors v. ACIT (2019) 418 ITR 1 / 267 Taxman 27 / 311 CTR 946 / (2020) 186 DTR 186 (Bom.)(HC)

932 **S. 68 : Cash credits – Non-Resident – Not an ordinary resident – If the assessee is non-resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act – Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. [S. 6(6) 69]**
Dismissing the appeal of the revenue the Court held thatif the assessee is non-resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act. Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. Residential status was regarded as 'not an ordinary resident'. (AY. 2006-07)
PCIT v. Binod Kumar Singh (2019) 178 DTR 49 / 264 Taxman 335 / 310 CTR 243 (Bom.) (HC), www.itatonline.org

933 **S. 68 : Cash credits – Bogus Share Capital – Merely because the investment was considerably large and several corporate structures were either created or came into play in routing the investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device – The assessee cannot be asked to prove the source of source.**
Dismissing the appeal of the revenue the Court held that, merely because the investment was considerably large and several corporate structures were either created or came into play in routing the investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device. The assessee cannot be asked to prove the source of source. (*PCIT v. NRA Iron & Steel (2019) 103 Taxmann.com 48 (SC)* referred). (AY. 2009-10)
PCIT v. Aditya Birla Telecom Ltd. (2019) 178 DTR 418 (Bom.)(HC), www.itatonline.org

934 **S. 68 : Cash credits – Loans – Confirmation, balance sheet, bank account produced – AO had made no effort to verify the details filed by the assessee – Addition is held to be not justified.**
Dismissing the appeal of the revenue, the Court held that, the assessee has filed Confirmation, balance sheet, bank account produced. AO had made no effort to verify

the details filed by the assessee. Accordingly the addition is held to be not justified. (AY. 2009-10)
PCIT v. Parth Enterprises (Bom.)(HC)(UR) (ITA No. 786 of 2016 dt. 11-12-2018)
Editorial : Order in ITO v. Parth Enterprises (Mum.)(Trib.) (ITA No 976/M. 2016 dt. 10-6-2015 is affirmed.

S. 68 : Cash credits – Bogus Purchases – Name of supplier could not be traced – No justification for applying GP rate – Addition as unexplained cash credit is up held. [S. 37(1), 69C, 145] 935
Allowing the appeal of the revenue the Court held that details of the suppliers furnished by the assessee were unsatisfactory and the assessee could not disclose the identity of the suppliers as none of the suppliers could be traced and genuineness of the purchases could not be established. Accordingly the AO and CIT (A) is justified in treating the amount as unexplained cash credits. Order of the Tribunal applying the GP rate there by reducing the tax liability of the assessee is reversed. Order of the CIT (A) is affirmed. (AY. 2010-11)
PCIT v. Wadhawan Designs (2019) 184 DTR 299 (Delhi)(HC)

S. 68 : Cash credits – Bank statement or identity of creditor is not sufficient to prove the creditworthiness of creditor – Confirmation and income tax return is not produced – Addition is held to be justified. 936
Dismissing the appeal of the assessee the Court held that, credit worthiness of transaction could not be said to be proved merely on strength of bank statement or identity of creditor. Assessee did not produce income tax return of lender or any confirmation. Purported confirmation was found to be only a copy of unsigned account of creditor. Source of funds had also not been explained. Identity as well as credit worthiness of creditor must be proved. Credit reflected in bank account of was not explained, as a result her credit worthiness was not proved. Order of Tribunal is affirmed. (AY. 2014-15)
Siddharth Export v. ACIT (2019) 183 DTR 361 / 311 CTR 663 / (2020) 268 Taxman 121 (Delhi)(HC)

S. 68 : Cash credits – Genuineness of purchases could not be established – Addition as cash credit is held to be justified. 937
Allowing the appeal of the revenue the Court held that, the assessee could not establish the genuineness of purchases hence the Tribunal was not justified in deleting the addition. Followed *CIT v. La Media (2001) 250 ITR 575 (Delhi) (HC) & CIT v. Divine leasing & Finance Ltd. (2008) 299 ITR 268 (Delhi) (HC)* (AY. 2010-11)
PCIT v. Wadhawan Designs (2019) 184 DTR 299 (Delhi)(HC)

S. 68 : Cash credits – Peak credit theory – Hawala transactions – Money laundering can be for oneself – Refusal to divulge details of persons from whom money was distributed – Entire amount to be added as income on basis of peak credit theory – Estimation of commission again at 2% as alleged commission shall be only on the amounts deposited, other than the incremental peak credit adopted for each year – Appeal is dismissed. [S. 69, 69A] 938
Assessee had been carrying on a lodge it opened various bank accounts in the name of partnership firms constituted of the relatives and employees of the assessee.

Substantial amounts came into such Bank accounts in all the subject assessment years and there were withdrawals made immediately on the deposits having come to the account. The AO added the peak credit in the accounts recovered were assessed under S. 68, 69 and 69A as unexplained cash credits and investments. Considering the fact that the entire transactions were hawala transactions, commission at the rate 2 per cent was also assessed as income of the assessee. The assessee contended that very allegation of hawala transaction would indicate that money which came into the accounts did not belong to assessee; but to those persons to whom it was distributed and, thus, there could not have been any addition made on the basis of peak credit. Tribunal up held the addition. On appeal High Court held that money laundering can also be for oneself and there can be no presumption that it is for others, especially when the assessee refuses to divulge the details of the persons to whom money was distributed. When the assessee contested the proceedings with a stout denial and nothing more; various accounts being found to have been opened and operated on behalf of the assessee, the entire deposits therein had to be treated as assessee' s income. The AO himself adopted the peak credit in each year, which again was modified to incremental peak credit. Court held that the assessee cannot dissociate himself from the various accounts in view of the overwhelming evidence unearthed by the department connecting him to the various accounts maintained in the Bank and the depositions of the various witnesses summoned. Despite the fact that the Enforcement Directorate had found the assessee to be a hawala operator or money launderer, the assessment under S. 68, 69 and 69A of the incremental peak credit of the respective years, in the subject assessment years, taken from all the accounts to be perfectly in order. There can be a reasonable assumption that the incremental credit would be the income of the assessee, the remittances being found in favour of the assessee and the disbursal not having been proved or even admitted. As regards commission when incremental peak credits are taken as the income of the assessee for a particular year the said quantum shall not be treated for the purpose of 2 per cent commission and no addition shall be made on that count. Hence the commission shall be only on the amounts deposited, other than the incremental peak credit adopted for each year. (AY. 2002-03 to 2005-06)

K. P. Abdul Majeed v. ACIT (2019) 267 taxman 151 / 414 ITR 531 / 180 DTR 249 / 310 CTR 261 (Ker.)(HC)

939 **S. 68 : Cash credits – VDIS – Declaration of diamond jewellery – Sale of items after smelting – Weight of gold not disputed – Addition as cash credit is held to be not justified – Assessable as capital gains. [S. 45, VDIS 1997, S. 65]**

Assessee voluntarily disclosed gold and diamond jewellery u/s 65(1) of VDIS, 1997 which was accepted and certificate was issued u/s 68(2) of the Act. Assessee filed return by declaring negative income from sale of above said VDIS declared gold and diamond jewellery items, which had been converted into bullion after smelting and separating diamonds through a goldsmith. AO rejected assessee's claim and brought entire sale consideration of VDIS declared items to tax under S. 68 of the Act. Tribunal upheld the order of the AO. On appeal the Court held that AO had not disputed weight or

gold sold by assessee after smelting it from jeweller. Moreover, Tribunal in its various decisions in case of other assessee's who were similarly placed, had accepted capital gain declared on sale of VDIS declared items after smelting them through various jewellers. Accordingly the Tribunal committed an error in not accepting sale invoices submitted by assessee on ground that it was not same items which had been shown and declared by them in VDIS. Addition was deleted. (AY. 1998-99)
Bhurat Sunilkumar (HUF) v. ITO (2019) 267 taxman 139 / 311 CTR 615 / 183 DTR 82 (Karn.)(HC)

S. 68 : Cash credits – Loans – Confirmation was filed – Matter remanded to the AO. [S. 254(1)] 940
Allowing the appeal of the assessee the Court held that it was apparent that this specific issue relating to documents furnished by assessee to establish genuineness of loan received from several parties, was not addressed by AO. Accordingly the addition is addition is held to be unjustified and the matter was to be remanded back to Assessing Officer. (AY. 2014-15)
Bairappa Krishnappa v. CIT(A) (2019) 265 Taxman 446 (Karn.)(HC)

S. 68 : Cash credits – Bank deposits – Bank statement was produced before appellate authorities – Deletion of addition is held to be valid. 941
Dismissing the appeal of the revenue the Court held that bank statements were produced before appellate authority authenticity of which was not in question or doubt. Accordingly the order of Tribunal is affirmed.
Dy. CIT v. Pushpak Merchants (P) Ltd. (2019) 108 taxmann.com 174 / 265 Taxman 433 (Chhatisgarh) (HC)
Editorial : SLP of revenue is dismissed, DCIT v. Godavari TIE UP (P.) Ltd. (2019) 265 Taxman 432 (SC)

S. 68: Cash credits – Loan – Onus not discharged – Addition is held to be justified. [S. 69] 942
Dismissing the appeal of the assessee the Court held that the assessee is not able to discharge the burden and explain the source of the investment in the property. Accordingly the order of Tribunal is affirmed. (AY. 2005-06)
Sajid Khan v. PCIT (2019) 417 ITR 1 / 311 CTR 725 / 183 DTR 417 / (2020) 268 Taxman 97 (All)(HC)

S. 68 : Cash credits – Share application money – Income tax returns, balance sheet, confirmations were produced – Deletion of addition is held to be justified. [S. 131] 943
Dismissing the appeal of the revenue the Court held that, upon receiving notice under S. 131 the assessee had produced documentary proof such as assessments and returns filed by share applicants as well as confirmation and acknowledgment documents. If AO wished to pursue matter, there were sufficient clues for him to have proceeded, for instance, it could have issued notices and obtained statements from bankers of share applicants or even balance sheets which existed in records of their AO. However, AO

did not choose to pursue said course of action. Accordingly the deletion of addition is held to be justified. (AY. 2008-09)
PCIT v. Adamine Construction (P.) Ltd. (2019) 107 taxmann.com 84 / 264 Taxman 280 (Delhi)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Adamine Construction (P.) Ltd. (2019) 264 Taxman 279 (SC)

944 **S. 68 : Cash credits – No explanation was furnished – Civil proceedings would not regulate the assessment under the Income-tax Act – Tribunal remanding the matter is held to be erroneous – Addition as cash credit is valid. [S. 254(1)]**
Allowing the appeal of the revenue the Court held that neither at the time of search nor later after issuance of notice had the assessee produced any substantiating materials as to the genuineness of the depositors. After clearly finding that the civil proceedings would not regulate the assessment under the Income-tax Act, there was no ground for modifying the order of the CIT (A) directing the Assessing Officer to examine the genuineness of the creditors. The preliminary list of creditors as approved by the civil court in the insolvency proceedings, was not sufficient material to upset the additions made in an assessment under the Act. The assessment order with respect to the addition of cash credits under S. 68 was valid. (AY. 1995-96, 1996-97)
CIT v. Malayil Bankers (2019) 416 ITR 322 / 103 CCH 468 / (2020) 185 DTR 322 (Ker.) (HC)

945 **S. 68 : Cash credits – Transactions found to be genuine – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that transactions found to be genuine. Accordingly deletion of addition is held to be justified. (AY. 2005-06, 2006-07, 2008-09)
CIT v. Nalwa Sons Investment Ltd. (2019) 416 ITR 263 (Delhi) (HC)

946 **S. 68 : Cash credits – Bogus share capital being ₹ 5.72 crores which was not returned or refunded – Assessee's contention that additions be restricted considering peak credit as there was rotation of money is not sustainable.**
Held by the Court that, as it is accepted by assessee that the bogus share capital received on different days amounted to ₹ 5.72 crores; which was not returned or refunded, hence assessee's contention that there was rotation of money and only bogus share capital of ₹ 1.55 crores should have been added as undisclosed credit under S. 68 of the Act is not sustainable. (AY. 2002-03)
Alfa Bhoj Ltd. v. DCIT (2019) 307 CTR 531 / 175 DTR 197 (Delhi)(HC)

947 **S. 68 : Cash credits – Share application money – Received by cheques – Details furnished – Burden is discharged – Failure by department to investigate identity of shareholders and genuineness of transactions – Addition is held to be not justified.**
Dismissing the appeal of the revenue the Court held that share application money was received by cheques, details furnished. Assessee has discharged the burden. Failure

by department to investigate identity of shareholders and genuineness of transactions, addition is held to be not justified. (AY. 2005-06)
CIT v. Sidhi Vinayak Metcon Ltd. (2019) 414 ITR 402 (Jharkhand)(HC)

S. 68 : Cash credits – Share capital – Two foreign nationals – Directors of the company – Identity of share applicants and genuineness of money infused is established – Deletion of addition is held to be justified. 948
Court held that the AO did not dispute veracity of documents produced and two individuals who had applied for shares, were made directors of assessee company. Accordingly the assessee had discharged onus that was placed upon it to disclose identity of share applicants and genuineness of money infused. Order of Tribunal is affirmed.
PCIT v. E-Smart Systems (P.) Ltd. (2019) 105 taxmann.com 158 / 263 Taxman 374 (Delhi) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. E-Smart Systems (P.) Ltd. (2019) 263 Taxman 373 (SC)

S. 68 : Cash credits – Source of fund explained – Burden discharged – Deletion of addition is held to be justified. 949
The Court held that the assessee discharged the burden by explaining the source, identity of creditor and genuineness of the transaction. Deletion of addition is held to be justified. (AY. 2004-05)
CIT v. T. B. Kunhimahin Haji and others (2019) 415 ITR 491 (Ker.)(HC)

S. 68 : Cash credits – Capital gains – Sale of property – Part of sale consideration credited in assessee's account – Addition as income from undisclosed source is held to be justified. [S. 45] 950
Allowing the appeal of the revenue the Court held that the mother who was the owner of the property and had sold the property did not return the income from the sale of the property. The amounts which were credited to the accounts of the assessee remained undisclosed income since the assessee had declared an income of only ₹ 1,17,830. There was no double taxation on the same income. The return filed by the assessee's mother on August 27, 2013 for the assessment year 2006-07 after a period of 6 years could not be processed by the Department. The assessee having admitted the credit of the amounts addition is held to be justified. (AY. 2006-07)
CIT v. Harri Joseph (2019) 415 ITR 181 (Ker.)(HC)

S. 68 : Cash credits – Capitalisation fee – Statement on oath – Search and seizure – Undisclosed income was disclosed – Addition of capitalization fee is held to be not valid. [S. 132(4), 158BC] 951
Allowing the appeal of the assessee the Court held that in the statement u/s 132(4) there was no admission on part of assessee that capitation fee. Undisclosed income was offered in the return after the search hence further addition on account of capitalization is held to be not valid.
R. Bhoopathy v. CIT (2019) 263 Taxman 411 / 176 DTR 239 (Mad.)(HC)

952 **S. 68 : Cash credits – Shares at a premium – Genuineness, creditworthiness and identity of investors are established – Addition cannot be made as cash credit.**
Dismissing the appeal of the revenue the Court held that, when Genuineness, creditworthiness and identity of investors are established-Addition cannot be made as cash credit on ground that shares were issued at excess premium. (AY. 2012-13, 2013-14)
PCIT v. Chain House International (P.) Ltd. (2018) 98 taxmann.com 47 / (2019) 408 ITR 561 (MP)(HC)
PCIT v. Rohtak Chain Co (P) Ltd. (2019) 408 ITR 561 (MP)(HC)
PCIT v. Bharat Securities Ltd. (2019) 408 ITR 561 (MP)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Chain House International (P.) Ltd. (2019) 262 Taxman 207 (SC), PCIT v. Bharat Securities (P) Ltd. (2020) 268 Taxman 394 (SC)

953 **S. 68 : Cash credits – Firm – Partner – First year of business – Credible materials produced by partners – Addition cannot be made in the assessment of firm.**
Dismissing the appeal of the revenue, the Court held that, the partners of the assessee had been able to show the persons from whom they had received credits. The three partners had also produced credible materials to show their sources for the specific advances made to the firm. If the sources of the creditors were doubted, there could be an assessment made only on them and not on the assessee, whose partners had proved the identity and creditworthiness of their creditors.
CIT v. Sree Ganesh Trading Co. (2019) 413 ITR 61 / 181 DTR 261 / 311 CTR 621 (Ker.)(HC)

954 **S. 68 : Cash credits – Bogus share premium – Accommodation entries – Balance sheet and confirmation was filed – It is the prerogative of the Board of Directors to decide the premium and it is the wisdom of the shareholder whether they want to subscribe to shares at such a premium or not-Addition cannot be made on presumptions. [S. 69C, 131, 131(IA), 250(4)]**
In response to notice u/s 131(IA) investor companies have filed copy of Balance sheets, copy of ITR, Ledger account, etc. and confirmed that the investment made by them in the share capital of assessee company. AO made the addition u/s 68 of the Act. Before the CIT(A) the assessee demanded for cross examination of parties whose statements were relied by the AO. In the appellate proceedings the parties denied that they have provided any accommodation entries to the assessee company or directors. CIT(A) deleted the addition, which was affirmed by the Appellate Tribunal. On appeal by the revenue dismissing the appeal the Court held that, the AO cannot question the transaction merely because he thinks the investor could have managed by paying a lesser amount as share premium. It is the prerogative of the Board of Directors to decide the premium and it is the wisdom of the shareholder whether they want to subscribe to shares at such a premium or not. S. 68 does not apply as the funds were received through banking channels and the identity, creditworthiness and genuineness of the investors was established. Estimated commission and addition made u/s 69C of the Act was also deleted. (AY. 2012-13)
PCIT v. Chain House International (P) Ltd. (2019) 307 CTR 19 (MP)(HC)
Editorial : SLP of revenue is dismissed, (SLP No. 1992/2019, dt. 07.08.2018) PCIT v. Chain House International (P) Ltd. (SC), www.itatonline.org

S. 68 : Cash credits – Share application money – Failure to appear in response to summons – Addition is held to be justified. [S. 131] 955

Dismissing the appeal, that since the Assessing Officer found on the facts that there was no plausible explanation by the assessee to justify the cash credits and the Tribunal accepted it, no question of law arose.

J. J. Development Pvt. Ltd. v. CIT (2019) 411 ITR 549 (Cal.)(HC)

Editorial : SLP of assessee is dismissed, J. J. Development Pvt. Ltd. v. CIT (2018) 408 ITR 70 (St) (SC)

S. 68 : Cash credits – Cash deposited in bank – Creditors did not respond – Cross examination was not requested – Addition is held to be justified. 956

Dismissing the appeal of the assessee the Court held that; cash was deposited in the bank accounts, the creditors did not respond and the assessee has not requested for cross examination. Addition is held to be justified. (AY. 2005-06)

Suresh Kumar T. Jain v. ITO (2019) 260 Taxman 326 / 178 DTR 44 / 309 CTR 92 (Karn.)(HC)

Editorial : Suresh Kumar T. Jain v. ITO (2011) 128 ITD 74 (Bang.)(Trib.) is affirmed.

S. 68 : Cash credits – Share capital – Share premium – Bogus share capital in form of accommodation entries – Directors were working as peons, receptionists etc, who have admitted that they have signed the documents as per direction of Mr. Tarun Goyal – Details were filed, however they have been not produced before the AO for examination – Deletion of addition by the Tribunal is held to be not justified. [S. 133(6)] 957

Allowing the appeal of the revenue the Court held that ; evidence was collected in the course of search proceedings by the Investigation Wing it was found that companies were not carrying on any genuine business activities. Directors of these companies were employees of Mr. Tarun Goyal, who were working as peons, receptionists etc. Entries in the books were bogus. Modus operandi in such cases is well known, money is circulated by first depositing cash in the bank account of one such company, and thereupon it is transferred/circulated within the group companies before cheque is issued to the beneficiary. Directors in the course of search proceedings directors have admitted that they have signed the documents as per direction of Mr. Tarun Goyal. In response to notice u/s 133(6) details were filed however the respondent-assessee had failed to produce Directors of the companies, though they had filed confirmations, and therefore, were in touch with the respondent-assessee. The respondent-assessee had also failed to produce the details and particulars with regard to issue of shares, notices etc. to the shareholders of AGM/EGM etc. Accordingly Court held that the transactions are clearly sham and make-believe with excellent paper work to camouflage their bogus nature. The reasoning is contrary to human probabilities. In the normal course of conduct, no one will make investment of such huge amounts without being concerned about the return and safety of such investment. The Tribunal's order is clearly superficial and adopts a perfunctory approach and ignores evidence and material referred to in the assessment order. Appeal of the revenue was allowed. (AY. 2008-09)

PCIT v. NDR Promoters Pvt. Ltd. (2019) 410 ITR 379 / 175 DTR 30 / 261 Taxman 270 / 307 CTR 281 (Delhi)(HC), www.itatonline.org

Editorial : SLP of assessee is dismissed, NDR Promoters (P.) Ltd. v. PCIT (2019) 266 Taxman 93 / 418 ITR 10 (St) (SC)

958 **S. 68 : Cash credits – Trade creditors – Deletion of addition is held to be justified on facts. [S. 260A]**
Dismissing the appeal of the revenue the Court held that, revenue has not filed the papers or documents which were filed before the CIT(A) Tribunal. In the absence of the said papers, factual finding given by CIT(A) and Tribunal is affirmed. Accordingly the deletion of addition is held to be justified. (AY. 2010-11)
PCIT v. Rajesh Kumar (2019) 260 Taxman 216 (Delhi)(HC)

959 **S. 68 : Cash credits – Deposits from members of pubic – PAN numbers, address and particulars relating to cheques were furnished – Assessing Officer has not carried out any further enquiry – Deletion of addition by the Tribunal was held to be justified.**
Dismissing the appeal of the revenue the Court held that, all relevant particular such as identity details relating to depositors, their PAN numbers, addresses, and particulars relating to cheques paid were furnished by the assessee, however the AO has not carried out any enquiries under law from concerned banks, addition was held to be not justified. (AY. 2009-10, 2010-11)
PCIT v. DLF Commercial Project Corporation (2018) 100 taxmann.com 308 / (2019) 411 ITR 716 / 260 Taxman 2 (Delhi)(HC)
Editorial : SLP of revenue is admitted; PCIT v. DLF Commercial Project Corporation. (2018) 409 ITR 11 (St)/ (2019) 260 Taxman 1 (SC)

960 **S. 68 : Cash credits – Unsecured loans – Explanation was not satisfactory – Addition is held to be justified.**
Dismissing the appeal of the assessee the Court held that, the explanation regarding the source of income being not satisfactory Tribunal is justified in confirming the addition as cash credits. (AY. 2012-13)
Shree Krishana Kripa Feeds v. CIT (2019) 410 ITR 533 / 260 Taxman 337 / 307 CTR 220 / 175 DTR 18 (P&H)(HC)

961 **S. 68 : Cash credits – Gifts – Overseas transactions through Bank conclusive proof – Credit worthiness of donor is required to be proved.**
Dismissing the appeal of the assessee the Court held that, the assessee has to creditworthiness of donor, mere transaction through banking channel is not sufficient compliance. (AY. 2004-05)
Narendra Kumar Sakaria v. ACIT (2019) 410 ITR 43 / 216 Taxman 513 (Mad.)(HC)

962 **S. 68 : Cash credits – loan from wife – Cash was deposited on the same day that cheque for that amount was issued – Addition is held to be justified.**
Dismissing the appeal of the assessee the Court held that, cash was deposited on the same day that cheque for that amount was issued. As the explanations offered were not found satisfactory addition as cash credits is held to be justified. (AY. 2012-13)
Pawan Kumar Garg v. CIT (2019) 410 ITR 131 (P&H)(HC)

963 **S. 68 : Cash credits – Amount outstanding for six years – Addition cannot be made for the relevant accounting year.**

Allowing the appeal of the assessee the Court held that; the loan of ₹ 15,00,000 had been continuously carried forward from the assessment year 2001-02. The loan did not relate to the assessment year 2007-08, even for the sake of argument, if it were treated to be fictitious loan addition cannot be made for the relevant year. (AY. 2007-08)

Kohinoor Enterprises v. ACIT (2019) 410 ITR 153 / 175 DTR 43 / 307 CTR 154 (J&K) (HC)

964 **S. 68 : Cash credits – Cash deposits – Demonetization – AO acting unreasonably and capriciously in rejecting genuine explanations offered by assessee in respect of cash deposits as unsatisfactory – Additions is unsustainable. [S. 115BBE]**

The assessee had deposited ₹ 180.53 crores post-demonetisation between November 9, 2016 and December 30, 2016. The assessee had disclosed ₹ 30 crores under the Pradhan Mantri Garib Kalyan Yojna. Thereafter, the Assessing Officer made an addition of ₹ 150.53 crores as undisclosed income of the assessee under S. 68 of the Act. On appeal, the CIT(A) observed that out of ₹ 113.03 crores held by the assessee on November 8, 2016, only ₹ 13.99 crores were deposited in the bank account on November 8, 2016 (actually deposited on November 10, 2016) and the balance of ₹ 99.04 crores was not deposited on the said date. He negated the contention of the assesse that on the date of demonetisation, the assessee had only ₹ 13.99 crores in cash since the assessee could not give an explanation for having such a large sum in cash and has showed unaccounted income of ₹ 99.04 crores as cash sales. Therefore, he directed the AO to restrict the addition to ₹ 73.13 crores. However, the Tribunal held that the AO was not vested with unfettered power to reject any explanation of the assesse on the basis of surmises and conjecture. He must form satisfactory opinion around the explanation provided by the assessee the additions made were liable to be quashed since the AO acted unreasonably and capriciously in rejecting the genuine explanations offered by the assessee solely with the aim of imposing large tax liabilities upon the assessee. (AY. 2012-13 to 2017-18)

Agson Global Pvt. Ltd. v. ACIT (2019) 76 ITR 504 (Delhi)(Trib.)

965 **S. 68 : Cash credits – Share application money – Identity and Creditworthiness of the share applicant – Genuineness of the transactions – Burden of Proof – Initial onus on assessee – Discharged – Onus shift to Revenue – Addition based on suspicion is held to be invalid.**

The assessee credit the books of accounts on share capital and share premium to the tune of ₹ 2,40,00,000/-. During the assessment proceedings, the AO requested the assessee to provided details of identity and creditworthiness of the share applicant. Further, it requested the directors of the share applicant company to appear before him. The AO drew an adverse inference as the director failed to appear and the similarity on documentation filed by all parties showed the entire transaction is a sham. Further, it stated that the share applicants showed little or no tangible asset in their financial. It noted that the assessee failed to show the creditworthiness of the investors and genuineness of the transaction. He brought the entire amount as income u/s 68 of the Act. On appeal, the CIT(A) granted part relief to the assessee. On cross-appeal to the

Tribunal. The Tribunal held the duty is cast upon the assessee to explain the nature, and source of credit in books of account. The assessee has to prove 3 ingredients, i.e., identity of the share applicant, genuineness of the transaction and creditworthiness of the share applicant. To prove these ingredients, the assessee furnished the name, address, permanent account number (PAN), balance sheet and income tax return. On verification of share applicants' financial statements, it was noticed that they had crores of rupees and the investment made was a small part of their capital. The transactions reflected in the share applicant's balance sheet. The share applicants have confirmed the amount in the responses to the notice u/s 133(6) issued by the AO If the assessee has discharged the initial onus, the burden shift to the AO to rebut by showing contra evidence. The assessee is not required to prove the source of source. If there is doubt about the creditworthiness of the investor, the AO should have carried out an enquired without which no adverse inference can be drawn. In the absence of investigation and gathering of evidence, the addition could not be sustained merely on suspicion or conjectures. (AY. 2012-13)

ITO v. Paras Surti Products Pvt. Ltd. (2019)75 ITR 137 (Kol.)(Trib.)

966 **S. 68 : Cash credits – Share application money – Burden of Proof – Identity, Creditworthiness and Genuineness of the Transactions on the Assessee – Mere submission of details not sufficient – Failed to discharge the burden – Addition is held to be justified – Bogus Purchases – Assessee failed to produced parties – Notice returned unserved – No documentation – Transportation and consumption – Addition is held to be justified. [S. 69]**

During the assessment proceedings, the AO notices various receipts which stood credited to the bank account of the assessee by way of unsecured loans. The AO repeatedly asked the assessee to provide an explanation and source of the cash credit. The assessee filed certain details. Due to time constraint, the AO could not verify the details and make the addition to the income u/s 68 of the Act. The CIT(A) held that the AO had rejected additional evidence without any verification. The additional evidence was sufficient to discharge the burden cast on the assessee. The AO has failed to bring any material on record to disprove the correctness of additional evidence filed by the assessee. Revenue filed an appeal with the Tribunal. Before the Tribunal, the assessee submitted that investors advance share application money. However, it treated them as an unsecured loan as the authorities share capital was less than the share application money. This treatment was unilateral without the consent of the share applicants. The Tribunal noted S. 68 cast an obligation on the assessee to explain the genuineness of the transaction to the satisfaction of the AO, The assessee shall prove the identity and creditworthiness of the creditors. If the assessee fails to do so, AO can invoke provision to treat the amount credited to the books of accounts as income. Further, it noted that unlike the case of the public company that is not aware of the person making share subscription, the burden of proof in the case of private companies is different. Private companies raise funds through family members, relative and friends who are mostly known to the company and promoters. Therefore, onus heavy lies on the assessee to prove the identity and capacity of the shareholder and genuineness of the transaction. The Tribunal held that the assessee had not discharged its primary onus u/s. 68. These

transactions were merely accommodating entries wherein the assessee own unaccounted funds were brought back through the five companies. Further, the AO had received specific information that the assessee was a beneficiary of bogus purchases from the Investigation Wing of the Department. On assessee failure to explain, the purchases were disallowed, and the amount was added back as income of the assessee. CIT(A) noted that the assessee had produced the transportation bills and the list of consumption of material purchased. The CIT(A) estimated the profits embedded in the purchase of 12. 5% to be added back to the assessee income. The Tribunal noted that the assessee has failed to produce the parties before the lower authorities for verification and enquiry. The notice issued by the AO to these parties were returned unserved. The assessee did not provide the proof of transportation, delivery of the material and consumptions of material. In the facts of the case, additions to the extent of 100 per cent of the alleged bogus purchases to be added back. (AY 2011-12)

ITO v. Western Imaginary Transcon Private Ltd. (2019) 75 ITR 402 (Mum.)(Trib.)

S. 68 : Cash credits – Search and Seizure – Sale of property – Identity of the Purchaser – No incriminating material – Found during a search – Genuineness of transaction – No cash credit – The settlement commission rejected the application – Merely on the basis of application before the Settlement commission – Addition cannot be made. [S. 153C, 245C(1)] 967

A search and seizure operations were conducted on various premises of the group to which the assessee belonged. During the search operations, the AO seized various material, including an agreement to sell dated 10-10-2011. The agreement provided that the assessee, along with her husband, agreed to sell properties for ₹ 56 crores and had received an advance of ₹ 8 crores. The AO doubt the genuineness of the transactions and obtained a report from the Investigation Wing. Based on the report, he held the transaction not to be genuine as the said company was found to indulge in providing accommodating bogus entities. After the search and seizure, the assessee and her husband approached the settlement commission. The assessee offered an amount of ₹ 35 lakhs for AY 2009-10 to 2015-16. The settlement commission rejected the application as the additional amount declared was merely based on estimates. The CIT(A) deleted the addition made by the AO but enhanced the addition considering the settlement commission application. There was cross-appeal by the revenue and assessee before the Tribunal. On revenue appeal, the Tribunal held that that the transaction is not an afterthought as the agreement was found during the search operations, and the existence of the agreement cannot be doubted. The amounts were transferred from bank accounts. The Investigation Wing report does not dispute the existence of the company. The identity of the purchase is not in doubt, and the revenue authorities accept the assessment of the purchaser. The AO has not brought any material to show that the company does not have sufficient funds; on the contrary, the financial statements show sufficient net worth of the company. In the absence of the material, genuineness of the transaction cannot be doubted merely on suspicion. The mere reliance on the Investigation Wing report itself is not conclusive evidence unless incriminating material is produced. Once the assessee discharged the onus to prove the identity and creditworthiness of the creditor/purchaser and genuineness of the transaction, the

burden is shifted on the AO to prove the contrary with some tangible material. The AO should have conducted an independent inquiry. As per S. 51, once the amount forfeited, the same would be deducted from the cost for which asset was acquired or written down value or fair market value as the case may be in computing the cost of acquisition for capital gain. On assessee appeal, the Tribunal noted that the CIT(A) made the addition based on the application made u/s. 245C(1) before settlement commission. Further, it noted that the application was rejected for want of any conclusive proof or documents and was based on estimates. The confidential information submitted before the settlement commission cannot be a basis of addition in the assessment proceedings in the absence of any incriminating material found during search and seizure action. The application filed u/s 245C (1) was rejected, and cannot be a basis of addition to the income of the assessee. Followed, *Maruti Fabrics (2014) 47 Taxmann.com 298 (Guj.) (HC)* (AY 2012-13, 2015-16)
ACIT v. Renu Sehgal (Smt.) (2019) 75 ITR 178 (Jaipur)(Trib.)

968 **S. 68 : Cash credits – Bank statement – Books of account – Credit in bank statement not credited in books of account, no cash deposits recorded in books of account – Transactions outside books of account – Addition as cash credit is held to be not justified.**
Tribunal while allowing the appeal of the Assessee held that, though the assessee had maintained books of account, the cash deposits made in the bank account were not found credited in the books of account. The entire transactions were made outside the books of account. In the absence of any finding with regard to the cash deposits recorded in the books of account of the assessee, the additions made u/s. 68 in respect of cash deposits in the bank account were unsustainable. (AY. 2011-12)
Asha Sanghavi (Smt.) v. ITO (2019) 76 ITR 17 (SN) (Vishakha)(Trib.)

969 **S. 68 : Cash credits – Assessee set up her own sewing machines in her home and gave contract to tailor – Received orders from customers and tailor stitching the cloth – Assessee and tailor sharing the receipts in ratio of 35 : 65 – Assessee's offer to demonstrate her claim on test check basis declined – Cash book and vouchers of day not examined – AO directed to verify sums reflected by assessee as her income of a specific day is 35 per cent of sum total of receipts of vouchers of specific date**
The assessee had sewing machines in her home and which she gave on contract basis to a tailor. She received orders from customers which the tailor executed. All the expenses, such as on needles, threads, oil and lubricants, buttons, etc., were borne by the tailor. For the job, the assessee and the tailor divided the receipts in the ratio of 35 : 65. The Assessing Officer made additions on account of cash deposits in the bank on the ground that there was no connection between the income shown by the assessee from the boutique and the bank deposits. The CIT (A) confirmed the additions. On appeal, the Tribunal held that the cashbook which reflected 35% of the amounts reflected in the vouchers of the day had never been examined by the lower authorities. The arbitrary wilful reluctance to look into the facts could not be upheld. The assessee offered to demonstrate her claim on a test check basis. The offer had been declined by

the Department and the parties had agreed that the issue may be remanded for carrying out the exercise. The AO was directed to verify the stated claim of the assessee namely that the sums reflected by her as her income of a specific day was the 35% of the sum total of the receipts of the vouchers of the specific date. The Tribunal also suggested that a tax advisory cell be constituted consisting of public spirited officers of the Revenue with strong ethics, full awareness of tax laws and people skills who would identify new successful businesses and implement a tax compliance scheme specially created for the benefits of the new ventures. (AY. 2014-15)
Asha Gandhi (Smt.) v. ITO (2019) 75 ITR 36 (Chd.)(Trib.)

S. 68 : Cash credits – Addition on basis of statement of person who retracted it later – No opportunity of cross – examination given to assessee – Neither Assessing Officer nor Investigating Authorities bringing on record any incriminating documents to suggest assessee holding unaccounted income brought back as loans and advances – Mere suspicion cannot be reason for making additions – It cannot replace the evidence on record placed by assessee supporting its explanation. 970

On an examination of the books of account of the assessee and its group companies the AO noted that enormous funds had obtained under the head "loans and advances" from the Kolkata businesses. These loans were non-interest bearing and remained in the books for periods ranging from one to three years. Taking the view that such substantial amounts loaned by businesses with meagre income lacked credibility even though obtained through banking channels and that these funds were the income of the assessee, the Assessing Officer added the difference between the opening and closing balance as income of the assessee under S. 68 of the Income-tax Act, 1961. The CIT(A) found that a search had taken place at the premises of the managing director of the assessee, but no evidence regarding round tripping had been found and that the creditors were identifiable Income-tax paying assessees. The subject transactions were through banking channels, adding credibility to the transaction. Since the assessee had furnished an explanation with supporting evidences and the Assessing Officer had not been able to disprove the explanation, he deleted the addition as it was on the basis of mere suspicion. On appeal, the Tribunal held that the addition made by the Assessing Officer was mainly based on the statement recorded of a person, who later retracted his statement and much credence could not be given to it as there was no corroborative evidence. The AO had not given opportunity of cross-examination of these persons to the assessee. The books of account of these concerns were duly audited and they had filed the returns of income. The revenue authorities having accepted their returns of income, it was not possible to reject certain entries without bringing in any contra evidence against those entries. Suspicion could not be a reason for making additions and it could not replace the evidence on record. Neither the AO nor the investigating authorities had brought on record any incriminating documents to suggest that the assessee was holding unaccounted income which was lent to certain persons and got it back as loans and advances. Not allowing the assessee to cross-examine the parties whose statements were relied upon to make addition in the assessment order was a serious flaw which made the order null and void inasmuch as it amounted to violation of the principles of natural justice because of which the assessees were adversely

affected. Therefore, the addition made on account of these alleged transactions treating them as unexplained credits under S. 68 was deleted. (AY. 2010-11, 2011-12)
ACIT v. Sabari Switch Gear (P.) Ltd. (2019) 75 ITR 119 (Cochin)(Trib.)

971 **S. 68 : Cash credits – Unsecured loan received substantiated by substantial documentary evidence – No proof by AO that loan emanated from coffers of assessee – Lenders corporate entities assessed to tax, making unsecured loans through banking channels – Complete details and evidence of lenders submitted by assessee – Addition is deleted. [S. 133(6)]**

Unsecured loans from 15 persons had been taken during the year 2015-16. Notice under S. 133(6) was issued to all the parties. Only two parties confirmed the transactions but refused to accept that they provided any unsecured loan to the assessee. Therefore, the Assessing Officer treated the loans as income under S. 68. The CIT (A) partially sustained the addition. On appeals by the assessee and Department, the Tribunal held that it is for the AO to pursue a creditor particularly once the assessee had duly furnished the complete particulars of the person from whom monies have been received by the assessee. In the absence of such a burden having been discharged, the Assessing Officer could not have mechanically proceeded to make the addition. Non-compliance with the notice issued under S. 133(6) of the Income-tax Act, 1961 to all the entities giving unsecured loan cannot be a basis to make addition under S. 68 of the Act. The Tribunal observed that the unsecured loans received by the assessee had been fully substantiated by substantial documentary evidence, copy of the audited financial statement, acknowledgment of return, confirmation from the lender, bank statement of the lender. Such sum could not in law or on fact be held to be unexplained cash credit under S. 68 of the Act. No material had been led by the Assessing Officer to even allege that such amount emanated from the coffers of the assessee. The lenders were corporate entities duly assessed to tax and had made unsecured loans through banking channels, which fact had neither been denied nor rebutted in the assessment order, which was also duly confirmed by each of the lender. The assessee had furnished complete details and evidence to discharge the burden in respect of unsecured loan. Therefore, addition was liable to be deleted. The Tribunal followed *Earthmetal Electrical (P) Ltd. v. CIT (CA No. 6181 of 2010 dated July 30, 2010) (SC)* and *CIT v. Orissa Corporation P. Ltd. [1986] 159 ITR 78 (SC)*. (AY. 2015-16)
Radius Industries v. ACIT (2019) 75 ITR 547 (Delhi)(Trib.)

972 **S. 68 : Cash credits – Addition on basis of statement of person who retracted it later – No opportunity of cross – examination given to assessee – Neither Assessing Officer nor Investigating Authorities bringing on record any incriminating documents to suggest assessee holding unaccounted income brought back as loans and advances – No unexplained credits can be added in hands of assessee.**

On an examination of the books of account of the assessee and its group companies the AO noted that enormous funds had obtained under the head "loans and advances" from the Kolkata businesses. These loans were non-interest bearing and remained in the books for periods ranging from one to three years. Taking the view that such substantial amounts loaned by businesses with meagre income lacked credibility even

though obtained through banking channels and that these funds were the income of the assessee, the Assessing Officer added the difference between the opening and closing balance as income of the assessee under S. 68 of the Income-tax Act, 1961. The Commissioner (Appeals) found that a search had taken place at the premises of the managing director of the assessee, but no evidence regarding round tripping had been found and that the creditors were identifiable Income-tax paying assessees. The subject transactions were through banking channels, adding credibility to the transaction. Since the assessee had furnished an explanation with supporting evidences and the Assessing Officer had not been able to disprove the explanation, he deleted the addition as it was on the basis of mere suspicion. On appeal, the Tribunal held that the addition made by the Assessing Officer was mainly based on the statement recorded of a person, who later retracted his statement and much credence could not be given to it as there was no corroborative evidence. The Assessing Officer had not given opportunity of cross-examination of these persons to the assessee. The books of account of these concerns were duly audited and they had filed the returns of income. The revenue authorities having accepted their returns of income, it was not possible to reject certain entries without bringing in any contra evidence against those entries. Suspicion could not be a reason for making additions and it could not replace the evidence on record. Neither the Assessing Officer nor the investigating authorities had brought on record any incriminating documents to suggest that the assessee was holding unaccounted income which was lent to certain persons and got it back as loans and advances. Not allowing the assessee to cross-examine the parties whose statements were relied upon to make addition in the assessment order was a serious flaw which made the order null and void inasmuch as it amounted to violation of the principles of natural justice because of which the assessees were adversely affected. Therefore, the addition made on account of these alleged transactions treating them as unexplained credits under S. 68 was deleted. (AY. 2010-11, 2011-12)

ACIT v. Sabari Millennium Impex (P.) Ltd. (2019) 75 ITR 119 (Cochin)(Trib.)

S. 68 : Cash credits – Share application money – Issue of shares at premium – Journal entries-No inflow of cash – Deletion of addition is held to be justified. [S. 131] 973

Dismissing the appeal of the revenue the Tribunal held that the consideration for issue of shares at premium by passing journal entries and it did not involve any credit to cash account. Accordingly there being no real inflow of cash involved in aforesaid transactions, amount of entry could not be treated as unexplained cash credit. (AY. 2012-13)

ITO v. Bhagwat Marcom (P.) Ltd. (2019) 178 ITD 684 (Kol.)(Trib.)

S. 68 : Cash credits – Shares at premium – Confirmation is filed and source is explained – Addition as cash credits is held to be not justified. [S. 133(6)] 974

Allowing the appeal of the assessee the Tribunal held that the share investor has responded in response to notice u/s 133(6) of the Act, filed the confirmation and explained the source of investment. Accordingly the addition confirmed by the CIT(A) is deleted. (AY. 2015-16)

Prime Comfort Products (P.) Ltd. v. ACIT (2019) 179 ITD 647 (Delhi)(Trib.)

975 **S. 68 : Cash credits – Share transactions – Accommodation entries – Unaccounted money – denial of exemption is held to be justified. [S. 10(38), 45]**

Assessee filed the return declaring long-term capital gain on sale of shares as exempt under S. 10(38) of the Act. AO held that the amount received as unexplained cash credit on the ground that the assessee failed to discharge burden of proof and explain nature and source of transaction and huge profit in all shares traded by assessee against human probability. CIT (A) also affirmed the order of the AO. On appeal the Tribunal held that the assessee failed to justify manifold increase in prices of shares despite weak financials of companies. Further, investigation carried out by Department had brought facts on record that share prices had been manipulated artificially, purchased by a set of accommodation entry provider companies controlled by cartel of brokers, entry operator, etc. Moreover, fact that prices of all shares purchased by assessee went up, that too without any corresponding profit or prospects of company, and not even in single case price of share came down, was against human probabilities and impugned year was an isolated year of such profits with no such profits made in earlier or subsequent years. Accordingly as the assessee failed to prove genuineness of transaction and long-term capital gain on sale of shares by assessee was an arranged affair to convert its own unaccounted money and thus, exemption claimed under S. 10(38) on sale of shares had rightly been disallowed. (AY. 2015-16)

Satish Kishore v. ITO (2019) 179 ITD 333 / (2020) 203 TTJ 749 (Delhi)(Trib.)

976 **S. 68 : Cash credits – AIR information – TDS difference and reconcile income – Addition cannot be made as cash credits [S. 194J Form, 26AS]**

Allowing the appeal of the assessee the Tribunal held that where the assessee is able to reconcile the TDS differences as per AIR information and return addition cannot be made as undisclosed receipts. (AY. 2011-12)

TUV India (P.) Ltd. v. DCIT (2019) 75 ITR 364 / 179 ITD 238 (Mum.)(Trib.)

977 **S. 68 : Cash credits – Share application money – Share premium – Name, address, PAN of share applicants together with copies of their balance sheets and returns and, amount received by account payee cheques out of sufficient bank balances maintained – Addition is held to be not valid.**

Assessee received share capital along with share premium from various investors. The AO held that assessee failed to prove identity, genuineness and creditworthiness of share subscribers, added the amount as cash credits. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that, for proving identity of share applicants, assessee had furnished name, address, PAN of share applicants together with copies of their balance sheets and returns, with regard to creditworthiness of share applicants, applicant companies were having capital in several crores of rupees and investment made in assessee was only a small part of their capital. As regards genuineness of transactions, monies had been directly paid to assessee by account payee cheques out of sufficient bank balances maintained by share applicants. Accordingly the addition is held to be not valid. (AY. 2012-13)

ITO v. Axisline Investment Consultants (P.) Ltd. (2019) 178 ITD 402 (Kol.)(Trib.)

S. 68 : Cash credits – Share application money – Premium – Confirmation filed – Mode of investment is explained – Addition is held to be not justified. 978

The assessee received a certain amount from one Investor as an investment towards share capital and share premium. The AO noticed that neither DML nor assessee produced any documentary evidence that said amount was deposited DML. Hence, made additions u/s. 68 on account of bogus share capital and share premium. CIT (A) deleted the addition. Dismissing the appeal of the revenue the Tribunal held that, the investor, has proved the identity beyond doubt and that notices, summons etc. were duly served upon her at her address provided by assessee. Investors was a woman having considerable financial strength and capacity who had a substantial annual income further she had investments in many immovable properties. Investor has confirmed investment made by her in shares of assessee-company and had also explained mode of investment with substantiated reasons as well as justification for making investments in shares of assessee. Addition is held to be not valid. (AY. 2012-13, 2013-14)

DCIT v. ATC Realtors (P.) Ltd. (2019) 178 ITD 293 / 184 DTR 1 (Gau.)(Trib.)

S. 68 : Cash credits – Bank deposits – Funds withdrawn from bank four months ago for purchase of a property but due to non-materialised of property transaction, money was re-deposited in bank account, addition cannot be as cash credits. 979

The AO held that, assessee had deposited certain amount in his bank account. Assessee explained that he had withdrawn said funds from his bank account four months ago and since a transaction relating to purchase of property did not materialise, he re-deposited funds in his bank account. The AO rejected explanation and added amount deposited in bank account to his taxable income. On appeal Tribunal held that, there was no instance, reference, argument or evidence to suggest that funds were not available with assessee. There could be no blanket period which could be judicially considered to be a reasonable time for re-depositing funds in bank account. Mere fact that there was a gap of about four months in re-depositing funds by itself would not lead to conclusion that explanation given by assessee was not acceptable. Accordingly the addition was deleted. (AY. 2009-10)

Baljit Singh v. ITO (2019) 178 ITD 12 (Chd.)(Trib.)

S. 68 : Cash credits – Impounding of documents found during search – Satisfactory explanation is furnished – Addition cannot be made. [S. 132, 153A] 980

If the documents found during the course of the search satisfactorily explain the income of the assessee no addition can be made under S. 68 of the Act as there is no unaccounted income lying in the hands of the assessee. (AY 2013-14)

Dy. CIT v. Pumarth Commodities P. Ltd. (2019) 69 ITR 52 (SN) (Indore)(Trib.)

S. 68 : Cash credits – Share premium – Addition made merely on basis of statement of a person recorded u/s. 131 by DIT (Invt.) and there was no any other evidence on record – Addition is held to be not justified. [S. 131] 981

The assessee-company received share application money/share premium from its Managing Director and one company. The AO observed that on basis of statement recorded by Investigation Wing of department of one MS u/s. 131 it was found

that share application money/share premium received by assessee was nothing but accommodation entries. On basis of said statement, AO made additions u/s. 68. It was noted that impugned addition was made only on basis of statement of MS recorded by Investigation Wing u/s. 131. On appeal Tribunal held that other than statement of MS, no other material evidence was referred either by AO or CIT(A). U/s. 131, authorities are not empowered to administer oath to deponent, therefore, such a statement recorded u/s. 131 had no evidentiary value. Hence, addition made merely on basis of statement recorded u/s. 131 without there being any other material available on record, was unjustified. (AY. 2013-14, 2015-16)
Lalithaa Jewellery Mart (P.) Ltd. v. ACIT (2019) 178 ITD 503 / 73 ITR 532 / 182 DTR 337 / 201 TTJ 1123 (Chennai)(Trib.)

982 **S. 68 : Cash credits – Share premium – Share applicants proved their creditworthiness and source of funds for investing – Addition is held to be not valid.**
Tribunal held, that the share applicants have proved their creditworthiness and source of funds hence deletion of addition is held to be justified. (AY 2013-14)
Dy. CIT v. HSM Steels P. Ltd. (2019) 70 ITR 47 (SN) (Hyd.)(Trib.)

983 **S. 68 : Cash credits – Share capital – Share premium – Additional grounds – Photocopies of blank share transfer forms, blank signed receipts, etc. necessary for transfer of shares found with assessee are not admissible as evidence u/s. 61 of Evidence Act and not incriminating in nature – All investors are assessed & have filed confirmations with trail of funds – AO did not make further inquiry into the documentary evidences or verify the trail of source of funds – Addition is held to be not justified – Estimate of commission is also deleted. [S. 69C, 132(4), 145A, 153A, Evidence Act, S. 61]**
Tribunal held that Photocopies of blank share transfer forms, blank signed receipts, etc. necessary for transfer of shares found with assessee are not admissible as evidence u/s 61 of Evidence Act and not incriminating in nature-All investors are assessed & have filed confirmations with trail of funds-AO did not make further inquiry into the documentary evidences or verify the trail of source of funds-Addition is held to be not justified. Decision in *PCIT v. NRA iron and steel (2019) 103 taxmann.com 48(SC)* and decision in NDR promoters private limited (2019)-TIOL-172 (Delhi) (HC) is considered. Estimate of commission is also deleted. (AY. 2012-13 to 2017-18)
Agson Global Pvt. Ltd. v. ACIT (2019) 76 ITR 504 (Delhi)(Trib.), www.itatonline.org

984 **S. 68 : Cash credits – Bogus share capital – Authorities have not done even the bare minimum for verifying the genuineness of the transaction – Casual approach cannot be subscribed on our part – Matter is set aside for indepth verification. [S. 133(6)]**
The assessee issued the share of ₹ 10 at premium of ₹ 390. The AO treated share application amount as unaccounted cash credits on the ground that the two applicant companies were controlled by Shri Praveen Kumar Jain. CIT (A) deleted the addition. On appeal by the revenue the Tribunal held that authorities have not done even the bare minimum for verifying the genuineness of the transaction. Casual approach cannot be subscribed on our part of the authorities to have carried out an in-depth verification of the genuineness of the transaction of receipt of share application money by the assessee from the said parties. As the share applicant companies were controlled by an infamous

accommodation entry provider, it was incumbent on the part of the authorities to have carried out an in-depth verification of the genuineness of the transaction of receipt of share application money by the assessee from the said parties. Matter is set aside for indepth verification. (*CIT v. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 (SC)* followed) (ITA No. 4589/Mum/2017, dt. 11-6-2019)(AY. 2012-13)
ITO v. Citymaker Builder Pvt. Ltd. (Mum.)(Trib.), www.itatonline.org

S. 68 : Cash credits – Share Application money – Assessee incorporated in preceding assessment year and receiving share application money in instant assessment year – No unaccounted money can be invested by assessee – investors examined on oath not subjected to cross-examination by assessee – Addition is held to be not justified – Creditor denying the outstanding balance – Addition is held to be justified. 985

The assessee was incorporated on December 14, 2011 in the financial year 2011-12. Since the assessee was at the stage of formation in preceding assessment year, i.e., 2012-13 and had received share application money in the assessment year in question, there could not be any unaccounted money invested by it. The assessee had produced sufficient documentary evidence before the Assessing Officer to prove that the large number of investors in the assessee were mostly related to the directors of the assessee and in sums less than ₹ 50,000, except in three cases. However, all the investors who had been examined on oath were not subjected to cross-examination on behalf of the assessee, and so no evidence could be brought on record to treat such income as undisclosed. Therefore, there was no justification for the authorities to sustain the addition. *CIT v. Bharat Engineering and Construction co. (1972) 83 ITR187 (SC); CIT v. Lal Mohar (2018) 409 ITR 95 (All) (HC)* followed. Creditor denying the outstanding amount in response to notice issued u/s 133(6) of the Act. Addition is held to be justified. (AY. 2013-14)
Woodcraft Export Co. P. Ltd. v. ITO (2019) 70 ITR 436 (Delhi)(Trib.)

S. 68 : Cash credits – Public issue – Global depository receipts – Failure to produce bank statement of investors – Addition cannot be made. [S. 132] 986

The assessee was engaged in the business of manufacturing and trading of yarn, garments, towels etc. A search and seizure operation u/s. 132 was conducted in the premises of the assessee. The AO made additions on account of global depository receipts issued by the assessee as unexplained credit u/s. 68 on the ground that the assessee was unable to prove the identity, genuineness and creditworthiness of the investors and the financials trail of the money having been paid by such investors in the forms of investment in the global depository receipts. The CIT(A) upheld the addition. On a appeal the Tribunal held that the authorities had made additions only on the basis suspicion. The Tribunal further held that the, AO had overlooked the fact that the assessee had raised this money through a public issue and that the instrument was listed on a stock exchange overseas, wherein there was no interaction between the assessee and the investors; infact most of the investors had off loaded their global depository receipts and now those shares were in equity market listed on Indian Stock Exchange. The Tribunal accordingly held that, just because the assessee was not in position to produce bank statement of the investors the impugned additions could not

have been made. Dis-satisfaction about the sufficiency of information could not be a ground to take adverse view against the assessee. (AY. 2010-11 to 2014-15)
SEL Manufacturing Co. Ltd. v. DCIT (2019) 71 ITR 343 (Chd.)(Trib.)

987 **S. 68 : Cash credits – Credit entry in bank account of third party – Credit cannot be treated as undisclosed income in absence of evidences corroborating statement of parties. [S. 131]**
The AO conducted a search and survey at the premises of the assessee. The AO based on the statements u/s. 131 of certain persons and bank statements found at the premise of the assessee made addition u/s 68. The AO had rejected the retraction affidavits filed by the assessee of the persons whose statements were obtained. On appeal, the CIT (A) deleted the addition as the statements were not corroborated with the evidence and the addition u/s 68 was made purely on the basis of the statements u/s 131. The Tribunal observed that the AO had failed to submit corroborative evidence against the retraction affidavits and the statement of third party had no evidentiary value. Further, the parties on statements of whom addition was made were cross-examined in the remand report and they admitted that the entries in the bank account relates to their own transactions. Thus, the Tribunal dismissed the appeal of the Department. (AY. 2014-15 to. 2016-17)
Dy. CIT v. Sumeet Agarwal (2019) 73 ITR 148 (Jodh.)(Trib.)
Dy. CIT v. Avinash Modi (2019) 73 ITR 148 (Jodh.)(Trib.)
Dy. CIT v. Kuldeep Modi (2019) 73 ITR 148 (Jodh.)(Trib.)
Dy. CIT v. Jain Mining And Equipment (2019) 73 ITR 148 (Jodh.)(Trib.)

988 **S. 68 : Cash credits – Loans – Allegation that loans received from companies controlled by Praveen Kumar Jain as accommodation entries – Substantial supporting material to prove loan transactions were genuine were produced – Addition is held to be not valid.**
Dismissing the appeal of the revenue the Tribunal held that the assessee has produced substantial documentary evidence such as confirmations of lender companies, copies of financial statements of lender companies, and copies of bank statements evidencing advancing of loan by lender companies to assessee through normal banking channel, etc. Interest paid on said loans was subjected to deduction of tax at source as per mandate of law, notices issued by AO under S. 133(6) to principal officers of lender companies, were duly complied with and required details were also furnished by lender companies. Merely because information was received by the AO from the office of the Dy. DIT (Inv.) that the search proceedings conducted under S. 132 in the case of one Praveen Kumar Jain had revealed that he was engaged in providing accommodation entries through several companies managed and controlled by him cannot be the sole basis to treat the loan as non genuine. (AY. 2010-11)
ITO v. Pratima Ashar (Smt.) (2019) 177 ITD 481 / 183 DTR 137 (Mum.)(Trib.)

989 **S. 68 : Cash credits – Share application – Share premium – Provided name, address and PAN of shareholders, etc. – Addition cannot be made. [S. 56(2)(viib)]**
Assessee-company received share application money from several investors. Assessee charged share premium of ₹ 990 per share. AO held that under rule 11UA fair market value of share of assessee was worked out to ₹ 37.87 per share as on 31-3-2010 and ₹ 166.54 per share as on 31-3-2011. Accordingly, relying on amended provision of

S. 56(2)(viib), he treated excess share premium received by assessee as unexplained income and made addition under S. 68 of the Act. Tribunal held that the assessee had adequately disclosed transaction in its books of account, filed statutory Forms regarding allotment of shares, provided name, address and PAN of shareholders, etc. Accordingly addition is held to be not valid. Amendment in S. 56(2)(viib) inserted vide Finance Act, 2013 with effect from 1-4-2013 is prospective in nature and could not be applied in assessment year 2011-12 for making addition /s 68 of the Act. (AY. 2011-12)
ITO v. Chiripal Poly Films Ltd. (2019) 177 ITD 441 / 202 TTJ 317 / 184 DTR 162 (Mum.)(Trib.)

S. 68 : Cash credits – Share capital premium – The test of human probabilities cannot be applied to business transactions – The AO cannot reach this conclusion without further investigation and bringing material on record – Reopening is held to be bad in law [S. 147, 148] 990
Tribunal held that, the AO cannot treat the share premium as unexplained cash credit only because the same is not commensurate with the income and financial strength of the assessee. The AO cannot reach this conclusion without further investigation and bringing material on record. Re-opening of assessment is held to be bad in law. (AY. 2007-08, 2008-09)
Janani Infrastructure Pvt. Ltd. v. ACIT (2020) 203 TTJ 59 (Bang.)(Trib.), www.itatonline.org

S. 68 : Cash credits – Loan – Depositors have filed affidavits, Bank statements, balance – sheets, Income-Tax Return Acknowledgements, Permanent Account Number Details, loan confirmation, etc. – Burden discharged – Addition is held to be not justified. 991
Tribunal held that the assessee has discharged the burden by filing affidavits, Bank statements, balance-sheets, Income-Tax Return Acknowledgements, Permanent Account Number Details, loan confirmation, etc. of the lenders. Accordingly the addition is held to be not justified. (AY. 2008-09)
ITO v. Jyoti Saraf (Smt.) (2019) 70 ITR 52 (Kol.)(Trib.)

S. 68 : Cash credits – Presumptive taxation – Non-maintenance of books of account – Addition cannot be made as cash credits. [S. 44AA(2)(iv)] 992
Tribunal held that the assessee had offered profit at eight per cent and the AO has accepted claim of exemption from maintenance of books as provided under S. 44AA(2)(iv) of the Act. Addition confirmed by CIT(A) is deleted. (AY. 2009-10)
Indrani Devi v. CIT (2019) 70 ITR 42 (Patna)(Trib.)

S. 68 : Cash credits – Share premium – Share premium collected over and above premium worked out in Valuation Certificate submitted to RBI, in view of fact that as per Notification No. FEMA/203/2010-RB, dated 7-4-2010 – There is no bar on collecting higher amount as share premium – Addition cannot be made-Amendment is applicable from the AY. 2013-14 – Even otherwise, the amendment will not apply to the investor which is a SEBI registered Venture Capital Fund. 993
Assessee issued shares, to NSR, Mauritius, a SEBI registered Venture Capital Fund at a premium of ₹ 1030/- per share. In valuation certificate submitted to Reserve bank of India, price of share was worked out at ₹ 682/- per share, consisting of ₹ 10/- par value

plus premium of ₹ 672/- per share. AO held that premium collected by assessee over and above premium worked out in Valuation Certificate was unjustified accordingly, assessed the same as cash credits. Tribunal held that in terms of Notification No. FEMA/203/2010-RB, dated 7-4-2010, share premium amount worked out in Valuation Certificate is minimum amount that can be collected by assessee and, hence, there is no bar on collecting higher amount as share premium. As there is no dispute about identity, creditworthiness of investor and genuineness of transactions the AO is not justified in making the addition. The Tribunal is also held that the amendment brought in S. 68 of the Act with effect from 1-4-2013 has been held to be applicable from assessment year 2013-14 onwards. Even otherwise, the amendment will not apply to the assessee herein as the investor is a SEBI registered Venture Capital Fund. (AY. 2012-13)
DCIT v. Varsity Education Management (P.) Ltd. (2019) 177 ITD 44 (Mum.)(Trib.)

994 **S. 68 : Cash credits – Share capital – Meagre income – Failure to establish from documentary evidence creditworthiness for making such huge investments and genuineness of transactions – Addition is held to be justified. [S. 133(6)]**
Allowing the appeal of the revenue, the Tribunal held that the share applicants had very meagre income and did not have creditworthiness for making such huge investments and genuineness of transactions were also not established from documentary evidences. Tribunal also observed that the AO reported that notice under S. 133(6) issued to all the ten parties were compiled and a statement of the directors as on date, were also recorded and they confirmed the fact of shares applied as well as share premium amounts paid. The AO recorded two objections in respect of the documentary evidence was produced by the assessee from the shareholder's bank account it was observed that amount was received by the parties immediately before the amounts was advanced to the assessee. The director of the shareholding companies produced before the AO were directors as on the date and not the directors in the year in which share capital was collected. Addition is held to be justified. (Followed *PCIT v. NDR Promoters Pvt Ltd (2019) 410 ITR 379 (Delhi)(HC)* & *PCIT v. NRA Iron & Steel Pvt. Ltd. 2019 103 taxmann.com 48 (SC)* followed))(AY. 2006-07)
ITO v. Synergy Finlease Pvt. Ltd. (2019) 177 ITD 160 / 178 DTR 145 / 199 TTJ 793 (Delhi) (Trib.), www.itatonline.org

995 **S. 68 : Cash credits – Donations received was offered as income in income and expenditure account – Addition cannot be made as cash credits.**
Tribunal held that donation received was offered as income in income and expenditure account of the trust hence addition cannot be made as cash credits. (AY. 2009-10)
ACIT v. Shree Shiv Vankeshawar Educational & Social Welfare Trust (2019) 177 ITD 184 / 181 DTR 314 (Delhi)(Trib.)

996 **S. 68 : Cash credits – Gain from off market trading in commodities – Statement of the broker that his company had not made any off market transactions with other clients-AO based on the statement assumed that transactions were not genuine – All details filed and even broker confirmed transactions – AO further denied set off against loss from F & O market – Addition deleted. [S. 115BBE]**
The assessee company which is engaged in share trading activities in various stock exchanges including F&O, commodities share trading and currency trading had filed

its return of income for A.Y. 2013-14 on 25-9-2013. During assessment proceedings, AO observed that the assessee made gain of ₹ 5,73,96,307/- in the business of trading in commodities. This gain was 'set off' against the loss of ₹ 5,56,42,339/- from F&O transactions, and a further loss of ₹ 1,82,496/- from currency transactions. It was observed by the AO that the assessee had shown a net profit of ₹ 21,25,794/- from its various share trading activities etc. When asked, assessee submitted that only one commodity transaction was entered in MCX and all other transactions were off market transactions which were through M/s Kaynet Commodities Pvt. Ltd. Assessee produced before the AO 'bills' of the off market trading that was carried out during the year. AO in order to verify the genuineness of the claim of the assessee issued summons under S. 131 to the Director of M/s Kaynet Commodities Pvt. Ltd. and recorded his statement under oath. Shri Mukesh Shah, Director of M/s Kaynet Commodities Pvt. Ltd. in his statement admitted before the AO that his company had not made any off market transactions with other clients. AO held a conviction that the commodity gains of ₹ 5,73,96,307/- claimed by the assessee were in the nature of artificially engineered gains that were created to 'set off' against the 'loss' incurred in F&O transactions. The AO that all the purchase and sale transactions were merely carried out by the assessee on a plain piece of paper and no movement of actual funds and only a journal entry was passed on 28-12-2012 and 5-1-2013 amounting to ₹ 1,00,00,000/- and ₹ 1,42,00,000/-, respectively, in the ledger of M/s Kaynet Commodities Pvt. Ltd. AO thus characterised the amount of ₹ 5,73,96,307/-as an unexplained cash credit under S. 68 of the Act. The AO further held that addition made under S. 68 could not be taken as income under any specific head of income, therefore, 'set off' of the F&O loss against the said deemed income could not be allowed. On appeal the CIT(A) allowed the appeal. On further appeal by the Revenue, the ITAT observed that assessee had placed on record the complete details i.e. name and address of the counter party viz. M/s Sneha Metal Pvt. Ltd. with the A.O, but the AO had not deemed it fit to make any enquiry with the said party. The Tribunal held that in case the AO had any serious doubts as regards the identity and creditworthiness in respect of the counter party which was identified in the course of the assessment proceedings, then it was open for him to have made further enquiries, which we find has not been done by him. The Tribunal held that the commodities transactions were carried out by the assessee throughout the year, thus the same clearly dislodges the observation of the AO that the profit generated therefrom was prompted with an intent to 'set off' the same against the loss suffered by the assessee in the F&O transactions. The Tribunal further observed that though an amount of ₹ 2,42,00,000/- was adjusted through journal entries, however, the payment of ₹ 3,21,50,000/- was received through account payee cheques, which thus clearly established the movement of actual funds in respect of the aforesaid transactions. The Tribunal therefore held that profit of ₹ 5,73,96,307/- from commodities transactions cannot be held as an unexplained cash credit under S. 68. The Tribunal further held that S. 115BBE was brought on the statute by the Finance Act, 2012 with effect from 1-4-2013. On a perusal of the said statutory provision, as was then so available on the statute and was applicable to the case of the assessee for the year under consideration i.e. A.Y. 2013-14, no restriction was placed as regards 'set off of losses against the income referred to in S. 68, 69, 69A, 69B, 69C and 69D. Rather, the legislature in all its wisdom by amending Sec. 115BBE vide

Finance Act, 2016 w.e.f. 1-4-2017 had only w.e.f. A.Y. 2017-18 placed a restriction on 'set off of losses, in addition to raising of any claim of expenditure and allowance against such income. The fact that the aforesaid amendment of S. 115BBE by the Finance Act, 2016, w.e.f. 1-4-2017 is prospective in nature was mentioned in CBDT Circular No. 3/2017, dated 20-1-2017. Thus even if the amount would have been taxable u/s 68, there was no embargo to claim 'set off' of losses in the year under consideration. (AY. 2013-14)
ITO v. Prism Share Trading (P) Ltd. (2019) 174 DTR 257 / 197 TTJ 733 (Mum.)(Trib.)

997 **S. 68 : Cash credits – Bogus capital gains from penny stocks – Mere allegation is not sufficient – No action from SBI – Capital gains cannot be assessed as cash credits. [S. 45]**
The allegation that the Co is a penny stock co whose share price has been artificially rigged by promoters/brokers/operators to create non-genuine LTCG is not sufficient. The AO has failed to bring on record any evidence to prove that the transactions carried out by the assessee were not genuine or that the documents were not authentic. No specific enquiry or investigation was conducted in the case of the assessee and/or his broker either by the INV Wing or by the AO during the course of assessment proceedings. The penny stock was also not subject to any action from SEBI (*Udit Kalra v. ITO (2019) 176 DTR 249 (Delhi)(HC)* distinguished, *CIT v. Fair Invest Ltd (2013) 357 ITR 146 (Delhi)(HC)* followed). (ITA No. 3212/DEL/2019, dt. 12-6-2019)(AY. 2015-16)
Deepak Nagar v. DCIT (Delhi)(Trib.), www.itatonline.org
Deepak Nagar v. ACIT (2019) 73 ITR 74 (Delhi)(Trib.)

998 **S. 68 : Cash credits – Books of account – Sale of shares-long term capital gains – Bank statement is not books of account – Addition cannot be made without giving an opportunity of cross examination – Addition is deleted. [S. 2(12A), 44AA]**
Tribunal held that mere bank statement which is issued by bank to its client/account holder could not have been elevated to status of books maintained by assessee within meaning of S. 2(12A) and S. 44AA of the Act. The revenue cannot rely on the statements of third parties without giving an opportunity of cross examination as it violates principles of natural justice. (AY. 2015-16)
Vinesh Maheswari v. ITO (2019) 176 ITD 576 (Delhi)(Trib.)

999 **S. 68 : Cash credits – Share application money – Balance sheet, profile, bank statements and PAN details of subscriber companies were provided – Addition cannot be made as cash credits. [S. 133(6)]**
In the course of assessment proceedings the assessee was asked to substantiate the identity, credit worthiness and genuineness of the share capital received. The assessee furnished list of share applicants with full names and addresses. The AO issued notices under S. 133(6). Reply to all the notices were received by the Assessing Officer along with ledger account, bank statements and copies of Income tax returns. The AO deputed an Income tax Inspector for making further enquiry. The Inspector submitted his report stating that the above said subscriber companies' addresses were fake and they did not exist at the given addresses. Thereafter, the Assessing Officer asked the assessee to produce the people from whom the share application money had been

received. On receiving no plausible reply and on the strength of the Inspector's report, the Assessing Officer came to the conclusion that the assessee grossly failed to identify the share applicants and drawing support from the provisions of section 68, he made the addition under S. 68. CIT(A) also affirmed the order of Assessing Officer. On appeal the Tribunal held that, once the assessee-company filed complete details before the Assessing Officer, then the initial onus upon the assessee-company has been discharged to prove the identity of the investor. The assessee company had provided the balance sheet of the investor company's along with their company profiles and details with the Registrar of Companies. The subscriber companies themselves have provided the bank statements and their respective PAN details. It is not the case of the revenue that the subscriber companies are name lenders or entry providers. Their details are available on public domain on the website of the Registrar of Companies. The paper book reveal the proportion of investment made by the share applicant companies in the share capital of the assessee-company. The percentage of their investment ranges from 5 per cent to 40 per cent, which means that the share applicant company portfolios include investment in other companies also. There is nothing on record to suggest that the other investments made by the share applicant companies have been treated as bogus in the hands of other companies. The assessee company discharged the burden hence addition confirmed by the CIT(A) is deleted. (AY. 2010-11)
Flourish Builders & Developers (P.) Ltd. v. DCIT (2019) 176 ITD 409 (Delhi)(Trib.)

S. 68 : Cash credits – Bank statement cannot be considered as books maintained by assessee – Addition is held to be not valid. 1000
Allowing the appeal of the assessee the Tribunal held that, Bank statement cannot be considered as books maintained by assessee. According the addition as cash credit was deleted. Followed *CIT v. Bhaichand H. Gandhi (1983) 143 ITR 67 (Bom) (HC), Mehul Vyas v. ITO (2017) 164 ITD 296 (Mum) (Trib).* (AY. 2008-09)
Satish Kumar v. ITO (2019) 198 TTJ 114 / 175 DTR 121 (Asr.)(Trib.)

S. 68 : Cash credits – All details regarding cable operators available on record – All deposits received in cheque which were subsequently refunded back – Deletion of addition is held to be justified. 1001
AO observed that while performing functions as a distributor assessee took deposits from cable operators which were refundable. However, AO observed that these deposits were rarely refunded and since assessee did not furnish name, address and PAN the same were treated as unexplained cash credit u/s 68. Tribunal relied on the CIT(A) order where he had verified the claim and found all details relating to cable operators available on record and the deposits were received in cheque and refunded back (AY. 2005-06)
ACIT v. Star India (P) Ltd. (2019) 176 DTR 409 / 199 TTJ 125 (Mum.)(Trib.)

S. 68 : Cash credits – Share premium – Nature and source of share premium received is explained – Addition cannot be made as cash credits. 1002
Where nature and source of share premium received by assessee on issue of shares stood explained, no addition under S. 68 could have been made. In cases prior to assessment year 2013-14, assessee was not required to prove source of funds received

since proviso to S. 68 requiring to do so was introduced with effect from 1-4-2013. (AY. 2012-13)
Jayneer infrapower & Multiventures (P.) Ltd. v. DCIT (2019) 176 ITD 15 / 200 TTJ 179 (Mum.)(Trib.)

1003 **S. 68 : Cash credits – Share application – High premium – Addition as unexplained cash credit is held to be justified.**
Dismissing the appeal of the assessee the Tribunal held that the assessee could not produce share applicants, justification for high premium, cash was deposited before issue of cheque and persons who have subscribed shares had nominal income. Addition as unexplained cash credit is affirmed. (AY. 2012-13)
Ayaana Comtrade (P.) Ltd. v. ITO (2019) 176 ITD 6 (Ahd.)(Trib.)

1004 **S. 68 : Cash credits – Advance received in earlier years – Addition cannot be made as cash credits.**
Advances received by assessee in earlier assessment years could not be brought to tax as unexplained cash credit under S. 68 in relevant/current assessment year. (AY. 2012-13)
James P. D'Silva v. DCIT (2019) 175 ITD 533 / 199 TTJ 739 / 179 DTR 281 (Mum.)(Trib.)

1005 **S. 68 : Cash credits – Share Capital – identity, creditworthiness and genuineness of the share applicants by producing the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments and the investors have shown the source of source & personally appeared before the AO in response to s. 131 summons – Addition cannot be made as cash credits. [S. 131, 133(6)]**
AO made contribution to share capital of the assessee as cash credits, which was affirmed by the CIT(A). On appeal by the assessee the allowing the appeal the Tribunal held that the assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants by producing the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments and the investors have shown the source of source & personally appeared before the AO in response to s. 131 summons. The judgement in *PCIT v. NRA Iron & Steel (2019) 103 taxmann.com 48 (SC)* is distinguished on facts stating that in the said decision the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case in the assessee. (AY. 2012-13)
Baba Bhootnath Trade & Commerce Ltd. v. ITO (2019) 177 DTR 169 / 199 TTJ 423 (Kol.) (Trib.), www.itatonline.org

1006 **S. 68 : Cash credits – Bank statement is not books of account Sale of shares – Addition on the basis of bank statement treating the statement as books of account is held to be not valid – Natural justice – Statement of third parties cannot be relied upon without giving an opportunity of cross examination. [S. (2(12A), 44AA, 45, 69, 69A, 143(3)]**
AO assessed the long term capital gains on sale of shares as cash credit u/s. 68 of the Act and alleged commission u/s 69C of the Act on the basis of bank statement issued by the Bank which was confirmed by the CIT(A). On appeal the Tribunal held that addition on the basis of bank statement treating the statement as books of account is

held to be not valid. Tribunal also held that statement of third parties cannot be relied upon without giving an opportunity of cross examination. Accordingly addition was deleted. *Referred Sheraton Apparels v. ACIT (2002) 256 ITR 20 (Bom.)(HC)* (AY. 2015-16) *Amitabh Bansal v. ITO (2019) 175 ITD 401 (Delhi)(Trib.)*

S. 68 : Cash credits – Bogus Capital gains – Penny Stocks – Though the AO did not find any mistake in the documentation furnished by the assessee, there is need for finding of fact on (i) the nature of the shares transactions; (ii) make – believe nature of paper work; (iii) Camouflage the bogus nature; and, (iv) the relevance of human probabilities etc-Addition is confirmed as cash credits. [S. 10(38), 45] 1007

The assessee purchased 300 shares of Pyramid Trading Finance Ltd. now known as Misha Finance & Trading Ltd. The said shares were transferred to Tohee Trading Agencies Pvt. Ltd. As per SEBI's website the said company i.e. Misha Finance & Trading Ltd was one of the delisted company. Purchase price was 0.37 and the sale price was ₹ 45 per share increase of 120 times within 24 months. The assessee claimed exemption u/s. 10(38) of the Act which was disallowed by the AO and assessed as cash credits. On appeal CIT (A) also confirmed the addition. On appeal to the Tribunal dismissing the appeal of the assessee the Tribunal held that; Though the AO did not find any mistake in the documentation furnished by the assessee, there is need for finding of fact on (i) the nature of the shares transactions; (ii) make-believe nature of paper work; (iii) Camouflage the bogus nature; and, (iv) the relevance of human probabilities, etc. Addition is confirmed as cash credits. Followed *PCIT v. NDR Promoters Pvt. Ltd. (2019) 410 ITR 379 (Delhi)(HC)* (ITA No. 1875/PUN/2018, dt. 01.03.2019) (AY. 2015-16)
Shamim Imtiaz Hingora v. ITO (SMC) (Pune)(Trib.), www.itatonline.org.

S. 68 : Cash credits – Share application money – Farmers – Identity, creditworthiness and also source of their investment was furnished – Addition is held to be not justified. 1008

Allowing the appeal of the assessee the Tribunal held that; in respect of share application money received from farmers the assessee has proved identity, creditworthiness and also source of their investment by filing the documentary evidence. Accordingly the addition as cash credits is held to be not justified. (AY. 2010-11)
Britex Cotton International Ltd v. DCIT (2019) 174 ITD 674 (Mum.)(Trib.)

S. 68 : Cash credits – Bank Account – Agricultural income – Bank statement is not considered as books of account and, therefore, any sum found credited in bank pass book cannot be treated as an unexplained cash credit – Matter remanded. 1009

Tribunal held that; Bank statement is not considered as books of account and, therefore, any sum found credited in bank pass book cannot be treated as an unexplained cash credit. Tribunal also held that absence of disclosure of agricultural income in income-tax return, it cannot be believed that parties had generated agricultural income. However in interest of justice and fair play, matter was to be restored to file of Assessing Officer for fresh adjudication in accordance with provisions of law. Followed *Rameshbhai Somabhai Patel v. ITO (ITA. No. 1864 (Ahd.) of 2014*, dt. 19-4-2018) (AY. 2011-12)
Ramilaben B. Patel (Smt.) v. ITO (2019) 174 ITD 694 (Ahd.)(Trib.)

1010 **S. 68 : Cash credits – Share premium – High premium – Transaction cannot be doubted – Addition is held to be not justified.**

Dismissing the appeal of the revenue the Tribunal held that; when the assessee has furnished merely because Assessing officer felt that share premium received by assessee was high, genuineness of transaction could not be doubted when the assessee has filed sufficient evidences such as such as share allotment details, annual return, details including name, address and PAN of shareholder who had subscribed to its shares etc addition cannot be made merely on the ground that high premium was charged. (AY. 2012-13)

DCIT v. Piramal Realty (P.) Ltd. (2019) 174 ITD 633 / 198 TTJ 999 / 176 DTR 242 (Mum.) (Trib.)

1011 **S. 68 : Cash credits – Share capital – In the case of a Private company, onus is on assessee to prove identity, creditworthiness of subscribers and most importantly genuineness of transactions – Even if AO does not make inquiry, CIT(A) should do so – Relief cannot be given merely on basis of Ration Card, Share Application forms, Voter ID etc of the subscribers – Matter was set aside to AO to decide according to the law. [S. 131]**

Allowing the appeal of the revenue the Tribunal held that, in the case of a Private company, onus is on assessee to prove identity, creditworthiness of subscribers and most importantly genuineness of transactions – Even if AO does not make inquiry, CIT(A) should do so-Relief cannot be given merely on basis of Ration Card, Share Application forms, Voter ID etc of the subscribers-Matter was set aside to AO to decide according to the law. (AY. 2009-10)

ITO v. Yadu Steels & Power Pvt. Ltd. (Delhi)(Trib.), www.itatonline.org

1012 **S. 68 : Cash credits – Undisclosed income – Bogus capital gains – Penny stocks – Mere furnishing of contract note etc does not inspire the confidence – Addition as cash credit is held to be justified – Commission addition estimated at 6% was restricted to 2%. [S. 45, 48]**

Dismissing the appeal of the assessee the Tribunal held that; The assessee completed paper-trail by producing contract notes for purchase and sale of shares of Parraneta Industries Ltd (PIL). Mere furnishing of contract notes etc does not inspire any confidence in the light of facts. Broker from whom the shares were purchased was suspended by SEBI for illegal activities. Demat account was not filed. Share price multiplied by 300 times. Commission addition which was estimated at 6% was restricted to 2%. Test of human probability applied and apparent should be ignored to unearth the harsh reality (*CIT v. Sumati Dayal (1995) 214 ITR 801 (SC)* & *CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)* applied). Addition was confirmed on facts and the case laws relied by the representative was discussed. (AY. 2004-05, 2005-06, 2006-07)

Rajkumar B. Agarwal v. DCIT (2019) 176 DTR 273 / 199 TTJ 222 (Pune)(Trib.) www.itatonline.org

Bharat R. Agarwal v. DCIT (2019) 176 DTR 273 / 199 TTJ 222 (Pune)(Trib.) www.itatonlne.org

Ameeta R. Agarwal v. DCIT (2019) 176 DTR 273 / 199 TTJ 222 (Pune)(Trib.) www.itatonlne.org

S. 68 : Cash credits – Bogus capital gains – Penny stocks – Plea that opportunity to cross – examine the witness was not given & investigation report was not furnished is not relevant if assessee unable to successfully controvert findings of the AO and such argument was never made before the lower authorities – Addition is held to be justified [S. 10(38), 45] 1013

Dismissing the appeal of the assessee the Tribunal held that, Lower authorities have treated the purchase and sale of shares of SRK Industries Ltd as sham transaction and denied the claim of exemption u/s 10(38) of the Act and treated as unexplained cash credits on the grounds that, the company in which the assessee had purchased the equity shares had no creditability and no prudent investor would make such investment. There was finding by the investigation wing that syndicate of brokers and broking entities indulging in price rigging, and the motive of price manipulation is only to bring the black money as legitimate long term capital gain for which exemption u/s 10 (30) of the Act is available. First time before the Tribunal the opportunity of cross examination was raised. Tribunal rejected the ground of cross examination and confirmed the applying the ratio of decisions in *CIT v. Sumati Dayal (1995) 214 ITR 801 (SC) & CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)* (AY. 2014-15)

Pankaj Agarwal & Sons (HUF) v. ITO (Chennai)(Trib.), www.itatonline.org
Mamta Agarwal (Smt.) v. ITO (Chennai)(Trib.), www.itatonline.org
Rajesh Agarwal & Sons v. ITO (Chennai)(Trib.), www.itatonline.org
Ramakishan Agarwal v. ITO (Chennai)(Trib.), www.itatonline.org
R. K. Agarwal & Sons (HUF) v. ITO (Chennai)(Trib.), www.itatonline.org
Sampatti Agarwal (Smt.) v. ITO (Chennai)(Trib.), www.itatonline.org
Rajesh Agarwal v. ITO (Chennai)(Trib.), www.itatonline.org
Pankaj Kumar Aagrwal v. ITO (Chennai)(Trib.), www.itatonline.org

S. 68 : Cash credits – Shares – Purchase of shares held to be genuine – Sale consideration cannot be assessed as assessee's own unaccounted money. [S. 45] 1014

Dismissing the appeal of the revenue the Tribunal held that when the Assessing Officer had accepted purchase of shares as genuine transaction, sale consideration received on sale of shares cannot be assessee's own unaccounted money. (AY. 2013-14)

ACIT v. Navneet Kumar Sureka (2019) 174 ITD 320 (Delhi)(Trib.)

S. 68 : Cash credits – Share premium – The fact that the premium is abnormally high as per test of human probabilities is not sufficient – The AO has to lift the corporate veil & determine whether any benefit is passed on to the shareholders/directors. Directions issued to AO to establish whether assessee company was used as a vehicle to pass on the benefit to shareholders/directors – Tribunal directed the AO to verify all the funds and cash flow management of the company for both AY. 2009-10 & 2010-11. AO should not resort to rely on circumstantial evidence or on test of human probabilities but on factual evidence of passing of benefit to the shareholders/directors – Addition was deleted subject to verification. [S. 28(iv), 56] 1015

The appellant contended before the Tribunal that, the representatives from investor companies were examined on oath and have confirmed making the investment at premium. Complete details and confirmation of transaction available and are not

contradicted in any why that shares were acquired at a premium as continues to be reflected in books of accounts of Appellant Company. Quantity of Share premium on shares of private company are not regulated by law and is based on commercial negotiations. Share premium money received is fully accounted and continues to remain in the company to date fully compliant with section 78 of companies Act. Allegations that the same could be towards services by promoters are totally baseless and not supported by any material. Amount of share premium is permitted to be negotiated between investor and company and there are no restrictions on the quantum. Bharati Cement Corporation Limited as legal entity is distinct and separate from promoters or shareholders, presumptions made in impugned order to the contrary are contrary to settled principles of law, unlawful, factually baseless and invalid. As no amount of share premium is alleged or even shown to have been allowed as pass through by the company there is no basis for suspicions and wild allegations. Without prejudice, even if lifting of corporate veil is permissible, the consequence would not lead to taxation of share premium in the hands of Appellant Company. The Tribunal held that the fact that the premium is abnormally high as per test of human probabilities is not sufficient to the AO to lift the corporate veil. Presumptions of some service/benefits being allowed by government of state of Andhra Pradesh to investor companies, even if presumed to be true for argument sake cannot justify taxation of any amount in the hands of Appellant company, as being a legal entity Appellant Company was neither in business of providing such services or was actually involved in any way. Details provided also establish that the entire sum and even subsequent share premium amount received from PARFICM remains invested in Appellant's business as on date of this hearing. AO brought impugned share premium to tax under S.28 (iv) and S. 68 but the Ld. CIT (A) has confirmed that the same is taxable under S. 56. Department is not in appeal against Ld. CIT (A) order. The subsequent amendment by way of S. 56 2(viib) effective 1-4-2013 i.e., AY. 2013-14 cannot be applied for impugned transactions completed during AY 1009-10 and 2010-11. On record confirm that S. 68 and S. 28(iv) have no application at all. Tribunal directed the AO to verify all the funds and cash flow management of the company for both AY. 2009-10 & 2010-11. AO should not resort to rely on circumstantial evidence or on test of human probabilities but on factual evidence of passing of benefit to the shareholders/directors. Hence, grounds of appeal raised by the assessee are allowed for statistical purposes. (ITA Nos. 696 & 697/Hyd/2014, dt. 10-8-2018) (AY. 2009-10, 2010-11)

Bharathi Cement Corporation Pvt. Ltd. v. ACIT (Hyd.)(Trib.), www.itatonline.org

1016 **S. 69 : Unexplained investments – Income from undisclosed sources – Non-Resident – Deposit in NRI Accounts – Deletion of addition by the Tribunal based on the evidences – Reversal of the order of Tribunal by the High Court is held to be not valid – Oder of the Tribunal is affirmed. [S. 158BB, 260A, Foreign Exchange Regulation Act, 1973, S. 13]**

Allowing the appeal of the assessee the Court held that t basically the High Court had made the additions on the ground that the assessee had been unable to present declaration forms that had been filled in by him at the time of his visits to India from abroad. Keeping in mind the fact that these declaration forms were asked for long after the expenditure had, in fact, been incurred, it could not possibly be said that the

Appellate Tribunal's judgment and findings therein were perverse, which was the only entry on facts for the High Court exercising its appellate jurisdiction under S. 260A of the Act. The High Court ought not to have interfered with the Appellate Tribunal's judgment as no substantial question of law arose therefrom. Order of Tribunal is affirmed. (AY. 1992-93 to 1997-98)

Purshottam Khatri v. CIT (2019) 419 ITR 475 / 267 Taxman 503 / (2020) 312 CTR 323 / 185 DTR 177 (SC)

Editorial : Decision in CIT v. Purshottam Khatri (2006) 203 CTR 1 / (2007) 290 ITR 260 (MP) (HC) is reversed.

S. 69 : Unexplained investments – Review – Tax effect less than ₹ 1 crore – Bogus purchases – Assessment – Addition cannot be made without providing a copy of the statements and opportunity of cross examination – Initial burden is discharged by the assessee by producing various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their income-tax return. [S. 68, 143(3), 261, 268A] 1017

Dismissing the review petition on merits the Court held that disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their income-tax return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination. Review petition of revenue is dismissed. (RP No 22394 of 2019 in CA Nos. 9604-9605 of 2018, dt. 21-8-2019) (SLP rejected *CIT v. Odeon Builders Pvt. Ltd (2018) 404 ITR 1 (St). CIT v. Odeon Builders Pvt. Ltd (2019) 418 ITR 316 (HC)* (AY. 2008-09)

CIT v. Odeon Builders Pvt. Ltd. (2019) 418 ITR 315 / 311 CTR 258 / 183 DTR 25 / 266 Taxman 461 (SC), www.itatonline.org

S. 69 : Unexplained investments – Income from undisclosed sources – Jewellery converted to bullion and sold – Sale proceeds through bank – Addition cannot be made as income from undisclosed sources. [Voluntary Disclosure of Income Scheme, 1997] 1018

Allowing the appeal of the assessee the Court held, the declaration had been accepted upon the assessees paying the requisite taxes. The documents filed in support were available before the Assessing Officer and were on record. In fact, the copies of the sale bills of the gold and silver bullion corresponded to the bullion quantities as converted. The mere change in the nomenclature from jewellery to bullion in the Voluntary Disclosure of Income Scheme declaration vis-a-vis sale bills would not be relevant. The Tribunal committed a serious error in arriving at a conclusion that items sold by the respective assessees were different from the jewellery declared under the Voluntary Disclosure of Income Scheme. The addition to income was not justified. (AY. 1998-99)

N. R. Gangavathi (HUF) v. ITO (2019) 419 ITR 469 / 311 CTR 625 / 183 DTR 375 (Karn.) (HC)

Basavaraj Kamatgi (HUF) v. ITO (2019) 419 ITR 469 / 311 CTR 625 / 183 DTR 375 (Karn.) (HC)

1019 **S. 69 : Unexplained investments – AO has not established the any such unaccounted investments – Order of Tribunal is affirmed. [S. 260A]**

AO made addition in respect of unaccounted investment made by assessee in immovable property. CIT(A) and Tribunal concurrently came to conclusion that materials on record did not establish any such unaccounted investments. High Court affirmed the order of the Tribunal.

CIT v. Suvas Hitendra Barot (2019) 108 taxmann.com 58 / 265 Taxman 231 (Guj.)(HC)

Editorial : SLP of revenue is dismissed CIT v. Suvas Hitendra Barot (2019) 265 Taxman 230 (SC)

1020 **S. 69 : Unexplained investments – Purchase of land – Addition made on the on the basis of statement and agreement of purchase is held to be valid.**

Dismissing the appeal of the assessee the Court held that it is settled position of law that statement is to be believed as a whole and not in piecemeal as one part suits to the assessee and other part does not suits to the assessee. The findings recorded by the authorities are the findings of fact based on the agreement of purchase of land dated 15-8-2005 and the same was admitted by SKL in reply to Question No. 14 of his statement and thus, the contention of the appellant that the authorities have committed an error in relying on the statement of SKL cannot be accepted. (AY. 2006-07)

Vijay Jain v. CIT (A) (2019) 265 Taxman 81(Mag.) (MP)(HC)

1021 **S. 69 : Unexplained investments – evidence found during the course of search in respect of later years and not in respect of prior years – Held, such evidence can be used to make estimations even for the earlier years. [S. 158BB]**

The Court held that AO while making block assessment is entitled to proceed on best of judgment and make estimations for the block period. Accordingly, when no material was found in the course of search in respect of prior years, the Court held that the AO was justified in using the material recovered disclosing suppression to make addition on the basis of estimation for the earlier years as it cannot be assumed that a dealer who praises suppression would retain the material disclosing suppression for long period. (BP 1990-91 to 2-3-2000)(ITA No. 19 of 2011 dt. 10-1-2019)

CIT v. Orma Marble Palace (P) Ltd. (2019) 308 CTR 584 / 177 DTR 350 / 110 taxmann.com 186 (Ker.)(HC)

Editorial: SLP of the assessee is dismissed Orma Marble Palace (P) Ltd. v. CIT (2019) 267 Taxman 436 (SC)

1022 **S. 69 : Unexplained investments – Excess stock – Restriction of addition to a sum of ₹ 10 lacs by way of estimate and preponderance of probability cannot be said to be arbitrary and illegal.**

On appeal, the High Court held that, when there is a finding of fact that on the basis of the physical verification, a difference was found in the goods with the assessee, Tribunal cannot be said to have erred in sustaining such additions made as it was not solely basis a retracted statement of employees but basis the physical verification of stock. There being no other material to prove to contrary, restriction of addition to a sum of

₹ 10 lakhs by way of estimate and preponderance of probability cannot be said to be arbitrary and illegal. (AY. 2007-08)
Omprakash Kukreja v. ACIT (2019) 308 CTR 68 / 176 DTR 244 (MP)(HC)

S. 69 : Unexplained investments – Statement on oath – Assets were not found – Merely on the basis of statement in the course of search no addition can be made. [S. 132(4)] 1023
Dismissing the appeal of the revenue the Court held that, when no incriminating materials or documents had been brought on record merely on the basis of statement on oath addition cannot be made. (AY. 2006-07)
CIT v. Dilbagh Rai Arora (2019) 263 Taxman 30 / 308 CTR 502 / 177 DTR 220 (All.)(HC)

S. 69 : Unexplained investments – Advance of rent received for premises – Unclaimed balance cannot be treated as unexplained investment or cash credits – Assessable as business income of the relevant assessment year. [S. 5, 28(i), 68] 1024
Allowing the appeal of the revenue the Court held that the amount received as advance of rent by the assessee and which remained unclaimed with it could not be treated as unexplained investment or unexplained cash credit, since it was neither, and assessment had to be upheld as an income from business. The source was clear from the books of account and there was proper explanation for the amounts. If the company which had paid the advance rent had occupied the premises the amounts would have been shown as income from business. The assessment itself was finalised after three years, which was the normal period of limitation for recovery of money, even if calculated from the date on which last refund was made. The assessee had not produced any agreement which would have had a restrictive clause for forfeiture of the advance amounts, if the contract did not fructify. The assessment order itself was passed after three years from the date of commencement of limitation and there was no claim made by the assessee as to any recovery proceedings having been commenced by the other company or a repayment having been made. The order of the Assessing Officer was restored with modification to assess the rent received in advance as income in the relevant previous year. (AY. 2003-04)
CIT v. Amritha Cyber Park (P.) Ltd. (2019) 412 ITR 199 / 263 Taxman 546 / 180 DTR 285 (Ker.)(HC)

S. 69 : Unexplained investments – Income from undisclosed sources – Bogus purchases – Purchases were not part of sales shown by the assessee – Bogus purchase for suppressing the profits of the business – Addition is held to be justified. 1025
Dismissing the appeal of the assessee the Court held that the Tribunal while confirming the addition of ₹ 21,46,261 had found that the Assessing Officer had conducted detailed enquiries regarding the alleged purchases. It was found that the bogus purchase bills were obtained for suppressing the profits of the assessee. Accordingly the Tribunal was justified in confirming the addition. (AY. 2012-13)
Shree Krishana Kripa Feeds v. CIT (2019) 410 ITR 533 / 260 Taxman 337 / 307 CTR 220 / 175 DTR 18 (P&H)(HC)

1026 **S. 69 : Unexplained investments – Investment was not satisfactorily explained – Addition is held to be proper. [S. 69A]**
Dismissing the appeal of the assessee the Court held that, there was no explanation offered by the assessee in respect of the investment amount of ₹ 10 lakhs. Confirmation and bank details are not produced, merely producing the letter who had executed the power of attorney is not sufficient. (AY. 1999-2000)
V. R. Sreekumar v. CIT (2019) 410 ITR 1 (Ker.)(HC)

1027 **S. 69 : Unexplained investments – Income from undisclosed sources – Penny stock – Return of 491% – Bogus long term capital gains – Stock Exchange has identified Cressanda Solutions Ltd as penny stock being used for obtaining bogus long term capital gains – No evidence of actual sale except contract notes issued by share Broker were produced – Denial of exemption is held to be justified. [S. 10(38), 45]**
Appellant booked Long term capital gain (LTCG) of ₹ 73,77,806/- and sought exemption under S. 10 (38) of the Act. AO denied the exemption. AO found transaction pertaining to purchase of shares by Appellant of Smartchamps IT and Infra Ltd., which was merged with Cressanda Solutions Ltd., to be bogus transaction by holding that Cressanda Solutions Ltd. was penny stock. CIT(A) and Appellate Tribunal also confirmed the order of AO. On appeal it was submitted that the Appellant had made cheque payment for purchase of 1500 shares of Smartchamps IT and Infra Ltd. in assessment year 2012-13, and that investment was accepted by department. It was further submits that Appellant had produced all relevant materials before Assessing Officer, namely, documentation relating to opening of DMAT account; purchase of shares of Smartchamps IT and Infra Ltd., contract notes, and other relevant documents. Dismissing the appeal of the assessee the Court held that, the analysis of balance sheet & P&L account of the Co shows that astronomical increase in share price which led to returns of 491% for assessee was completely unjustified. The EPS & other financial parameters cannot justify price at which assessee claims to have sold shares to obtain Long term capital gains. It is not explained as to why anyone would purchase said shares at such high price. Accordingly the order of Tribunal is affirmed. High Court also observed that Bombay Stock Exchange has identified Cresssanda Solutions Ltd as penny stock being used for obtaining bogus long term capital gains and no evidence of actual sale except contract notes issued by share Broker were produced. Accordingly no question of law. (AY. 2014-15)
Suman Poddar v. ITO (2019) 112 taxmann.com 329 / (2020) 268 Taxman 321 (Delhi)(HC) www.itatonline.org
Editorial : SLP of the assessee is dismissed, Suman Poddar v. ITO (SLP No. 26864/2019 dt 22-11-2019 (2020) 268 Taxman 320 (SC)

1028 **S. 69 : Unexplained investments – HSBC in Switzerland – No addition in the absence of incriminating material found in the course of search. [S. 132, 153A]**
AO made addition under S. 69 on the basis of certain papers which according to him showed that the assessee was the owner of bank accounts with HSBC in Switzerland. Held that the addition was to be deleted since the said papers were not found in the course of the search and in the absence of any incriminating material found in the course

of a search, no addition could be made in the assessment for a year which was unabated. Further held that in any event the papers did not show that any deposits were made in the given assessment years, which is a pre-requisite for S. 69. (AY. 2006-07 to 2012-13)
Krishan Kumar Modi v. ACIT (2019) 180 DTR 274 (Delhi)(Trib.)

S. 69 : Unexplained investments – Cash transactions in bank accounts – Source of cash deposits – failed to explain source – Addition is held to be justified. [S. 131(1)] 1029
During assessment proceeding, AO noted that assessee had deposited cash on different dates in saving bank account. Assessee claimed to have entered into an agreement for sale of his factory land and had received advance which was deposited in his bank account. However, said agreement was cancelled due to family dispute and amount of advance was refunded to the buyer/company. Assessee was asked to produce the Director of the Company and also issued summons u/s 131(1) for his personal attendance. Assessee was unable to produce the original agreement nor the Director. The AO held that out of total cash deposit in assessee's saving account, a certain amount represented assessee's unexplained investment out of his undisclosed sources and accordingly added to his total income as he failed to explain satisfactorily sources of such investment. CIT(A) confirmed AO's order. Tribunal held that, the AO asked assessee for source of total cash deposits made in three different dates, accordingly AO allowed benefit of withdrawals made on various date and sustained addition. Assessee had entered into an agreement for sale and claimed to have received advance. The Purchaser also confirmed this fact that an amount was given to assessee and was duly reflected in balance sheet furnished to AO. Thereafter, assessee also deposited an amount but before that deposits there were withdrawals. In present case, it was not brought on record to substantiate that said withdrawals was utilized by assessee elsewhere and not re-deposited in bank account, so it could be said that said amount was available with assessee for depositing cash. However, assessee could not furnish any proper evidence to satisfaction of AO for remaining said amount and hence Addition made in assessee's hands appeared to be justified. Addition was made in respect with difference amount between total cash deposit and withdrawals. Remaining addition made by AO and sustained by CIT(A) was deleted. (AY. 2009-10)
Kamaljit Vij v. ITO (2019) 175 DTR 257 / 198 TTJ 299 (Asr.)(Trib.)

S. 69 : Unexplained investments – Undisclosed income – Disclosure by director – Unaccounted sales – Addition can be made only after the consideration of purchases and ancillary expenses – Addition is restricted to only profit margin. [S. 132(4)] 1030
Assessee company was engaged in the milk processing business. A search was conducted at the premises and documents reflecting unaccounted sales for a period of 20 days were discovered. The assessee company claimed that the unaccounted portion was handed over to the director of the company to deal with in his individual capacity. To this the director also confirmed in affirmative stating that he had already offered to tax the income from such milk, which was acknowledged by the AO. However, the AO, without any justification and without bringing any documents on record considered that such unaccounted sales was done for 2 AY's rather than 20 days only and accordingly made an addition to the income of the assessee company. Also the assessee contended

that the AO, in his whims and surmises, has considered the extrapolation only for 2 AY's, if he was so confident about the seized documents and the income therein, he should have extrapolated for the entire block of six years. It was held that, here as the income from the unaccounted milk was already declared by the director and tax was paid on it, the addition made was completely unjustified and was to be deleted. (AY. 2011-12, AY 2012-13)
ACIT v. Creamy Foods Ltd. (2019) 55 CCH 377 / 70 ITR 59 (SN) (Delhi)(Trib.)

1031 **S. 69 : Unexplained investments – Loose sheet found during search not in handwriting of assessee or of any of family members – No statement recorded from author of loose sheet regarding contents and no enquiries conducted with buyer of flat – Addition is held to be not valid. [S. 132]**
Tribunal held that a loose sheet was found evidencing the on money consideration for sale of the flat. The loose sheet was not in the handwriting of the assessee or of any of the family members. No statement was recorded from the author of the loose sheet regarding the contents and no enquiries were conducted with the buyer of the flat. The assessee had never agreed or accepted that he had received the sale consideration over and above the amount recorded in the registered document and no evidence was found with regard to receipt of cash. Therefore, the addition was unsustainable. (AY. 2012-13 and 2013-14).
Dy. CIT v. Kotu Sarat Kumar (2019) 71 ITR 147 (Vishakha)(Trib.)

1032 **S. 69 : Unexplained investments – Search and seizure – Gold and silver ornaments – Found in premises of assessee belonging to assessee's wife and his mother – Gold and silver ornaments inherited – Addition cannot be made.**
The Tribunal held, that once the AO had found the explanation was reasonable, there was no case for making the addition in the hands of the assessee. The AO had accepted the explanation of the assessee that the gold jewellery and silver articles found in the premises of the assessee belonged to the assessee's wife and his mother and were inherited. There was no case for making the addition in the hands of the assessee. Merely because of non-furnishing of wealth-tax returns, the Assessing Officer could not make the addition in the hands of the assessee when it was explained to the AO that the jewellery belonged to his wife and mother. If at all the addition was required to be made it should be made in the hands of the right person duly initiating the proceedings. The assessee had filed wealth-tax returns for the assessment years 2009-10 and 2010-11, which had been accepted by the Department without making any addition. Therefore, there was no case for making the addition on account of gold and jewellery found during the course of search in the hands of the assessee. (AY. 2012-13, 2013-14).
Dy. CIT v. Kotu Sarat Kumar (2019) 71 ITR 147 (Vishakha)(Trib.)

1033 **S. 69 : Unexplained investments – Income Surrendered during survey proceedings on account of undisclosed debtors is business income and not deemed income – Assessee entitled to set off of business loss against such surrendered income. [S. 28(i), 69B, 133A]**
Tribunal held that the surrender had been made on account of undisclosed debtors. The CIT((A)) had rightly treated the surrendered income as in the nature of business

income of the assessee and accordingly, allowed the benefit of set off of losses against it. (AY. 2012-13)
Dy. CIT v. Khurana Rolling Mills P. Ltd. (2019) 73 ITR 613 (Chd.)(Trib.)
Dy. CIT v. Khurana Steels Ltd. (2019) 73 ITR 613 (Chd.)(Trib.)

S. 69 : Unexplained investments – Income from undisclosed sources – Bogus purchases – Assessee not producing material evidence of parties or intermediaries from whom it made purchases for verification – Addition on account of bogus purchases justified. 1034
During the course of search and seizure action conducted by the Investigation Wing in the case of three group concerns, it came to light that they were operating and managing benami concerns in the names of their employees through which they provided accommodation entries of unsecured loans and bogus purchases to various beneficiaries. The assessee however, could not produce the parties or intermediaries for verification nor could the assessee produce sufficient evidence to prove the genuineness of purchases. Even the payments through account payee cheques were not found sacrosanct and the same had been admitted in the statements recorded by the Investigation Wing. Moreover, cash was returned to these beneficiary parties through A after deducting commission. Therefore the unverifiable purchases were brought to tax and addition on account of bogus purchases was confirmed. The very nature of business of the accommodation entry provider was to earn commission income from the beneficiaries, such as the assessee, the AO had reasonably estimated the commission of ₹ 10,000 for two bogus bills obtained by the assessee at ₹ 5,000 per bill. (AY. 2013-14, 2014-15)
VBC Jewellery v. Dy CIT (2019) 70 ITR 481 (Chennai)(Trib.)

S. 69 : Unexplained investments – Income form undisclosed – Bogus purchases – The CIT(A) is not justified in enhancing the assessment to disallow 100% of the bogus purchases – The only addition which can be made is to account for profit element embedded in the purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. [S. 251] 1035
AO to believe that the said purchases were non-genuine and accordingly, the additions against these purchases were estimated @12. 5% which resulted into an addition of ₹ 10,41,892/-. The Ld. first appellate authority, after considering assessee's submissions and material on record came to a conclusion that the circumstances called for full additions as against 12.5% estimated by AO. Tribunal held that, The CIT(A) is not justified in enhancing the assessment to disallow 100% of the bogus purchases-The only addition which can be made is to account for profit element embedded in the purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. Followed, *PCIT v. Mohommad Haji Adam (Bom.)(HC) (ITA. No. 4650/Mum/2018, dt. 16-5-2019)*(AY. 2009-10)
V. R. Enterprises v. ITO (Mum.)(Trib.), www.itatonline.org

1036 **S. 69 : Unexplained investments – FDRs found from premises of director – Reflected in the accounts of the company – Addition cannot be made as unexplained investments.**
Tribunal held that though the FDRs found from premises of director it reflected in the accounts of the company hence addition cannot be made as unexplained investments. (AY. 1997-98)
Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17 / 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd. v. Dy CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

1037 **S. 69 : Unexplained investments – Immovable property – Assets were acquired in earlier years – No addition can be made for the relevant year.**
Assessing Officer made addition to assessee's income on account of unexplained investment in agricultural land and flats. Tribunal held that all assets were acquired by assessee in preceding years and no asset was acquired during year under consideration. Accordingly addition cannot be made during relevant assessment year. (AY. 1997-98)
Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17 / 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd. v. Dy. CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

1038 **S. 69 : Unexplained investments – Addition cannot be made in year under consideration in respect of investment in immovable property made in earlier year.**
Allowing the appeal of the assessee the Tribunal held that addition cannot be made in year under consideration in respect of investment in immovable property made in earlier year. (AY. 2009-10)
Preeti Singh (Km.) v. ITO (2019) 176 ITD 137 / 179 DTR 325 (Delhi)(Trib.)

1039 **S. 69 : Unexplained investments – Hindu undivided family – Agricultural land – Partition – Fixed deposits – Benami names of family members – Retraction of statement – No assessment is made in larger Hindu undivided family – Additions can be made in the hands of smaller HUF – Investments in fixed deposits to be considered as unexplained investments of smaller HUF in equal shares-Matter remanded. [S. 132(4), 171]**
Tribunal held that merely on the basis of statement addition cannot be made especially when the statement was retracted within reasonable bale time. On facts the HUF was not assessed to tax hence no order u/s 171 is required to be passed. As the property was portioned additions can be made only in the hands of smaller HUFs and not in the hands of larger HUF. Fixed deposits can be assessed only in the hands of smaller HUFs in equal shares, in different years. Matter remanded. (AY. 1999-2000 to 2009-10)
DCIT v. E. Ramesh Upadhyay, HUF (2019) 69 ITR 164 (Bang.)(Trib.)

S. 69A : Unexplained money – Income from undisclosed sources – No evidence to show that cheques stated to have been issued by the assessee – Deletion of addition is held to be justified. 1040

Dismissing the appeal of the revenue the Court held that, the amount credited in bank vis-à-vis transactions on behalf of clients. Assessee claimed that he had entered into the transaction not on his own behalf but on behalf of Mr. Chaturvedi who in turn was acting on behalf of Shri Maharaj Investment ('SMI'), The assessee was at the highest used as a conduit by the other parties and did not himself substantially gain from these transactions. Accordingly the addition in the hands of assessee was not sustainable. (A.Y. 1992-93)

CIT v. Anoop Jain (2019) 182 DTR 291 / 311 CTR 58 / (2020) 268 Taxman 427 (Delhi)(HC)

S. 69A : Unexplained money – Cash found – Residential premises of father-in-law – Addition cannot be made in the assessment of the assessee. [S. 132, 132(4A), 153C, 292C] 1041

A search was conducted at the residential premises of the assessee's father-in-law. Cash was seized. At same time, a search was also conducted at another residential premises belonging to the assessee but nothing was found there. Return was filed in pursuance of notice u/s. 153C. AO held that assessee used to live with his father-in-law and it was actually assessee who was accumulating cash found at residence. Accordingly made the addition. In response to summons issued under S. 131 father in law in his written submission admitted that cash seized from his premises belonged to him and-he had also filed a tax return for block assessment showing said seized cash and also enclosed cash flow statement with his return explaining recovered cash. CIT(A) deleted the addition. Tribunal confirmed the addition. On appeal High court no addition could be made to income of assessee in respect of impugned cash found at premises of his father-in-law. High Court referred the provisions of S. 132(4A) and also S. 292C of the Act.

Dharmraj Prasad Bibhuti v. ITAT (2019) 266 Taxman 281 / 311 CTR 969 / (2020) 186 DTR 66 (Patna)(HC)

S. 69A : Unexplained money – Income from undisclosed sources – Cold storage – No purchase and sale of products – Deletion of addition is held to be justified. [S. 68, 132, 153A, U.P. Regulation of Cold Storage Act, 1976] 1042

Dismissing the appeal of the revenue the Court held that the assessee had not violated the terms of licence granted by the licencing authority, accordingly mere presumption and assumption from any documents or papers seized during the search and survey could not be the basis for addition of the amount. Tribunal had also recorded that there was no evidence of purchase or sale of unaccounted stock belong to the assessee during course of search or survey was found against the assessee. Accordingly the deletion of addition is held to be justified. (A.Y. 2008-09)

CIT v. Kesarawani Sheetalaya Alld. (2019) 418 ITR 369 / 267 Taxman 216 (All.)(HC)

S. 69A : Unexplained money – Cash deposit in savings bank account of ₹ 37 lakhs – Sales as per return was only ₹ 9.65 lakhs – Addition is held to be justified. 1043

Assessee filed return showing gross receipts of ₹ 9 lakhs, however it was found that the assessee made cash deposits of more than 37 lakhs in saving bank account. The

AO made addition of differential amount to assessee's income. Addition was confirmed by CIT(A) and appellate Tribunal. High court also affirmed the order of the Tribunal. (A.Y. 2008-09)
Krishan Kumar v. ITO (2019) 107 taxmann.com 463 / 265 Taxman 228 (P&H)(HC)
Editorial: SLP of assessee is dismissed Krishan Kumar v. ITO (2019) 265 Taxman 227 (SC)

1044 **S. 69A : Unexplained money – Purchase and sale of gold on behalf of other parties – Identity of purchasers was not established – Addition on estimate basis of 3.5% of turnover is held to be justified as against 1% disclosed by the appellant.**
Assessee was engaged in business of purchase and sale of gold from finance companies. Assessee disclosed commission income at rate of 1 per cent for total quantum of turnover of purchase and sale of gold. AO held that on account of failure of assessee to furnish details of said purchasers, income of assessee was to be estimated at 3.5 per cent of turnover of gold purchased and sold by him and not 1 per cent as disclosed by him. Tribunal affirmed the order of the AO. On appeal High court also affirmed the order of the Tribunal. (A.Y. 2013-14)
H. Abuthahir v. DCIT (2019) 265 Taxman 9 (Mag.) (Mad.)(HC)

1045 **S. 69A : Unexplained money – Search – Excess jewellery found which belongs to partners – Addition cannot be made in the assessment of firm. [S. 158BB]**
Allowing the appeal of the assessee the Court held that in a notebook it was stated that excess jewellery belonged to partners of assessee who offered same to revenue. Accordingly the addition cannot be made in the assessment of the firm. (BP. 1-4-1987 to 27-11-1997)
Sri Kavitha Jewellers v. DCIT (2019) 263 Taxman 185 / 309 CTR 82 / 177 DTR 100 (Mad.) (HC)

1046 **S. 69A : Unexplained money – Bogus purchases – Sundry creditors – Disallowance by Assessing Officer as bogus purchases – Tribunal confirming the 25% of profit embedded in credits – Held to be justified. [S. 37(1), 145]**
AO held that the creditor expenses were not genuine and that those creditors were merely book entries and had already been paid off in cash. Accordingly he added the amount to the income of the assessee. The CIT (A) restricted the additions to the profit element of 25 per cent. Both the assessee and the Department filed appeals before the Tribunal both of which were rejected. Dismissing the appeal of the revenue the Court held that the CIT (A) and the Tribunal had correctly limited the additions made by the Assessing Officer to 25 per cent of unverifiable alleged bogus creditors.
CIT v. Nandkishor Huaschand Jalan (2019) 412 ITR 357 (Guj.)(HC)

1047 **S. 69A : Unexplained money – Search and seizure – Illegal capitation fees – Addition on estimate basis is held to be justified.**
Dismissing the appeal of the assessee the Court held that since assessee did not bring any material on record to enable revenue authorities to determine his earning from illegal capitalisation fees addition to income on the basis seized material is held to be justified.
Arvind Janardhan Pandey v. ITO (2019) 262 Taxman 401 (Bom.)(HC)

S. 69A : Unexplained money – Unexplained cash receipts – Description of property was not furnished – Addition is held to be justified. 1048

AO made addition to assessee's income on account of unexplained cash receipt. In appellate proceedings assessee raised a plea that said amount represented rental receipts of a property owned by her. However, assessee did not furnish description of property, rental agreement, name and address of tenants, sources of investments, etc. Tribunal rejected the explanation and confirmed addition. High Court affirmed the order of Tribunal. (A.Y. 2000-01 and 2001-02)

Sangeetha Jain (Smt.) v. ACIT (2019) 414 ITR 61 / 261 Taxman 220 (Karn.)(HC)

S. 69A : Unexplained money – On money – Loose documents – There was no reliable or independent evidence to come to the conclusion that the assessee had accepted on-money in the sale of the constructed properties – Deletion of addition by the Tribunal is up held. 1049

Dismissing the appeal of the revenue the Court held that; there was no reliable or independent evidence to come to the conclusion that the assessee had accepted on – money in the sale of the constructed properties. Accordingly the deletion of addition by the Tribunal is up held.

PCIT v. Nishant Construction (P) Ltd. (2019) 101 taxmann.com 179 / 260 Taxman 366 (Guj.)(HC)

Editorial : SLP of revenue is dismissed PCIT v. Nishant Construction (P) Ltd. (2019) 260 Taxman 365 (SC)

S. 69A : Unexplained money – Assessee failing to discharge onus to prove lawful owner of cash found during course of Search – Cash in possession of Assessee to be treated as unexplained money. [S. 132] 1050

A search and seizure operation under S. 132 of the Act was conducted by the Investigation Wing at the residential and business premises of the assessee. During the course of assessment proceedings, the assessee filed a reply stating that ₹ 2,01,00,000 was received as advance against property. No further details giving the name and address of the person from whom this money was received were provided. The mode of payment was also not mentioned. The AO finalized the assessment by making an addition of ₹ 2 crores in the hands of the assessee. On appeal the first appellate authority upheld the addition made by AO. The assessee being aggrieved by the order passed by CIT(A) preferred further appeal to the Income Tax Appellate Tribunal, Delhi. The Appellate Tribunal held that there was a specific information received by the CBI and conversation of all the persons had been recorded by the CBI. Nothing had been explained with regard to the allegations made against the assessee and others in the charge-sheet submitted by the CBI. There was a substantial gap between withdrawal of cash and payment to the assessee. Therefore, the assessee had failed to explain the source of the cash of ₹ 2 crores found from his possession during the course of search by the CBI. The entire case set up by the assessee was clearly an afterthought. The memorandum of understanding and receipt were sham documents and fabricated by the assessee and others later on which fact was further strengthened by the fact that no original memorandum of understanding and receipt had been produced before the

authorities. Thus, the assessee had no explanation whatsoever of the cash found from is possession during the course of search by the CBI. If the test of human probability was applied it was clearly established that the assessee had failed to prove the source of ₹ 2 crores found during the course of search by the CBI at his residence. The addition was sustained. (A.Y. 2011-12)
Jatinder Pal Singh v. DCIT (2019) 76 ITR 1 (Delhi)(Trib.)

1051 **S. 69A : Unexplained money – Addition made merely on the basis of show cause notice by Excise department for alleged under valuation of shares is held to be not valid. [S. 145, 148]**
Assessee is engaged in the business of manufacturing of ceramics glaze. On the basis of letter from Dy. Director (Inv.) the assessment was reopened and on the basis of such show cause notice and addition was made merely on basis of action of issuance of show cause notice by Excise Department. On appeal the Tribunal held that in Excise Proceedings, Customs Excise and Service Tax Appellate Tribunal (CESTAT) had decided issue in favour of assessee and said order passed b CESTAT had achieved finality. Accordingly the Tribunal held that since action of excise department was only basis of additions were made, the addition is held to be not valid. (A.Y. 2006-07 to 2008-09)
Zirconia Cera Tech Glazes v. DCIT (2019) 178 ITD 526 (Ahd.)(Trib.)

1052 **S. 69A : Unexplained money – Survey – Jangad stock – Stock register is supported by confirmation letter – Addition is held to be not valid.**
AO rejected the explanation of stock on jangad basis and made addition u/s. 69A as unexplained stock. CIT (A) confirmed the addition. On appeal the Tribunal held that jangad stock is supported by confirmation letter and which is referred in the tax audit report. Accordingly deleted the addition made by the AO. (A.Y. 2011-12)
Mayankkumar Natwarlal Soni v. ACIT (2019) 179 ITD 444 (Ahd.)(Trib.)

1053 **S. 69A : Unexplained money – Income from undisclosed sources – unexplained cash – Cash flow statement accepted in wealth-tax assessment not to be discarded – Cash balance available as on date of search treated as explained. [S. 132]**
Tribunal held that as on the date of search, a sum was found in cash in the residence of the assessee, which the assessee explained as representing the book balance and stated that there was no unaccounted or unexplained cash. In support of the availability of the cash balance, the assessee filed a cash flow statement for the financial years 2007-08 to 2012-13, which indicated that there was a huge cash balance available with the assessee for the year ended March 31, 2012 and March 31, 2013. The assessee filed the wealth-tax returns in response to the notice issued by the AO under section 17 of the Wealth-tax Act, 1957 and the assessments were accepted by the Department taking the cash balance as per the wealth-tax returns and no defects were found. Therefore, the cash flow statement could not be discarded. Neither the Assessing Officer nor the CIT(A) had found any defect in the cash flow statement submitted by the assessee during the wealth-tax proceedings. Therefore, the cash balance available as on the date of search was treated as explained and no addition was warranted. (A.Y. 2012-13, 2013-14)
Dy. CIT v. Kotu Sarat Kumar (2019) 71 ITR 147 (Vishakha)(Trib.)

S. 69A : Unexplained money – Assessee keeping money in locker and explaining that it was out of savings to perform his daughter's marriage – Money in locker not taxable. [S.132] 1054

When the assessee had filed returns, they were accepted. The assessee's wife had also filed returns and they were also accepted and the assessee had submitted that out of savings the amounts were kept in the locker. Thus, the assessee had fully explained the sources and he had discharged the burden cast upon him. The AO without giving any basis, rejected the explanation of the assessee. He was not correct. The CIT (A) was of the opinion that instead of keeping money in the locker, it was better to deposit in the bank so that the assessee may earn the interest. The assessee was the person who had to decide whether to keep the money in the locker or deposit it in the bank. In this case, the assessee had decided to keep money in the locker to perform his daughter's marriage and explained the sources. (A.Y. 2013-14)

Dinesh Goswami v. Dy. CIT (2019) 70 ITR 580 (Indore)(Trib.)

S. 69A : Unexplained money – Capital gain – Penny stock – Sale of share – Bogus entries – Information from investigation wing – Addition is held to be justified. [S. 10(38), 45, Indian Evidence Act. S.102] 1055

In the return of income assessee claimed long term capital gain arising from sale of shares as exempt under S. 10(38) of the Act. On the basis of information from Investigation Wing that number of penny stock companies were providing bogus entries of long-term capital gain on sale of their shares and Kappac Pharma Ltd was one of those companies. AO carried out detailed investigation and found that assessee's transactions of sale of shares of Kappac Pharma Ltd were sham. Accordingly added amount of long-term capital gain under S.69A of the Act. Tribunal held that the assessee had failed to discharge her burden of proof that long-term capital gain arising from sale of shares was genuine. On other hand, enquiry conducted by SEBI was further corroborated by investigation carried out by Directorate of Investigation that Kappac Pharma Ltd. was one of such companies whose scrips had been manipulated to provide bogus long-term capital gains. Accordingly the addition made by AO is confirmed. (A.Y. 2014-15)

Pooja Ajmani v. ITO (2019) 177 ITD 127 / 200 TTJ 231 / 177 DTR 377 (SMC)(Delhi)(Trib.)

S. 69A : Unexplained money – Seizer of cash from director – Company had shown to have received cash as share capital – Matter remanded for re-adjudication. 1056

During the search cash was found in the premises of Director. The company admitted that it had received the cash as share capital. Tribunal held that order of CIT(A) for re-adjudication of the matter is held to be proper. (A.Y. 1997-98)

Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17 / 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd. v. Dy. CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

1057 **S. 69A : Unexplained money – Misappropriation of cash – Director – Authorised agent of company – No addition can be made in the hands of the director.**
Director was an authorised agent of NDMC for collecting electricity and water charges from customers – Company was remitting less amount to NDMC by resorting to fraud. Addition cannot be made in the hands of director. (A.Y. 1997-98)
Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17 / 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd. v. Dy. CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

1058 **S. 69A : Unexplained money – Documents seized in third party premises in the course of search – No mention of name of assessee in the seized documents – Deletion of addition is held to be justified. [S. 132(4A)]**
Dismissing the appeal of the revenue, the Tribunal held that, on the basis of documents found in the premises of third party and also there was no mention of assessee's name in seized document additions cannot be made merely based on presumption and surmises. (A.Y. 2013-14)
ACIT v. Navneet Kumar Sureka (2019) 174 ITD 320 (Delhi)(Trib.)

1059 **S. 69B : Amounts of investments not fully disclosed in books of account – Addition cannot be made merely on the basis of stamp valuation adopted by Stamp authority. [S.45, 50C]**
Assessee purchased a property for a consideration of ₹ 1.55 crore. Value adopted by stamp duty authority as per market rate was ₹ 2.55 crores. AO on basis of value so adopted by stamp duty authority, made addition to assessee's income under S. 69B of the Act. Tribunal deleted that addition. Dismissing the appeal of the revenue the Court held that, provisions of S. 50C could not be applied for making addition under S. 69B. Court also held that there was no material on record to show that assessee had in fact made investments over and above that recorded in books of account, impugned addition was to be deleted. (A.Y. 2011-12)
PCIT v. Dharmaja Infrastructure (2019) 265 Taxman 125 (Guj.)(HC)

1060 **S. 69B : Amounts of investments not fully disclosed in books of account – Addition is held to be not justified solely on the basis of photocopy of agreement between two other persons which was seized during search of third party. [S.132, 513A]**
Court held that addition is held to be not justified solely on the basis of photocopy of agreement between two other persons which was seized during search of third party. Relied on *K. P. Varghese v. ITO (1981) 131 ITR 597 (SC)*. (A.Y. 2009-10)
CIT v. Kulwinder Singh (2019) 415 ITR 49 / 311 CTR 233 (P&H)(HC)

1061 **S. 69B : Amounts of investments not fully disclosed in books of account – Seized paper – Matter remanded [S. 132, 153A 292C]**
Tribunal held that neither assessee had been able to substantially prove that aforesaid seized papers found from his residential premises did not belong to him, nor AO had been able to dislodge claim of assessee. Accordingly the matter remanded to the AO (A.Y. 2011-12)
Dinesh H. Valecha v. DCIT (2019) 178 ITD 701 (Mum.)(Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account – Unexplained investment – Purchase of land – Addition merely on presumption is held to be not justified. 1062

Tribunal held that the Department found the agreement to sale with the schedule of payments. There was proof for payment in cash and by cheque. Apart from that, there was no evidence to show that the assessee had actually made the payment except the schedule of payments mentioned in the agreement. The AO made the addition only on presumption that the payment would have been made. The assessee denied that it had actually made any further payments and submitted that the transaction had not gone through. But no details were submitted. The Department had not found anything to show that the landlords actually received the payments. The additions could be made only based on actual evidence and not based on presumptions particularly. Therefore, the addition was to be deleted. (A.Y. 2007-08, 2008-09)

Dy. CIT v. Janapriya Engineers Syndicate Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account – Unexplained investment – Purchase of land – Peak credit – Directed to verify audited cash book entries with payments to landlords and reliable source of cash available for such payments to landowners. 1063

Tribunal held that at the time of search, the Department found two documents, one a registered sale deed and another the agreement to sell. The consideration mentioned in the documents was different. It was natural to presume that when the transaction was complete by registering the document, the parties could have changed the value in terms of the agreement to sell. That was the original arrangement between the parties. In the given case, all the three transactions were complete. Accordingly, the CIT (A) had come to the conclusion that the assessee could have adhered to the clauses in the agreement to sell. The assessee had brought to the notice in the case of L that the Department had agreed with the value of sale consideration in terms of the registered sale deed and completed the assessment. For the same transaction, the Department could not treat two different figures as sale consideration. Therefore, the AO was directed to determine the sale consideration adopted for Land consider the same value as sale consideration in the case of the assessee also. Similarly, the Assessing Officer was directed to verify the other two cases and determine the sale consideration adopted for the other two parties and determine the same sale consideration as the proper value of consideration in the case of the assessee. (A.Y. 2007-08, 2008-09)

Dy. CIT v. Janapriya Engineers Syndicate Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)
CIT v. Engineers Reddy Homes (P) Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

S. 69C : Unexplained expenditure – Income from undisclosed sources – Bogus purchases – Bhanvarlal Jain group – Hawala concern – Addition cannot be made of entire purchases based on the report of Investigation wing – When sales are accepted purchases cannot be rejected – Estimate of profit of 3 % of bogus purchases – Held to be justified – Appeal of revenue is dismissed – No question of law. [S. 260A] 1064

The responded is in business in trading and manufacturing of silver, gold, diamonds stones and Jewellery. The AO on the basis of report of investigation wing Mumbai

where in two purchases were made from Amit Diamonds which belongs to Bhanvarlal Jain group being a hawala concern, made addition of entire purchases. CIT(A) deleted the addition and confirmed 3% of amount of purchases. Tribunal affirmed the order of the CIT(A). On appeal by the revenue, dismissing the appeal of the revenue the Court held that the CIT(A) had found that the assessee had shown purchases as well as sales. If the sales were accepted, the Assessing Officer could not have rejected the purchases. Once the purchases were accepted, the difference between the inflated and actual price of purchases would be required to be disallowed and what would be the extent of difference would be a matter of estimate. The CIT (A) had estimated this difference at 3 per cent of the bogus purchases and the Tribunal had accepted it. Whether an estimate should be at a particular sum or at a different sum can never be an issue of law. (Followed *Sanjay Oilcake Industries v. CIT (2009) 316 ITR 274 (Guj.)(HC) Referred N.K. Industries Ltd. v. Dy CIT (2017) 292 CTR 354 / 8 ITR-OL 336 (Guj.)(HC), Vijay Proteins Ltd. v. CIT (2015) 58 taxmann.com 44 (Guj.)(HC)* (A.Y. 2011-12)
PCIT v. Shah Virchand Govanji Jewellers Pvt. Ltd. (2019) 418 ITR 472 (Guj.)(HC)

1065 **S. 69C : Unexplained expenditure – Purchase of land jointly with another person – Assessee could be asked to explain only 50% of his share and not source of other person who has invested another 50%.**
Assessee purchased a piece of land jointly with another person. AO added entire sale consideration to assessee's income. Tribunal, accepted assessee's stand that since land had been purchased jointly, he could be asked to explain only 50 per cent of amount paid to seller of land. High Court upheld the order of Tribunal. (A.Y. 1996-97)
PCIT v. Bhagwanbhai K. Patel (2019) 108 taxmann.com 60 / 265 Taxman 233 (Guj.)(HC)
Editorial : SLP of revenue is dismissed PCIT v. Bhagwanbhai K. Patel (2019) 265 Taxman 232 (SC)

1066 **S. 69C : Unexplained expenditure – Bogus purchases – Tribunal is justified in restricting addition on account of alleged bogus purchases to 25 per cent.**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in restricting addition on account of alleged bogus purchases to 25 per cent. Followed *Vijay proteins Ltd. v. CIT (2015) 58 taxmann.com 44 (Guj.)(HC), Sanjay Oilcake Industries v. CIT (2009) 316 ITR 274 (Guj.)(HC).* (A.Y. 1993-94)
PCIT v. Synbiotics Ltd. (2019) 265 Taxman 34 (Mag.) (Guj.)(HC)

1067 **S. 69C : Unexplained expenditure – Bogus purchases – Alleged use of five credit cards by friends – In response to summons the friends refused use of cards – Addition is held to be justified. [S. 131]**
AO found that the five credit cards were used by the assessee. Assessee stated that it was used by friends. In response to summons u/s. 131 friends refused having used assessee's credit card. AO made addition as unexplained expenditure. Tribunal affirmed the order of the AO. On appeal the Court held that since the assessee failed to prove nature of expenses incurred through credit cards despite adequate opportunity given by Tribunal, impugned addition made by authorities below was to be confirmed. (A.Y. 2009-10)
Sunil Balasubramaniam Shankar v. ITO (2019) 265 Taxman 7 (Mag.) / (2019) 418 ITR 496 (Mad.)(HC)

S. 69C : Unexplained expenditure – Hawala transaction – Bogus purchases – Trading in paper and paper products – Adoption of profit at 12.5 % of alleged bogus purchases is held to be justified. [S.143(3)] 1068

Assessee was trading in paper and paper products. AO held that as the assessee involved in hawala transactions and substantial purchases made by it were bogus in nature, disallowed purchases and added same in income of assessee as unexplained expenditure under S. 69C of the Act. CIT (A) held that even if purchase transactions were not verifiable what was taxable was only income component and not entire purchase. He adopted average profit rate at 3.67 per cent and disallowed 3.67 per cent of bogus purchases. Tribunal, on appeal filed by revenue, enhanced disallowance from 3.67 per cent to 12.5 per cent of bogus purchases. On appeal by the assessee the Court held that since all authorities had come to a finding of fact that substantial purchases made by assessee were bogus in nature, extent of disallowance did not give rise to any substantial question of law. (A.Y. 2010-11, 2011-12)

Pooja Paper Trading Co (P.) Ltd. v. ITO (2019) 264 Taxman 260 (Bom.)(HC)

S. 69C : Unexplained expenditure – Bogus purchases – Trader in fabrics – Entire purchases cannot be added without disturbing the sales – Addition is to be restricted to the extent of G.P. rate. [S.145] 1069

Dismissing the appeal of the revenue the Court held that; even if the purchases are bogus, the entire purchase amount cannot be added. As the department had not disputed the assessee's sales & there was no discrepancy between the purchases and the sales, the purchases cannot be rejected without disturbing the sales in case of a trader. The addition has to be restricted to the extent of the G.P. rate on purchases at the same rate of other genuine purchases (*N. K. Industries Ltd. v. Dy. CIT (2016) 72 taxmann.com 289 / (2017) 292 CTR 354 (Guj.)(HC) N. K. Proteins v. Dy. CIT (2017) 250 Taxman 22 (SC)* referred. (ITA 1004 of 2016, dt. 11.02.2019)

PCIT v. Mohommad Haji Adam (Bom.)(HC) www.itatonline.org

S. 69C : Unexplained expenditure – Bogus purchases – Sundry creditors – Only profit element embedded in credits can be taxed – Restricted to 25% of element of profit. [S.37, 69A] 1070

The AO added outstanding credits in the name of various alleged bogus purchases. The CIT (A) restricted the additions to the profit element of 25 per cent. Both the assessee and the Department filed appeals before the Tribunal both of which were rejected. Dismissing the appeal of the revenue High Court up held the order of the Tribunal. (Referred *N. K. Proteins Ltd. SLP No (C) 769 of 2017, Vijay Proteins Ltd. v. CIT (2018) 409 ITR 3 (St)(SC), N. K. Industries Ltd. v. Dy.CIT (2016) 72 taxmann.com 289 (Guj.)(HC)) CIT v. Nandkishor Huaschand Jalan (2019) 412 ITR 357 (Guj.)(HC)*

S. 69C : Unexplained expenditure – Survey – Confessional statement of assessee 's brother who is an employee of the assessee – Gross profit shown was much lesser than profit in said line of business – Unaccounted receipts – Addition of sales instead of net profit thereon – Failure to provide stock register – Addition is held to be justified. [S. 133A] 1071

Dismissing the appeal of the assessee the Court held that; Tribunal is justified confirming the addition based on the confessional statement of the assessee 's brother

who is an employee of the assessee. Court also held that gross profit shown was much lesser than profit in said line of business and the assessee has failed to produce stock register.(A.Y. 2009 10)

Pradeep Kumar Biyani v. ITO (2019) 101 Taxman 130 / 260 Taxman 299 (Guj.)(HC)

Editorial : SLP of assessee is dismissed, Pradeep Kumar Biyani (2019) 260 Taxman 298 (SC)

1072 **S. 69C : Unexplained expenditure – Addition was made in prior year – Addition cannot be made relevant year.**

Allowing the appeal of the assessee the Court held that ; the addition of ₹ 18,30,000 made by the AO on account of unexplained expenditure was made in the assessment year 2006-07. Simply by saying that this was a bogus liability for the assessment year 2006-07 which was cleared in the assessment year 2007-08, and that it must have been repaid out of unrecorded sources was only a presumption without any evidence brought on record to that effect. The addition was not justified. (A.Y. 2007-08)

Kohinoor Enterprises v. ACIT (2019) 410 ITR 153 / 175 DTR 43 / 307 CTR 154 (J&K)(HC)

1073 **S. 69C : Unexplained investments – Search and seizure – Bogus purchases – Diary – Contents of a seized document are to be read in toto, and it is not permissible on part of an AO to dissect same and therein summarily accept same in part and reject other part. [S. 132, 292C]**

During course of search and seizure a diary was seized from office premises of assessee-company, a part of said group. Assessee surrendered an amount towards bogus bills booked during various years in its books of account. AO held that company had made unexplained investments in various capital assets by incurring expenditure in cash and treated unexplained investment/expenditure as income of assessee from undisclosed sources, and brought same to tax under head other sources. AO adopted a self-suiting approach and had accepted part of contents of seized document, i.e., to extent same revealed that assessee had made investment towards construction/furnishing of hotel building, however, he had whimsically declined to take cognizance of fact that said investment, as per said seized document, was sourced from cash that was received back by assessee against payments made towards bogus purchases. CIT (A) partly deleted the addition. On appeal by revenue and cross appeal by the assessee, the Tribunal held that approach adopted by AO was not justified and held that contents of a seized document are to be read in toto, and it is not permissible on part of an AO to dissect same and therein summarily accept same in part and reject other part and deleted the addition. (A.Y. 2011-12)

DCIT v. Kanakia Hospitality (P.) Ltd. (2019) 179 ITD 1 (Mum.)(Trib.)

1074 **S. 69C : Unexplained expenditure – Bogus purchases – Sales accepted – The AO is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases. [S. 68]**

The assessee is in the business of diamonds. The AO made addition of ₹ 14, 37 867 as alleged bogus purchases. CIT(A) restricted the addition to extent of 12.5 % of such purchases. On appeal following the decision in Mohammad Haji Adam & Co ITA No

1004 of 2016 dt 11-02-2019 www.itatonline.org and Judgment of Mumbai Tribunal in *Shri Rameshkumar Daularaj v. ITO* (ITA No 4192 /Mum/ 2018 dt 7-05-2019 directed that in case of bogus purchases where sales are accepted, the addition can be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. The AO is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases.(ITA No. 6483/Mum/2018, dt. 06.12.2019)(A.Y. 2008-09)
Hemant M. Mehta HUF v. ACIT (SMC) (Mum.)(Trib.), www.itatonline.org

S. 69C : Unexplained expenditure – Purchase of land – Addition of same payments made in hands of landowners – Addition on protective basis not sustainable. [S. 143(3)] 1075
In the course of assessment proceedings, the AO based on the seized documents and sworn statement of the director of the assessee, made an addition of ₹ 6.30 crores as unexplained expenditure under S. 69C of the Act. The CIT (A) directed the AO to delete the addition. On appeal : Held, that the AO had already made addition in the hands of the assessee and the same payments to land owners could not be made as addition in the case of the assessee on protective basis. The findings of the CIT(A) is held to be justified. (A.Y. 2007-08, 2008-09)
Dy. CIT v. Janapriya Engineers Syndicate Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – AO cannot blow hot & cold by disallowing the purchases from a party as bogus while treating sales to same party as genuine – Entire purchases cannot be disallowed – Percentage of addition to gross profit is held to be justified. 1076
Tribunal held that AO cannot blow hot & cold by disallowing the purchases from a party as bogus while treating sales to same party as genuine. Addition is held to be not justified. Percentage of addition to gross profit is held to be Considered *NK Proteins Ltd. v. CIT (2017 TIOL l 23-SC-IT), nk Industries Ltd. v. DCIT (2016) 72 taxmann.com 628 (Delhi) CIT v. La Medica (2001) 117 Taxman 628 (Delhi)(HC) Ganesh Rice Mills v. CIT (2007) 294 ITR316 (All) (HC), Vijay Proteines Ltd. v. ACIT (2015) 58 taxmann.com 44 (Guj) (HC) Sanjay Oil cake Industries Ltd v. ACIT (2009) 316 ITR 274 (Guj) (HC)* (ITA No. 3741 to 3746/Del/2019 (assessee) ITA No. 5264 to 5269/Del/2019 (Revenue), dt. 31.10.2019) (A.Y. 2012-13 to 2017-18)
Agson Global Pvt. Ltd. v. ACIT (2019) 504 (Delhi)(Trib.), www.itatonline.org

S. 69C : Unexplained expenditure – Bogus purchases – Accommodation entries – Additional grounds – Approval is not available in the file – On the basis of affidavit filed by the AO, the Tribunal is presumed that the approval was obtained before issue of notice – 100% addition is confirmed for alleged bogus purchases, considering the statements and material available on the record. [S. 153A, 153D] 1077
Tribunal held that there is serious suspicion about the conduct of the assessee in taking additional ground challenging the issue of approval u/s 153D for the first time before the Tribunal. The assessee is making an attempt is derail the issue on merits and to escape on technical ground. The affidavits filed by the AOs coupled with circumstantial

evidences available in the assessment folders clearly establish the fact of obtaining necessary approval u/s 153D though copy of approval letter is not available in the assessment record. Accordingly the additional ground was rejected. Considering the statement of the Director and the assessee could not produce the delivery challans etc, the contention of the assessee that only profit can be assessed is not correct. 100% addition u/s. 69C towards bogus purchases confirmed followed *NK Proteins Ltd. v. DCIT (2017) 292 CTR 354 (SC)* followed). (ITA No. 3874/Mum/2015, dt. 10.04.2019)(A.Y. 2007-08/2011-12)
Pratibha Pipes & Structurals Ltd. v. CIT (Mum.)(Trib.), www.itatonline.org

1078 **S. 69C : Unexplained expenditure – House hold expenses – Joint family – Addition is retracted to 50% of the expenditure.**
Considering the joint family status addition in respect of household expenses is restricted to 50% of the expenditure. (A.Y. 2009-10)
Ashwin S. Mehta v. ACIT (2019) 70 ITR 234 (Mum.)(Trib.)

1079 **S. 69C : Unexplained expenditure – Income from undisclosed sources – Bogus purchases – Hawala dealers – 12.5 Per cent of purchases to be brought to tax which is embedded in purchases. [S37(1)]**
Tribunal held that in respect of purchase of alleged bogus purchases from hawala dealers only 12.5% of purchases is to be brought to tax which is embedded in purchases. (A.Y. 2009-10, 2010-11)
Shantilal B. Parekh v. ITO (2019) 70 ITR 193 (Mum.)(Trib.)

1080 **S. 69C : Unexplained expenditure – Volkar committee report – Denied incurring an expenditure – Allegation of paying Kickbacks for participating in oil for food programme – Burden is on revenue – Merely on the basis of Volkar committee report – Addition is held to be not justified.**
Tribunal held that the additions made by the AO were solely based upon the Volkar Committee Report. The assessee had denied having incurred the expenditure and it was on the Department to prove that the assessee had paid kickbacks participating in the Oil for Food Programme. No such evidence had been brought on record except the Volkar Committee Report. The Department grossly failed in discharging the onus under S 69C. of the Act without bringing any cogent direct material evidence on record. The additions made could not be sustained. (A.Y. 2003-04 to 2005-06)
Flex Engineering Ltd. v. DCIT (2019) 70 ITR 417 (Delhi)(Trib.)

1081 **S. 69C : Unexplained expenditure – Bogus purchases – Business of manufacturing and trading of tea machineries – PAN cards were furnished – Payments were made by account payee cheques – TDS was deducted – Parties were produced for examination – Addition cannot be made as unexplained expenditure.**
Allowing the appeal of the assessee the Tribunal held that; the assesse has produced, PAN cards furnished, payments were made by account payee cheques, TDS was deducted, four parties were produced for examination. Addition cannot be made as unexplained expenditure. (A.Y. 2014-15)
Pravesh Kejriwal v. ITO (2019) 174 ITD 662 (Kol.)(Trib.)

S. 71 : Set off of loss – One head against income from another – Unabsorbed depreciation is deemed to be current year's depreciation and can be set off against capital gain. [S.32(2), 45] 1082

Tribunal held that unabsorbed depreciation is deemed to be current year's depreciation and can be set off against capital gain (A.Y. 2015-16)

Hirsh Bracelet India (P.) Ltd. v. ACIT (2019) 178 ITD 601 (Bang.)(Trib.)

S. 71 : Set off loss – One head against income from another – Borrowing funds and making investments in business also paying interest – No evidence assessee diverted funds for non – business purpose – Intra head losses can be set off. 1083

The assessee was engaged in the business of running a hotel and made investments in V Hotels. It borrowed funds from a co-operative bank for the purpose of making investments in V Hotels. He declared interest from other sources and claimed deduction of the interest paid on unsecured loans and on bank loans and set off the resultant loss against the income from other sources, business and capital gains under S. 71 of the Act which the AO. The CIT(A) deleted the disallowance. On appeal the Tribunal held that the assessee had borrowed the funds and made investments in the business. The AO did not make out a case that the assessee had diverted the funds for non-business purpose. Business consideration was the decision of the assessee and not the AO. The assessee made the investments for the purpose of business and paid the interest. The income under the head "Income from other sources" resulted in a loss which was claimed for set off under S. 71. Intra head losses were allowable to be set off against other sources of income in the same assessment year. Therefore the addition was deleted. (A.Y. 2012-13, 2013-14).

Dy. CIT v. Kotu Sarat Kumar (2019) 71 ITR 147 (Vishakha)(Trib.)

Kotu Sarat Kumar v. DCIT (2019) 71 ITR 147 (Vishakha)(Trib.)

Kotu Anasuya (Smt.) (Late) v. DCIT (2019) 71 ITR 147 (Vishakha) (Trib.)

S. 72 : Loss – Carry forward and set off – Scheme sanctioned by BIFR – Objection by Revenue to grant tax concession – Writ is held to be not maintainable. [S. 72A, Sick Industrial Companies (Special provisions) Act, 1985, S. 18, 19, Art. 226] 1084

Dismissing the petition the Court held that, in view of clear stand of the Department raising specific objection at the time of framing of the scheme against grant of tax waiver the BIFR could not have in the final scheme given directions for giving such benefits. In the context of income-tax waiver, the Department contended before the BIFR that the company has not quantified the tax liability and therefore, the relief can be considered only after the details are received from the company. Without quantification thus, the Department was not willing to give any concession or tax Waiver. It was, in this context that the BIFR noted that expression to consider has already been used. Scheme did not contain any mandate to the IT Department to grant the tax concession requested the assessee company. Accordingly the Writ petition challenging the Revenue s 'order rejecting the assessee's application for waiver of income-tax pursuant to scheme framed by the BIFR is held to be not maintainable.

Olympia Industries Ltd. v. UOI (2019) 181 DTR 253 / (2020) 312 CTR 248 (Bom.)(HC)

1085 **S. 72 : Carry forward and set off of business losses – Return was not filed with in prescribed time – Application for condonation of delay was not filed with in permissible time limit – Rejection of application is held to be justified. [S. 119, 139(1), 254(1)]**

AO rejected assessee's claim for carry forward of loss on ground that return was not filed within time prescribed under S. 139(1) of the Act. On appeal Tribunal directed assessee to seek condonation of delay in filing return from CBDT. Assessee did not file application for condonation of delay even before CBDT within permissible time limit. CBDT rejected application on ground of limitation and latches. On writ the Court held that rejection of application by CBDT is held to be justified. (A.Y. 2008-09)

Ganesh Sahakari Bank Ltd. v. Government of India (2019) 264 Taxman 150 (Bom.)(HC)

1086 **S. 72 : Carry forward and set off of business losses – Business loss can be set off only against business income. [S. 28(i)]**

Carry forward and set off of business losses can be set off only against business income. (A.Y. 1985-86, 1996-97 to 2002-03)

CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

1087 **S. 72 : Carry forward and set off of business losses – Discontinued business – Entitle to set off the loss against business income of the current year. [S. 28(i), 71, 72(1), 176(3A)]**

The assessee was engaged in the business of manufacturing of textile garments. It filed return for relevant year, declaring total income at ₹ Nil. The AO held that as the business was discontinued the assessee was not entitle to set-off against the brought forward business losses of the earlier years. CIT (A) allowed the claim of the assessee. Tribunal affirmed the order of the CIT (A) by holding that S. 72(1)(i) does not mandate that business or profession should have been carried on by assessee during relevant previous year as a pre-condition for set off of brought forward business losses and, therefore, in case there are profits and gains of any business or profession carried on by assessee, which are assessable in its hands during relevant year, it would be entitled to set off its brought forward business losses against same. Referred *CIT v. Jaipuria China Clay Mines (P) Ltd. (1966) 59 ITR 555 (SC)* (A.Y. 2011-12)

DCIT v. Regency Property Investments (P.) Ltd. (2019) 179 ITD 584 (Mum.)(Trib.)

1088 **S. 72 : Carry forward and set off of business losses – Effect of appellate order – loss is allowed to be carried forward and benefit of set off against business income in subsequent assessment years could be allowed to assessee even in absence of such claim in return of income. [S. 254(1)]**

Tribunal held that where as a consequence to order of Appellate Authority, assessee has received relief which has cascading effect on subsequent assessment years, AO is duty bound to give effect to said order in later affected assessment. Accordingly business loss was arrived at by Assessing Officer while giving effect to order of Tribunal, said loss could be carried forward and benefit of set off against business income in subsequent assessment years could be allowed to assessee even in absence of such claim in return of income. (A.Y. 2003 04 to 2006-07)

Maharashtra State Warehousing Corporation v. DCIT (2019) 177 ITD 359 (Pune)(Trib.)

S. 72A : Carry forward and set off of accumulated loss – Amalgamation – Not specified as to how those conditions were not met – Allowed to be set off. 1089

Dismissing the appeal of the revenue the Tribunal held that the AO could not reject assessee's claim for set off of accumulated loss by merely maintaining that assessee did not comply with conditions laid down in S. 72A but not specifying as to how those conditions were not met by assessee. (A.Y. 2009-10)

ACIT v. ADM Agro Industries Dharwad (P.) Ltd. (2019) 175 ITD 324 (Delhi)(Trib.)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Period of four years from date of amalgamation for achieving fifty – per cent level of production is to be seen at end of four year. [S. 72A(3), R.9C] 1090

AO held that as per Form 62 filed by assessee, it had manufactured only 10.76 per cent of total installed capacity of amalgamating company. Accordingly the AO held that provisions of S. 72A read with rule 9C on ground that assessee had not achieved 50 per cent level of production of installed capacity of amalgamating company and, thus, carried forward business losses and unabsorbed depreciation pertaining to amalgamating company could not be allowed to be set off in hands of assessee-company. Tribunal held that the assessee achieved more than 50 per cent of production in first year, however, it failed to achieve more than 50 per cent of production in second year, i.e., year under consideration due to labour disputes however other conditions of S. 72A read with rule 9C with respect to holding three-fourth of book value of assets of amalgamating company, furnishing of certificate of an accountant in Form 62 showing level of production, etc., were complied with and, at time of completion of assessment, period of four years had not expired from date of amalgamation. Accordingly carried forward business losses and unabsorbed depreciation pertaining to amalgamating company could be allowed to be set off. (A.Y. 2010-11)

Embio Ltd. v. ACIT (2019) 177 ITD 414 (Mum.)(Trib.)

S. 73 : Losses in speculation business – Non-banking company – Losses can only be set off against speculative business income unless the gross total income of the assessee is under heads of income, other than income from profits and gains of business or profession. – Loss in speculative business is allowed to be carried forward. [S. 72] 1091

The assessee had a loss of ₹ 1,68,674/- from the sale of shares. It also had a dividend income of ₹ 31,93,299/-. The expenditure was set off against the income from business for the year, there was a total loss of ₹ 3,19,13,970/-. The assessee also had income from other sources at ₹ 7,98,850/-, which was by way of refund of income tax for the earlier years. The assessee claimed that the business loss which arose in this particular year could be set off against the income from other sources. Allowing the appeal of the revenue the Court held that where the assessees carried on speculative business, like dealing in shares, when suffered losses, the claim of set off against the income from sources other than the profits and gains of business or profession, was found to be not permissible going by S. 73. S. 73 culls out a particular type of business loss out of S. 72 and places it u/s. 73, being one occasioned by a speculative business. The Court rejected the argument of the assessee that in the year when the loss was set off by the assessee, there was only

income from other sources and therefore, in such year Explanation would not be applicable. (A.Y. 2003-04)
CIT v. Harrisons Malayalam Financial Services Ltd. (2019) 176 DTR 145 / (2019) 308 CTR 280 (Ker.)(HC)

1092 **S. 73 : Losses in speculation business – Non-Banking financial Institution advancing Loans and making investments – Not speculative transactions – Loss is allowable to be set off. [S.28(i)]**
The assessee was a non-banking financial institution advancing loans and engaging in investment activities is not speculative transactions. Accordingly the loss is allowable to be set off. (A.Y. 2005-06, 2006-07, 2008-09)
CIT v. Nalwa Sons Investment Ltd. (2019) 416 ITR 263 (Delhi)(HC)

1093 **S. 73 : Losses in speculation business – Commodity trading – Off market transaction – The AO cannot treat losses from off market commodity transactions as bogus and inadmissible in the eyes of the law if the transactions through the broker are duly recorded in the books of the assessee – The fact that the broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus.**
Dismissing the appeal of the revenue the Court held that; The AO cannot treat losses from off market commodity transactions as bogus and inadmissible in the eyes of the law if the transactions through the broker are duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. To hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. The fact that the broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus. No material was brought to show that off market transactions are prohibited. (ITAT No. 78 of 2017 GA No. 747 of 2017, dt. 19.06.2018) (A.Y. 2009-10)
PCIT v. BLB Cables and Conductors Pvt. Ltd. (Cal.)(HC), www.itatonlne.org

1094 **S. 73 : Losses in speculation business – Explanation – Whether trading in shares is the principal business of the assessee is a mixed question of facts and law – Matter remanded. [S. 71, 72, 254(1)]**
Matter remanded to the Tribunal to examine the evidence on record to determine whether or not trading in shares is the principal business of the assessee. If it is the principal business, the Explanation to S. 73 will apply and the loss arising from such trading activities will be eligible for set off and carry forward as per S. 71 and 72 of the Act. Matter remanded to the Tribunal. (A.Y. 2004-05)
Shankar Sales Promotion (P) Ltd. v. CIT (2019) 418 ITR 400 / 178 DTR 1 / 308 CTR 640 (Cal.)(HC)

1095 **S. 73 : Losses in speculation business – AO cannot compare funds deployed in shares held as investment as against funds deployed of loans and advances – Loss incurred by it in share transactions was assessable as business loss which could be set off against its business income. [S. 28(i)]**
Assessee is a company engaged in business of share trading and financing. AO held that the activity of money lending could not be said to be assessee's principal business

activity because majority of funds were deployed in investment in shares rather than loans and advances. AO held that Explanation to S. 73 is applicable accordingly disallowed set off of share trading loss against normal business income treating it to be in nature of deemed speculation loss. CIT (A) decided in favour of the assessee. On appeal by the revenue the Tribunal held that in order to determine question of applicability of Explanation to S. 73, AO could not compare funds deployed in shares held as investment as against funds deployed in business of loans and advances, therefore where funds deployed in business of share dealing/trading were less than funds deployed in business of loans and advances, order passed by AO that activity of granting loans & advances was not principal business of assessee, was not sustainable. Consequently, assessee's case had fallen outside ambit of Explanation to S. 73; thus, loss incurred by it in share transactions was assessable as business loss which could be set off against its business income. (A.Y. 2014-15)
ITO v. Shankar Sales Promotion (P.) Ltd. (2019) 179 ITD 797 (Kol.)(Trib.)

S. 73 : Losses in speculation business – Business of manufacturing and trading of soya premier nutrition and dairy products – Hedging of forward trading – No specific details shown by the assessee to demonstrate that to guard against loss through price fluctuation which might arise from contracts for delivery of goods – Loss from alleged contracts did not fall under proviso (a) of S. 43(5) of the Act. [S. 43(5)] 1096
Assessee claimed loss under S. 43(5) on hedging of soya in commodity exchange. Dismissing the appeal of the assessee the Tribunal held that the assessee was regularly entering into transactions of purchases/sale and commodity derivatives with NCDEX. No specific details shown by the assessee to demonstrate that to guard against loss through price fluctuation which might arise from contracts for delivery of goods. Accordingly the loss from alleged contracts did not fall under proviso (a) of S. 43(5) of the Act. (A.Y. 2011-12)
Premier Industries (India) Ltd. v. JCIT (2019) 174 ITD 415 (Indore)(Trib.)

S. 80 : Return for losses – Capital gains – Carry forward – Advance Rulings – Losses can be allowed to be carry forward and set off only if return of income has been filed in the year in which the loss arise claiming such losses. [S. 74, 139(1)] 1097
Petitioner an LLC incorporated outside India was managing three investment series (funds) in India. Such series had suffered loss in the earlier year and were claimed as such in their respective return of income. Petitioner filed an application before Authority for Advance Rulings (AAR) seeking answer as to whether it was entitled to carry forward accumulated capital losses, in terms of S. 74 of the Act. AAR decided against the Petitioner. On writ challenging such order, the High Court held that, the Petitioner was not the assessee who had claimed such loss in its return of income. In fact, the Petitioner had obtained PAN after such year and it had not filed any return of income in the year in which loss arose claiming such loss. As a result, as per S. 80, the Petitioner was held not eligible for claiming such losses. The question was answered by the Authority for Advance Rulings in the context of the application filed by the assessee alone with regard to its claim. Petitioner Nos 2 to 4 could not be heard. (AY 2011-12)
Aberdeen Institutional Commingled Funds LLC v. AAR (2019) 262 Taxman 346 / 177 DTR 1 / 308 CTR 287 / (2020) 421 ITR 183 (Bom.)(HC)

1098 **S. 80DD : Medical treatment of dependent – Observations – Disability – Jeevan Aadhar – Amount of annuity under the policy is to be released only after the death of the person assured – Purpose is to secure the future of the person suffering from disability, after the death of the parent / guardian – Provision is valid in law – Considering the several difficult situations where the handicapped person may need the payment on annuity or lumpsum basis even during the life time of their parents / guardians, it is for the legislature to take care of theses aspects and to provide suitable provision by making necessary amendments in S.80DD. [Art. 14]**

Constitutional validity of the provision S. 80DD is challenged on the ground that the entitlement of disabled dependent to get annuity or lumpsum payment under LIC policy only after the death of the subscriber in respect of the policy named 'Jeevan Aadhar'. Apex Court held that the provision is valid in law. Court also observed that, considering the several difficult situations where the handicapped person may need the payment on annuity or lumpsum basis even during the life time of their parents / guardians, it is for the legislature to take care of theses aspects and to provide suitable provision by making necessary amendments in S.80DD of the Act.

Ravi Agarwal v. UOI (2019) 410 ITR 399 / 173 DTR 194 / 306 CTR 177 / 260 Taxman 352 (SC)

1099 **S. 80G : Donation – Tribunal rightly remanded the matter to decide application of Section 80G – Relevant documents pointed out before Tribunal from which charitable nature could be deciphered – Remand by the Tribunal is held to be justified. [S. 12A]**

Assessee obtained a certificate under S.12A and also applied for a certificate under S.80G. CIT(E) dismissed assessee's application. Tribunal remanded the matter to the CIT (E) as the application for registration was rejected without examining evidence filed by assessee. Assessee contended that entire material was available before the tribunal to come to a subjective satisfaction and the tribunal should not have remanded the matter. The High Court held that Tribunal had power to remand and rightly remanded the matter back to the CIT (E) for fresh consideration and pass a speaking order.

People Cause Foundation v. ITAT (2019) 179 DTR 122 / 106 taxmann.com 9 / 310 CTR 248 (All.)(HC)

1100 **S. 80G : Donation – Charitable activities – Application of u/s. 80G(5) cannot be rejected when registration continued. [S. 11AA, 12A, 80G(5)]**

Assessee trust was registered under S. 12A of the Act. It claimed deduction under S.80G of the Act. AO rejected assessee's claim holding that there was no proof of charitable activities being carried on by assessee. Tribunal, however, found that for last three years details had been provided to show that charitable activities were being carried on. Registration under S. 12A continued in favour of assessee. Tribunal allowed assessee's claim. High Court upheld Tribunal's order.

CIT v. Babbar Charitable Trust (2019) 106 taxmann.com 159 / 264 Taxman 30 (All.)(HC)

Editorial : SLP of revenue is rejected, CIT v. Babbar Charitable Trust (2019) 264 Taxman 29 (SC)

S. 80G : Donation – When registration is granted application u/s. 80G(5) cannot be rejected. [S.12AA, 80G(5)] 1101

CIT (E) rejected assessee's application u/s. 12AA of the Act. High Court held that as there was no adverse material against assessee to come to conclusion that it was not a charitable institution or organization it is entitle to registration (*CIT v. Lok Sewa Sansthan Samiti Sonebhadra ITA No 139 of 2011 dt. 2-7-2013*). Following the order of granting of registration the Court held that once registration is granted application u/s 80G(5) cannot be rejected.

CIT v. Lok Sewa Sansthan Samiti Sonebhadra (2019) 105 taxmann.com 202 / 263 taxman 496 (All.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. Lok Sewa Sansthan Samiti Sonebhadra (2019) 263 Taxman 495 (SC)

S. 80G : Donation – Approval under section 80G(5)(vi) could not be denied merely because donations made by assessee – trust were of insignificant amount. [S.80G(5) (vi)] 1102

Dismissing the appeal of the revenue the Court held that; approval under S. 80G(5) (vi) could not be denied merely because donations made by assessee-trust were of insignificant amount.

CIT v. Mata Padmawati Shyamdaya Charitable Trust (2019) 260 Taxman 266 (Bom.)(HC)

S. 80G : Donation – Paid through bank and receipt in the name of assessee – Held to be allowable as deduction. 1103

Tribunal held that the donation was made through bank and receipt in the name of assessee hence held to be allowable as deduction. (A.Y. 2009-10)

Aditya Medisales Ltd. v. DCIT (2019) 176 ITD 783 (Ahd.)(Trib.)

S. 80G : Donation – Charitable institutions – Carried out some of charitable activities in furtherance to its objects – Rejection of exemption is held to be not valid [S. 12AA, 80G(5)] 1104

Allowing the appeal of the assessee the Tribunal held that; it was not disputed that the assessee had carried out some of charitable activities in furtherance to its objects. Accordingly the rejection of application by the CIT (E) is set aside.

Bharat Bhushan Jain Charitable Trust v. CIT (2019) 175 ITD 729 / 71 ITR 76 (Delhi)(Trib.)

S. 80G : Donation – Matter remanded to CIT(E) for verification of genuineness of activities of trust. [S. 80G(5)] 1105

Tribunal held that the denial is held to be not justified without examining the genuineness of activities of trust. Accordingly the matter is remanded for verification.

Shree Surat Jilla Leuva Patidar Samaj v. CIT (2019) 175 ITD 469 (Surat)(Trib.)

S. 80HH : Newly established industrial undertakings – Income – Profits and gains – Deduction has to be computed on the profits and gains without deducting therefrom 'depreciation' and 'investment allowance' & not from income as computed under the Act. S. 80AB is prospective. [S. 80AB, 80I] 1106

Deduction has to be computed on the 'profits and gains', without deducting therefrom 'depreciation' and 'investment allowance' & not from 'income' as computed under the

Act. S. 80AB is prospective. *Motilal Pesticides (I) Pvt. Ltd. v. CIT (2000) 243 ITR 26 (SC)* is reversed) (A.Y. 1979-80, 1980-81)
Vijay Industries v. CIT (2019) 412 ITR 1 / 175 DTR 321 / 307 CTR 486 / 264 Taxman 265 (SC), www.itatonline.org
Editorial: Vijay Industries v. CIT (2004) 270 ITR 175 / 190 CTR 90 (Raj.) (HC) is reversed.

1107 **S. 80HH : Newly established industrial undertakings – Dipping plant – Manufacture – Manufacturing cloth industrial fabrics, readymade garments sewing threads etc. – Entitle to deduction. [S. 2 (29B)]**
The assessee was a public limited company engaged in the business of manufacturing of cloth, industrial fabrics, readymade garments, sewing threads, etc. The assessee claimed a deduction under S. 80HH of the Act in respect of its dipping plant. The claim was disallowed by the AO and affirmed by the Tribunal on the ground that the activity carried on amounted only to "processing" and not "manufacture". On appeal High Court held that the activity of dipping was, key to stabilising and heat-setting the products. It was only after such dipping and heat stabilisation that the material would be compatible for rubber adhesion in various products requiring dimensional stability. The input used was industrial fabric or yarn and what emerges after the aforesaid activity was a commercially distinct product, different from the input used. It could be seen from the explanation provided before the authorities that a series of processes were carried out resulting in the final products. Such a series of processes in itself, amounted to the activity of "manufacture". The assessee was entitled to special deduction under S. 80HH. S. 2(29B) "manufacture" the definition inserted by the Finance (No. 2) Act, 2009, with effect from April 1, 2009 any activity that would result in the transformation or change in the character of the object or article or thing, such that a new and distinct object is brought into existence would amount to "manufacture". The definition statutorily enshrines one of the long settled tests of what would constitute "manufacture". Thus, notwithstanding that the definition itself has been inserted only with effect from April 1, 2009 the test itself has been consistently applied by the courts even prior thereto in determining whether an activity would amount to manufacture or not. (A.Y. 1991-92 to 1995-96, 1998-99)
Madura Coats P. Ltd. v. DCIT (2019) 417 ITR 115 (Mad.)(HC)

1108 **S. 80HHC : Export business – Supporting manufacturer – Supporting manufacturer is at par with actual direct exporter of goods when it comes to deductions that are available – Remanded the matter back to Tribunal for fresh adjudication. [S.28(iiid)]**
Allowing the appeal of the revenue the Court held that in *CIT v. Baby Marine Exports (2007) 290 ITR 323 (SC)* was dealing with the an issue related the eligibility of export house premium for inclusion in business profit for the purpose of deduction u/s. 80HHC of the Act, whereas in the present appeals the point for consideration is completely different, being as to whether the assessee being supporting manufacture are to be treated on par with the direct exporter for the purpose of deduction of export incentives u/s. 80HHC of the Act. Accordingly the judgment of High Court is set aside and matter is remanded back to Appellate Tribunal for adjudication afresh.
CIT v. Carpet India (2019) 267 Taxman 93 (SC)
Editorial: Order in CIT v. Carpet India (2008) 174 Taxman 417 (P&H) (HC) is set aside.

S. 80HHC : Export business – Entitle to deduction on gross total income without reducing it by the deduction allowed u/s. 80IB of the Act. [S. 80IA (9), 80IB] 1109

Allowing the appeal of the assessee the Court held that the assessee is entitle to deduction on gross total income without reducing it by the deduction allowed u/s. 80IB of the Act. Followed *Associated Capsules (P.) Ltd. v. Dy. CIT (2011) 332 ITR 42 (Bom.) (HC)*

IPCA Laboratories Ltd. v. ACIT (2019) 112 taxmann.com 331 / (2020) 268 Taxman 328 (Bom.)(HC)

Editorial: SLP of revenue is dismissed ACIT v. IPCA Laboratories Ltd. (2020) 268 Taxman 327 (SC)

S. 80HHC : Export business – Interest income assessed as business income is to be included from the profits and gains of business for the purpose of section 80HHC. [S. 80HHC] 1110

Assessee filed its return of income and AO made an addition by excluding gross interest receipts assessed under the head 'profits and gains of business' which has a nexus with the export activity which had been netted off by the assessee. High Court held that the conversion of a portion of the sale proceeds as fixed deposits was done by the bank themselves and not on volition of the assessee. Therefore, the transaction was connected and closely linked with the business activity of the assessee and interest income assessed as business income is to be included for the purpose of S. 80HHC and assessee appeal was allowed. (A.Y. 2004-05)

JVS Exports v. ACIT (2019) 181 DTR 145 / 419 ITR 123 (Mad.)(HC)

S. 80HHC : Export business – Deduction is allowable on the basis of finally assessed income. 1111

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that the deduction is allowable on the basis of finally assessed income. (A.Y. 1994-95)

CIT v. Apollo Tyres Ltd. (No. 3) (2019) 416 ITR 554 (Ker.)(HC)

S. 80HHC : Export business – Duty entitlement pass book credit – Entitled to take only net amount of sale value after deducting face value. [S. 28(iiid)] 1112

Allowing the appeal of the assessee the Court held that the assessee was entitled to take only the net amount of the sale value of the duty entitlement pass book credit after deducting the face value for the purpose of S. 80HHC of the Income-tax Act, 1961 while applying Explanation (baa) of the provision. Duty entitlement pass book credit is chargeable as income u/s. 28(iiid) of the Act. Followed *Topman Export v. CIT (2012) 342 ITR 49 (SC)* (A.Y. 2003-04)

Gold Line Exports v. ITO (2019) 412 ITR 465 (Mad.)(HC)

S. 80HHC : Export business – Interest – Business income – Interest charged on delayed payment of sale consideration is assessable as business income. [S. 28(i)] 1113

Dismissing the appeal of the revenue the Court held that the Interest charged on delayed payment of sale consideration is assessable as business income and should not be

deducted for the purpose of computation u/s. 80HHC. Followed *CIT v. Nirma Ltd. (2014) 367 ITR 12 (Guj.)(HC)*. (A.Y. 1991-92)
PCIT v. Atul Ltd. (2019) 103 taxmann.com 249 / 262 Taxman 11 (Guj.)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Atul Ltd. (2019) 262 Taxman 10 (SC)

1114 **S. 80HHC : Export business – Total turnover – Entire turnover of business – Donation for scientific research cannot be excluded. [S. 35(1)(ii), 80GGA]**
Court held that so long as the assessee carries on business and has business profits, the expenditure incurred by the assessee by way of contribution to an approved institution for scientific research cannot be claimed as a donation covered by the provisions of S. 80GGA so as to take it out from the scope of computation of business profits under Chapter IV Part D within which S. 35(1)(ii) is also included. The assessee is not entitled to claim expenditure incurred under S. 35(1)(ii) of the Act as donation under S. 80GGA of the Act so as to exclude it from the amount eligible for deduction under S.80HHC of the Act.
Sri Aurobindo Ashram Harpagaon Workshop Trust v. DCIT (2019) 415 ITR 247 (Mad.)(HC)

1115 **S. 80HHC : Export business – Assessee's claim confined to sale to export house – Export house not claiming deduction with regard to export of goods manufactured by assessee – Entitled to deduction.**
The claim of the assessee to deduction under S. 80HHC was confined only to sale to the export house. The export house had issued disclaimer certificate along with copy of the revised chartered accountant certificate. The export house had not claimed deduction under S. 80HHC with regard to export of goods manufactured by the assessee. Therefore, the assessee was entitled to deduction under S. 80HHC with regard to goods sold to the export house. However, deduction under S. 80HHC claimed by the assessee on account of sale to export house was ₹ 1,67,23,392 which was in excess of the profits earned by the export house. Therefore, for the limited purpose of quantification of deduction under S. 80HHC the issue was restored to the AO. (A.Y. 2002-03)
ACIT v. Abad Exim Pvt. Ltd. (2019) 70 ITR 719 (Cochin)(Trib.)

1116 **S. 80HHC : Export business – Claim was made in the return filed u/s. 153A – Failed to include in the revised return inadvertently – Directed tom entertain the claim. [S. 153A].**
Claim made in the return pursuance of notice u/s. 153A and failed to include in the revised return Tribunal directed the AO to allow the claim. (A.Y. 2003-04 to 2005-06)
Flex Engineering Ltd. v. DCIT (2019) 70 ITR 417 (Delhi)(Trib.)

1117 **S. 80HHD : Convertible foreign exchange – Hotel – Tour operator – Double deduction under Chapter VIA – Entitlement of deduction under diverse provisions in respect of same income – Matter referred to larger Bench. [S. 80IA]**
The question before the High court was whether an assessee was entitled to claim deductions under diverse provisions in respect of same income, if assessee qualified under various provisions. i.e. S.80HHD and 80-IA. Following the judgment in *EIH Ltd. v. CIT (2011) 338 ITR 503 (Cal.)(HC)* the Court held that if assessee was entitled to claim

deduction under more than one head, the assessee must be left free to do so, subject to deduction not being more than income earned under such head. Issue had been referred to a larger bench for reconsideration in judgment in *ACIT v. Micro Labs Ltd (2016) 380 ITR 1 (SC)*. Following the same SLP of revenue is allowed and matter is listed along with SLP (Civil) No 19005/2012.
PCIT v. E.I.H. Ltd. (2019) 262 Taxman 6 (SC)
Editorial : Refer PCIT v. E.I.H. Ltd. (2019) 103 taxmann.com 203 (Cal.)(HC) / 262 Taxman 7 (Cal.)(HC)

S. 80HHE : Export business – Computer software – Eligible business – While computing the deduction turnover of only eligible to be considered and not total turnover of business. 1118
Dismissing the appeal of revenue the Court held that while computing the deduction turnover of only eligible to be considered and not total turnover of business. Followed *Flender Ltd. v. CIT (2014) 45 taxmann.com 21 (Cal.)(HC)*. (ITA NO. 1575 of 2017 dt. 12-2-2019 (ITA No. 6540/M/2004 dt. 20-4-2016 (A.Y. 1999-2000)
CIT v. Glbal Tele Systems Ltd. (Bom.)(HC)(UR)

S. 80I : Industrial undertakings – Deduction under S. 80 – I should be given on profit without reducing deduction under S. 80HH. [S.80HH] 1119
Dismissing the appeal of the revenue the Court held that Deduction under S. 80I should be given on profit without reducing deduction under section 80HH. (A.Y. 1994-95)
CIT v. Hindustan Lever Ltd. (2019) 103 taxmann.com 88 (Bom.)(HC)
Editorial: SLP of revenue is dismissed; CIT v. Hindustan Lever Ltd. (2019) 261 Taxman 547 (SC)

S. 80IA : Industrial undertakings – Manufacture – Activity of compression of natural gas into CNG amounted to manufacture – Entitle to exemption. [S. 2(29BA)] 1120
Assessee procured gas from GAIL and compressed it through compressor for manufacture of compressed natural gas (CNG), which was subsequently sold to customers, as fuel for vehicles. Assessee claimed that activity undertaken by it amounted to manufacture within meaning of S. 2(29BA) and claimed deduction under S. 8OIA of the Act. AO rejected the claim which was up held by the Tribunal. High Court held that without undergoing process of compression, natural gas in its original form could not be used as fuel for automobile industry and, thus, compressed natural gas in its compressed form had a distinct identity and character and use accordingly the activity undertaken by assessee amounted to manufacture and allowed the claim. Followed *ITO v. Arihant Tiles & Marbles (P.) Ltd. (2010) 320 ITR 79 (SC)* (A.Y. 2008-09)
Central U.P. Gas Ltd. v. Dy. CIT (2019) 106 taxmann.com 370 / 264 Taxman 283 (All.) (HC)
Editorial: SLP is granted to the revenue CIT v. Central U.P. Gas Ltd. (2019) 264 Taxman 282 (SC)

1121 **S. 80IA : Industrial undertakings – Infrastructure development – Contractor and not developer – Question of law is a substantial question of law admitted by High Court. [S. 80IA(4), 260A]**

Following questions of law is admitted which is to be heard along with ITA Nos. 183 of 2012 and 184 of 2012.

a) Whether, the respondent / assessee fulfils the requirement stipulated in S. 80IA(4) of the Income tax Act 1961 once the conclusion reached is that it is contractor and not developer as stated in the sub-section ?

b) Whether, in the facts and circumstances of the case the Income Tax Appellate Tribunal was right in holding that even if the assessee is termed as contractor he had developed, operated and maintained infrastructural facility and hence entitle to the deductions within the meaning of sub-section (ITA No. 1769 of 2016 dt 30-01-2019)

PCIT v. Mahalaxmi Infra Projects Ltd. (Bom.)(HC) www.itatonline.org.

1122 **S. 80IA : Industrial undertakings – Interest on bank deposits do not constitute business income for claiming deduction.**

Court held that the disputed income was income generated by way of interest from the amounts deposited by the assessee elsewhere and had no relation to the business activity of the assessee do not constitute business income for claiming deduction. (A.Y. 1994-95)

CIT v. Apollo Tyres Ltd. (No. 3) (2019) 416 ITR 554 (Ker.)(HC)

1123 **S. 80IA : Industrial undertakings – Two manufacturing units – Deduction at 30% of eligible business – Not on total income. [S.80AB]**

Dismissing the appeal of the revenue the Court held that the understanding of the Department with regard to the scope of section 80AB to enable them to reckon the deduction at 30 per cent, confining it to the lower extent of the total income from all sources, instead of reckoning it as 30 per cent of the business profits from the eligible business, was wrong and misconceived. No question of law. (A.Y. 1995-96)

CIT v. Apollo Tyres Ltd. (No. 5) (2019) 416 ITR 571 (Ker.)(HC)

1124 **S. 80IA : Industrial undertakings – Telecommunication services – Income from sharing fibre cables and cell – sites was income by way of leasing – Late fees and reimbursement of cheque dishonour charges received from parties – Eligible for deduction. [S. 80IA(2A)]**

Dismissing the appeal the Court held that income from sharing fibre cables and cell-sites was income by way of leasing late fees and reimbursement of cheque dishonour charges received from parties is eligible for deduction. (A.Y. 2008-09)

CIT v. Vodafone Mobile Services Ltd. (2019) 414 ITR 276 / 183 DTR 277 / 311 CTR 588 (Delhi)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Maintaining and operating railway sidings under agreement with principal contractor who had entered into agreement with railways and recognised by railways as transferee – Entitle to deduction – Object and intent of legislature is considered. [S. 80IA(4)] 1125

Dismissing the appeal the Court held that the Tribunal had rightly applied the proviso to S.80IA(4) and had held that the assessee was recognised as a contractor for the railway sidings, which fell under the definition of "infrastructure facility" and that it was entitled to the benefit under S. 80-IA. It had also rightly held that the proviso did not require that there should be a direct agreement between the transferee enterprise and the specified authority to avail of the benefit under S. 80IA. Object and intent of legislature is considered. (A.Y. 2006-07)

CIT v. Chettinad Lignite Transport Services Pvt. Ltd. (2019) 415 ITR 107 / 177 DTR 329 / 309 CTR 268 / 265 Taxman 466 (Mad.)(HC)

S. 80IA : Industrial undertakings – Telecommunication business – Net interest earned is eligible for deduction. 1126

Assessee obtained loan from the Bank at 7 % and advanced the loan to sister concern at 9% and claimed that net interest income earned by it was also eligible for deduction. AO rejected the claim. Tribunal allowed the claim of the assessee. High Court affirmed the view of the Tribunal.

PCIT v. Vodafone Essar Gujarat Ltd. (2019) 263 Taxman 632 (Delhi)(HC)

S. 80IA : Industrial undertakings – Manufacture – Converting herbs into a certain herbal product by manual process – Purchase of plant and machinery and consumption of electricity are not mandatory requirements – Entitle to deduction. 1127

Assessee which is in business of converting herbs into a certain herbal product by manual process. It used some chemicals and small machinery and most processes of its manufacturing did not require electricity. AO denied the exemption. Tribunal held that purchase of plant and machinery and consumption of electricity are not mandatory requirements to claim deduction and manufacturing of herbal product by assessee would amount to manufacture of a different commercial article. Order of Tribunal is affirmed by High Court. (A.Y. 1996-97 to 1998-99)

CIT v. Cavinkare (P.) Ltd. (2019) 263 Taxman 740 / 309 CTR 453 / 180 DTR 137 (Mad.) (HC)

S. 80IA : Industrial undertakings – Conversion of paddy into rice is a manufacturing activity – Entitle to deduction. [S. 80IB] 1128

Dismissing the appeal of the revenue the Court held that, conversion of paddy into rice is a manufacturing activity and, thus, assessee engaged in said activity was entitled to deduction u/s. 80IA/80IB of the Act. (A.Y. 1999-2000 to 2004-05)

CIT v. Muthuramalingam Modern Rice Mill (2019) 263 Taxman 294 / 307 CTR 816 / 176 DTR 177 (Mad.)(HC)

1129 **S. 80IA : Industrial undertakings – Infrastructure development – Agreement with a nodal agency established by State Government Deduction cannot be denied. [S. 80IA(4)]**

Dismissing the appeal of the revenue the Court held that, deduction could not be denied merely on ground that State Government had created a nodal agency for working out finer details and nitty-gritty of infrastructure development and assessee had entered into agreement with said nodal agency. (A.Y. 2012-13)

CIT v. Ranjit Projects (P.) Ltd. (2019) 104 taxmann.com 391 / 263 Taxman 4 (Guj.)(HC)

Editorial: SLP of revenue is rejected, CIT v. Ranjit Projects (P.) Ltd. (2019) 263 Taxman 3 (SC)

1130 **S. 80IA : Industrial undertakings – Gross or net – Net of interest excluding expenditure incurred in earning such interest income which should be excluded for purpose of deduction.**

Dismissing the appeal of the revenue the Court held that only be net of interest excluding expenditure incurred in earning such interest income which should be excluded for purpose of deduction. Followed *ACG Associated Capsules Pvt. Ltd. v. CIT (2012) 343 ITR 89 (SC)*

PCIT v. Gujarat Paghuthan Energy Corporation (P.) Ltd. (2019) 263 Taxman 255 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, PCIT v. Gujarat Paghuthan Energy Corporation (P.) Ltd. (2019) 263 Taxman 254 (SC)

1131 **S. 80IA : Industrial undertakings – Assessee has option to choose initial year – Entitled to notional carry forward of loss from that particular Year. [S. 80]**

Allowing the appeal of the assessee the Court held that, the initial year for the purpose of section 80IA was the initial assessment year from which the deduction commenced and the assessee was entitled to the notional carry forward from that particular year. CBDT Circular No. 1 of 2016 dt 15-2-2016 (2016) 381 ITR 1 (St.) (A.Y. 2002-03, 2003-04)

South India Corporation Ltd. v. ACIT (2019) 412 ITR 239 / 177 DTR 337 (Ker.)(HC)

1132 **S. 80IA : Industrial undertakings – Apportionment of expenses between two sets of units – Deduction not exceeding gross total Income – Apportionment of expenses is valid.**

Dismissing the appeal of the revenue the Court held that in the absence of any material to indicate that the methodology for allocation of expenditure followed by the CIT(A) and confirmed by the Tribunal was incorrect or perverse, there was no reason to interfere with the factual findings of the Tribunal. Moreover certain limitations are placed by the statute on the quantum of relief allowable in relation to deductions under Chapter VI-A of the Act, in terms of S. 80A(2) and (4), 80AB, 80AC and 80B. These include a mandate that the relief granted shall not exceed the gross total income as defined under S. 80B(5). The relief granted had been restricted to the gross total income computed. (A.Y. 1997-98 to 2002-03)

CIT v. Swelect Energy Systems Ltd. (2019) 412 ITR 291 (Mad.)(HC)

S. 80IA : Industrial undertakings – Generation of power – Eligible unit – Consolidated balance – sheet and profit and loss account – Losses of earlier years of other two units of assessee cannot be notionally brought forward and set off against profits of eligible unit. [S. 80IA(5)] 1133

Dismissing the appeal of the revenue the Court held that,the mere fact that consolidated balance-sheet and profit and loss account had been prepared for the entire business would not disentitle the assessee to claim deduction under S. 80IA in respect of the one undertaking of its choice. The assessee had maintained separate statements and had filed before the CIT(A) detailing separate project cost and source of finance in respect of each unit. The assessee had exercised its claim before the AO for deduction under S. 80IA in respect of only the 16 megawatt unit at Karnataka. Each unit, including a captive power plant, had to be seen independently as separate and distinct from each other and as units for the purpose of grant of deduction under S. 80IA. (A.Y. 2004-05)

CIT v. Bannari Amman Sugars Ltd. (2019) 412 ITR 69 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Where the assessee had sold many units, it was entitled to deduction under S. 80IA even if the Authority's approval came later on. [S. 80IA(4)(iii)] 1134

Where the assessee had sold 21 units located in the Industrial park and those units were also operational, it was entitled to the deduction under S. 80IA(4) which is available to the assessee's who begin to develop, operate and maintain industrial parks. The date of certificate from the local authority is not to be taken as the date of commencement. Followed *Ganesh Housing Corporation Ltd v. Under Secretary (2011) 399 ITR 441 (Guj.) (HC)*. Appeal of revenue is dismissed. (A.Y. 2007-08)

PCIT v. Kolte Patil Developers Ltd. (2019) 175 DTR 280 / 307 CTR 704 (Bom.)(HC)

S. 80IA : Industrial undertakings – Net interest excluding expenditure incurred in earning such interest income which had to be excluded for purpose of computing deduction. 1135

Dismissing the appeal of the revenue the Court held that, only be net interest excluding expenditure incurred in earning such interest income which had to be excluded for purpose of computing deduction available under S. 80IA. Followed *ACG Associated Capsules (P) Ltd. v. CIT (2012) 343 ITR 89 (SC)* (A.Y. 2005-06)

CIT v. CLP India (P.) Ltd. (2019) 103 taxmann.com 442 / 262 Taxman 204 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. CLP India (P.) Ltd. (2019] 262 Taxman 203 (SC)

S. 80IA : Industrial undertakings – Infrastructure development – Contractor or transferee approved by concerned authority – Entitled to deduction. 1136

Dismissing the appeal of the revenue the Court held that the assessee was duly recognised as transferee or assignee of the principal contractor and was duly so recognised by the Railways to operate and maintain the railway sidings at Vadlur and Uthangalman railway stations. The assessee was entitled to deduction. (A.Y. 2003-04, 2004-05, 2010-11)

CIT v. Chettinad Lignite Transport Services P. Ltd. (2019) 413 ITR 162 / 177 DTR 329 / 309 CTR 268 / 266 Taxman 7 (Mad.)(HC)

1137 **S. 80IA : Industrial undertakings – Infrastructure development – Captive power – Valuation of electricity provided to another unit should be at rate at which electricity distribution companies were allowed to supply electricity to consumers.**

Dismissing the appeal of the revenue the Court held that, for computing deduction profits arising from captive consumption of electricity, valuation of electricity provided to another unit should be at rate at which electricity distribution companies were allowed to supply electricity to consumers.

CIT v. Reliance Industries Ltd. (2019) 261 Taxman 358 (Bom.)(HC)

1138 **S. 80IA : Industrial undertakings – Infrastructure development – Container Freight Station (CFS) – Eligible for deduction.**

Dismissing the appeal of the revenue the Court held that, Container Freight Station (CFS) run by the assessee is an infrastructure facility which is eligible for deduction. Followed *Global Logistics Ltd Continental Ware Housing Corp. (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom.)(HC)* Referred *All Cargo Global Logistics Ltd. v. Dy CIT (2012) 137 ITD 287 (SB) (Mum.)(Trib.)* (A.Y. 2008-09, 2009-10)

PCIT v. JWC Logistic Park (P.) Ltd. (2018) 100 taxman.com 355 / (2019) 260 Taxman 92 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. JWC Logistic Park (P.) Ltd. (2019) 260 Taxman 91 (SC)

1139 **S. 80IA : Industrial undertakings – Infrastructure development – Commission agent of BSNL – Providing basic telecommunication services as defined u/s. 2(k) of TRAI Act, 1997 to its customers – Entitled to deduction [S. 80IA(4)(ii), Indian Telegraph Rules 1951 and TRAI Act, 1997]**

The assessee is acting as commission agent of BSNL, claimed deduction u/s 80IA(4) (ii) of the Act in respect of commission received by it. The AO held that nature of service done by assessee was of commission agent of BSNL and they do not render any telecommunication service thus, deduction claimed by assessee was denied. Tribunal held that the assessee was collecting commission charges and therefore, not a provider of telecommunication services. On appeal the Court held that the assessee is providing 'basic telecommunication services' in terms of relevant Rules in Indian Telegraph Rules 1951 and TRAI Act, 1997. Definition of 'telecommunication service', as defined u/s. 2(k) of TRAI Act, was a very wide and comprehensive definition, which includes services of any description, which was made available to users by means of any transmission or reception of signs, signals. definition being very wide and inclusive definition, it would encompass all types of services regardless of description and it would encompass type of service rendered by assessee and therefore, type of service rendered by assessee was a 'basic telecommunication service'. Even official website of BSNL also shows EPABX as one of enterprises services provided by BSNL. Official website of BSNL also states that it permits telephone subscribers to use their own PABX/EPABX connected to BSNL network under certain commercial/technical conditions. Followed CIT. Himanshu V. Shah (Guj.) (HC)), (TCA No. 1098 of 2005 dt. 16-12-2014) and also referred *ITO v. Quick Telecom (ITA No 1654 of 2010 dt. 21-12-2009 (Mum.) (Trib.)* (A.Y. 2003-04 2004-05)

Sabdhagiri Telecom v. ITO (2019) 173 DTR 100 / 306 CTR 300 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Operation of Industrial Park approved by competent Authority – Entitle to deduction. 1140

Dismissing the appeal of the revenue the Court held that ; held, that operation of Industrial Park approved by competent Authority is entitle to deduction. Followed. *R. R. Industries Ltd. v. ITO (2013) 356 ITR 97 (Mad.)(HC)* (A.Y. 2009-10)

CIT v. R. R. Industries Limited (2019) 410 ITR 3 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Operating and maintenance of airport – Agreement between airports authority and the assessee – Entitled to deduction. [S. 80IA(4)(i)(c)] 1141

The Tribunal held that the agreement between the Airports Authority of India and the assessee would qualify to be an agreement entered into with a statutory body for operating and maintaining the infrastructure facility. The Government of India had notified that all civil commercial flights would operate to and from the airport w.e.f. July 1, 1999. The assessee had started operating and maintaining the airport only from July 1, 1999, as the assessee satisfied the condition u/s. 80IA(4)(i)(c). Entitled to deduction. (A.Y. 2005-06 to, 2010-11)

Dy. CIT v. Cochin International Airport Ltd. (2019) 76 ITR 44 (SN) (Cochin)(Trib.)

S. 80IA : Industrial undertakings – Assessee running a cinema production house – Each new project for new film not be considered as reconstruction of business already in existence – Nothing on record to show that there was any transfer of used machinery or plant to a new business – Production of a cinema film would amount to manufacturing or processing of goods – Entitled to deduction. 1142

Assessee is a cinema production house and had claimed a deduction u/s. 80IA. AO disallowed the claims citing that clause (i)(ii) and (v) of Sub section 2 had not been satisfied. According to him the assessee's actions having been producing movies for a long period of time only amounted to splitting up or restructuring and that all its employees were on a contractual basis thus not having the minimum 10 workers for manufacturing under cl.5. CIT (A) held that Assessee had satisfied the requirements. In appeal, held that each new movie produced would not be considered as splitting up or restructuring as it was a production house. Although the assessee has used hired machinery for production the Department was unable to show that there was any transfer of used machinery to a new business or plant. That as per CBDT in Circular No. 24 (F. No. 6/22/68-IT(A-I dated July 23, 1969, production of a cinema film would amount to manufacturing or processing of goods. Lastly, just because the employees were not regular employees of the assessee does not mean they were not employed by the assessee for the new production project, therefore there were more than 10 people working for the assessee. Thus, assessee was entitled to claim deduction u/s. 80IA. (BP 1-4-1986 to 30-1-1997)

Dy. CIT v. K.T. Kunjumon (2019) 70 ITR 445 (Chennai)(Trib.)

1143 **S. 80IB : Industrial undertakings – Profit from sale of slag, which was a by – product in manufacture of pig iron, was to be considered as profit from business of industrial undertaking engaged in manufacture and sale of pig iron for purpose of deduction.**
Allowing the appeal of the assessee the Court held that, slag generated during process of manufacturing of pig iron was part of manufacturing process and was a by-product of pig iron and, thus, profits earned from sale of such by-product was to be considered as part of profits derived from business of industrial undertaking engaged in manufacture and sale of pig iron and would be eligible for deduction. (A.Y. 2004-05)
Sesa Industries Ltd. v. CIT (2019) 415 ITR 257 / 264 Taxman 95 / 180 DTR 25 / 309 CTR 380 (Bom.)(HC)

1144 **S. 80IB : Industrial undertakings – Business of manufacturing Menthol – Profit from hedging – Hedging activity of Mentha Oil has direct nexus with the manufacturing activity and profit derived from hedging is eligible for deduction.**
Dismissing the appeal of the revenue the Court held that, the assessee which is carrying on business of manufacturing Menthol, hedging activity of Mentha Oil has direct nexus with the manufacturing activity and profit derived from hedging is eligible for deduction. (A.Y. 2006-07, 2007-08, 2009-10)
PCIT v. Jindal Drugs Ltd. (2019) 306 CTR 241 / 173 DTR 345 (Bom.)(HC)

1145 **S. 80IB : Industrial undertakings – Satisfied turnover stipulations for Small – Scale Industry – No question of law. [S. 260A]**
The Commissioner (Appeals) held that the turnover stipulations in terms of the fixed assets by Note 1 of the Department of Industrial Policy and Promotion Circular had been complied with. Order of CIT (A) was affirmed by Appellate Tribunal. Dismissing the appeal of the revenue the Court held that, the duty of the Assessing Officer was to apply the law in the given facts regardless of the position of the Revenue or the assessee in the course of the proceedings. No question of law arose. (A.Y. 2005-06)
CIT v. Eltek Sgs Pvt. Ltd. (2019) 412 ITR 41 (Delhi)(HC)

1146 **S. 80IB : Industrial undertakings – Eligible undertaking – Each oil well can be treated as a separate eligible undertaking – Not required to maintain separate account for each undertaking. [S. 80IC]**
Dismissing the appeal of the revenue the Tribunal held that for claiming deduction under S. 80IB, law does not require such separate accounts to be maintained as if undertaking itself is a distinct business. For purpose of deduction each oil well can be treated as a separate eligible undertaking. (A.Y. 2003-04 to 2006-07, 2007-08)
ACIT v. Oil India Ltd. (2019) 179 ITD 455 / 182 DTR 25 / 201 TTJ 545 (Guwahati)(Trib.)

1147 **S. 80IB : Industrial undertakings – Ownership of property is not a condition for claiming deduction.**
On appeal by the Department, the Tribunal relying on the decision of the Hon'ble Gujarat High Court in the case of *CIT v. Radha Developers (2012) 341 ITR 403 (Guj.)(HC)* held that ownership of land was not a prerequisite for claiming deduction u/s. 80IB of the Act and therefore, deduction was allowable. (A.Y. 2007-08, 2010-11)
DCIT v. AG8 Ventures Ltd. (2019) 69 ITR 35 (SN) (Indore)(Trib.)

S. 80IB : Industrial undertakings – Production and sale of mosquito repellents – In absence of any other rational basis for allocating income for computation of amount eligible for deduction, ratio of excisable value of output of non-eligible unit vis-a-vis that of eligible units would constitute a good basis for bifurcation of income – Matter remanded. 1148

The assessee had three units and one unit manufacturing heaters was not eligible for deduction and the said unit supplied those heaters to other two eligible units engaged in production of refills at a particular excisable value. AO disallowed deduction claimed under S. 80IB in respect of Units 2 and 3 which related to supply of heaters from non-eligible Unit 1. CIT(A) up held the order of AO. Tribunal held that in absence of any other rational basis for allocating income for computation of amount eligible for deduction, ratio of excisable value of output of non-eligible unit vis-a-vis that of eligible units would constitute a good basis for bifurcation of income. Matter remanded.
SC Johnson Products (P.) Ltd. v. DCIT (2019) 175 ITD 477 (Delhi)(Trib.)

S. 80IB(10) : Housing projects – Stay of judgment in *CIT v. Global Reality (2015) 379 ITR 107 (MP)* where it was held that issuance of completion certificate, after the cut-off date by the Local Authority but, mentioning the date of completion of project before the cut-off date, does not satisfy the condition specified in clause (a) of Section 80IB (10) read with Explanation (ii) thereunder hence not entitle to exemption. [S. 80IB (10)(a)] 1149

Apex Court stayed the judgment in *CIT v. Global Reality (2015) 379 ITR 107 (MP) (HC) (2020) 114 taxman 95 (MP)(HC)* where it was held that issuance of completion certificate, after the cut-off date by the Local Authority but, mentioning the date of completion of project before the cut-off date, does not satisfy the condition specified in clause (a) of Section 80IB (10) read with Explanation (ii) thereunder hence not entitle to exemption. (SLP Nos. 35004-05/2015, dt. 08.07.2019) (A.Y. 2004-05 to 2006-07)
Global Estate v. CIT (2020) 114 taxman.com 96 (SC), www.itatonline.org

S. 80IB(10) : Housing projects – Date of agreement with land owner dated 11-07-1997 – Approval of project by local authority was on 30-09 1998 – Project completed before 31-03 2008 – Entitle to deduction. 1150

Assessee had undertaken a housing project. Date of agreement entered into between assessee and land owner was 11-7-1997. Date of approval of project by local authority was 30-9-1998. Assessee had incurred certain expenditure like making advances for purchase of land, levelling of land, etc. prior to 1-10-1998 and the said project was completed before 31-3-2008. AO disallowed claim u/s. 80IB (10) of the Act. Tribunal allowed deduction holding that assessee had only incurred expenditure like making advances for purchase of land, levelling of land, etc. prior to 1-10-1998 and, therefore, no construction was possible prior to approval of plan by local authority, which was accorded only on 30-9-1998. On appeal the revenue contended before High Court that since some portion of expenditure for development of project was incurred by assessee prior to cut off date, i.e., 1-10-1998, development work had started prior to cut off date and, therefore, assessee was not entitled to benefit of deduction. High Court held that since expenditure incurred by assessee prior to cut off date of 1-10-1998 was not in

nature of development and commencement of housing project itself, accordingly the order of Tribunal is affirmed. (Followed *CIT v. Housing & Construction Ltd. (2014) 225 Taxman 29 (Mag.) (Delhi)(HC) SLP is granted to revenue, (2014) 227 Taxman 378 (SC)* (A.Y. 2001-02)
CIT v. Arun Excello (2019) 113 taxmann.com 347 (Mad.)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect; CIT v. Arun Excello (2020) 269 Taxman 18 (SC)

1151 **S. 80IB(10) : Housing projects – One of the unit constructed exceeded the upper limit – Deduction cannot be denied to entire housing projects – Exemption is not allowable only in respect of the unit exceeded the prescribed limits.**
Assessee claimed deduction under S. 80IB(10) in relation to income of housing development. AO rejected assessee's claim on ground that some residential units exceeded specified built up area of 1500 sq. ft. Tribunal held that simply because out of several units included in housing project, only in one of them, constructed area exceeded upper limit; that too, by a small margin, deduction claimed could not be denied in respect of entire housing project. High Court confirmed order passed by Tribunal.
PCIT v. Shreenath Buildcon (2019) 110 taxmann.com 389 (Guj.)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Shreenath Buildcon (2019) 267 taxman 115 (SC)

1152 **S. 80IB(10) : Housing projects – Condition that completion certificate must be obtained within four years from local authority – Amendment is not retrospective – Not applicable prior to 1-4-2005 – Order of Tribunal quashing the reassessment is held to be valid. [S. 147, 148]**
Dismissing the appeal of the revenue the Court held that prior to April 1, 2005, S. 80IB(10) of the Income-tax Act, 1961 provided only three conditions for the eligibility for the deduction. There was no such condition that the project in question should be completed and completion certificate obtained within the period of four years. The condition was imposed by the amendment with effect from April 1, 2005. The condition will be applicable prospectively and not retrospectively. Accordingly once it had come on record by the fact finding authority that there was no such condition to have the completion certificate within four years from the local authority granting approval of the projects, the reassessment proceedings taken against the assessee were held to be bad in law. (Followed *CIT v. Brahma Associates (2011) 333 ITR 289 (Bom.)(HC), CIT v. Sarkar Builders (2015) 375 ITR 392 (SC).* (A.Y. 2005-06, 2007-08)
PCIT v. Sahara States, Gorakhpur (2019) 418 ITR 168 / 310 CTR 457 / 181 DTR 265 / 267 Taxman 130 (All.)(HC)

1153 **S. 80IB(10) : Housing projects – Residential plus commercial – Commercial user is permitted by local authority was within local limits – Entitle to exemption.**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in allowing the exemption in respect of housing project which is approved by the local authority as residential plus commercial within the limits prescribed under Development

Control Rules/Regulation, deduction under S. 80IB(10) up to 31-3-2005. Followed *CIT v. Veena Developers (2015) 277 CTR 297 / (2016) 66 taxmann.com 353 (SC)*
CIT v. Indo Continental Hotels and Resorts Ltd. (2019) 107 taxmann.com 161 / 264 Taxman 294 (Raj.)(HC)
Editorial: SLP of revenue is dismissed, CIT v. Indo Continental Hotels and Resorts Ltd. (2019) 264 Taxman 293 (SC)

S. 80IB(10) : Housing projects – Project was completed before March 31, 2009 – Two building project was handed over to land lord for further development – Allowing the claim is exemption is held to be justified. 1154
Dismissing the appeal of the revenue the Court held that necessary completion certificates from the local authority were issued from time to time and the construction was completed and duly certified by the local authority before March 31, 2009. The records showed that the other two buildings were not to be constructed and the land was to be handed over to the landlord on account of further developments and dispute. Order of Tribunal granting the deduction is held to be justified. (A.Y. 2009-10)
PCIT v. Sadhana Builders Pvt. Ltd. (2019) 414 ITR 561 (Bom.)(HC)

S. 80IB(10) : Housing projects – Allotment of more than one unit to members of same family – Allottees later removing partitions and combining two flats into one – No breach of condition that each unit should not be of more than 1000 Sq. Ft. – Entitled to deduction. 1155
Dismissing the appeal of the revenue the Court held that allotment of more than one unit to same family members no breach condition. Allottees later removing partitions and combining two flats into one, no breach of condition that each unit should not be of more than 1000 Sq. Ft. Argument of the revenue that condition inserted by Finance Act, 2009 with effect from April 1-2010 is procedural and applicable to pending cases was rejected. (A.Y. 2009-10)
PCIT v. Kores India Ltd. (2019) 414 ITR 47 (Bom.)(HC)

S. 80IB(10) : Housing projects – Land was in the original owner – Undertaken development of housing project at their own risk and cost – Entitle to deduction. [S. 2(47)] 1156
AO disallowed claim mainly on ground that assessee was not owner of land and approval of project was not in name of assessee. Tribunal held that the assessee had undertaken development of housing project at their own risk and cost and merely because land was held in name of original owner when housing development project was executed, it would not be detrimental to assessee's claim of deduction. High Court affirmed the order of the Tribunal. (A.Y. 2010-11)
PCIT v. Green Associates (2019) 105 taxmann.com 79 / 263 Taxman 239 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Green Associates (2019) 263 Taxman 238 (SC)

1157 **S. 80IB(10) : Housing projects – Direction is given to AO to collect information about stage of completion of projects and size of flat – Pro rata deduction to be given if project completed within norms.**

Tribunal held that the assessee had only submitted the letters before the CIT(A) to claim the deduction on pro rata basis. According to the findings of the CIT(A) those letters had not given any details about the stage of completion or the size of the flat to ascertain whether those projects satisfied the conditions specified in S 80IB(10). Therefore, the AO was directed to collect information about the stage of completion of the projects and the size of the flats. If it was within the norms, the AO was to give pro rata deduction under S. 80IB(10). (A.Y. 2007-08, 2008-09)

Dy. CIT v. Janapriya Engineers Syndicate Ltd. (2019) 70 ITR 370 (Hyd.)(Trib.)

1158 **S. 80IB(10) : Housing projects – Obtaining occupation certificate is not a mandatory requirement in order to ascertain whether building was completed or not for purpose of deduction under S. 80-IB(10)**

Tribunal held that the occupation certificate is not a mandatory requirement in order to ascertain whether building was completed or not for purpose of deduction under S. 80IB(10). (A.Y. 2001-02 to 2008-09)

Puran Ratilal Mehta v. ACIT (2019) 175 ITD 190 / 178 DTR 217 / 199 TTJ 607 (Mum.)(Trib.)

1159 **S. 80IB(11A) : Undertaking – Business of processing, preservation and packaging of fruits or vegetables – Business of manufacturing and exporting honey is eligible to claim deduction.**

The assessee firm which is engaged in the business of manufacturing and exporting honey. It claimed deduction under S. 80IB(11A) in respect of benefit received under Vishesh Krishi and Gram Udyog Yojana (VKGUY). AO denied the deduction om the ground that the VKGUY scheme is part of Foreign Trade Policy 2009-14 framed by the Government of India, Ministry of Commerce and Industry. Tribunal also up held the view of the AO. On appeal high Court held that perusal of the scheme would suggest that the objective of the scheme was to promote export of agricultural produce and their value added products, minor forest produce and their value added variants, Gram Udyog products, forest based products and other produces as maybe notified. In relation to exports of such products, benefits in the form of incentives would be granted at the prescribed rate. The objective behind granting such benefit was in order to compensate high transport cost and to offset other disadvantages. In clear terms, thus, the Government of India realized that the products such as agricultural produce, minor forest produce and Gram Udyog products as also forest based products would have high transport cost and would be accompanied by various other disadvantages. In order to make the export of such products viable, the Government of India decided to grant certain incentives under the said scheme. The clear objective behind the scheme was, thus, to reduce the cost of its procurements and to neutralize certain inherent disadvantages attached to such products. Accordingly the court held that the assessee's claim of deduction under S. 80IB(11A) in relation to the benefits received by the assessee under VKGUY scheme upon the export of its agro products was to be allowed. (A.Y. 2009-10)

Pioneer Foods & Agro Industries v. ITO (2019) 265 Taxman 53 (Mag) / 181 DTR 60 / 311 CTR 573 (Bom.)(HC)

S. 80IB(11A) : Undertaking – Business of processing, preservation and packing of fruits or vegetable eligible – Business of extraction of oil from oil palm by different processes and preservation of oil under adjusted temperature and then packaging of oil in large containers or tanks, could be said to be from business of processing, preservation and packing of fruits or vegetable eligible for deduction. 1160

Allowing the appeal of the assessee the Tribunal held that, Profits from assessee's business of extraction of oil from oil palm by different processes and preservation of oil under adjusted temperature and then packaging of oil in large containers or tanks, could be said to be from business of processing, preservation and packing of fruits or vegetable eligible for deduction. (A.Y. 2012-13 to 2014-15)

3F Oil Palm Agrotech (P.) Ltd. v. ACIT (2019) 178 ITD 319 (Hyd.)(Trib.)

S. 80IC : Special category States – New Industrial undertaking – Initial assessment year – An assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessees started availing exemption, they carried out substantial expansion of its industry would become 'initial assessment year', and from that assessment year, assessee shall been entitled to 100 per cent deductions from that year. [S. 80IB(4)] 1161

Dismissing the appeal of the revenue the Court held that ; an assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessees started availing exemption, they carried out substantial expansion of its industry would become 'initial assessment year', and from that assessment year, assessee shall been entitled to 100 per cent deductions from that year. Intention of the legislature to be seen. (*CIT v. Classic Binding Industries (2018) 407 ITR 429 (SC)* is held not good law and reversed). (A.Y. 2009-10 to 2011-12)

PCIT v. Aarham Softronics (2019) 412 ITR 632 / 261 Taxman 529 / 175 DTR 105 / 307 CTR 233 (SC), www.itatonline.org

Editorial : From the judgment in Stoverkraft of India v. CIT (2017) 160 DTR 378 / (2018) 400 ITR 225 / 300 CTR 5 (HP) (HC) is affirmed and Adamac Formulation v. CIT (2018) 409 ITR 661 (P&H) (HC) is reversed.

S. 80IC : Special category States – Allocation of expenditure – Remanding the matter to the AO – No substantial question of law. [S. 254(1), 260A] 1162

Tribunal remanding the matter to the AO regarding the allocation of expenditure and to follow the Judgment in *Zandu Pharmaceuticals Works Ltd. v. CIT (2013) 350 ITR 366 (Bom.)(HC)*. No substantial question of law. (A.Y. 2009-10)

CIT v. Glenmark Pharmaceuticals Ltd. (2019) 417 ITR 479 / 260 Taxman 249 (Bom.)(HC)

S. 80IC : Special category States – Book profit – Legislative powers – Constitutional validity – Discrimination between individual and company – There was a reasonable classification by way of special provision for companies – Provision is held to be valid. [S. 115JB, Art, 14, 226] 1163

Assessee filed a writ petition challenging provisions of sections 115JB & 80-IC to be ultra vires inasmuch as benefits granted under S. 80-IC could not be withdrawn

by introduction of provisions of S. 115JB of the Act on the ground that there was discrimination in terms of article 14 of Constitution between individual and company. High Court held that that there was a reasonable classification by way of special provision for companies, therefore, it would fall in reasonable classification inasmuch as S. 80IC dealt with deduction for an assessee whereas provision of S. 115JB would come into play only when assessee was a company.
Bishnu Krishna Shrestha v. CIT (2019) 414 ITR 405 / 263 Taxman 478 / 180 DTR 158 / 309 CTR 478 (Raj.)(HC)
S.B.L. (P.) Ltd. v. CIT (2019) 414 ITR 405 / 263 Taxman 478 (Raj.)(HC)
Editorial : SLP is granted to the assessee, S.B.L. (P.) Ltd. v. CIT (2019) 263 Taxman 477 / 411 ITR 39 (St) (SC)

1164 **S. 80IC : Special category States – Substantial expansion – Entitle to exemption.**
High Court held that issues involved in appeal already stood adjudicated by High Court in *Stovekraft India v. CIT [2017] 400 ITR 225 (HP)* as modified by Supreme Court in *Mahabir Industries v. P CIT [2018] 406 ITR 315 (SC).*
PCIT v. Security Products (P.) Ltd. (2019) 105 taxmann.com 177 / 263 Taxman 373 (HP) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. Security Products (P.) Ltd. (2019) 263 Taxman 372 (SC)

1165 **S. 80IC : Special category States – Manufacture – Wooden Sleepers and planks made into planks – Amounts to manufacture – Entitled to deduction. [S. 2(29BA)]**
Tribunal held that original products used by the assessee were wooden planks, evafoam, thermocol, adhesive tape, pneumatic, stapler pins, and nails. The final product obtained in the process by the assessee was wooden crates which were a distinct and separate article different from all the products that went into the manufacture and was recognised as a distinct product by the Central excise and value added tax classification which had assigned the product a specific code and serial number respectively in the Central excise and value added tax Schedules. In terms of the Uttrakhand Value Added tax Act, 2005, wooden crates were recognized as a distinct product and item. Similarly the assessee had been registered as manufacturer with the District Industries Centre and registered as a factory under the Factories Act. The assessee had been granted exemption from excise duty which was only granted to manufacturing units. The term as defined by S. 2(29BA) would include any activity that results in the creation of an article or object that was new and distinct from the raw material that went into its manufacture and having a different name, character, use and/or integral structure. The wooden crates were completely distinct from the planks, nails, fevicol, foam etc. that were used to make them and they had a use of their own. The change brought in the wooden planks by hand by the labourers using small cutters would amount to manufacture of a product, the wooden crates, by the assessee. Further when four Departments of the Government had considered the assessee a manufacturing unit, another Department of the Government could not take a contrary view or a view inconsistent with the view taken by the other Departments of the Government. (A.Y. 2012-13)
ITO v. Rudra Woodpack P. Ltd. (2019) 70 ITR 169 (Delhi)(Trib.)

S. 80IC : Special category States – Oil exploration activity can be taken as manufacture or production – Eligible for deduction. [S. 80IB, 80IC(7)] 1166

Dismissing the appeal of the revenue the Tribunal held that the assessee is not required to maintain its books of account qua each undertaking to be treated as separate unit in S. 80IC(7) of the Act. Oil exploration activity could be taken as manufacture or production as prescribed in S. 80IC(2)(b) of the Act, hence eligible for deduction. (A.Y. 2003-04 to 2006-07, 2007-08)

ACIT v. Oil India Ltd. (2019) 179 ITD 455 / 182 DTR 25 / 201 TTJ 545 (Guwahati)(Trib.)

S. 80IC : Special category States – Profit on each undertaking has to be treated separately – Profits and losses of all eligible undertakings are not to be netted for purpose of calculating deduction – Each undertaking are to be taken on a stand – alone basis – Where the assessee availed deduction for a period of 5 years at rate of 100 per cent on substantial expansion, deduction for remaining 5 assessment years will be at rate of 30 per cent and not at rate of 100 per cent. [S. 80IC(2), 80IC(5), 80IC (7)] 1167

Tribunal held that while calculating the deduction, profit on each undertaking has to be treated separately. Profits and losses of all eligible undertakings are not to be netted for purpose of calculating deduction. Each undertaking are to be taken on a stand-alone basis. Assessee availed deduction for a period of 5 years at rate of 100 per cent on substantial expansion, deduction for remaining 5 assessment years will be at rate of 30 per cent and not at rate of 100 per cent. (A.Y. 2010-11 to 2012-13)

Milestone Gears (P.) Ltd. v. ACIT (2019) 174 ITD 702 / 176 DTR 59 / 198 TTJ 870 (Chd.) (Trib.)

S. 80IC : Special category States – Tea plantation – Manufacturing of tea is not eligible to claim deduction in respect of sale of black tea manufactured from green tea leaf purchased from outside market. [S. 80IC(2)(b)] 1168

Assessee engaged in growing/cultivation of tea as well as manufacturing of tea in Assam. Assessee claimed deduction u/s. 80IC(2)(b) in respect of sale of black tea manufactured from green leaf purchased. The AO found that assessee did not cultivate / plant green tea itself for manufacturing black tea, and therefore rejected claim. Tribunal held that until and unless assessee engages with both conditions of processing and raising of planation of tea, it cannot be allowed deduction u/s. 80IC(2)(b). Accordingly the assessee is not eligible to claim deduction u/s. 80IC(2)(b) in respect of green tea leaf purchased from outside market. (A.Y. 2011-12)

Bisseswarlall Mannalal & Sons v. DCIT (2019) 178 ITD 74 / 202 TTJ 526 / 184 DTR 27 (Kol.)(Trib.)

S. 80JJA : Bio-degradable waste – Collecting and processing – Matter remanded for disposal in light of report given by a Chemical Expert Certifying as to whether contents of two products manufactured by assessee namely 'bio-pesticides' and 'bio-fertilizers' were distinct or not. [S. 254(1)] 1169

Assessee is engaged in production and sale of bio-pesticides. She had been claiming deduction under S. 80JJA since 2009-10. For relevant year, assessee claimed deduction

under S. 80JJA for producing bio-fertilisers after allegedly setting up a new unit. Assessee relied upon Certificate of Ministry of Agriculture dated 30-5-2014, to state that she was manufacturing organic fertilizers under brand name 'SOIL Food'-AO disallowed the claim, which was affirmed by the CIT (A). On appeal the Tribunal remanded the matter for disposal in light of report given by a Chemical Expert Certifying as to whether contents of two products manufactured by assessee namely 'bio-pesticides' and 'bio-fertilizers' were distinct or not. (A.Y. 2015-16)
Uma Saini (Smt.) v. ITO (2019) 178 ITD 352 (Chd.)(Trib.)

1170 **S. 80M : Inter corporate dividends – Deduction to be on gross income and not on net income. [S. 80HHC]**
Dismissing the appeal of the revenue the Court held that, deduction to be allowed on gross income. Followed *CIT v. Modern Terry Towers Ltd. (2013) 357 ITR 750 (Bom.)(HC) (756)*, court held that principle computing deduction u/s. 80HHC of the Act cannot be imported in to S. 80M of the Act. "The provisions of section 80HHC are entirely different from those of S. 80M and 80AA. There is no basis for importing the provisions of S. 80HHC with section 80M. The same does not lead to a satisfactory computation of the net dividend under section 80M"
PCIT v. State Bank of India (2019) 181 DTR 275 / (2020) 420 ITR 376 (Bom.)(HC), www.itatonline.org

1171 **S. 80M : Inter corporate dividends – Dividend declared in respect of earlier financial years distributed in assessment year in question – Entitled to deduction. [S. 263]**
Dismissing the appeal of the revenue the Court held that; though the declaration of dividend had been occasioned in the financial years 2001-02 and 2002-03, the dividend had been paid out by the assessee only during the financial year relevant to the assessment year 2003-04 and it had been paid prior to the due date for filing the return. The assessee was entitled to deduction under section 80M. (A.Y. 2003-04)
CIT v. Titan Industries Ltd. (2019) 410 ITR 175 (Mad.)(HC)

1172 **S. 80P : Co-operative societies – Denial of exemption – Alternative remedy – Directed to avail alternative remedy u/s. 246A of the Act. [S. 246A, Art. 226, Tamil Nadu Cooperative Societies Act, 1983]**
Assessee was a co-operative society. AO denied deduction under S. 80P to assessee on two heads viz., (i) large deduction under chapter VI-A from total income and (ii) low income in comparison to high loans/advances/investment in shares appearing in balance sheet. Assessee filed the writ petition. Court held that regarding first issue, High Court in two decisions had already held that cooperative societies akin to writ petitioner were entitled to claim deductions under various heads adumbrated under section 80P but SLP was pending against said decisions. Accordingly the assessee sought to opt for alternative remedy of appeal in respect of second issue. writ petition was to be disposed of, leaving it open to writ petitioner to avail alternate remedy of statutory appeal to CIT(A) (*CIT Salem v. Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd. (T C Nos. 484 & 487 of 2016, dt. 2-8-2016*], based on judgment in *CIT v. Veerakeralam Primary Agricultural Co-operative Credit Society [2016] 388 ITR 482 (Mad.)*

(HC) Nerinjipettai Primary Agricultural Co-operative Credit Society Ltd. v. ITO in W.P. No. 2552 of 2019 dt. 27-6-2019 (Mad)(HC) (A.Y. 2016-17)
K274 Uthukuli Primary Agricultural Cooperative Credit Society Ltd. v. ITO (2019) 267 Taxman 374 (Mad.)(HC)

S. 80P : Co-operative societies – Primary Agricultural Credit Society – Interests from loans and advances – Matter remanded [S. 80P(2)(a)(i), Kerala Co-operative Societies Act, 1969] 1173
Assessee a primary Agricultural Credit Society registered under Kerala Co-operative Societies Act, 1969, was engaged in banking as well as providing credit facilities to its members and Tribunal held that income derived by assessee by way of interest from loans and advances made by it was eligible for deduction under S. 80P(2)(a)(i), matter was remanded to Tribunal for fresh consideration in light of decision in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT 2019 (2) KHC 287*, (A.Y. 2014-15)
PCIT v. Kundayam Service Co-operative Bank Ltd. (2019) 265 Taxman 52 (Mag.)(Ker.)(HC)

S. 80P : Co-operative societies – Co-operative Bank – Assessee must substantiate that its main object of incorporation continues to be fulfilled In relevant assessment year – Benefit is not allowable solely on basis of certificate of registration – Assessee is not entitled to deduction if it ceases to be of specified class of society in any year even if it was eligible for initial years. [S. 80P(4)] 1174
Allowing the appeal of the revenue the Court held that, the assessee which claims the status and the benefits of a primary agricultural credit society would have to substantiate that its main object of incorporation continues to be fulfilled. It has to obtain a certificate from the competent authority by producing the relevant facts and figures including the balance-sheet and profit and loss account to show that it satisfies the requirements of the second proviso to section 2(oa) of the 1969 Act, to claim the status of a primary co-operative agricultural society. The certificate of registration of a society as primary agricultural credit society is not conclusive evidence that the primary object of the principal business undertaken by that society is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities, and the society is not entitled to deduction under S. 80P merely on the strength of the certificate of registration issued under S. 8(1) of the 1969 Act. On a claim for deduction under S. 80P of the 1961 Act, by reason of sub-S. (4) thereof, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee-society and arrive at a conclusion whether or not the benefits can be extended in the light of the provisions thereunder. (A.Y. 2007-08 to 2010-11, 2012-2013)
CIT v. Poonjar Service Co-Operative Bank Ltd. (2019) 414 ITR 67 (FB) (Ker.)(HC)
Mavilayi Service Co-Operative Bank Ltd. v. CIT (2019) 309 CTR 121 / 179 DTR 65 / 414 ITR 67 (FB) (Ker.)(HC)
PCIT v. Vazhappally Service Co-Operative Bank Ltd. (2019) 309 CTR 121 / 179 DTR 65 (FB) (Ker.)(HC)
Editorial:
- ***ITO v. Ettumanoor Service Co-Operative Bank Ltd. (2016) 52 ITR 132 (SN) (Cochin) (Trib.) ITO v. Sahyadri Cohin-Co-Operative Credit Society Ltd (2017) 60 ITR 135 (Cochin) (Trib.) is reversed.***

- ***SLP is granted to the assessee Mavilayi Service Co-Operative Bank Ltd v. CIT (2019) 418 ITR 12 (St) (SC)***

1175 **S. 80P : Co-operative societies – Co-Operative Bank – Income from sale of goods for public distribution system of State Government under directive of State Government – Ancillary activity – Entitle to deduction [S. 80P(1)(2)(a)(i), Tamil Nadu Co-Operative Societies Act, 1983, S. 2(13)]**

Allowing the appeal of the assessee the Court held that; income from sale of goods for public distribution system of State Government under directive of State Government is an ancillary activity. Accordingly entitle to deduction. (A.Y. 2005-06)

Kodumudi Growers Co-Operative Bank Ltd. v. ITO (2019) 410 ITR 218 (Mad.)(HC)

1176 **S. 80P : Co-operative societies – Supply of milk to mother diary – Deduction u/s. 80P(2)(b) is allowable – Interest earned by it from deposits made with nationalised/ private banks, however, said benefit was available in respect of interest earned on deposits made with co-operative bank. [S. 80P(2)(b), 80P(2)(d)]**

Allowing the appeal of the assessee the Tribunal held that, the activity of assessee-society of supplying milk to Mother Diary was interlinked with activities of its members primary co-operative societies and at same time primary co-operative societies could also not operate without assessee being a District level society, assessee's claim for deduction under S. 80P(2)(b) is to be allowed. Tribunal also held that deduction u/s. 80P(2)(d) is available in respect of interest earned on deposits made with Co-operative Bank and not in respect of interest earned by it from deposits made with nationalised /private banks. (A.Y. 2012-13, 2013-14)

Surendranagar District Co-op. Milk Producers Union Ltd. v. DCIT (2019) 75 ITR 339 / 179 ITD 690 (Rajkot)(Trib.)

1177 **S. 80P : Co-operative societies – Benefit of S. 80P(2)(a)(i) cannot be denied to co-operative credit societies. [S. 80P(2)(a)(i), 80P(4)]**

Tribunal held that benefit of section 80P(2)(a)(i) cannot denied to co-operative credit societies, in view of their functions of providing credit facilities to members, and same is not hit by provisions of S. 80P(4). (A.Y. 2007-08 to 2009-10)

ACIT v. People's Co. Op. Credit Society Ltd. (2019) 177 ITD 25 / 180 DTR 444 / 75 ITR 79 / 200 TTJ 921 (SB)(Ahd.)(Trib.)

ACIT v. Bhiladi Mercantile Credit Co-Operative Society Ltd. (2019) 177 ITD 25 / 180 DTR 444 / 75 ITR 79 / 200 TTJ 921 (SB)(Ahd.)(Trib.)

ACIT v. Samarpan Co-Operative Society Ltd. (2019) 177 ITD 25 / 180 DTR 444 / 75 ITR 79 / 200 TTJ 921 (SB) (Ahd.)(Trib.)

ITO v. Jafari Momin Vikas Co-Operative Society Ltd. (2019) 177 ITD 25 / 180 DTR 444 / 75 ITR 79 / 200 TTJ 921 (SB)(Ahd.)(Trib.)

1178 **S. 80P : Co-operative societies – Entitle deduction in respect of interest earned from co-operative societies. [S. 80P(2)(a)(i), 80P(2)(d)]**

Dismissing the appeal of the revenue the Tribunal held that the assessee a co-operative credit society, was engaged in business of providing credit facilities exclusively to

its members is entitle top deduction in respect of interest earned from co-operative societies. (A.Y. 2012-13)
DCIT v. Bardoli Vibhag Gram Udyog Vikas Co-op Credit Society Ltd. (2019) 175 ITD 471 (Surat)(Trib.)

S. 90 : Double taxation relief – Rate of tax – Applicable to domestic company and not 65% – CBDT Circular is held to be applicable – DTAA-India-Japan. [Art. 7, 23, 24(2)] 1179
The question before the High Court was "Whether on the facts and in the circumstances of the case, the tribunal was right in law in holding that the rate of tax applicable to the assessee would be the rate of 65% and not the rate applicable to a domestic company" After considering the various provisions of the DTAA the Court held that The stand taken in the Tribunal's order cannot be appreciated or accepted since a similar clause in the double taxation avoidance agreement between India and the Netherlands was interpreted by the Central Board for Direct Taxes and a circular issued thereupon. The Tribunal held, in the present case, that since there was no similar circular, the benefit as available to a permanent establishment of ABN Amro Bank in India could not be extended to this assessee. When there is no dispute that there is a double taxation avoidance agreement in place between India and the country of origin of the assessee in the present case and when such agreement contains a lucid clause as apparent from Article 24(2) thereof quoted above and when Section 90 of the Act itself recognises such an agreement and creates a special status for the relevant permanent establishments, there was no room for either the Commissioner to wait for any dictat from the high command of the CBDT or for the Tribunal to demonstrate similar servile conduct in not appropriately interpreting and giving effect to the clear words of the agreement between the two countries. The reference is concluded by answering the first question raised as follows: The Tribunal was incorrect in holding that the rate of tax applicable to the assessee was 65%. The Tribunal ought to have held that the rate applicable to the assessee was such rate as applicable to a domestic company carrying on similar activities. (A.Y. 19991-92)
Bank of Tokyo Mitsubishi Ltd. v. CIT (2019) 310 CTR 479 / 181 DTR 220 (Cal.)(HC)

S. 90 : Double taxation relief – DTAA credit – Dividend from Cyprus is entitle to exemption – DTAA-India-Cyprus. [S. 90, Art. 25 (4)] 1180
AO rejected assessee's claim holding that assessee failed to prove that exemption for dividend income was provided as an incentive for economic development. CIT (A) held at India-Cyprus DTAA did not cast burden of proving that tax exemption was in respect of economic development on claimant let alone establishing that tax exemption was in relation to 'special' economic development and also held that by giving exemption/ tax incentive in respect of dividend income, Cyprus was definitely contributing to promotion of its economic development and, thus, no other specific evidence was mandated by law to establish that exemption in question was designed to promote economic development. Accordingly allowed the claim of the assessee. Order of CIT(A) is affirmed by the Tribunal. (A.Y. 2008-09)
Kemwell (P.) Ltd. v. ACIT (2019) 178 ITD 228 (Bang.)(Trib.)

1181 **S. 90 : Double taxation relief – Interest – Royalty – Levy of surcharge and 3% education cess on tax computed – Held to be not valid – DTAA-India-UAE. [Art. 2(1), 11, 12]**

Allowing the appeal of the assessee the Tribunal held that, Article 2(1) of the India-UAE DTAA provides that the taxes covered shall include tax and surcharge thereon. Education cess is nothing but an additional surcharge & is also covered by the definition of taxes. The Tribunal held that the provisions of India UAE Double taxation Avoidance Agreement are pari materia with the provisions of India Singapore DTAA, which was subject matter of consideration in *DIC Asia Pacific Pte Ltd. v. ADIT (2012) 18 ITR 358 (Kol)(Trib)*. Accordingly the appeal of the assessee is allowed. Tribunal also referred following cases in support, *Capgemini SA v. Dy.CIT (IT)-2 (1) [13-07-2016] [2016] 72 taxmann.com 58 (Mum) (Trib.), Dy.DIT v. J. P. Morgan Securities Asia (P.) Ltd. [23-10-2013] [2014] 42 taxmann.com 33 (Mum) Trib.), Dy. DIT (IT)-1(1),v. BOC Group Ltd. [30-11-2015] [2015] 64 taxmann.com 386 (Kol.)(Trib.), Everest Industries Ltd. v. JCIT [31-01-2018], [2018] 90 taxmann.com 330 (Mum)(Trib.), Soregam SA v. Dy. DIT(IT) [30-11-2018] [2019] 101 taxmann.com 94 (Delhi) (Trib.), and Sunil V. Motiani v. ITO (IT(1) [27-02-2013] [2013] 33 taxmann.com 252 (Mum) (Trib.).* (A.Y. 2012-13)

R. A. K. Ceramics v. DCIT (2019) 176 DTR 345 / 199 TTJ 273 (Hyd.)(Trib.), www.itatonline.org

1182 **S. 92 : Transfer pricing – Arm's length price – Arm's Length Price to be restricted to transaction of assessee with associated enterprise. [S. 92C]**

Dismissing the appeal of the revenue the Court held that the determination of the arm's length price should be restricted to the international transactions of the assessee with its associated enterprise.(A.Y. 2008-09)

CIT v. Phoenix Mecano (India) Pvt. Ltd. (2019) 414 ITR 704 / 265 Taxman 354 (Bom.)(HC)

Editorial: SLP of revenue is dismissed CIT v. Phoenix Mecano (India) Pvt. Ltd. (2018) 402 ITR 32 (ST).

1183 **S. 92 : Transfer pricing – Arm's length price – Tonnage tax – Provisions of Chapter X (Transfer pricing) would have no application in computing income of assessee chargeable to tax as per Chapter XII-G (Tonnage tax scheme). [S. 115JB, 115VA]**

Tribunal held that and accordingly it is to be held that transfer pricing regulations do not apply to assessee to extent of operations carried out through operating qualifying ships where income is taxed under Tonnage Tax Scheme (A.Y. 2007-08)

Van Oord India (P.) Ltd. v. ACIT (2019) 177 ITD 687 / 183 DTR 151 / 202 TTJ 248 (Mum.) (Trib.)

1184 **S. 92B : Transfer pricing – Associated enterprises – Expenditure advertisement, marketing and promotion – deletion of arm's length adjustment – Held to be justified. [S. 92C]**

Dismissing the appeal of the revenue the court held that ; deletion of adjustment in respect of advertisement marketing and promotion expenses is held to be justified. No substantial question of law.

PCIT v. Gillette India Ltd. (2019) 411 ITR 459 (Raj.)(HC)

Editorial: SLP is granted to the revenue. PCIT v. Gillette India Ltd (2018) 408 ITR 26 (St) / 264 Taxman 27 (SC)

S. 92B : Transfer pricing – Share purchase agreement – Brand ambassadorship – Since parties to SPA was not an AE of assessee nor JIPL entered into a prior agreement with AE of assessee, Not an international transaction – S. 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. No income had accrued to or received by the assessee under S. 5, no notional income can be brought to tax under. 92. [S. 92B(2), 92C] 1185

The Assessee, a film actor, acted as brand ambassador for Jaipur IPL Team. RK (Husband of the assessee) made a decision to buy shares of EMHSL, Mauritius through a company Kuki Investments and accordingly, a share purchase agreement [SPA] was entered into on 2-2-2009 between (RK) (Husband), the assessee, EMHSL (Mauritius) and Kuki. Although the assessee was neither a buyer nor a seller of shares but still she was a signatory to the agreement and the said agreement bind her to render certain services without any charge to 100 per cent subsidiary of EMSHL, Mauritius i.e., JIPL by virtue of the fact that her husband, through his intermediary company got the shares of EMSHL, Mauritius. AO held that the assessee and EMHSL were Associated Enterprises [AE] within the meaning of S. 92A(1) and the services rendered by the assessee to JIPL was an international transaction within the meaning of S. 92B which was to be benchmarked on the principle of Arm's Length Price [ALP]. The Tribunal in assessee's own case for 2010-11 held that S. 92A(2)(J) deems the two 'enterprises' as AE if one of the enterprises is controlled by an individual and the other 'enterprise' is controlled by such individual or his relatives. The Department did not submit as to how that individual (i.e. RK) or his relative controlled the other 'enterprise' (i.e. assessee). Without satisfying the second limb, i.e. that individual or his relative controlled the other enterprise, provisions of S. 92A(2)(j) cannot be applied. S. 92B(2) cannot be applied to hold that transaction between assessee and JICPL was an 'international transaction' as neither any of the parties to the SPA were an AE of the assessee nor JICPL entered into a prior agreement with the AE of the assessee (JICPL was not a party to the SPA); and as such the pre-requisite of a prior agreement between a non-AE with the AE of an assessee is not fulfilled. Further it held that Chapter pre-supposes the existence of 'income' and lays down machinery provision to compute ALP of such income, if it arises from an 'international transaction'. S. 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. No income had accrued to or received by the assessee under S. 5, no notional income can be brought to tax under S. 92. (A.Y. 2011-12)

Shilpa Shetty v. ACIT (2019) 178 ITD 461 (Mum.)(Trib.)

S. 92B : Transfer pricing – Arm's length price – Corporate guarantee given to associated enterprises – Arm's length commission on such guarantee restricted to 0.5%. [S. 92C] 1186

The assessee gave corporate guarantee to its associate enterprises ("AE's") who received loans from a bank which were guaranteed by the assessee. The assessee charged commission @0.5% of the amount of guarantee given to the AE's. The AO made adjustment to such commission @1.77 as against 0.5% charged by the assessee. The Tribunal held that the issue is squarely covered by the Tribunal in assessee's own cases

for immediately preceding years and hence the adjustment should be restricted at 0.5%. (A.Y. 2012-13)
Cox & Kings Ltd. v. Addl. CIT (2019) 55 CCH 75 / 69 ITR 45 (SN) (Mum.)(Trib.)

1187 **S. 92C : Transfer pricing – Guarantee commission – Comparison can be made between guarantees issued by commercial Banks as against a corporate guarantee issued by a holding company to benefit of its Associated enterprises – Bench mark fixed by TPO at 3 percent is held to be correct. [S. 92CA (3), R.10B]**
SLP was granted to the revenue Glenmark Pharmaceuticals Ltd. (2017) 397 ITR 30 (St) / 250 Taxman 391 (SC). Dismissing the appeal of the revenue the Court held that Bench mark fixed by TPO at 3 percent on account of guarantee commission is held to be correct. Comparison can be made between guarantees issued by commercial Banks as against a corporate guarantee issued by a holding company to benefit of its Associated enterprises. (A.Y. 2008-09)
(Note-Order of Tribunal in *Glenmark Pharmaceuticals Ltd. v. Add.CIT (2014) 43 taxmann.com 191 / 62 SOT 79 (URO) (Mum.)(Trib.)* is affirmed.)
CIT (LTU) v. Glenmark Pharmaceuticals Ltd. (2019) 265 Taxman 237 / 310 CTR 723 / 182 DTR 87 (SC)
Editorial: Order in CIT (LTU) v. Glenmark Pharmaceuticals Ltd. (2017) 398 ITR 439/85 taxmann.com 349 (Bom.)(HC) is affirmed partly.

1188 **S. 92C : Transfer pricing – Arm's length price – Corporate guarantee – Arm's length price of corporate guarantee cannot be determined on the basis of bank guarantee – Adjustment of 3% of the amount of guarantee given by the assessee is held to be not justified.**
Dismissing the appeal of the revenue the Court held that Arm's length price of corporate guarantee cannot be determined on the basis of bank guarantee. Adjustment of 3% of the amount of guarantee given by the assessee is held to be not justified (Followed ITA No. 1302 of 2014 dt. 02-02-2017)(A.Y. 2009-10)
CIT v. Glenmark Pharmaceuticals Ltd. (2019) 417 ITR 479 / 260 Taxman 249 (Bom.)(HC)
Editorial: SLP of revenue is dismissed CIT v. Glenmark Pharmaceuticals Ltd. (2019) 416 ITR 138 (St)

1189 **S. 92C : Transfer pricing – Arm's length price – Know-how – Royalty – TPO is not justified in making the addition without applying any specified method.**
Assessee had made purchase of raw material from its associated enterprises, agreeing to pay 2 per cent of net sale amount by way of royalty. TPO made adjustments to assessee ALP primarily on ground that assessee had not derived any specific benefits out of such technology nor assessee had received any incremental benefits on account of payment of such royalty amount. TPO also recorded that assessee had not used any technology which was purchased and for which royalty payment was made. CIT(A) deleted additions which is affirmed by the Tribunal. On appeal by the revenue, dismissing the appeal the Court held that, TPO is not justified in making the addition without applying any specified method. Accordingly the order of AO is affirmed. (A.Y. 2007-08)
CIT v. SI Group-India Ltd. (2019) 265 Taxman 204 / (2020) 186 DTR 184 (Bom.)(HC)

S. 92C : Transfer pricing – Pro-rata adjustment considering only associated enterprises – Matter remanded – No question of law. [S. 260A] 1190

In transfer pricing proceedings, TPO made adjustment to entire segment of manufacturing activity instead of making adjustment for only international transaction. Tribunal held that TPO was not justified in making adjustment to entire segment of manufacturing activity and remanded matter back to TPO in respect of import of raw material for pro-rata adjustment considering only Associated Enterprise transactions. No substantial question of law.

PCIT v. Bunge India (P.) Ltd. (2019) 265 Taxman 207 (Bom.)(HC)

S. 92C : Transfer pricing – Arms' length price – Whether one entity is comparable to another – question of fact – No substantial questions of law. [S. 260A] 1191

Dismissing the appeal of the revenue the Court held that, whether one entity is comparable to another is a question of fact. Since Tribunal's well-reasoned order deleting the comparables, as prayed by assessee, cannot be termed either as perverse or vitiated by any error of law apparent on the face of the record, no substantial question of law arises. (A.Y. 2005-06, 2007-08)

CIT v. Ness Technologies (India) (P) Ltd. (2019) 307 CTR 588 / 174 DTR 260 (Bom.)(HC)

S. 92C : Transfer pricing – Arms' length price – Most appropriate method vis-a-vis rule of consistency – TPO applied the RPM and CPM method for benchmarking international transactions – Tribunal however applied TNMM on the aggregated transactions observing that it has been consistently applied over the years – Justified. 1192

On appeal it was held that, Tribunal was justified in applying TNMM on the aggregated transactions of import of finished goods for resale and export of finished goods to AEs, observing that TNMM has been consistently applied over the years and also because Revenue has not been able to show any material difference in the subject assessment year which would justify a change in the most appropriate method (TNMM) adopted while benchmarking the international transactions. (A.Y. 2005-06)

PCIT v. Vishay Components India (P) Ltd. (2019) 307 CTR 744 / 176 DTR 46 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Interest at 11.30 per cent interest paid by assessee to its associated enterprises was very much within arm's length rate – Deletion of addition is held to be valid. 1193

Assessee engaged in business of identifying investment opportunities in financially distressed companies. Assessee raised funds through debt instruments from group companies by issuing Compulsory Convertible Debentures (CCDs). During relevant year, assessee paid interest at rate of 11.30 per cent on CCD to its associated enterprises. TPO held that interest paid to associated enterprises was excessive, made certain adjustment to assessee's ALP. Tribunal held that rate of interest at 11.30 per cent is reasonable. High Court up held the order of the Tribunal. (A.Y. 2010-11)

PCIT v. India Debt Management (P.) Ltd. (2019) 417 ITR 103 / 264 Taxman 42 / 178 DTR 223 / 309 CTR 32 (Bom.)(HC)

1194 **S. 92C : Transfer pricing – Arm's length price – Export of finished valves and valves in kit form to its AE and also to its group companies across globe – TPO ought to have arrived at ALP of Assessee's sale to its AE by only comparing it with uncontrolled transaction of sale. [S.92]**

Assessee-company had exported finished valves and valves in kit form to its AE and also to its group companies across globe. TPO held that supply of valves and kits to other group companies was at higher price and thus, adjusted profit margin (average) of similar supplies made to group companies to enhance/revise sales price of valves and kits sold to AE. Tribunal deleted the addition. On appeal High Court held that since in terms of provision of Act, ALP cannot be determined by comparing prices charged to Group Companies, i.e., controlled transaction, TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale and, therefore, approach of TPO was contrary to provisions of law. (A.Y. 2004-05)

PCIT v. Audco India Ltd. (2019) 264 Taxman 237 (Bom.)(HC)

1195 **S. 92C : Transfer pricing – Arm's length price – Mutually agreed procedure (MAP) adopted by Governments of India and USA in relation to US based transactions for determination of ALP could also be adopted for determining ALP of on – US based transactions.**

Dismissing the appeal of the revenue the Court held that, the Assessee had 96% international transactions with US based AEs and rest were with non-US based AEs. There was no distinction between US and non-US based transactions. US Govt entered in to Mutually Agreed Procedure for determining tax in two countries. CBDT, in later years agreed that such transfer pricing in relation to US based transactions could safely be adopted for purpose of assessee' s non-US based transactions to which the Assessee agreed under Advance Pricing Agreement. Tribunal held that for determining ALP of non-US transactions said MAP between India and US could be applied. High Court up held the order of the Tribunal. (A.Y. 2007-08)

PCIT v. J.P. Morgan Services India (P) Ltd. (2019) 263 Taxman 141 / 182 DTR 373 / 311 CTR 15 (Bom.)(HC)

1196 **S. 92C : Transfer pricing – Arm's length price – Company which outsources its work is not comparable for ALP determination with a company that does activity inhouse – A company having substantial related party transactions, could not be selected as comparable.**

Dismissing the appeal of the revenue the Court held that; A company which outsources its work is not comparable for ALP determination with a company that does activity inhouse. A company having substantial related party transactions, could not be selected as comparable. (A.Y. 2003-04)

PCIT v. Pfizer Ltd. (2019) 262 Taxman 215 / 308 CTR 389 / 177 DTR 110 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – Merger and Amalgamation had taken place in a company – Cannot be selected for comparable – Securities and stock broker cannot be compared with merchant banker – Interest earned on margin money deposited with AE for broking services for futures and options should be factored in to determine ALP. 1197

Dismissing the appeal of the revenue the Court held that; while determining the Arm's length price, Merger and Amalgamation had taken place in a company cannot be selected for comparable. Securities and stock broker cannot be compared with merchant banker. Interest earned on margin money deposited with AE for broking services for futures and options should be factored in to determine ALP. (A.Y. 2006-07)

PCIT v. J. P. Morgan India (P) Ltd. (2019) 261 Taxman 404 / 180 DTR 179 / 310 CTR 17 (Bom.)(HC)

S. 92C : Transfer pricing – Even if the assessee does not report the specified transaction & the AO has no occasion to notice it, the TPO has no jurisdiction to suo moto determine the ALP – He has to call for a reference from the AO – Alternate remedy is not a bar if the action is without jurisdiction & can be severed from the rest. [S. 40A(3A), 92BA(i) 92CA, 92E, Art. 226] 1198

Allowing the petition the Court held that, even if the assessee does not report the specified transaction & the AO has no occasion to notice it, the TPO has no jurisdiction to suo moto determine the ALP. He has to call for a reference from the AO. Alternate remedy is not a bar if the action is without jurisdiction & can be severed from the rest. (A.Y. 2015-16)

Times Global Broadcasting Company Ltd. v. UOI (2019) 176 DTR 321 / 308 CTR 123 (Bom.)(HC), www.itatonline.org

S. 92C : Transfer pricing – Purchase of equity shares at value in excess of FMV is capital transaction and does not give raise to any income Taxability under Transfer Pricing provisions of shares purchased at value in excess of FMV – As the transaction of purchase of equity shares is a capital transaction and does not give rise to any income, the transfer pricing provisions do not apply. Chapter X is a machinery provision – It can only be invoked to bring to tax any income arising from an international transaction. It is necessary for the revenue to show that income does arise from the international transaction. S. 2(24)(xvi) & 56(2)(viib) are prospective. [S. 2(24)(xvi), 56(2)(viib), 92B] 1199

Dismissing the appeal of the revenue the Court held that, Purchase of equity shares at value in excess of FMV is capital transaction and does not give raise to any income Taxability under Transfer Pricing provisions of shares purchased at value in excess of FMV: As the transaction of purchase of equity shares is a capital transaction and does not give rise to any income, the transfer pricing provisions do not apply. Chapter X is a machinery provision. It can only be invoked to bring to tax any income arising from an international transaction. It is necessary for the revenue to show that income does arise from the international transaction. S. 2(24)(xvi) & 56(2)(viib) are prospective. (A.Y. 2010-11)

PCIT v. PMP Auto Components Pvt. Ltd. (2019) 416 ITR 435 / 175 DTR 404 / 307 CTR 739 / 262 Taxman 104 (Bom.)(HC), www.itatonline.org

1200 **S. 92C : Transfer pricing – Purchase and sale of shares – TPO was not justified in treating the transaction as loan and charging interest on notional basis – Corporate guarantee – Tribunal is justified in restricting the addition at 1% of guarantee commission as against addition of at 5% of commission by the TPO. [S. 92B]**

Dismissing the appeal of the revenue the Court held that TPO was not justified in treating purchase and sale of shares as loan there by charging interest on notional basis. Court also held that the Tribunal is justified in restricting the addition 1 % of guarantee commission as against addition of 5 % of commission by TPO. Followed *CIT v. Everest Kento Cylinders Ltd. (2015) 58 taxmann.com 254 (Bom.)(HC)* (ITA No. 1248 of 2016, dt.28.01.2019)

PCIT v. Aegis Limited (Bom.)(HC), www.itatonline.org

1201 **S. 92C : Transfer pricing – Arm's length price – Selection of comparables – Comparison with high brand value and higher scale of operations and profit margin to be excluded – Comparables have to be functionally similar but they should have similar business environment and risks as the tested party – Tribunal order is set aside. [S. 144C]**

Allowing the appeal of the assessee the Court held that, comparison with high brand value and higher scale of operations and profit margin to be excluded. Comparables have to be functionally similar but they should have similar business environment and risks as the tested party. Court also held hat when rule 10B(2) was applied, i. e., the FAR analysis, namely, the functions performed, the assets owned and the risks assumed was deployed, the brand and high economic upscale fell within the domain of "assets". This also would make both these comparables in question, TCSESL and TCSESIL unsuitable as comparables to the assessee in determining the arm's length price under S. 92C of the Act. Accordingly the order of the Tribunal and the corresponding orders of the Dispute Resolution Panel and the TPO also set aside. (A.Y. 2010-11)

Avaya India P. Ltd. v. ACIT (2019) 416 ITR 638 / 310 CTR 633 / 182 DTR 89 / 267 Taxman 351 (Delhi)(HC)

1202 **S. 92C : Transfer pricing – Arm's length price – Commission – commission paid to Associated Enterprise at rate of 7.84 per cent as against 11 per cent paid to unrelated party was at ALP – Deletion of addition is held to be valid.**

AO made additions to assessee's ALP on ground that commission paid by assessee to associated enterprise was excessive and not at arm's length. Tribunal held that commission paid by assessee to Associated Enterprise was at rate of 7.84 per cent as against 11 per cent paid to unrelated party. Tribunal thus set aside addition made by AO. High Court upheld order passed by Tribunal.

PCIT v. Sun Pharmaceutical Industries Ltd. (2019) 109 taxmann.com 54 / 266 Taxman 95 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, PCIT v. Sun Pharmaceutical Industries Ltd. (2019) 266 Taxman 94 (SC)

S. 92C : Transfer pricing – Transportation cost – Not able to establish that cost of transportation in comparable case was lesser than assessee – Adjustment is held to be valid. [S. 260A] 1203

Assessee is engaged in manufacture and sale of lube additives. Tribunal upheld transfer pricing adjustment made by TPO since assessee was not able to establish that cost of transportation in comparable case was lesser than assessee. Order of Tribunal is affirmed. (A.Y. 2009-10, 2010-11)

Indian Additives Ltd. v. DCIT (2019) 265 Taxman 383 (Mad.)(HC)

S. 92C : Transfer pricing – Arms' length price – Services of application design, software engineering and technology cannot be compared with a company providing software support services. 1204

Dismissing the appeal of the revenue the Court held that, a company operating at full fledged risk and performing services of application design, software engineering and technology cannot be compared with a company providing software support services. (A.Y. 2007-08)

PCIT v. ZTE Telecom India (P.) Ltd. (2019) 265 Taxman 70 (Mag.)(P&H)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparables – Companies large and functionally distinct with different areas of development and services – Cannot be benchmarked or equated – Exclusion of three comparables – Held to be valid. [S.92CA] 1205

Dismissing the appeal of the revenue the Court held that, companies large and functionally distinct with different areas of development and services, cannot be benchmarked or equated. Accordingly the exclusion of three comparables is Held to be valid. No question of law. (A.Y. 2009-10, 2010-11)

CIT v. Symphony Marketing Solutions India P. Ltd. (2019) 417 ITR 289 (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price – Net margin method – Free on board value of contract cannot be included in operating cost – No question of law. [S. 92D, R.10B(1)(e)] 1206

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that free on board value of contract cannot be included in operating cost and Tribunal rightly held that the Transfer Pricing Officer had "artificially enhanced the cost base of the taxpayer and proposed a mark-up of the free on board value of the goods sourced by the associated enterprises and as such this approach was not available in the transactional net margin method under rule 10B(1)(e). (A.Y. 2007-08, 2008-09, 2009-10)

CIT v. Itochu India Pvt. Ltd. (2019) 414 ITR 521 / 180 DTR 334 / 310 CTR 430 / 266 Taxman 17 (Mag.) (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price – Question of fact – No substantial question of law. [S. 260A] 1207

Court held that the determination of arm's length price in international transactions is a finding of fact. No substantial question of law arises unless the finding is perverse. (A.Y. 2009-10)

PCIT v. Ipass India P. Ltd. (2019) 414 ITR 662 (Karn.)(HC)

1208 **S. 92C : Transfer pricing – Arm's length price – Comparable – No question of law. [S.260A]**
Dismissing the appeal of the revenue the Court held that, the determination of the arm's length price in an international transaction is a finding of fact. Whether the comparables have been rightly picked up or not, or filters for arriving at the correct list of comparables have been rightly applied or not, do not give rise to any substantial question of law. (A.Y. 2008-09)
CIT v. Gxs India Technology Centre Pvt. Ltd. (2019) 415 ITR 354 (Karn.)(HC)

1209 **S. 92C : Transfer pricing – Arm's length price – Comparable – Unless ex facie perversity in the findings of the Tribunal is established – Appeal is not maintainable. [S. 260A]**
Court held that an appeal can be made to the High Court only on a substantial question of law. In an international transaction the determination of the arm's length price is a question of fact. Unless ex facie perversity in the findings of the Tribunal is established by the appellant, the appeal at the instance of an assessee or the Revenue under S 260A of the Act is not maintainable (A.Y. 2006-07)
PCIT v. Broadcom India Pvt. Ltd. (2019) 415 ITR 380 (Karn.)(HC)

1210 **S. 92C : Transfer pricing – Arm's length price – Only one comparable – Difference in functionality – Matter remanded.**
Court held that since the entire TP Adjustment has hinged only on one comparable, the objection to the inclusion of which by the assessee required a detailed consideration, the impugned order cannot be sustained in law. Accordingly the entire issue of determining the TP adjustment in respect of the transactions in the staffing segment of the assessee should be considered afresh by the TPO uninfluenced by his earlier order. (A.Y. 2010-11)
Pyramid IT Consulting (P.) Ltd. v. ACIT (2019) 264 Taxman 23 (Delhi)(HC)

1211 **S. 92C : Transfer pricing – Arm's length price – Comparables – Question of fact – Appeal is not maintainable. [S.260A]**
Dismissing the appeal of the revenue the Court held that, the questions whether or not the comparables have been rightly picked and whether or not filters for arriving at the correct list of comparables have been rightly applied, do not give rise to any substantial question of law. Unless an ex facie perversity in the findings of the Income-tax Appellate Tribunal is established by the appellant. (A.Y. 2010-11)
Inteva Products India Automotive Pvt. Ltd. (2019) 413 ITR 406 (Karn.)(HC)

1212 **S. 92C : Transfer pricing – Arm's length price – Exclusion of comparables having high brand value is held to be proper. [S. 260A]**
Court held that exclusion of comparables having high brand value is held to be proper. No question of law. (A.Y. 2011-12)
CIT v. E-Valueserve Sez (Gurgaon) P. Ltd. (2019) 416 ITR 51 (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – No question of law – Appeal is not maintainable. [S. 260A] 1213

Dismissing the appeal of the revenue the Court held that; The High Court cannot disturb findings of fact under S. 260A of the Act, unless such findings are ex facie perverse and unsustainable and exhibit a total non-application of mind by the Tribunal to the relevant facts of the case and evidence before the Tribunal. (A.Y. 2010-11)

CIT v. Kirloskar Toyota Textile Machinery P. Ltd. (2019) 412 ITR 359 (Karn.)(HC)

S. 92C : Transfer pricing – AMP expenses incurred for brand building – not an international transaction – followed earlier order of tribunal in its own case – Matter remanded back – Income deemed to accrue or arise in India – Business connection – Premium for insurance policy was incurred by Adidas AG and it would only be entitled to receive claim of insurance and no income accrued to assessee – No business connection in India. [S. 9(1)(i), 92B(1)] 1214

Assessee engaged in the business of sourcing, distribution and marketing of products of brand name 'Adidas' in India. TPO alleged that AMP expenses incurred by assessee resulted in brand building of its AE in India for which assessee was not compensated and applied Bright Line Test. Tribunal in assessee' s own case had observed that the main purpose of incurring huge AMP expenses largely benefited the assessee in India with incidental benefit arising to foreign AE. Unless the TPO could establish direct benefit accruing to the foreign AE there would be no existence of an international transaction. Following its earlier order, tribunal set aside the matter to the TPO. Further, AO proposed an addition of ₹ 90.92 cr on account of insurance compensation pertaining to loss due to fire received by Adidas AG, Germany. Premium of insurance policy was incurred by Adidas AG, the said entity would be only having the right to receive the claim of insurance and therefore no income accrued to the assessee. Adidas AG entered into a contract in Germany for insuring the intangible asset in the form of financial interest in its subsidiaries which is distinct from physical stock in trade which was lost in fire. Adidas AG has also paid tax in Germany in relation to the amount of insurance claim in question. Thus, claim for insurance could not be said to have any business connection in India and consequently, claim received by Adidas AG could not be treated as income deemed to accrue or arise in India in hands of the assessee. (A.Y. 2010-11)

Adidas India Marketing (P.) Ltd. v. ITO (2019) 181 DTR 185 / 111 taxmann.com 203 / 201 TTJ 257 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – No express agreement shown to exist between assessee and AE for incurring ALP expenses for promotion of brand of AE – hence, AMP expenses cannot come within the purview of the international transaction – Determination of ALP of royalty at Nil is not sustainable – Applying rule of consistency – Payment of royalty paid in earlier and subsequent years – has to be accepted. 1215

Held that;

a) In the absence of an express arrangement / agreement between the assessee and the AE, expenditure incurred by making payment to third parties for advertisement, marketing and promotion (AMP) expenses, does not come within the purview

of international transaction and determination of ALP of such expenditure by applying BLT method is not valid.

b) When the payment of royalty in the past assessment years was undisputed, inference in the current assessment year by making general observations is unsustainable. (A.Y. 2009-10)

Kellogg India (P) Ltd. v. DCIT (2019) 182 DTR 280 / 201 TTJ 393 (Mum.)(Trib.)

1216 **S. 92C : Transfer pricing – Arm's length price – Interest on loans to AEs – Arm's length rate of interest is the rate prevalent in the country where the loan is received/ consumed and not the country in which the assessee advances loans to its AEs – Order of settlement commission is conclusive as regards the matter there in and not on other years. [S. 245D(4), 245I]**

Held by the Tribunal that the rate of interest charged by the assessee is more than the arm's length rate of interest as worked out on the basis of the rates prevalent in the countries where the borrower enterprises are situated, hence no transfer pricing adjustment can be made. Order of settlement commission is conclusive as regards the matter there in and not on other years hence the issue is decided on merits. (A.Y. 2012-13)

Uttara Foods & Feeds (P) Ltd. v. ACIT (2019) 182 DTR 333 / 202 TTJ 540 (Pune)(Trib.)

1217 **S. 92C : Transfer pricing – Assessee paid consultancy fees and other reimbursement to Associated Enterprise – AO asked for details regarding such international transaction – assessee filed details however the TPO was not convinced and made addition – DRP confirmed as no new material was brought on record – ITAT remanded the matter back to AO for de-novo consideration. [S. 254(1)]**

The assessee was engaged in the business providing consultancy services for properties. The assessee entered into a international transaction with its foreign AE. The TPO asked for details regarding the payment of consultancy fees to AE. The assessee filed certain evidences along with written submissions. The TPO held that assessee could not furnish details of services provided by AE or details of personnel who provided these services and determined the ALP to be nil. The DRP upheld the actions of the AO/ TPO as no new material was brought on record by the assessee during its proceedings. The Tribunal held that the assessee had remained unable to furnish proper evidences/ explanation against various queries raised by TPO. However the Tribunal also held that due consideration was not given to all the evidences filed by assessee and hence it remanded the matter back to the AO/TPO for de-novo adjudication of the issue of determination of ALP. (A.Y. 2008-09)

Pioneer Property Zone Services Ltd. v. DCIT (2019) 76 ITR 11 (SN) (Mum.)(Trib.)

1218 **S. 92C : Transfer pricing – Arm's length price – Safe Harbour Rules (Position prior to 1-10-2009) – As per CBDT Circular No. 5/2010 dated 3-6-2010, amendment to proviso to S. 92C(2) being applicable from assessment year 2009-10 onwards, benefit of +/-5 per cent variation as sought by assessee was acceptable for assessment year 2004-05.**

The assessee-company was engaged in the business of providing merchant banking and related financial and investment advisory services. It filed return of income for the year

under consideration. This was referred to the TPO for an examination of international transactions of the assessee. The TPO recommended a transfer pricing adjustment of ₹ 80.56 lakhs for the international transaction of brokerage received from Associated Enterprise (AE) in the case of DVP trade transaction. On appeal CIT (A) directed the Assessing Officer to reduce transfer pricing adjustment from ₹ 80.65 lakhs to ₹ 70.41 lakhs considering the plus/minus 5 per cent variation from the Arm's Length Price (ALP). On appeal the Tribunal held that as per the proviso to S. 92C(2) the same was amended subsequently and as per the Circular of CBDT No. 5/2010 dated 3-6-2010, the amended provisions were applicable with effect from 1-4-2009 i.e., for the assessment year 2009-10 and subsequent years. Thus, in this way, the benefit of plus/minus 5 per cent as sought by the assessee was found to be acceptable for the period under consideration and, as such, the CIT (A) had rightly directed the AO r/TPO to reduce the TP adjustment recommended by the TPO from ₹ 80.65 Lakhs to ₹ 70.41 Lakhs. (A.Y. 2009-10)

J.P. Morgan India (P.) Ltd. v. DCIT (2019) 178 ITD 430 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Tax exemption – Arm's length price on international transactions deserve to be determined. [S. 10A, 10B, 92] 1219

Question before the Special Bench was "whether or not the provisions of section 92 can be invoked in a situation in which income of the assessee is eligible for tax exemption or tax holiday and thus not actually chargeable to tax in India, or in a situation in which there cannot be any motive in manipulating the prices at which international transactions have been entered in to?" Special Bench held that even if an assessee is eligible for tax exemption at the rate of hundred percent under S. 10A/10B of the Act, then also the arm's length price on international transactions deserve to be determined under S. 92C of the Act. (A.Y. 2006-07 to 2008-09)

Doshi Accounting Service Pvt. Ltd. v. DCIT (2019) 184 DTR 101 / 76 ITR 449 (SB) (Ahd.) (Trib.) www.itatonline.org

S. 92C : Transfer pricing – Arm's length price – International transactions – Benchmarking of transactions – Comparable – Back office support services – Company providing consultancy business solution and testing and high end business process outsourcing services – Cannot be held to be comparables. 1220

Assessee providing back office support services. Company providing high end data analytics and customised process solution and leading Indian provider of knowledge process outsource services functionally different. High end diversified services. Company having income from translation charges. Company having lower employee cost to sales than assessee. Company having different financial year ending. Company under serious indictment in fraud cases. Company providing consultancy business solution and testing and high end business process outsourcing services is held to be not comparables. (A.Y. 2007-08).

Dy. CIT v. Morgan Stanley Advantage Services P. Ltd. (2019) 74 ITR 456 (Mum.)(Trib.)

1221 **S. 92C : Transfer pricing – Assessee accepted MAP resolution arrived at between competent authorities of India and Japan, issues raised in appeal became infructuous and thus, same were to be dismissed as withdrawn. [S. 254(1)]**

Assessee is engaged in business of manufacturing and trade of various types of inventors, servers and other electric products. During relevant year, assessee entered into various international transactions with its Associated enterprises. TPO made adjustment to assessee' s ALP in respect of its manufacturing segment. DRP confirmed said addition. In course of appellate proceedings, assessee pointed out that it had accepted MAP resolution arrived at by competent authorities of India and Japan and, thus, assessee wanted to withdraw grounds raised on transfer pricing issues. Accordingly the Tribunal held transfer pricing issue raised by assessee became infructuous and, thus, same was to be dismissed as withdrawn. (A.Y. 2012-13)

Yaskawa India (P.) Ltd. v. ACIT (2019) 179 ITD 33 (Bang.)(Trib.)

1222 **S. 92C : Transfer pricing – Arm's length price – Failure by authorities to follow procedure prescribed – Matter remanded. [R. 10B]**

Tribunal held that as provided in S. 92C of the Act, arms's length price was to be determined by one of the methods prescribed, which was found to be the most appropriate method having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as may be prescribed. The manner in which such most appropriate method was to be applied for determination of arm's length price was prescribed in rule 10B of Rules. In the present case, neither the assessee nor the Transfer Pricing Officer or the CIT(A) had followed this procedure prescribed in S. 92C of the Act and rule 10B of the Rules to determine the arm's length price in relation to the royalty payment made by the assessee to its associated enterprises and hence this matter was remanded to the AO for carrying out such exercise. (A.Y. 2005-06)

Greaves Cotton Limited v. ACIT (2019) 73 ITR 406 (Mum.)(Trib.)

1223 **S. 92C : Transfer pricing – Arm's length price – Comparables – Assessee is not barred in law from withdrawing from its list of comparables during assessment which were included by the assessee during benchmarking.**

Assessee provides software development services and quality assurance (testing) services to its AE on exclusive basis as a captive unit. Assessee applied Transactional Net Marginal Method (TNMM) as the most appropriate method for benchmarking the international transaction with Profit Level Indicator (PLI) of Operating Profit to Total Cost (OP/TC). Such profit rate of the assessee was 14.72%. Certain comparables were chosen with average PLI of 15.03%. The AO benchmarked the transaction by rejecting certain companies from the Assessee's list of comparables and introducing certain fresh companies. In this manner, he shortlisted 4 companies with their average operating profit margin at 22.18% and made transfer pricing addition. On appeal, CIT(A) granted partial relief. Aggrieved, assessee filed an appeal before Tribunal. Before Tribunal, the preliminary objection by Department was that assessee once assessee had chosen a comparable (Vama Industries Ltd), thereafter during the course of assessee stand cannot be changed to exclude the same comparable. Tribunal relied on various decisions and

held that assessee is not barred in law from withdrawing from its list of comparables, a company included on account of mistake. Accordingly Tribunal rejected this objection of department. With regard to the exclusion of comparable on merits, Tribunal held that the same is functionally different Accordingly, Tribunal rejected the same as comparable. (A.Y. 2012-13)
Approva Systems Private Ltd. v. Dy. CIT (2019) 73 ITR 219 / 180 DTR 438 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Loan to AEs without charging interest – Interest rate could not exceed LIBOR plus 200 basis points – Remanded to TPO for examination. 1224
Before the Tribunal the assessee contended that Interest rate could not exceed LIBOR plus 200 basis points. Matter remanded to TPO for examination. (A.Y. 2007-08)
Tata Motors Ltd. v. CIT (2019) 177 ITD 327 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Cannot determine The ALP at nil on an ad-hoc basis – If an authority like the RBI or Commerce Ministry has approved the rate of royalty, it carries persuasive value that the rate is at ALP. 1225
If the TPO is not satisfied with the assessee's method of benchmarking royalty payments, he should independently benchmark the ALP by adopting any one of the prescribed methods. He cannot determine The ALP at nil on an ad-hoc basis. TNMM is the most appropriate method for determining the ALP of royalty and not the CUP method. If an authority like the RBI or Commerce Ministry has approved the rate of royalty, it carries persuasive value that the rate is at ALP. (A.Y. 2003-04 to 2005-06)
ACIT v. Netafim Irrigation India Pvt. Ltd. (2020) 185 DTR 30 (Mum.)(Trib.), www.itatonline.org

S. 92C : Transfer pricing – Arm's length price – Weighted average – Exporting carpets to foreign associated enterprise as well as unrelated parties – Variation of rates – AO is directed to apply weighted average of all transactions – Sale proceeds to be realised from the associated enterprises were in foreign currency, instead of applying the prime lending rate as the arm's length price, interest at the LIBOR shall be considered as the arm's length interest – The effect of the exchange gain or loss had to be given in computing of arm's length price being the part of sale proceeds as well as comparable price. [S. 92CA)] 1226
Tribunal held that in respect of exported the carpets to its foreign associated enterprises as well as to the other unrelated parties the vast variation of the rates of different variety of the carpets, designs and patterns made it difficult to compare the average price computed in terms of the arithmetic mean of all the transactions with that of the carpets sold to non-associated enterprises. Therefore, the average method adopted by the assessee in working out the arm's length price under the comparable uncontrolled price did not give the correct results of the arm's length price. These transactions could not be simply aggregated or clubbed together for evaluation under the transfer pricing regulations. A weighted average of price rate of the transactions with the associated enterprises as well as the non-associated enterprises would mitigate the scope of any variation or difference in the working out of the sale price of the international transactions as well as the

uncontrolled/unrelated price being arm's length price. The matter was remanded to the Assessing Officer to carry out a fresh exercise of determining the arm's length price as well as the price of the international transaction by using a weighted average instead of a simple average of all the transactions entered into by the assessee with the associated enterprises as well as all the transactions of sale of carpets to the non-associated enterprises. Further once the comparable uncontrolled price taken was more than one the benefit of the second proviso to S. 92C(2) had to be allowed and thereby if the price of the international transaction was within the tolerance range of ± 5 per cent of the arm's length price no adjustment was called for. As regards sale proceeds to be realised from the associated enterprises were in foreign currency, instead of applying the prime lending rate as the arm's length price, interest at the LIBOR shall be considered as the arm's length interest. When the credit period allowed by the assessee was more than the normal period the financial effect of the credit allowed to the associated enterprises had to be taken and considered as part of the sales made to the associated enterprises and not as an independent international transaction. The effect of the exchange gain or loss had to be given in computing of arm's length price being the part of sale proceeds as well as comparable price. (A.Y. 2008-09 to 2010-11)
CIT v. Jaipur Rugs Company Pvt. Ltd. (2019) 70 ITR 1 / 179 DTR 177 (Jaipur)(Trib.)

1227 **S. 92C : Transfer pricing – Capital asset – Share application money – Investment made in shares or applying for shares cannot be given different colour so as to expand scope of transfer pricing adjustment by re-characterizing it as interest free loan – Adjustment made is held to be not valid. [S. 92B]**
Tribunal held that money advanced for acquisition of shares which is a capital asset, same cannot be treated as capital financing unless parties have intended or agreed to convert same and such an intention has to be gathered from any agreement or arrangement or understanding; if parties have treated it to be share application money for subscription of shares, then onus is upon Assessing Officer to prove it contrary that it is an international transaction. Accordingly the addition of adjustment is deleted. (A.Y. 2011-12)
Unitech Ltd. v. DCIT (2019) 176 ITD 266 (Delhi)(Trib.)

1228 **S. 92C : Transfer pricing – Arm's length price – Selection of comparable – TPO's own filters were not proportionate with range of 75-85 per cent (freight cost/freight income) – Directed to exclude said comparable from list of comparables.**
Tribunal held that, while selecting a comparable, TPO had not looked into functions of comparable and TPO's own filters were not proportionate with range of 75-85 per cent (freight cost/freight income) applied for selection of comparables. Tribunal directed to exclude said comparable from list of comparables. (A.Y. 2007-08 to 2012-13)
CEVA Freight India (P.) Ltd. v. DCIT (2019) 176 ITD 341 (Delhi)(Trib.)

1229 **S. 92C : Transfer pricing – Arm's length price – Management fee – TPO is not justified in holding that arm's length value of management fee was nil and accordingly making an upward adjustment.**
Tribunal held that, TPO accepted that services were rendered by AEs for which management fee had been paid, hence he was not correct in holding that arm's length

value of management fee was nil and accordingly making an upward adjustment. (A.Y. 2009-10)
CEVA Freight India (P.) Ltd. v. DCIT (2019) 176 ITD 341 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – When TPO has accepted assessee's segmental bifurcation to arrive at TP adjustments, no adjustment is warranted in hands of assessee under such head – A Company who is not a persistent loss making concern can be included in final set of comparables – Functionally different companies cannot be good comparable. Foreign exchange fluctuations should be treated as operating income for Transfer pricing purposes. [S. 92CA] 1230

The Hon'ble Tribunal held that where assessee had consistently from year to year followed a methodology of segregating cost of centres of sales & marketing, delivery services and client care and clubbing same under head 'software distribution segment', which in turn, were re-charged by assessee from its AEs with mark up, then such a methodology adopted merits to be accepted and cost plus revenue would have to be removed from software development segment. Assessee in this regard had furnished complete details in written submissions, wherein as against revenue from services segment, software distribution expenses; hence assessee had earned margin which worked out to 18.14%. Where TPO himself had considered cost incurred on sales & marketing, delivery services and client care cost centres to be attributable to distribution segment and where assessee had re-charged cost with 18% markup to its AEs, then cost plus revenue related to the said cost should also be attributed to distribution segment. TPO had accepted assessee's segmental bifurcation to arrive at TP adjustments. Cost allocated to software distribution segment had neither been challenged nor been disturbed by TPO, wherein operating cost used by TPO for margin computation of software distribution segment matches total expenses, operating cost used by TPO for margin computation of software distribution segment. Accordingly, Tribunal held that no adjustment was warranted in hands of assessee under head 'software distribution segment'. Tribunal excluded comparables Infobeans Systems Pvt Ltd, Persistent Systems Pvt Ltd, Cybercom Datamatics Information Solutions Ltd. and Cybermate Infotek Ltd as functionally different companies. The Tribunal held that forex exchange fluctuation should be treated as operating income for TP purposes and required to be included in margins of software development segment for computing PLI of assessee.
Triple Point Technology India Pvt. Ltd. v. Dy. CIT (2019) 69 ITR 422 / 176 DTR 421 / 199 TTJ 237 (Pune)(Trib.)

S. 92C : Transfer pricing – Adjustment ought to be made only on proportionate value of the international transaction and could not be made at an entity level. 1231

On appeal by the Department, the Tribunal upheld the order of the Ld. CIT(A) granting proportionate adjustment and held that after granting proportionate adjustment, since the value of the international transaction fell within the range of +/-5% as provided u/s. 92C(2) of the Act and therefore, the entire adjustment was liable to be deleted. (A.Y. 2011-12)
ACIT v. Sodexo Food Solutions India P. Ltd. (2019) 69 ITR 119 (Mum.)(Trib.)

1232 **S. 92C : Transfer pricing – It is mandatory for the AO to determine the arm's length price (ALP) of the international transactions by following one of the prescribed methods – He is not entitled to follow any other method or to resort to estimation – The failure to follow one of the prescribed methods makes the entire transfer pricing adjustment unsustainable in law – The legal infirmity cannot be cured by restoring the issue to the TPO – The TPO cannot be allowed another innings to rectify the mistake. [S. 254(1)]**

Tribunal held that, it is mandatory for the AO to determine the arm's length price (ALP) of the international transactions by following one of the prescribed methods. He is not entitled to follow any other method or to resort to estimation. The failure to follow one of the prescribed methods makes the entire transfer pricing adjustment unsustainable in law. The legal infirmity cannot be cured by restoring the issue to the TPO. The TPO cannot be allowed another innings to rectify the mistake. (ITA No. 1182/MUM/2017, dt. 16.01.2019)(A.Y. 2012-13)

CLSA India Private Ltd. v. DCIT (Mum.)(Trib.), www.itatonline.org

1233 **S. 92C : Transfer pricing – Loan to Associated Enterprises – SBI rate is a local rate and LIBOR is a foreign rate, therefore, LIBOR rate should be preferred as against SBI local rate of interest.**

SBI rate is a local rate and LIBOR is a foreign rate, therefore, LIBOR rate should be preferred as against SBI local rate of interest. Where once transaction between assessee and A.E. was in foreign currency and transaction was an international transaction, then commercial principles in regard to international transactions are to be applied. In such circumstances, domestic prime lending rate would have no applicability and international rate fixed being LIBOR would come into A.Y. Hence, LIBOR rate had to be considered while determining arm's length interest rate in respect of transaction between assessee and A.E. (ITA No. 1148/Del/2017, dt. 22.02.2019)

Aamby Valley Ltd. v. ACIT (2019) 102 taxmann.com 38 / 198 TTJ 662 (Delhi)(Trib.), www.itatonline.org

1234 **S. 92CA : Reference to transfer pricing officer – CBDT's Instruction No.3/2003 dated 20.05.2003 makes it mandatory for the AO to make a reference to the TPO – The failure to make reference to the TPO renders the Transfer Pricing Adjustments made therein are bad in law though the assessment order is good – The matter should be restored to the file of the AO so that appropriate reference could be made to the TPO. [S. 92C, 119]**

Court held that CBDT's Instruction No.3/2003 dated 20.05.2003 makes it mandatory for the AO to make a reference to the TPO-The failure to make reference to the TPO renders the Transfer Pricing Adjustments made therein are bad in law though the assessment order is good-The matter should be restored to the file of the AO so that appropriate reference could be made to the TPO. (CA NO.6144 of 2019, dt. 13.08.2019) (A.Y. 2005-06)

PCIT v. S. G. Asia Holding (I) Pvt. Ltd. (2019) 266 Taxman 451 / 108 taxmann.com 213 / 310 CTR 1 / 181 DTR 17 (SC), www.itatonline.org

Editorial: Arising from the order PCIT v. S. G. Asia Holding (I) Pvt. Ltd. (2019) 102 taxmann.com 306 (Bom) (HC)

S. 92CA : Reference to transfer pricing officer – AO is not bound to pass draft assessment order in tune with arm's length price fixed by TPO – AO having rejected valuation of shares made by TPO, made addition to assessee's income in respect of excess price paid for buy – back of shares – Writ was dismissed – liberty is given to the to the assessee raise all the issues before the Dispute Resolution Panel. [S. 2(22) (iv), 46A, 56(1), 92CA 94, 115QA, 144C, Companies Act, 1956 S. 72A, R.11UA, Art.226] 1235

Assessee was a company incorporated under laws of Mauritius-It was a shareholder in an Indian company namely 'CTSIPL'. During relevant year, on account of availability of surplus fund, CTSIPL decided to buy-back its shares. CTSIPL ascertained valuation of its shares through SEBI registered category-I Merchant Banker using Discounted Free Cash Flow ['DCF'] method at ₹ 23,915 per share. AO referred determination of ALP for buy-back of shares to TPO who submitted his report wherein no adverse inference was drawn in respect of valuation of shares. AO however, proceeded to pass a draft assessment order wherein shares in question were valued at ₹ 8512 per share and, thus, excess consideration paid over said Fair Market Value (FMV) was assessed under S. 56(1) of the Act. Assessee filed writ petition Challenging validity of impugned draft assessment order on ground that when TPO had determined ALP, AO had no power to differ from TPO. in view of provisions of S. 92CA(4), Assessing Officer is not bound to pass draft assessment order in tune with arm's length price fixed by TPO. in view of fact that value of shares determined by SEBI registered Category-I Merchant Banker was for purpose of RBI applications and not for purpose of Act, instant petition deserved to be dismissed. However, with liberty to the assessee raise all the issues before the Dispute Resolution Panel. (A.Y. 2014-15)

Cognizant (Mauritius) Ltd. v. DCIT (IT) (2019) 265 Taxman 387 / 310 CTR 321 / 181 DTR 154 (Mad.)(HC)

Cognizant Technology Solutions Corporation v. Dy.CIT (2019) 310 CTR 321 / 181 DTR 154 (Mad.)(HC)

S. 92CA : Reference to transfer pricing officer – It is incumbent upon Assessing Officer to pass a draft assessment order under S. 144C of the Act. [S. 92CA(3), 144C] 1236

Assessee is engaged in business of providing risk consultancy services. TPO proposed certain addition to assessee's ALP, thereafter, instead of passing a draft assessment order, AO passed a final assessment order. On writ the Court held that consequent upon an order of TPO under S. 92CA(3), it is incumbent upon AO to pass a draft assessment order under S. 144C. AO over looked aforesaid legal position and proceeded to pass a final assessment order, thereby depriving assessee of an opportunity of questioning draft assessment order under S. 144C before DRP. Accordingly the order was quashed. (A.Y. 2011-12)

Control Risks India (P.) Ltd. v. Dy. CIT (2019) 107 taxmann.com 82 / 264 Taxman 292 (Delhi)(HC)

Editorial: SLP of revenue is dismissed, DCIT v. Control Risks India (P.) Ltd. (2019) 264 Taxman 291 (SC)

1237 **S. 92CA : Reference to transfer pricing officer – Transfer Pricing – Jurisdiction of Transfer Pricing Officer – In specified domestic transactions Transfer Pricing Officer has no jurisdiction unless specific reference is made to him by Assessing Officer – High Court can consider issue of jurisdiction though alternative remedy is available. [Art. 226]**

Allowing the petition the Court held that in specified domestic transactions Transfer Pricing Officer has no jurisdiction unless specific reference is made to him by Assessing Officer. Accordingly the order of the Transfer Pricing Officer was quashed in so far as it recommended an adjustment of the arm's length price towards payment of creditors in the demerger process of a sum of ₹ 57.54 crores. Court also held that it can consider issue of jurisdiction though alternative remedy is available. However in respect of the adjustment made by the Transfer Pricing Officer towards payment of subscription fees, even though the assessee may have certain arguable points, that by itself, would not enable the High Court to bypass the entire statutory scheme of assessment, appeal and revision. The order dealing with the balance after deducting ₹ 57.54 crores would not be interfered with. (A.Y. 2015-16) (WP. No 3386 of 2018 dt. 15-03-2019)

Times Global Broadcasting Company Ltd. v. UOI (2019) 413 ITR 42 (Bom.)(HC)

1238 **S. 92CA : Reference to transfer pricing officer – Jurisdiction of TPO – Whether TPO can examine any transaction which come to his notice during course of proceedings though not referred to him by the AO – Passing ad – interim relief, the AO is prevented from passing any further orders till issue raised is decided by the Court. [S.92C]**

Issue raised in the petition was jurisdiction of TPO, whether TPO can examine any transaction which come to his notice during course of proceedings though not referred to him by the AO. By way of an ad – interim relief the High Court directed the AO not to pass further orders till issue raised is decided by the Court. (dt 16-12-2018)

Times Global Broadcasting Company Ltd. v. UOI (2019) 260 Taxman 314 (Bom.)(HC)

1239 **S. 92CA : Reference to transfer pricing officer – Arm's length price – Advertisement and publicity expenses – Additional grounds – ALP disputed for the first time before the Tribunal – Additional ground is rejected as it virtually result in re-opening of the assessment. [S. 92C, 254(1)]**

The assessee incurred advertisement and publicity expenses of ₹ 58,41,53,467/- which were paid to the third parties in India. The AO stated in the assessment order that advertisement and publicity expenditure was not part of assessee's Form no.3ECB report. Therefore, the advertisement and publicity expenditure from the very initial stage itself was never treated as part of international transaction. TPO made adjustment amounting to ₹ 20,94,22,353/-Adjustment made by the TPO was ultimately deleted by CIT(A). Tribunal held that, if at this stage the Department is permitted to rake up the issue relating to determination of arm's length price of advertisement and publicity expenses, as raised in additional grounds, it will virtually result in re-opening of the assessment which is prohibited under S. 92CA, 92C of the Act. (A.Y. 2005-06)

Star India (P) Ltd. v. Addl. CIT (2019) 176 DTR 409 / 199 TTJ 125 (Mum.)(Trib.)

S. 115A : Foreign companies – Tax – Royalty – In terms of technology license agreement entered into by assessee an Italy based company with its Indian AE effective from 1-04-2008, being covered by sub-clause (AA) of section 115A(1)(b), rate of tax on royalty received by assessee will be 10.50 per cent – DTAA-India-Italy. [S. 90(2), 195A] 1240

Tribunal held that Rate of tax on Royalty on three wheelers received by assessee an Italy based company from its Indian AE, pursuant to technology license agreement entered between assessee and its AE in India, effective from 1-04-2008, being covered by sub-clause (AA) of S. 115A(1)(b), will be 10.50 per cent. (A.Y. 2012-13, 2013-14)

Piaggio & C.S.P.A. v. DIT (2019) 175 ITD 304 / 70 ITR 1 (SN) (Pune)(Trib.)

S. 115AC : Capital gains – Bonds – Global Depository – Foreign currency – Transfer of Shares covered by scheme – Computation of capital gains to be made under provisions of scheme – Subsequent Amendment of provisions in Income-tax Act is not applicable. [S.47(x), 49(2A), 264, Foreign Currency Exchangeable Bonds Scheme, 2008] 1241

Allowing the petition the Court held that, the revisional authority fell in clear error in taking assistance of the amendments made by the Finance Act, 2008. The assessee was right in urging that the cost of acquisition of the shares was to be determined with reference to the date of acquisition of the foreign currency convertible bonds. Thus the period for which the shares should be regarded as having been held by the assessee should also be reckoned from the date of acquisition. The second respondent failed to consider the scheme and therefore, once these clauses were included in the 1993 Scheme itself, then, they would govern the foreign currency convertible bonds related transactions to the extent the corresponding provisions are not made in the Act. The authority was not right in holding that the cost of acquisition of the shares as per clause 7(4) of the 1993 Scheme was not tenable. The Government of India notified Scheme effected from 1992 held the field and was the applicable one. The Foreign Currency Exchangeable Bonds Scheme, 2008 had equal status but was admittedly a later one. The computation made by the assessee was accurate and had to be accepted.

Kingfisher Capital CLO Ltd. v. CIT (2019) 413 ITR 1 / 263 Taxman 198 / 308 CTR 537 / 177 DTR 225 (Bom.)(HC)

S. 115B : Life Insurance business – Surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under section 115JB of the Act. [S. 56] 1242

Dismissing the appeal of the revenue the Court held that surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under S. 115JB of the Act. (A.Y. 2010-11, 2011-12)

PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 415 ITR 389 / 105 taxmann.com 471 / 263 Taxman 471 (Bom.)(HC)

Editorial : SLP is granted to the revenue, PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 263 Taxman 470 / 411 ITR 39 (St) (SC)

1243 **S. 115BBC : Anonymous donations – Names and address along with other particulars of donors who have given donation was furnished – Donation cannot be assessed as anonymous donation.**
Tribunal held that the assessee has furnished names, address and other particulars of donors. Accordingly the donation received cannot be assessed as anonymous donation. (A.Y. 2009-10)
ACIT v. Shree Shiv Vankeshawar Educational & Social Welfare Trust (2019) 177 ITD 184 / 181 DTR 314 (Delhi)(Trib.)

1244 **S. 115BBDA : Dividend received from domestic companies, tax on – Constitutionally valid and not arbitrary – Petition was dismissed. [S. 10(34), 115BA, 115-0, Art. 14]**
Petitioner challenged constitutional validity of proviso to S. 10(34) and provisions of S.115BDDA on ground that S.115BBDA does not have any base and that provision makes hostile discrimination between a resident assessee and a non-resident assessee, as provision only applies to a resident assessee and it is arbitrary, ultra vires and violates of article 14. Dismissing the petition the Court held that proviso to S. 10(34) gives primacy to S. 115BBDA over S. 10(34) and provision of S. 115BA is clear and categorical as it stipulates that dividend income upto ₹ 10 lacs is not to be charged to tax at rate 10 per cent under S. 115BBDA. Court held that non-residents are liable to pay tax in country of their residence and taxation regime applicable to non-residents need not be identical to that applicable to residents. Accordingly S. 10(34) and 115BBDA are constitutionally valid.
Rajan Bhatia v. CBDT (2019) 306 CTR 561 / 261 Taxman 255 / 174 DTR 145 (Delhi)(HC)

1245 **S. 115BBE : Higher tax rate – Tax on income referred in S. 68, 69, 69B 69C, S. 69D – Cash credits, unexplained investments, unexplained expenditure – Set off of loss – Survey – Surrender of income – Set off of losses was to be allowed – The amendment made to section 115BBE denying the benefit of set off of losses with effect from 1-4-2017 was retrospective in nature [S. 68 to 69C, 71, 115BBE, 133A]**
The assessee surrendered the additional income during the survey. The income surrendered were partly in nature of business income and partly deemed income. The assessee had set off debit entries and business loss against the same. The AO treated the entire additional income surrendered as deemed income as provided under S. 69, 69A, 69B and 69C separately and charged to tax under S. 115BBE and denied the set off of losses. On appeal the Tribunal held that the amendment made to S. 115BBE denying the benefit of set off of losses with effect from 1-4-2017 was retrospective in nature, it is prospective, hence the assessee is entitle to set off the losses against deemed income assessed under S. 69 69A and 69C of the Act. Followed, *P CIT v. Khushi Ram & Sons Foods (P.) Ltd. in (ITA No. 126 of 2015, dt. 29-7-2016 (P&H)(HC))* (A.Y. 2013-14, 2014-15)
Famina Knit Fabs v. ACIT (2019) 176 ITD 246 / 177 DTR 140 / 199 TTJ 258 (Chd.)(Trib.)

1246 **S. 115J : Book profit – Anticipated loss on completion of contract – Includible in profits – Provision for gratuity – Bad debts – Not includible in profits.[S. 115JA, 145]**
Court held that the anticipated loss on completion of contract is includible in profits. Provision for gratuity and bad debts is not includible in profits. Followed *CIT v. HCL Comnet Systems and Services Ltd. (2008) 305 ITR 409 (SC)*
Fertilisers and Chemicals Travancore Ltd. (2019) 414 ITR 338 (Ker.)(HC)

S. 115JA : Book profit – Deduction u/s. 80HHC is to be allowed on the basis of book profits and not on the basis of eligible profits under S. 80HHC. [S. 80HHC] 1247
Dismissing the appeal of the revenue the Court held that Where assessee' s income was computed under S. 115JA, Tribunal was justified in allowing deduction under S. 80HHC on basis of book profits and not on basis of eligible profits under S. 80HHC as per normal computation. Followed *Ajanta Pharma Ltd. v. CIT (2010) 327 ITR 305 (SC)* (A.Y. 200-01)
CIT v. Ashok Leyland Ltd. (2019) 266 Taxman 406 (Mad.)(HC)

S. 115JA : Book profit – Provision for bad and doubtful debts is a provision for unascertained liability, and, thus, same could not be excluded while computing book profits – Provision made for payment of purchase tax, payment of purchase tax on cane subsidy and provision for wealth tax, in anticipation of Government Notification, were provisions for unascertained liability, liable to be added back while computing book profits. [S. 36(1)(vii)] 1248
Dismissing the appeal of the assessee the Court held that provision for bad and doubtful debts is a provision for unascertained liability, and, thus, same could not be excluded while computing book profits. Court also held that provision made for payment of purchase tax, payment of purchase tax on cane subsidy and provision for wealth tax, in anticipation of Government Notification, were provisions for unascertained liability, liable to be added back while computing book profits.(A.Y. 1997-98, 1998-99)
EID Parry (India) Ltd. v. ACIT (2019) 265 Taxman 454 (Mad.)(HC)

S. 115JA : Book profit – Company – Provision for bad debts – Amended provision by Finance (No. 2) Act, 2009 with retrospective effect from 1-4-1998 – Matter Remanded to Assessing Officer to decide applicability of the provision. 1249
High Court held that the Assessing Officer was to decide the applicability of the amendment to S. 115JA by the Finance (No. 2) Act, 2009 with retrospective effect from April 1, 1998. Matter remanded. (A.Y. 1998-99)
Chettinad Cement Corporation Ltd. v. DCIT (2019) 410 ITR 224 (Mad.)(HC)

S. 115JA : Book profit – Capital gains – Exempt u/s. 54EC is not to be included for the purpose of computation of book profit. [S. 45, 54EC] 1250
Tribunal held that the capital gains which are exempt u/s 54EC is not to be considered for purpose of computing books profit (A.Y. 1999-2000)
Fibroflex (India) P. Ltd v. Dy.CIT (2019) 74 ITR 105 (Chennai)(Trib.)

S. 115JA : Book profit – Foreign Banking company – Maintaining its accounts under Banking Regulation Act, 1949 – Provision is not applicable – DTAA-India-UK. [Art.7, Banking Regulation Act, 1949, Companies Act, 1956] 1251
Tribunal held that assessee a foreign company was carrying on business of banking, financial service and allied activities in India and was maintaining its accounts under Banking Regulation Act, 1949, it would not be required to prepare its Profit and Loss Account under provisions of Part-II and III of Schedule-VI of Companies Act, 1956. Accordingly provisions of S. 115JA is not applicable. (A.Y. 1997-98)
Standard Chartered Bank v. JCIT (2019) 177 ITD 139 / 200 TTJ 774 / 178 DTR 201 (Mum.)(Trib.)

1252 **S. 115JA : Book profit – Provision for wealth – tax could not be included for purposes of computation of book profit.**
Tribunal held that provision for Wealth-tax could not be included for purpose of computation of book profit. (A.Y. 2008-09)
Aditya Medisales Ltd. v. DCIT (2019) 176 ITD 783 (Ahd.)(Trib.)

1253 **S. 115JA : Book profit – Debenture Redemption Reserve – Ascertained liability – Deductible for computing book profits – Order of Assessing Officer as per the ratio of jurisdictional High Court – Revision is bad in law on merit and law. [S. 263]**
Allowing the appeal of the assessee the Tribunal held that, there being a decision by the jurisdictional High Court allowing the deduction of debenture redemption reserve above, it would be binding on the PCIT. PCIT cannot hold that the order of Jurisdictional High Court is per incurium. The revision was based on a mere change of opinion and not because the original order was prejudicial to the interests of the revenue. Hence, the order of the PCIT is liable to be quashed on merits also. Followed *CIT v. Raymond Ltd. (2009) 2009 Taxman 65 (Bom.)(HC) and Grasim Industries Ltd. v. CIT (2010) 321 ITR 92 (Bom.)(HC).* (ITA. No. 3530/Mum/2018 dt (ITA. No. 3530/Mum/2018 / 3531 dt 10-1-2019 (A.Y. 2009-10, 2010-11)
Housing Development and Infrastructure Ltd. v. PCIT (Mum.)(Trib.)(UR)

1254 **S. 115JAA : Book profit – Deemed income-Tax credit – Demerger of SEZ units – Tribunal Order – MAT credit needs to be allowed to the assessee – not to the demerged company (SEZ units) even though the same arose on account of SEZ units. [Companies Act, S.391]**
Dismissing Revenue's appeal, Tribunal held that even though no specific provision is provided in the Act in respect of carry forward and set off of MAT credit in respect of demerger, the credit for such MAT credit needs to be allowed to the assessee, and not to the demerged Company (SEZ units). (A.Y. 2014-15)
DCIT v. TCS E-Serve International Ltd. (2019) 182 DTR 273 / 201 TTJ 997 (Mum.)(Trib.)

1255 **S. 115JB: Book profit – Provision for bad and doubtful debt – Ascertained liability – No addition can be made.**
Tribunal deleted addition made in respect of provision for bad and doubtful debts in computation of book profits. High Court up held the order of the Tribunal followed *Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273 (SC).*
CIT (LTU) v. ACC Ltd. (2019) 112 taxmann.com 402 / (2020) 269 Taxman 15 (Bom.)(HC)
Editorial: SLP of revenue is dismissed; CIT (LTU) v. ACC Ltd. (2020) 269 Taxman 14 (SC)

1256 **S. 115JB : Book profit – Gains from sale of agricultural land – Not agricultural income – Cannot be reduced – Provision for gratuity – Ascertained liability – Deductible. [S. 2(IA), 2(14)(iii)(a), 10]**
Court held that agricultural income is granted an exemption under section 10. Sub-clause (2) of the first Explanation to section 115JB, provides a downward adjustment of the profits as revealed from the books of account, to that income, to which any

of the provisions of S. 10, 10A, 10B, 11 or 12 applies. If any portion of the profits as reflected in the books of account relates to agricultural income, then there is a clear exemption provided under section 10. In view of the exemption under S.10, any revenue from agricultural land would have to be reduced from the profits in computing the minimum alternate tax under S. 115JB. Explanation 1 to S. 2(1A) however specifically excludes any income derived from transfer of land, referred to in items (a) and (b) of S. 2(14)(iii) from the definition of "revenue derived from land". This exclusion brought in by way of abundant caution, as is evident from the words employed cannot lead to a corollary being drawn of inclusion of sale of agricultural land as agricultural income or as revenue derived from land. Agricultural income as defined under S. 2(1A), inter alia, takes within its ambit "any rent or revenue derived from land, which is situated in India and is used for agricultural purposes". The words "revenue derived from land" employed in the sub-clause, would only take within their ambit the periodic payments or revenue derived, when the owner of the property is not divested of the title and the land continues to be used for agricultural purposes. When a sale of agricultural land is made, the purchaser is not obliged to carry on agricultural land is made, the purchaser is not obliged to carry on agricultural operations, nor can the consideration received on such sale of agricultural land deemed to be agricultural income. The consideration received on sale of agricultural land in a rural area, not coming under S. 2(14)(iii)(a) and (b) would not be income or revenue derived from land. It has to be added to the profit and loss account and would be reflected in the book profits, for assessment under S. 115JB. There is no statutory provision enabling a downward adjustment of the sum from the book profits in the computation as provided in S.115JB. Provision for gratuity would be an ascertained liability and, hence, would be capable of being deducted from computation of the minimum alternate tax under S. 115JB. (A.Y. 2006-07)

CIT v. Harrisons Malayalam Ltd. (2019) 414 ITR 344 / 183 DTR 302 / 266 Taxman 414 / 311 CTR 802 (Ker.)(HC)

S. 115JB : Book profit – Banking – Insurance – Electricity company – Are not company bound by provisions of Companies Act – (Pre amendment by Finance Act, 2012) – Provision is not applicable to a banking company, insurance & electricity cos – The mechanism provided for computing book profit in terms of S. 115JB(2) is wholly unworkable for a banking company – When the machinery provision fails, the charging section also fails – Provision is not applicable – The anomaly was removed by the Finance Act, 2012 – However, the amendments are neither declaratory nor clarificatory but make substantive and significant legislative changes which are applicable prospectively. 1257

Dismissing the appeal of the revenue the Court held that, Banking, Insurance and Electricity companies are not bound by provisions of Companies Act. (Pre amendment by Finance Act, 2012) Provision is not applicable to a banking company (also insurance & electricity cos).The mechanism provided for computing book profit in terms of S. 115JB(2) is wholly unworkable for a banking company. When the machinery provision fails, the charging section also fails. The anomaly was removed by the Finance Act, 2012-However, the amendments are neither declaratory nor clarificatory but make

substantive and significant legislative changes which are applicable prospectively. (Followed *Kerala State Electricity Board v. Dy CIT (20110) 329 ITR 91 (Ker.)(HC).*
PCIT v. Union Bank of India (2019) 177 DTR 305 / 308 CTR 797 / 263 Taxman 685 (Bom.) (HC), www.itatonline.org
Editorial: SLP is granted to the revenue PCIT v. Union Bank of India (2019) 418 ITR 9 (St) (SC)

1258 **S. 115JB : Book profit – While computing book profit, provision made for payment of wealth tax could not be included in it as section 115JB only refers to income-tax paid or payable or provisions made therefor – No question of law. [S. 260A]**
S. 115JB pertains to special provision for payment of tax by certain companies. As is well known, detailed provisions have been made to compute the book profit of the assessee for the purpose of the said provision. Explanation 1 contains list of amounts to be added while computing assessee's book profit under S. 115JB. In plain terms, clause (a) as noted above refers to amount of income-tax paid or payable or the provision made therefor. The legislature has advisedly not included wealth tax in this clause. By no interpretative process, the wealth tax can be included in clause (a). Clause (c) would include the amount set aside for provisions made for meeting liabilities other than ascertained liabilities. For applicability of this clause, therefore, fundamental facts would have to be brought on record which in the present case, the revenue has not done. In fact, the entire thrust of the revenue's argument at the outset appears to be on clause (a) which refers to the income-tax which according to the revenue would also include wealth tax. This question, therefore, is not required to be entertained. (A.Y. 2002-03)
CIT-LTU v. Reliance Industries Ltd. (2019) 261 Taxman 283 (Bom.)(HC)

1259 **S. 115JB : Book profit – Provision for diminution in value of investment – Written off in the books – Addition cannot be made to book profit. [S. 115JB(2)(i), Accounting Standard (AS) 13]**
Dismissing the appeal of the revenue the Court held that provision for diminution in value of investment, having been actually written off, cannot be added to book profit under section 115JB(2)(i) of the Act. (A.Y. 2003-04)
PCIT v. Torrent (P.) Ltd. (2019) 266 Taxman 151 (Guj.)(HC)

1260 **S. 115JB : Book profit – Capital gains – Adjusted book profits eligible for benefit under S.54EC. [S. 45, 54EC, 115JA(4), 115JA(5)]**
Court held that the adjusted book profits would be further eligible to the benefits set out in the other provisions of the Act and the language of S. 115JB admitted of the grant of relief under S. 54EC of the Act. (A.Y. 2003-04)
CIT v. Metal and Chromium Plater (P) Ltd. (2019) 415 ITR 123 (Mad.)(HC)

1261 **S. 115JB : Book profit – Unabsorbed depreciation – Business loss – Remand by the Tribunal is held to be justified – Provision for interest on bank loans made for earlier years – Waiver of interest – Finding of the Tribunal that interest was an unascertained liability is held to be not proper – Matter remanded. [S. 43B]**
Court held that the Tribunal as the final fact finding authority had remanded the matter holding the issue in favour of the assessee and there was no appeal by the assessee.

The consideration of the AO which was in accordance with the order of the Tribunal need not be interfered with. No question of law arose. Court also held that, when the Assessing Officer in the remand report had specifically stated that the interest on bank loans of the earlier years was disallowed under S. 43B, it was not proper for the Tribunal to have taken the view that it was an unascertained liability and that it ought not to have been disallowed.(A.Y. 2006-07)
Covema Filaments Ltd. v. CIT (2019) 411 ITR 560 (Ker.)(HC)

S. 115J : Book profit – Only the adjustments to the extent provided in the Explanation to S. 115 can be made. [Companies Act, 1956] 1262
The profit shown in the accounts of the company, which are certified by the auditors of the company as having been maintained in accordance with the provisions of the Companies Act and which had been accepted in the general meeting of the company as well as by the Registrar of Companies, had to be taken as the starting point for computation of book profit under S. 115J and only the adjustments to the extent provided in the Explanation to S. 115J can be made. (A.Y. 2004-05)
Dy. CIT v. Stewarts and Lloyds of India Ltd. (2019) 74 ITR 677 (Kol.)(Trib.)

S. 115JB : Book profit – Depreciation – Adjustment is held to be not valid [S.32, Companies Act, 1956] 1263
The AO made addition of certain amount on account of difference between depreciation as per Companies Act and a sum while calculating total income as per S.115JB on the ground that assessee had adopted the rate of depreciation as per Act instead of Companies Act in profit & loss account. The CIT(A) deleted the addition. Tribunal allowing the appeal held that, it is not the case that depreciation provided in P&L are not at the same rates provided for the purpose of its P&L being laid before AGM. The assessee has claimed depreciation in the P&L and the same amount has been taken into consideration while determining the book profit. Based on the direct provisions of S. 115JB, the addition of the AO on account of adjustment in computation u/s. 115JB is not liable. (A.Y. 2012-13)
ACIT v. HAL Offshore Ltd. (2019) 178 ITD 272 / 202 TTJ 308 / (2020) 185 DTR 392 (Delhi) (Trib.)

S. 115JB : Book profit – Special economic zones – Even income arising from the business of a SEZ Unit, which is exempt u/s 10AA, is subject to MAT from AY 2012-13 onwards owing to the insertion of the proviso to s. 115JB(6) – Order of rectification is held to be valid. [S.10AA, 154] 1264
Dismissing the appeal of the assessee the, Tribunal held that even income arising from the business of a SEZ Unit, which is exempt u/s 10AA, is subject to MAT from AY 2012-13 onwards owing to the insertion of the proviso to s. 115JB(6). The earlier judgments holding that the exemption provisions would prevail over S. 115JB are not good law after the insertion of the proviso to S. 115JB(6) (CBDT Circular No. 2/2012 dated 22.5.2012 referred). Order of rectification is held to be valid. (A.Y. 2012-13)
Safeflex International Ltd. v. ITO (2019) 183 DTR 129 / 202 TTJ 258 (Jaipur)(Trib.), www.itatonline.org

1265 **S. 115JB : Book profit – Deduction of provision for card receivables written back not added in computation of Book Profits in the year of provision – Entitle to deduction of write back while computing he book profit.**
The assessee reduced the provision for card receivables written back in computing Book Profits for A.Y. 2012-13. However, the provision for card receivables was not added back in computing Book Profit for earlier years. It was submitted that provision for diminution in value of asset was to be added to Book Profits vide Finance (No. 2) Act, 2009 with retrospective effect from A.Y. 2001-02. Further, the assessee had book loss in the earlier years and even if the provision for card receivables was added back in computing Book Profits, there would still be a loss and accordingly revised working for Book Profit were submitted. The Tribunal after considering the revised workings of the Book Profits noted that the assessee would not be liable to Book Profits. Further, the Tribunal noted that similar claim of assessee for A.Y. 2011-12 was accepted by the Department. Thus, following the principle of consistency the claim of the assessee was to be accepted. (A.Y. 2012-13)
Bobcards Ltd. v. ACIT (2019) 73 ITR 1 (Mum.)(Trib.)

1266 **S. 1115JB : Book profit – Housing project – Development of housing project units which were neither units in SEZ nor developer of SEZ – Not entitle to exempt from MAT. [S. 80IB(10)]**
Tribunal held that benefit of exemption from MAT is provided only for business, as specified, carried on by persons who had got approvals under SEZ Act and which were carried on in SEZ or units therein. Accordingly the assessee which is engaged in development of housing project units which were neither units in SEZ nor assessee was developer of SEZ, its income would not be exempt from payment of MAT.S. 115JB is charging section and except for deductions specified in Explanation 1 to S. 115JB(2), no other deductions would be allowed. (A.Y. 2008-09, 2009-10, 2010-11, 2012-13]
Gee City Builders (P.) Ltd. v. DCIT (2019) 177 ITD 70 (Chd.)(Trib.)

1267 **S. 115JB : Book profit – Share of profit from AOP – Insertion of clause (iic) in Explanation 1 to section 115JB by Finance Act, 2005, w.e.f. 1-4-2016, is retrospective in nature – Share income would not be included while computing total income for purpose of book profit. [S. 67A, 86]**
Dismissing the appeal of the revenue, the Tribunal held that, share of profit from AOP which is exempt under S.86 of the Act. Accordingly due to insertion of clause (iic) in Explanation 1 to S. 115JB by Finance Act, 2005, w.e.f. 1-4-2016, which is retrospective in nature, share income would not be included while computing total income for purpose of S.115JB of the Act.(A.Y. 2010-11 to 2013-14)
ACIT v. Om Metal Infraproject Ltd. (2019) 176 ITD 202 (Jaipur)(Trib.)

1268 **S. 115JB : Book profit – Amalgamation – Revaluation on basis of fair market value (FMV) – Revaluation was mandated by order of High Court approving amalgamation scheme – Difference arising between book value of shares shown in books of amalgamating company and FMV of shares which formed capital reserve of assessee, could not be added while computing book profit. [S. 145]**
High Court sanctioned scheme of amalgamation of assessee company with its two wholly owned subsidiary companies. Assessee acquired shares of one, IHFL held by

amalgamating companies. It revalued such shares at time of amalgamation as per existing market price. Difference arising between book value of shares shown in books of amalgamating companies and fair value of shares formed part of capital reserve of assessee-amalgamated company. AO was of view that in terms of clause (v) to Explanation 1 of S. 115JB, such amount in capital reserve on account of revaluation of shares had to be taken into account while computing book profit. Tribunal held that on amalgamation, assessee acquired shares held by amalgamating company and same were revalued on basis of fair market value (FMV), since such revaluation was mandated by order of High Court approving amalgamation scheme, difference arising between book value of shares shown in books of amalgamating company and FMV of shares which formed capital reserve of assessee, could not be added while computing book profit under S. 115JB of the Act.(A.Y. 2015-16)
Priapus Developers (P.) Ltd. v. ACIT (2019) 176 ITD 223 / 71 ITR 113 / 182 DTR 226 (Delhi)(Trib.)

S. 115JB : Book profit – Change in deprecation rate – Reduction due to change in depreciation rate is different from diminution in value of assets and, same is not hit by clause (i) of Explanation 1 to S. 115JB – Self serving evaluation of useful life of depreciable assets leading to higher rate of depreciation and consequently resulting reduced tax burden for assessee was not bonafide, same would be a colourable device to evade tax – Matter remanded to Assessing Officer for verification. [S. 32] 1269
Tribunal held that when book value of certain assets undergoes reduction as a result of change in rate of deprecation, such reduction is different from diminution in value of assets and, same is not hit by clause (i) of Explanation 1 to section 115JB. However self serving evaluation of useful life of depreciable assets leading to higher rate of depreciation and consequently resulting reduced tax burden for assessee was not bonafide, same would be a colourable device to evade tax. Matter remanded to the AO (A.Y. 2012-13)
DCIT v. Railtel Corpn. of India Ltd. (2018) 176 ITD 169 (Delhi)(Trib.)

S. 115JB : Book profit – Not following the Accounting standard – AO Must modify the book profit as per Accounting Standards as per provisions of Companies Act. 1270
Dismissing the appeal of the assessee the Tribunal held that AO must modify book profit for computation of MAT in case company has not followed Accounting Standards as per provisions of Companies Act. (A.Y. 2013-14)
Gati Ltd. v. ACIT (2019) 175 ITD 310 (Hyd.)(Trib.)

S. 115JB : Book profit – Waiver of principal and interest – One time settlement – Disclosed in notes' to Auditors Report – obligatory on part of Assessing officer to have considered same while determining book profit – Matter remanded – Prior period adjustment – Justified in rejecting claim of deduction in respect of prior period adjustments. [Companies Act, 1956, S. 211(6)] 1271
Tribunal held that, Auditors by way of qualification notes to Auditors Report's, had mentioned that benefit of OTS made with lenders resulting in waiver of principal and interest which had been credited by assessee-company to profit & loss account prior

to accrual of same to assessee-company. As per S. 211(6) of the Companies Act, 1956, reference to balance sheet or profit and loss account of a company shall include notes to accounts giving information required under said Act. Accordingly, it was obligatory on part of Assessing officer to have considered such notes while determining book profit. Matter remanded. Tribunal also held that revenue authorities were justified in rejecting claim of deduction in respect of prior period adjustments. (A.Y. 2004-05)
Mukand Ltd. v. ITO (2019) 174 ITD 605 / 198 TTJ 884 (Mum.)(Trib.)

1272 **S. 115O : Domestic companies – Tax on distributed profits – Charging section – No need for issuance of notice before making a demand – Profits distributed to share holders is deemed to be dividend – Reduction on share capital can be effected by buying back shares – Advance Ruling cannot be given if an enquiry is pending against the assessee – Writ will not normally be issued if there is alternative remedy – Liberty is given to file an appeal. [S. 2(22), 245R, 246A, Art. 226 Companies Act, 1956, S.391, 393]**

Dismissing the petition against single judge order the Court held that ; appeal against AO's Order holding that the transactions made pursuant to the buy back agreement in consequence to the approval of the scheme under S. 391 to 393 of the Companies Act requires to be taxed under S. 115O on the premise that it would constitute dividend and not capital gain is maintainable. Court also held that single Judge, though rightly dismissed the writ on the ground that alternate remedy is available, was not correct in going into the merits of the case, at this stage, while granting liberty to file an appeal. (WP. No. 2063 of 2019 dt. 06-09-2019)
Cognizant Technology Solutions India (P) Ltd. v. DCIT (2019) 418 ITR 576 / 310 CTR 515 / 181 DTR 371 / (2020) 269 Taxman 151 (Mad.)(HC)
Editorial : Order of single judge in Cognizant Technology Solutions India (P) Ltd. v. DCIT (2019) 416 ITR 462 (Mad.)(HC) is partly affirmed.

1273 **S. 115O : Domestic companies – Tax on distributed profits – Charging section – No need for issuance of notice before making a demand – Profits distributed to share holders is deemed to be dividend – Reduction on share capital can be effected by buying back shares – Advance Ruling cannot be given if an enquiry is pending against the assessee – Writ will not normally be issued if there is alternative remedy. [S. 2(22) 245R, Art. 226]**

Dismissing the petition the Court held that S. 115-O had been issued to the assessee and it had been given sufficient opportunity to be heard. Prima facie the buy-back of shares pursuant to the order of the company court would not give rise to capital gains and had to be treated as dividend. The assessee had an alternate remedy of filing an appeal against the order. A writ would not issue to quash the order. (WP No. 7354 of 2018 dt 25-06-2018 (SJ)
Cognizant Technology Solutions India P. Ltd. v. DCIT, LTU (2019) 416 ITR 462 / 265 Taxman 100 (Mag.) / 181 DTR 382 / 310 CTR 527 (Mad.)(HC)
Editorial : Order of single judge is partly affirmed; Cognizant Technology Solutions India (P) Ltd. v. DCIT (2019) 418 ITR 576 / 310 CTR 515 / 181 DTR 371 (Mad.)(HC)

S. 115V-I : Shipping business – Shipping income – Tonnage tax scheme – Forex rate fluctuation gains – Gains on account of exchange rate variations of foreign loan taken for purchase of ships being connected to assessee's core activities of operating qualifying ships would be entitled to benefit under Chapter XII-G. 1274

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in holding that, notional gains on account of restatement of foreign exchange liabilities on loan taken for purchase of ships would be considered to be a part of core activity of shipping company entitled to benefit of Chapter XII-G of the Act. (A.Y. 2008-09)

PCIT v. M. Pallonji Shipping (P.) Ltd. (2019) 262 Taxman 326 / 177 DTR 115 (Bom.)(HC)

S. 119 : Central Board of Direct Taxes – Refund claims and carry forward the losses – Delay in filing of return – Refusal to condone the delay would cause genuine hardship to assessee – Rendering substantial justice is the paramount consideration of the Courts as well as the authorities rather than deciding on hyper technicalities. [S. 139(9)] 1275

Court held that upon being properly advised, the assessee filed the correct return of income in the correct form for the assessment year 2009-10 on March 24, 2015 declaring a loss of ₹ 7,91,66,338/-. Thus, it was because of circumstances beyond its control that the assessee could not file the return of income under S. 139(9) of the Act within the specified time. The assessee had made out a case of genuine hardship for admitting the claim after the expiry of the period specified under the Act. The Board ought to have exercised its powers under clause (b) of sub-section (1) of S. 119 of the Act and condoned the delay in filing the return of income. The order dated May 30, 2018 passed by the Board under S. 119(2)(b) was liable to be quashed. Circular No 9 of 2015 dt 9-6-2015) Court also observed that rendering substantial justice is the paramount consideration of the Courts as well as the authorities rather than deciding on hyper technicalities. (2015) 374 ITR 25 (St).(A.Y. 2009-10)

Surendranagar District Co-Operative Bank Ltd. v. DCIT (2019) 416 ITR 294 / 182 DTR 353 / 311 CTR 91 (Guj.)(HC)

Editorial: SLP of revenue is dismissed DCIT v. Surendranagar District Co-Operative Bank Ltd. (2019) 416 ITR 296 (SC).

S. 120 : Jurisdiction of income-tax authorities – Appointment of ITO – Pass percentage – Modification from 26-05-2008 – No retrospective effect [Departmental Examination Rules for ITOs 1998 R. VI] 1276

Dismissing the petition the Court held that,introduction of Modified Rules for Departmental Examination for 1998 Rules whereby 'Pass Percentage' in Rule VI prescribing requirement of 60 per cent of marks for passing each of subjects was modified and reduced to 50 per cent with effect from 26-5-2008, cannot be given retrospective effect.

C. V. Antony v. Chairman, CBDT (2019) 265 Taxman 178 (Ker.)(HC)

1277 **S. 124 : Jurisdiction of income-tax authorities – Place of filing of e-returns – Registered office at Mumbai – Branch office at Indore – e-returns from inspection filed at Indore – Notice issued u/s. 143(2) by the Indore AO is held to be valid – Rejection of application by Chief Commissioner is held to be justified. [S. 143(2)]**

Dismissing the petition the Court held that; assessee was filing e-returns from inception in Indore and it had accepted jurisdiction of AO at Indore in earlier assessment years accordingly objection raised by assessee that jurisdiction in its case lay in State of Maharashtra, was rightly rejected by Chief Commissioner. Notice issued u/s. 143(2) by the Indore AO is held to be valid. (A.Y. 2011-12)

Frolic Reality (P.) Ltd. v. CIT (2019) 261 Taxman 32 / 176 DTR 51 / 307 CTR 784 (MP)(HC)

1278 **S. 127 : Power to transfer cases – Mumbai to Pune – Violation of natural justice – Various statements referred by the PCIT was neither provided to the petitioner nor referred in the show cause notice – As the principle of natural justice is violated – Transfer order is quashed.**

In response to notice to transfer the case the Petitioner raised detailed objections under a communication dated 6th March, 2017 contending interalia that the proposed exercise of the powers was impermissible. The Petitioner had no dealings with any person in the Ranka group. The need to centralize the Petitioner's assessments with the said group of assessees therefore, did not arise. The Petitioner relied on certain judgments. He also sought personal hearing. PCIT passed the order transferring the case. The petitioner filed the writ petition to quash the transfer order. Court observed that the PCIT referred to the statements of one Abhinandan Jain recorded under S. 132(4) of the Act, suggesting that the Petitioner had inflated the script price of one Risa International Ltd., in connivance with other operators. The statements of other witnesses were referred to suggest that the Petitioner had received commission for such activities. According to him, such statements establish the involvement of the Petitioner in organizing artificial price rise in the shares of the said Company. Admittedly, none of these aspects were stated in the show cause notice, nor the statements or even the gist of the statements to the extent relevant, was provided to the Petitioner. The Petitioner therefore, had no opportunity to meet with such adverse material which the Principal Commissioner pressed in service for passing the impugned order. Under the circumstances, the impugned order is quashed. Accordingly the petition is allowed.

Naresh Manakchand Jain v. PCIT (2019) 183 DTR 347 (Bom.)(HC)

1279 **S. 127 : Power to transfer cases – Transfer for purposes of co-ordinated investigation – Mode of investigation need not be disclosed – Notice to transfer implies that both the Commissioners are in agreement – Manner of agreement need not be recorded – Transfer is held to be valid – Writ is held to be not maintainable. [S. 127(2)(A), Art. 226]**

Dismissing the petition the Court held that, transfer for purposes of co-ordinated investigation and mode of investigation need not be disclosed. Court also held that notice to transfer implies that both the Commissioners are in agreement. Manner of agreement need not be recorded accordingly the transfer is held to be valid and Writ is held to be not maintainable.

MRL Postnet P. Ltd. v. PCIT (2019) 418 ITR 349 / (2020) 268 Taxman 343 (Mad.)(HC)

S. 127 : Power to transfer cases – Reasons must be recorded – Objections must be considered – Order of transfer is held to be not valid. 1280

Allowing the petition the Court held that the Principal Commissioner had only stated in his order that he was of the opinion that the objections raised by the assessee could not be the basis for not centralising the case and the materials which were seized and impounded needed to be further investigated. The notice issued to the assessee stated some reasons. But at the same time, when such reasons were opposed and a reply was filed by the assessee objecting to the transfer, the Principal Commissioner had to necessarily record his reasons with certain facts and circumstances warranting the transfer and to justify that centralised or co-ordinated investigation was required. The order of transfer was not valid.

MRL Postnet Private Limited v. CIT (2019) 416 ITR 407 (Mad.)(HC)

S. 127 : Power to transfer cases – Opportunity of hearing was granted to the assesse – Relative hardship – Order is valid. 1281

Dismissing the petition the Court held that, opportunity of hearing was granted to the assesse and relative hardship to the assessee the transfer order cannot be the ground to decide the validity of the order. Order of transfer is held to be valid.

Nexus Feeds Limited v. PCIT (2019) 414 ITR 259 (T&AP)(HC)

S. 127 : Power to transfer cases – Co-ordinated investigation – Recorded reasons and opportunity of hearing was given – Transfer is held to be valid. [S.127(2)(A)] 1282

Dismissing the petition the court held that held that the transfer of case is done for co-ordinated investigation. Commissioner recorded the reasons and opportunity of hearing was given. Transfer is held to be valid. (A.Y. 2017-18)

Soma Enterprise Ltd. v. CIT (2019) 414 ITR 374 / 309 CTR 396 / 180 DTR 79 (Telangana) (HC)

S. 127 : Power to transfer cases – Recording of reasons – Non application of mind – Reason must disclose that patently, logic and prudence has been applied before passing the order – Decentralisation of central charges cannot constitute sufficient reason to transfer the cases. 1283

Allowing the petition the Court held that; reason assigned for transfer of its case from one jurisdiction to another jurisdiction i.e., decentralisation of cases from central charges, did not constitute sufficient reason, accordingly the order for transfer of cases was quashed.

PCIT v. Rohtas Project Ltd. (2018) 100 Taxman 383 / (2019) 260 Taxman 95 (All.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Rohtas Project Ltd. (2019) 260 Taxman 94 (SC)

S. 127 : Power to transfer cases – Opportunity of hearing – Assessee's case was transferred from one AO to another AO having offices in different localities/places, notice had to be given to assessee – Order is held to be void ab initio and barred by limitation. [S. 127(1), 143(2), 292B] 1284

The assessee, individual, filed his return declaring certain taxable income. The return was processed u/s. 143(1) and subsequently, the case was selected for scrutiny under

CASS. Thereafter, the Addl. CIT, Kurnool, vide transferred the files to Addl. CIT (IT-II) Hyderabad, stating that the jurisdiction of the case vested with the AO Hyderabad since the assessee was a non-resident. AO issued a notice u/s. 143(2) and 142(1) and completed the assessment u/s.143(3). The assessee preferred an appeal before the Commissioner (Appeals) challenging the jurisdiction of the AO at Hyderabad on making the assessment and also the additions made by the AO. Tribunal held that, where assessee's case was transferred from one Assessing Officer to another Assessing Officer having offices in different localities/places, notice u/s. 127(1) had to be given to assessee and it was only Principal Director General or Principal Commissioner who could transfer case u/s. 127. Order is held to be void initio and barred by limitation. (A.Y. 2011-2012)
Vijay Vikram Dande Kurnool v. ADIT (2019) 178 ITD 139 (Hyd.)(Trib.)

1285 **S. 132 : Search and seizure – Loan transaction is reflected in the books of account and return filed by the assessee – No material basis of which a reasonable person could have formed the opinion and lack of jurisdiction – Search action is held to be invalid. [Art. 226]**
Allowing the petition the Court held that Loan transaction is reflected in the books of account and return filed by the assessee, accordingly there is no material basis of which a reasonable person could have formed the opinion and also lack of jurisdiction, search action is held to be invalid and quashed.
Lalhibhai Kanjibhai Mandalia v. PCIT (2019) 180 DTR 49 (Guj.)(HC)

1286 **S. 132 : Search and seizure – Warrant of authorisation – Locker keys were found – Jewellery was seized – Search and seizure is held to be valid. [R. 112(1)]**
Dismissing the petition the Court held that, during search and seizure operation conducted upon premises of assessee, keys belonging to assessee's lockers were found and seized in which certain jewellery was found, since there was proper authorization for impugned search and seizure operation, same could not be set aside
Sumedha Dutta v. UOI (2019) 264 Taxman 306 / 183 DTR 285 (MP)(HC)

1287 **S. 132 : Search and seizure – Validity – Initiation of search proceedings was not based upon any information or other material – Authorisation is held to be invalid and quashed. [Art. 226]**
A search was conducted in case of assessee. Assessee challenged the search action. Allowing the petition the court held that, there was nothing on record to indicate that any belief had been formed by competent authority to effect that assessee had in his possession any money, bullion, jewellery or other valuable article or thing which would not have been disclosed by him for purposes of Act. Accordingly the warrant of authorization is quashed held to be in valid. (A.Y. 2008-09, 2009-10)
Laljibhai Kanjibhai Mandalia v. PDIT(I) (2019) 416 ITR 365 / 263 Taxman 604 / 309 CTR 330 / 180 DTR 49 (Guj.)(HC)

S. 132 : Search and seizure – Validity – Objection that panchas were not present at the time of search – Cannot be raised for first time before CIT(A) after a period of three years. [S. 153A] 1288

On appeal the High Court held that, the question of presence of panchas raised for the first time before the first appellate authority after a period of three years from the search is conducted, cannot at all be countenanced. Appeal of the assessee is dismissed. (A.Y. 2003-04 to 2009-10)

Rajan Jewellery v. CIT (2019) 414 ITR 621 / 308 CTR 602 / 177 DTR 369 / 266 Taxman 357 (Ker.)(HC)

S. 132 : Search and seizure – Retention of seized assets – Cash adjusted against demand on block assessment – Jewellery and fixed deposit receipts to be returned. [S. 153A] 1289

Allowing the petition the Court held that there was no demand outstanding in the case of the assessee's spouse. Thus, after adjustment of the outstanding demand of ₹ 9,24,501 shown as outstanding in the case of Mrs Saritha Gupta the balance fixed deposit receipt as well as the jewellery seized during the course of search conducted on September 8, 2010 had to be returned.(A.Y. 2005-06, 2010-11)

Sandeep Raghunath Gupta v. DCIT (2019) 412 ITR 203 (Guj.)(HC)

S. 132 : Search and seizure – Warrant of authorization – Siphoning off funds by way of advancing loans to shell companies without any equivalent collateral securities – Warrant of authorisation was held to be valid. [S. 133A(3)] 1290

On specific information that assessee-society was engaged in siphoning off funds by way of advancing loans to shell companies without any equivalent collateral securities, a warrant of authorisation was issued under S.132 of the Act and order was passed under S. 133A(3)(ia) whereby documents and books of account belonging to assessee were seized. On writ against search and seizure dismissing the petition the Court held that since warrant of authorisation was based on definite information and discreet verification, it was to be regarded as adequate and order passed under S. 133A(3)(ia) was also in consonance with provisions of Act.

Adarsh Credit Co-operative Society Ltd. v. Jt. DIT (2018) 97 taxmann.com 353 / 309 CTR 169 / (2019) 414 ITR 434 / 179 DTR 200 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, Adarsh Credit Co-operative Society Ltd. v. Jt. DIT (2019) 261 Taxman 345/ 309 CTR 168 / 413 ITR 322 (St) / 179 DTR 199 (SC)

S. 132 : Search and seizure – Issue of warrant of authorisation against the locker of the assessee, without disclosing any material or information stating that locker contained valuable jewellery or other articles representing undisclosed income warrant was unjustified and held to be illegal. [S.153A] 1291

Allowing the petition the Court held that; merely because the Locker key of assessee was found in the course of search against cousin of assessee, Search warrant issued against the locker of assessee without disclosing any material or information stating that locker contained valuable jewellery or other articles representing undisclosed income warrant

was unjustified. Consequently, the proceedings under S. 153A are also set aside and quashed. (A.Y. 2009-10 to 2014-15)
Shah E Naaz Judge v. ADIT (2019) 260 Taxman 116 / 306 CTR 42 / 173 DTR 169 (Delhi) (HC)
Sahyr Kohli v. ADIT (2019) 260 Taxman 116 / 306 CTR 42 / 173 DTR 169 (Delhi)(HC)
Sandeep Kohli v. ADIT (2019) 260 Taxman 116 / 306 CTR 42 / 173 DTR 169 (Delhi)(HC)

1292 **S. 132 : Search and seizure – No search warrant – Search declared as invalid – Block assessment is also invalid. [S.158BC, 158BD]**
A search and seizure operation under section 132 of the Act was conducted in the business and residential premised of the assessee. In the course of the search, books of account were seized. The AO completed the assessment under s. 158BC r.w.s. 143(3) r.w.s. 158BD of the Act. CIT(A) observed that notice under s. 158BC issued is invalid and the order u/s 158BC was after limitation & cancelled the order of the AO. Tribunal held that the CIT(A) has also observed that since there is no search warrant issued in the name of the assessee in the assessment records. Therefore, once the search was to be declared as invalid and, on that ground, that impugned block assessment was also declared as invalid. Hence the order of the CIT(A) is confirmed. (BP 1-04-1989 to 8-11-1999)
Seema Sen (Dey) (Smt.) v. ACIT (2019) 177 DTR 205 (Cuttack)(Trib.)

1293 **S. 132(4) : Search and seizure – Statement on oath – Statement made by the assessee that capitation fees paid by to the Engineering college – Held, cannot ipso fact make addition based on such statement – Held, no admission that engineering fees paid out of undisclosed income – Addition held to be not justified. [S. 158BB, 158BC]**
In search, the assessee declared a sum of ₹ 23.65 lakh as undisclosed income. He also stated in the statement that he had paid ₹ 5.6 lakh as capitation fees to an Engineering College. AO made addition in respect of both the amounts. High Court held that statement cannot be read out of context and no addition can be made without any corroborating material. It held that there was no statement that ₹ 5.6 lakh was paid out of undisclosed income and even if it is assumed that the same was paid out of undisclosed income, a sum of ₹ 23.65 lakh was already offered to tax as undisclosed income. Held, no addition can be made.
Bhoopathy R. v. CIT (2019) 418 ITR 591 / 308 CTR 63 / 176 DTR 239 / 263 Taxman 411 (Mad.)(HC)

1294 **S. 132(4) : Search and seizure – Statement on oath – Addition made on the basis of statement on oath – Subsequent retraction – Statement recorded during the course of action which was in presence of independent witness has overriding effect over the subsequent retraction – Addition is held to be valid. [S. 131, 132, 292C]**
A search was carried out at business premises of assessee-company on 11-10-2014. In course of search proceedings, statement of director Shri Bannala of assessee-company was recorded under S. 132(4) admitting certain undisclosed income. Subsequently on 4-12-2014 statement of the Director was again recorded. In the return of income the amount disclosed was not offered. Non-disclosure of income in the return of income will

amount to retraction of the statement. AO made addition to assessee's income on basis of statement given by its director. Confirming the addition the Tribunal held that that statement had been recorded in presence of independent witness hence the retraction was not valid. On appeal High Court held that mere fact that director of assessee-company retracted statement at later point of time, could not make said statement unacceptable and burden lay on assessee to show that admission made by director in his statement was wrong and such retraction had to be supported by a strong evidence showing that earlier statement was recorded under duress and coercion. On facts as the assessee has failed to discharge the burden order of Tribunal is affirmed.

Bannalal Jat Constructions Pvt. Ltd. v. ACIT (2019) 418 ITR 291 / 106 taxmann.com 127 / 264 taxman 6 (Raj.)(HC)

Editorial: SLP of assessee is dismissed, Bannalal Jat Constructions (P.) Ltd. v. ACIT (2019) 264 Taxman 5 (SC)

S. 132(4) : Search and seizure – Statement on oath – Surrendered income – Expenses computed – Irregularity in accounts – addition is not justified. 1295

The assessee was conducted and the statement of the assessee was recorded U/s. 132(4) of the Act thereby surrendering ₹ 1,67,00,000/-on account of unaccounted expenditure of the assessee. During the course of the assessment proceedings, the AO noted that the actual account of expenditure recorded in the seized material is ₹ 1,73,72,171/-and there is excess expenditure of ₹ 6,32,171/-which was added to the income of the assessee. The Ld. CIT(A) restricted the addition by apply the NP @ 13.28% which comes to ₹ 83,952/-. The Tribunal held that the amount of ₹ 83,952/-is also covered by the miscellaneous surrendered by the assessee on account of irregularity in the accounts of the assessee. Accordingly, without going into the other contention raised by the assessee, the addition is not justified and the same is deleted. (A.Y. 2010-11, 2011-12, 2015-16)

Banna Lal Jat Constructions (P) Ltd. v. Dy. CIT (2019) 174 DTR 225 (Jaipur)(Trib.)

S. 132(4A) : Search and seizure – Presumption – Appellate Tribunal – Duties – Loose papers found during search – Not absolute – Order of Tribunal is set aside. [S. 158BC, 254(1)] 1296

The AO made addition on the basis of loose papers found during the search proceedings. CIT – (A) deleted the addition. On appeal by the revenue the Tribunal held that CIT(A) had overlooked the provision of S.132(4A) of the Act hence allowed the appeal of the revenue. On appeal the High Court held that, The Tribunal only on basis of presumption u/s 132(4A) reversed the finding of the CIT(A), without recording any finding as to how the loose sheets which were recovered during search were linked with the assessee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding of the CIT(A). The matter is set aside to decide on merit. (ITA No. 357 of 2010 dt. 13-11-2019)

Ajay Gupta v. CIT (2019) CTCJ-December-P, 151 / (2020) 185 DTR 217 / 312 CTR 381 (All.)(HC)

1297 **S. 132A : Powers – Requisition of books of account – Search and seizure – Cash found from the employees of Courier services – Explanation that the cash was withdrawn from several bank accounts – Failure to produce relevant documents – Issue of warrant of authorisation is held to be valid. [S. 131, 132, Art.226]**

Two employees of Angadiya Courier Services namely Surajbhai Pravinchandra Mehta and Rajendrasinh Viramji Vaghela were travelling from Nagpur to Ahmedabad via Surat in a bus of Srinath Travels. Upon physical search of the Bus two bags containing seven packets of cash aggregating ₹ 2,45,50,000 were recovered by the Police of Vapi. The police took interrogation and revealed that they were employees of Angadiya Courier Services. Summons were issued to Surajbhai Pravinchandra Mehta and Rajendrasinh Viramji Vaghela asking them to attend the office of the DDIT(Inv) Surat along with necessary details the cash recovered from their possession. The statements were taken u/s 131 both of them denied that they were not owners of the cash. Thereafter summon was issued to Kaushikkumar Dhayalal Soni a partner of V.P. Angadiya and Courier Services, Ahmedabad. Partner in his statement stated that the cash belongs to Proprietor of S. K. Traders. Proprietor of S. K. Traders stated that the cash were withdrawn from cash book. There was some proceedings before the Magistrate Court u/s 451 of the Code of Criminal Procedure. Magistrate had ordered the Police to hand over the cash to the concerned Assessing Officer. The AO has issued the warrant of authorisation u/s. 132A(1) of the Act. The assessee challenged the issue of warrant of authorisation. Dismissing the petition the Court held that when asked to submit details of bank account and cash withdrawals, assessee declined to submit details and prayed for some more time to produce relevant documents hence issue of authorisation is held to be valid.

Kamleshbhai Rajnikant Shah v. DIT (2019) 267 taxman 159 / (2020) 420 ITR 274 / 186 DTR 221 (Guj.)(HC)

1298 **S. 132A : Powers – Requisition of seized assets – Cash seized under guidelines issued by Election Commission – Election commission finding that seizure was not valid – Income-Tax Authorities had no jurisdiction to requisition such cash [S. 132, Art.226]**

The assessee was a proprietorship concern engaged in wholesale trading of ready-made garments. A flying squad entered his business premises claiming knowledge about huge cash lying with the assessee which according to them was meant for use in elections for influencing voters in violation of the election laws and guidelines. No notice had been received by him in this regard and thus, the authority of the flying squad was unknown. The proprietor of the assessee handed over the cash which was a collection of payments received from different customers and meant for different purposes. The cash was not even counted by the flying squad, who simply collected the cash, prepared a seizure list and left the business premises. The Committee constituted under the guidelines of the Election Commission concluded that the seized cash had no connection with the election. Meanwhile the cash was requisitioned under a warrant of authorisation issued under S. 132A of the Income-tax Act, 1961. On a writ the Court held that the proceeding was an outcome of a raid conducted under the guidelines of the Election Commission of India and the seizure was not a consequence of a raid made by the Income-tax authorities under S. 132 of the Act, nor could any order be passed

in purported exercise of jurisdiction under S. 226(3) of the Act. Even otherwise, the seizure itself was without sanction of law which was apparent from the fact that no first information report or complaint was instituted as provided under clause 4 of the Guidelines nor was the case submitted to the court of competent jurisdiction within 24 hours nor did the Committee constituted under the Guidelines take any decision to order seizure of the cash, in the absence of any first information report/complaint instituted in terms of clause 16(i). The order of requisition was not valid.
Indian Traders v. State of Bihar (2019) 417 ITR 95 (Pat.)(HC)

S. 133A : Power of survey – Undisclosed income – Admission of excess stock and excess cash – Addition is held to be valid – Mentioning of wrong section in the assessment order does not make addition as unsustainable. [S.69B, 69C, 131] 1299
Dismissing the appeal of the assessee the Court held that, the excess stock, per se, had to be brought to tax as undisclosed income and there was no justification for or question of giving corresponding deduction to the extent of any purchase or source of incurring such expenditure or unexplained investments. When the excess stocks were found during the survey, there was no question of allowing the assessee to record any additional purchases because such purchases had already been recorded in the books of account of the assessee. S. 69B which provided for bringing to tax investments in bullion, jewellery or other valuable articles (including excess stocks) would have been the more appropriate section to have been indicated in the orders passed by the authorities below rather than under S. 69C as unexplained expenditure. Mention of the wrong section in the order would not upset the additions made by the assessing authorities below. No question of law arose. (A.Y. 2014-15)
SVS Oil Mills v. ACIT (2019) 418 ITR 442 / 311 CTR 1002 / (2020) 186 DTR 122 (Mad.) (HC)

S. 133A : Power of survey – Unexplained investment – Statement in the course of survey – Documents discovered in the course of survey – Failure to explain the source satisfactorily – Addition is held to be valid. [S. 69, 132, 133A(3)(iii)] 1300
In the Course of survey the assessee admitted in the sworn statement that he had invested ₹ 95 lakhs in the deal. Court held that merely on the basis of statement in the course of survey addition cannot be made. However on facts the assessee could not produce any evidence to support that he had not made any investments. Appreciating the facts of the case Tribunal confirmed the addition. High Court affirmed the order of the Tribunal.
C. K. Abdul Azeez v. CIT (2019) 417 ITR 363 / 182 DTR 283 / 267 Taxman 553 / 311 CTR 489 (Ker.)(HC)

S. 133A : Power of survey – Residential premises – Conversion of survey in to search Survey at residential premises is held to be invalid. [S. 131, 132] 1301
Summons under S. 131 were issued to assessee at its business premises, informing assessee that respondent tax officials wanted to carry a survey operation under S. 133A of the Act. Assessee submitted that although summons indicated survey operations but procedure was converted into search and seizure which was impermissible in law. The

assessee filed writ petition with a prayer that process of search and seizure conducted by respondents on business premises of assessee be quashed and set aside. It was alleged that there had been a complete non-application of mind in issuing summons under S. 131. Allowing the petition the Court held that summons were absolutely silent as to what information was required from assessee during survey operation. It was found that authorities had not demonstrated from any material as to whether assessee failed to co-operate or there was a suspicion that income had been concealed by assessee warranting resort to process of search and seizure. Moreover, assessee had voluntarily disclosed retention of cash in his premises. Accordingly since no satisfaction was ever recorded by authorities that survey had to be converted into search and seizure, action of authorities was bad in eyes of law, further, summons issued to assessee were totally vague as no documents were mentioned which were required of assessee and neither was any other thing stated, thus, process of search and seizure conducted by respondents on business premises/residence of assessee was to be quashed and set aside.
Pawan Kumar Goel v. UOI (2019) 417 ITR 82 / 265 Taxman 25 / 309 CTR 276 / 180 DTR 1 (P&H)(HC)

1302 **S. 133A : Power of survey – Income from undisclosed sources – Disclosure in the course of survey – Project completion method – Addition can be made only in the year of completion of project – Deletion of addition is held to be justified. [S. 69A, 145]**
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in confirming the order of the CIT (A) deleting the addition made by the Assessing Officer on account of the undisclosed income of ₹ 26,05,00,000 disclosed during the course of survey under S. 133A, on the ground that since the assessee followed the project completion method for offering the income to tax, the amount would be subjected to tax upon completion of sale, though the amount had been received earlier from the buyer and in view of the finding of the CIT (A) that the assessee in fact, had offered such income to tax in the later years as and when the sale deeds were executed. In his statement the partner of the assessee had agreed that the sum was the undisclosed income of the assessee for the assessment year in question, and had added a clarification that it would be subject to execution of the sale deeds.
CIT v. Happy Home Corporation (2019) 414 ITR 524 (Guj.)(HC)
Editorial: SLP of revenue is dismissed CIT v. Happy Home Corporation (2019) 411 ITR 38 (ST) (SC).

1303 **S. 133A : Power of survey – Statement recorded u/s. 133A of the Act does not hold any evidentiary value without any corroborative evidence – Deletion of addition is held to be justified.**
The assessee engaged in the business of manufacturing hides and its sales. A survey u/s. 133A was conducted on the business premises of the assessee. During the course of survey, statement on oath of one of the Directors was recorded wherein he was forced to surrender ₹ 1 crore being the amount in different denominations on different dates as advance given for the purpose of purchase of land. The amounts were entered on different pages of a pad of spiral binding. Assessee thereafter retracted his statement as well as surrendered amount soon after survey. The assessee did not include the

amount surrendered in its return of income. The Assessing Officer made addition of ₹ 1 crore on the basis of statement on oath of the assessee. CIT (A) affirmed the order of the Ld. AO. Aggrieved by the order of CIT (A), assessee filed an appeal before the ITAT. The Tribunal observed that in the survey a writing pad/diary was found wherein certain amounts were mentioned. However the addition of ₹ 1 crore was merely on the basis of the statement. The Assessing Officer and even ld. CIT (A) whose powers are co-terminus with that of the Assessing Officer did not conducted any specific enquiry neither at the time of survey or post-survey nor was any verification carried out so as to bring forth other independent materials on record to corroborate and justify alleged transactions found in the diary. The order of the Assessing Officer was also silent as to what immoveable property was purchased by using the amounts mentioned in diary. There is no mention to amount to whom the amount was paid. In nutshell, the addition is made merely on the basis of statement of the assessee recorded u/s. 133A without any conclusive evidence. In view of the same, the Tribunal deleted the addition. (A.Y. 2015-16)

Habib Tannery P. Ltd. v. Dy. CIT (2019) 69 ITR 28 (SN.) (Luck.)(Trib.)

S. 133A : Power of survey – Undisclosed income – Loose papers – Bona fide mistake by director in surrendering income – Set off of expenditure is allowable. [S. 115BBE] 1304

Dismissing the appeal of the revenue the Tribunal held that during the course of survey loose paper referred to certain details of health camp income and expenditure. On the basis of these documents income worked out to ₹ 2,10,13,228 (gross receipt ₹ 3,26,00,730 less expenses) but inadvertently the director during the course of survey while admitting the undisclosed income comprising of income and expenses and surrendered the income at ₹ 4,41,88,232 which was a bona fide mistake as the income on the basis of the loose papers was desired to be surrendered. Therefore the addition was deleted. As regards the set off of the expenditure of ₹ 19,70,923 had been explained by the assessee before the authorities and the account mainly included salary paid to the director and others at ₹ 17,97,199 which had been duly offered to tax by the director and others in their respective returns. The expenditure of ₹ 19,70,923 had been claimed against the income from organising health camp which was also the part of the business activity of the assessee. Therefore the set off of the expenditure was allowed. (A.Y. 2013-14)

Dy. CIT v. Dthri Health Care P. Ltd. (2019) 69 ITR 17 (SN) (Indore)(Trib.)

S. 133A : Power of survey – unaccounted receivables – Surrender of income Deemed income – Categorization/characterization of income surrendered – business income – Set off of losses was to be allowed [S. 69A, 69B] 1305

The assessee in this case was deriving income from manufacturing and sale of different types and sizes of autoparts. That during the impugned assessment year the assessee's premises was surveyed under the provisions of S. 133A of the Act, where upon it was noticed that there were unaccounted receivables. The same was surrendered by the assessee. However, at the time of finalization of the accounts, as at the close of the year, though the additional income surrendered during survey proceedings was credited as income, the same was offset with the brought forward business losses from

the preceding assessment year, resulting in the return of nil income for the impugned assessment year, and claim of carry forward of losses of the balance. In the assessment proceedings the AO treated the additional income surrendered as deemed income under the provisions of S. 69A and 69B of the Act separately without allowing setoff of the same with the business losses of the assessee. The Ld. CIT(A) held the case in favour of the assessee. On revenue appeal, the Tribunal held that the assessable as business income of the assessee and set off of losses was to be allowed against the same as rightly claimed by the assessee. (A.Y. 2013-14)
Dy. CIT v. Mehta Engineers Ltd. (2019) 177 DTR 140 (Chd.)(Trib.)
Famina Knit Fabs v. ACIT (2019) 177 DTR 140 (Chd.)(Trib.)

1306 **S. 133A : Power of survey – Sworn statement – Addition cannot be made only on the basis of statement of managing director recorded u/s. 131 during survey, without any corroborative evidence. [S.131, 132(4), 143(3), Evidence Act, 1878, S. 18]**
Dismissing the appeal of the revenue the Court held that, addition cannot be made only on the basis of statement of managing director recorded u/s. 131 during survey, without any corroborative evidence. Assessing Officer could not make additions to income of assessee-company only on basis of sworn statement of its managing director recorded under section 131 during course of survey without support of any corroborative evidence. Circular CBDT Circular in F. No. 286/98/2013-IT (Inv.II) dated 18-12-2014. (A.Y. 2014-15)
ITO v. Toms Enterprises (2019) 175 ITD 607 / 199 TTJ 758 / 180 DTR 235 (Cochin)(Trib.)

1307 **S. 139 : Return of income – Delay in filing revised return – Amalgamation – Approval by NCLT – Revised return filed after due date of filing of return is irrelevant – Not required to seek condonation of delay by CBDT. [S. 119(2)(b), 139(5), 170]**
Allowing the appeal of the assessee the Court held that, the consequence of amalgamation is that the amalgamating companies lose their separate identity and cease to exist. The successor is obliged u/s 170 to file a revised return to reflect the effect of the amalgamation. The fact that the revised return is filed after the due date specified in S. 139(5) is irrelevant as the scheme approved by the NCLT provides for it. The assessee is also not required to seek condonation of delay u/s. 119(2)(b) (CANos. 9496 to 99 of 2019(Arising out of SLP (C) Nos.19678681 of 2019 dt.18.12.2019) (A.Y. 2016-17)
Dalmia Power Ltd. v. ACIT / (2019) 112 taxmann.com 252 / (2020) 312 CTR 113 / 420 ITR 339 / 185 DTR 1 (SC), www.itatonline.org
Editorial: Order in ACIT v. Dalmia Power Ltd. / ACT v. Dalmia Cement (Bharat) Ltd. (2019) 418 ITR 242 / 312 CTR 127 / 185 DTR 16 (Mad.)(HC) is reversed.

1308 **S. 139 : Return of income – Permanent Account Number (PAN) – Dispute between members of the society – Income tax Act does not allow both groups to file income tax returns having same PAN – AO is directed to pass a reasoned order with in period of eight weeks. [Art. 226]**
There is disputes between the rival group and both group are filing annual return before the Registrar of Societies. There is no provision under the income-tax Act that allows both the groups to file income tax returns for a particular financial year having same

PAN. One of the party approached the Court to direct the AO to consider the return filed by them. A report was called from the AO. After considering the report the Court held that the AO shall examine the issue as to which group is authorised to file the return as per the PAN that has been issued by the Income tax authorities. The parties are directed to produce necessary documents regard to the title suits that indicate as to who is controlling the management of the society. Upon passing the order, the AO shall cancel the PAN card issued to unauthorised / wrong party and reject the return filed by them. The Court further directed that a reasoned order should be communicated to both the parties and these proceedings to be completed within period of eight weeks. (WP No. 17205 of 2019 dt 27-11-2019)

Anand Marga Pracaraka Sangh v. UOI (2020) CTCJ-January-P. 85 (Cal.)(HC)

S. 139 : Return of income – Delay in filing revised return – Amalgamation – Sanction of company Law Tribunal is not binding on Income-Tax Authorities – Application for condonation of delay to me made. [S. 119, Companies Act, 2013, S. 230(5), Constitution, Art. 226] 1309

Pursuant to sanction of the scheme of arrangement the transferee company attempted to file revised returns without filing an application for condonation of the delay in filing them on the basis that the sanctioned scheme of arrangement and, in particular, clause 64(c) thereof, entitled such filing and was binding on the Income-tax authorities. This contention was accepted by a single judge under article 226 of the Constitution. On appeal, the Court held that the Department had been notified that the scheme of arrangement enabled the amalgamated company and transferee company to file returns and revised returns before the tax authorities, including the Income-tax authority. However, it could not be said that the Department had consented to waive the procedures or statutory requirements prescribed in the Income-tax Act for this purpose. In this regard, the order of the Company Law Tribunal whereby the scheme of arrangement was sanctioned also mandated that necessary permissions should be obtained and compliances fulfilled. The transferee company was required to comply with the procedure for filing a revised return belatedly. (A.Y. 2015-16, 2016-17)

ACIT v. Dalmia Power Ltd. (2019) 418 ITR 242 (Mad.)(HC)

ACIT v. Dalmia Cement Power Ltd. (2019) 418 ITR 242 (Mad.)(HC)

Editorial : Decision in Dalmia Power Ltd. v. ACIT / Dalmia Cement (Bharat) Ltd. v. ACIT (2019) 418 ITR 221 / 308 CTR 777/ 178 DTR 113/ 265 Taxman 37 (Mad) (HC) is reversed. Order of High Court is reversed Dalmia Power Ltd. v. ACIT (SC) CA Nos. 949669 of 2019 (Arising out of SLP Nos. 19678681 of 2019 dt. 18-12-2019) www.itatonline.org.

S. 139 : Return of income – Revised return – Manually – Amalgamation – revised returns of income filed by companies pursuant to scheme of arrangement and amalgamation approved by NCLT, manually, beyond prescribed period without obtaining condonation of delay from Board in accordance with section 119(2)(b) read with CBDT Circular No. 9 of 2015 were valid. [S. 119(2)(b), 139(5), Companies Act, S.391] 1310

Petitioners filed Revised return of income of the amalgamated company had been filed by the respective petitioners beyond the prescribed period as stipulated under S. 139(5) of the Act. AO held that since the revised returns of income had been filed beyond

the prescribed period as stipulated under S. 139(5) of the Act and condonation of delay had not been obtained from the Board in accordance with S. 119(2)(b) of the Act read with CBDT Circular No.9 of 2015, as also the petitioners having filed the return manually had not complied with rule 12(3) of the Income Tax Rules by filing the revised returns electronically, the revised returns of income were invalid. On writ allowing the petition the Court held that Paragraph 64 (c) of the scheme of arrangement and amalgamation approved by the National Company Law Tribunal permits the respective petitioners to file revised returns of income beyond the prescribed period without incurring any liability on account of interest, penalty or any other sum. As seen from S. 139(5) of 1961 Act, they relate to cases where the assessee discovers any omission or any wrong statement in the original return of income. But in the case on hand, the revised returns of income have been filed pursuant to the scheme of arrangement and amalgamation approved by National Company Law under S. 391 of the Companies Act, 1956. Therefore, the submission made by the respondents, that any revised return of income will have to be filed before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier is not correct as S. 139(5) of 1961 Act, is not applicable for the case on hand. Followed *Pentamedia Graphics Ltd. v. ITO [2012] 20 taxmann.com 755 (Mad) (HC) and JK Bombay (P) Ltd. v. New Kaiser-I Hind Spg. & Wvg. Co. AIR 1970 SC 1041* where in the Court held that the approval of the scheme of arrangement and amalgamation by the National Company Law Tribunal gives statutory force to the said scheme. Insofar as rule 12(3) of the Income Tax Rules, 1962, which requires filing of returns electronically is concerned, the petitioner cannot be rendered remediless just because the income tax website did not allow a window to the respective petitioners for filing returns of income electronically as the revised returns of income were filed beyond the prescribed period as stipulated under S. 139(5) of the Income-tax Act, 1961 the rules of procedure are handmaid of justice. It should not be an obstruction in the aid of justice. As rightly observed by Krishna Iyer, J., in the case of *Sushil Kumar Sen v. State of Bihar [1975] 1 SCC 774*, the procedure should be the handmaid, not the mistress of legal justice which vests with residuary power in the Judges to act ex debito justitiae, where the tragic sequel otherwise would be wholly inequitable. Accordingly the petitions are allowed and the respondent is directed to receive the revised returns of income filed by the respective petitioners pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal, Chennai and complete the assessment for the assessment years 2015-2016 and 2016-2017 in accordance with law. (A.Y. 2015-16, 2016-17)

Dalmia Power Ltd. v. ACIT (2019) 418 ITR 221 / 308 CTR 777 / 178 DTR 113 / 265 Taxman 37 (Mad.)(HC)

Editorial: Reversed partially; ACIT v. Dalmia Power Ltd. (2019) 418 ITR 242 (Mad.) (HC), ACIT v Dalmia Cement Power Ltd. (2019) 418 ITR 242 (Mad.)(HC)

1311 **S. 139 : Return of income – Defective return – Denial of deductions – AO must provide an opportunity to remove the defects in the return and opportunity of hearing – Order of the AO is set aside. [S. 48 54 F, 143(3), Art. 226]**

Allowing the petition the Court held that, it is sine qua non for Assessing Officer to consider claims of deduction/exemption made by assessee and thereafter to return said

claims if assessee is not entitled to same by assigning reasons. Accordingly the order of AO is set aside (A.Y. 2016-17)
Deepak Dhanaraj v. ITO (2019) 265 Taxman 19 / 180 DTR 219 / (2020) 420 ITR 105 (Karn.)(HC)

S. 139 : Return of income – Return under S. 139(3) is necessary in order to carry forward losses under the head 'business or profession' or capital gains – Claim for carry forward and set off of business loss is not allowed. [S. 45, 139(1), 139(3), 139(5)] 1312
Where the assessee filed the original return under S. 139(1), and not under S. 139(3), and sought to revise it under S. 139(5), it was eligible to set off the losses under the head 'profits and gains of business or profession' or 'capital gains' by way of such revised return. However, it could not carry forward such losses since a carry forward of such losses requires the original return to be filed under S. 139(3) and not 139(1). (A.Y. 2006-07)
CIT v. Kerala State Construction Corporation Ltd. (2019) 177 DTR 411 / 308 CTR 841 / 267 Taxman 256 (Ker.)(HC)

S. 139 : Return of income – Extension of due date – flood at State of Kerala – General direction for extending due date for filing returns would be contrary to scheme of Act – Specific grievances of assessees in individual cases could be dealt with by CBDT on receipt of the application – Court also directed the CBDT to consider holding a camp sitting in Kerala for the purposes of considering the applications of the assesses. [S. 119(2)(a)(b), 139A] 1313
CBDT had suo motu extended return filing due date in State of Kerala from 30-9-2018 to 31-10-2018 taking note of floods. Filing the petition the assessee contended that the extension may be granted to at least 31-12-2018. Court held that general direction for extending due date for filing returns would be contrary to scheme of Act. Specific grievances of assessees in individual cases could be dealt with by CBDT on receipt of the application and appropriate orders shall be passed thereon in accordance with law after hearing the assessees, within two months from the date of receipt of the applications from the assessees. Taking note of the fact that the assessees who file applications pursuant to this judgment, will likely be residents in Kerala State, the CBDT may consider holding a camp sitting in Kerala for the purposes of considering the aforesaid applications of the assessees, in the peculiar factual circumstances that obtain in these Writ Petitions. (A.Y. 2018-19)
Alwaye Chartered Accountants Association v. UOI (2019) 261 Taxman 4 (Ker.)(HC)

S. 139 : Return of income – Invalid return – Failure to enclose the report from Chartered Accountant in Form No 3 CEB – AO must give an opportunity to rectify the defect with in specified time – Reassessment is quashed on the ground of change of opinion.[S. 92E, 139(9), 147, 148, 271BA, ITAT R. 27] 1314
Dismissing the appeal of the revenue the Tribunal held that the AO cannot hold the return as invalid for failure to enclose the report from Chartered Accountant in form No 3CEB. AO must give an opportunity to rectify the defect with in specified time. The Tribunal entertained the Rule 27 application of the responded in respect of validity of

the re assessment. Following the judgment in *CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)* the reassessment proceeding was quashed. (A.Y. 2008-09)
DCIT v. Husco Hydraulics (P.) Ltd. (2019) 179 ITD 559 (Pune)(Trib.)

1315 **S. 139AA : Quoting of Aadhaar number – From assessment years 2019-20, linkage of PAN with Aadhaar card is mandatory.**
High Court had permitted the assessee to file Income tax returns for the assessment year 208-19 without liking their Aadhaar and PAN numbers and also directed that Income Tax Department would not insist on production of their Aadhaar number. When the High Court has passed the order the matter was spending before Supreme Court. Thereafter Supreme Court decided the matter and up held vires of S. 139AA of the Act. In view thereof, linkage of PAN with Aadhaar card was mandatory. As the assessment for the assessment year 208-19 was completed, for the subsequent assessment years Income tax Return shall be filed in conformity to Supreme Court order.
UOI v. Shreya Sen (2019) 262 Taxman 370 / 174 DTR 265 / 306 CTR 609 (SC)
Editorial : Shreya Sen v. UOI (2018) 257 taxman 95/ 407 ITR 37 (Delhi) (HC), partly reversed.

1316 **S. 139D : Return in electronic form – No provision for filing manual return – Setoff of carried forward loss – Directed to make representation to CBDT – The issue raised by the petitioner does not appear to be an issue only in an individual case, but may affect the whole body of the assessees' (whose claim may not fit in the prescribed proforma). Thus, a clarification on this issue by the CBDT may be beneficial to the entire body of assessee, in fact, who seek to make a claim which according to them, the prescribed proforma does not provide for. [S. 50, 71, 72, 119, 139(1), 139(9), Art.226]**
During the year the petitioner has suffered a business loss of ₹ 57 crores. This business loss, the petitioner is entitled to set off against the income of ₹ 77 crores which was subject to tax under the head "capital gain" in terms of S. 71 of the Act. Thus, leaving a balance of ₹ 20 crores (approx) as taxable income. It is this balance of ₹ 20 crores, the petitioner was entitled to set off from the carry forward business loss of ₹ 166 crores (approx) in terms of S. 72 of the Act. It is the case of the petitioner that such setting off of carry forward business loss of the earlier years in respect of amounts taxed under the head "short term capital gains" has been allowed by the Tribunal in numerous cases. However, when the petitioner attempted to file its return of income in the prescribed electronic form, the petitioner was able to reflect the set off in terms of S. 71 of the Act i.e. setting of the losses against gains of the subject assessment year. However, the petitioner was not able to reflect in the prescribed return of income in electronic form, the set off available in terms of S. 72 of the Act i.e. setting off of current year's business loss against the carry forward loss from the earlier years. This for the reason that the return which is filed electronically requires certain columns to be filled in by the petitioner and the other columns are self populated. The petitioner is unable to change the figures and make a claim for set off under S. 72 of the Act in the present facts. This results in excess income being declared, resulting in an obligation to pay more tax on income which in term of S. 72 of the Act is allowed to be set off against carried forward

losses of earlier years. It is in these circumstances, the petitioner has prayed that he be allowed to file his return of income in appropriate form for the subject assessment year in paper form and the same be taken up for assessment in accordance with the Act. During the subject assessment year, the petitioner has otherwise suffered a business loss of ₹ 57 crores (approx). This business loss, the petitioner is entitled to set off against the income of ₹ 77 crores which was subject to tax under the head "capital gain" in terms of S. 71 of the Act. Thus, leaving a balance of ₹ 20 crores (approx) as taxable income. It is this balance of ₹ 20 crores, the petitioner was entitled to set off from the carry forward business loss of ₹ 166 crores (approx)(see Exhibit-B to petition) in terms of Section 72 of the Act. It is the case of the petitioner that such setting off of carry forward business loss of the earlier years in respect of amounts taxed under the head "short term capital gains" has been allowed by the Tribunal in numerous cases. Court held that In the normal course, we would have directed the petitioner to file representation with the CBDT making a demand for justice, before we considered issuing of a writ of mandamus. However, in the peculiar facts of this case, the petitioner is required to file return of income by 31st October, 2019. It is only now when the petitioner was in the process of filing his return electronically that the petitioner realized that he is unable to make a claim of set off under S. 72 of the Act, even though the claim itself is prima facie allowable in view of the decisions of the Tribunal in *M. K. Creations v. ITO (2017) 6 TMI 821 (Mum.)(Trib.)* and in *ITO v. Smart Sensors & Transducers Ltd. (2019) 104 taxmann.com 129 / 176 ITD 104 (Mum)(Trib)*. In the absence of the petitioner filing its return of income on or before 31st October, 2019 the petitioner is likely to face penal consequences. We also in the present facts are of the view that awaiting the order of the AO under S. 139(9) of the Act, declaring the return as defective, will not help as the issue would continue to remain even if a fresh return is filed. The issue raised is a fundamental issue, which needs to be addressed by the CBDT. On the facts the petitioner is directed to make representation to CBDT. The petitioner is directed to file the return electronically as well as manually. Court also observed that the issue raised by the petitioner does not appear to be an issue only in an individual case, but may affect the whole body of the assessees' (whose claim may not fit in the prescribed proforma). Thus, a clarification on this issue by the CBDT may be beneficial to the entire body of assessee, in fact, who seek to make a claim which according to them, the prescribed proforma does not provide for.

Samir Narain Bhojwani v. Dy.CIT (2019) 184 DTR 386 / (2020) 312 CTR 95 (Bom.)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – AO is entitle to suo motu extend the time without an application by the assessee – The amendment by FA 2008 was intended to remove an ambiguity and is clarificatory in nature – There exists a presumption of retrospective application in regard to amendments which are of a procedural nature – Orders of High Courts set aside and matter remanded to Appellate Tribunal to decide on merits. [S. 142(2C), 153A, 153B] 1317

Division Bench of the Delhi High Court in a batch of appeals filed by the revenue against the order of Tribunal came to the conclusion that prior to insertion of the expression "suo motu" with effect from 1 April 2008 in S. 142(2C), the assessing Officer had no jurisdiction to extend time for the submission of the report of an auditor

appointed under sub S. (2A) of his own accord. As a consequence, it was held that that the assessment which was made under S. 153A, in respect of the assessment in question was barred by limitation. The assessee. Contended that the Assessing Officer had no jurisdiction or authority under S. 142(2C), as it stood prior to 1 April 2008 to extend time for the submission of the audit report of the auditor appointed under the provisions of sub S. (2A).In essence, the submission is that the assessing officer was authorised to extend time (Not exceeding 180 days) from the date on which a direction under sub section (2A) was received by the assessee, only on an application made by the assessee and for any good and sufficient reason. If the assessee made an application, the assessing Officer would no jurisdiction to extend time. Revenue adopted a contrary position submitting that even before 1 April 2008, the jurisdiction of the assessing Officer to extend time for submission of audit report was not confined to a situation in which the assessee had made an application for extension. Consequently, the incorporation of a provision for a suo motu exercise of power by the assessing Officer, with effect from 1 April 2008 by the Finance Act 2008 was only intended to remove an ambiguity and was clarificatory in nature. Allowing the appeal of the revenue the Court held that, the AO who has fixed the time in the first instance must necessarily, as an incident of the authority to fix time, be entitled to suo motu extend time without an application by the assessee. The amendment by FA 2008 was intended to remove an ambiguity and is clarificatory in nature. There exists a presumption of retrospective application in regard to amendments which are of a procedural nature. Order of High Courts was set aside and matter restored to the file of Appellate Tribunal to decide on merits.

CIT v. Rama Kishan Dass (2019) 263 Taxman 657 / 176 DTR 225 / 307 CTR 777 / 413 ITR 337 (SC), www.itatonline.org

Editorial: Order in CIT v. Bishan Swaroop Ram Kishan Agro Pvt. Ltd. (2011) 203 Taxman 326 (Delhi)(HC) is reversed.

1318 **S. 142(2A) : Inquiry before assessment – Special audit – Finding that direction had been issued after condition laid down were fulfilled – Writ is held to be not maintainable. [Art. 226]**

Dismissing the petition the Court held that, since there was continued non-compliance, a show-cause notice in respect of specific queries raised therein was issued on May 30, 2019. Another notice dated June 3, 2019 in the form of a corrigendum to the show-cause notice was issued, calling upon the assessee to produce the books of account. The questionnaire raised by the AO was not specifically answered. Despite the honest attempt made by the AO in understanding the accounts of the assessee, it had not yielded the desired results, thereby warranting the appointment of the special auditor. At this stage, it could not be held that there was no correlation between the aspects which required scrutiny and the terms of reference for the special auditor under the law. The direction for special audit was justified. Followed *Sahara India (Firm) v. CIT (2008) 300 ITR 403 (SC)* (A.Y. 2016-17)

Religare Finvest Ltd. v. Dy. CIT (2019) 419 ITR 5 / (2020) 312 CTR 432 / 185 DTR 119 (Delhi)(HC)

Religare Enterprises Ltd. v. Dy CIT (2019) 419 ITR 5 (2020) 312 CTR 432 / 185 DTR 119 (Delhi)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – An attempt to understand the books of account – Huge amount of professional fees was paid – Reference to special Audit is held to be valid. 1319

Dismissing the petition the Court held that, merely because some of the transactions were subjected to transfer pricing mechanism, would not debar the Assessing Officer from exercising powers under S. 142(2A) of the Act, if the conditions for exercising such powers were otherwise satisfied. The Transfer Pricing Officer would be essentially concerned with the assessment of the arm's length price of the specified transactions with an associated enterprise. Principle of natural justice is followed hence the reference to special audit is held to be valid. (A.Y. 2015-16)

Multi Commodity Exchange of India v. Dy.CIT (2019) 310 CTR 274 / 176 DTR 385 (Bom.) (HC)

S. 142(2A) : Inquiry before assessment – Special audit – Complexity in accounts – Order to Special audit is held to be valid – Juristic person like a company cannot file a writ petition. [Art. 226] 1320

Dismissing the petition the Court held that, Article 226 of the Constitution of India confers extraordinary jurisdiction on the High Court to issue high prerogative writs for the enforcement of fundamental rights or for any other purpose. The legal position is that a juristic person such as a company is not entitled to any of the freedoms guaranteed by the Constitution of India. On merits considering the nature of the accounts complexity of the accounts, and the interests of the Revenue order to special audit is held to be valid. (A.Y. 2014-15)

Cama Hotels Ltd. v. Samir Vakil for his successor Dy. CIT (OSD) (2019) 418 ITR 109 / 182 DTR 129 / 311 CTR 537 (Guj.)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – Search proceedings – Individual not required to be maintain account statutorily Providing accommodation entries – Order for special audit is held to be justified – Petition also dismissed on the ground of belatedly approaching the Court. [Art. 226] 1321

Dismissing the petition the Court held that the PCIT had duly given an opportunity of hearing to the assessee and after applying his mind to the material on record and satisfying himself as regards the necessity of directing the assessee to get his accounts audited by an accountant as envisaged under S. 142(2A) of the Act had granted approval for the proposal for special audit. Merely because the terms of reference contained some irrelevant directions, it would not vitiate the entire process. Except for bald allegations of mala fides, nothing substantial had been brought out so as to establish actual mala fides on the part of the Assessing Officer. Moreover, though the period for completion of special audit was 120 days, after approximately two thirds of the period had elapsed, the assessee belatedly approached the court challenging it. This conduct of the assessee also disentitled him to the grant of discretionary relief under article 226 of the Constitution of India. The order directing special audit was valid. (A.Y. 2011-12, 2016-17)

Tehmul Burjor Sethna v. ACIT (2019) 418 ITR 596 (Guj.)(HC)

1322 **S. 142(2A) : Inquiry before assessment – Special audit – Genuine attempt by Assessing Officer to understand nature of Assessee's business and method of accounting – Principles of natural justice not violated – Order for Special Audit is justified.**
Dismissing the petition the court held that, AO has made genuine attempt to understand nature of Assessee's business and method of accounting. As the principles of natural justice is not violated, order for Special Audit is justified. (A.Y. 2016-17)
National Projects Construction Corporation Ltd. (NPCC) v. DCIT (2019) 413 ITR 130 / 179 DTR 53 / 310 CTR 367 / 265 Taxman 249 (Delhi)(HC)

1323 **S. 142(2A) : Inquiry before assessment – Special audit – Method of accounting – Difficulty in allocating expenses – No allegation of mala fides – Order directing Special Audit is justified. [S. 80IC, 145]**
Dismissing the petition the Court held that, the order for special audit was reasonable especially in regard to the imprest account for which details of expenses incurred had not been furnished, the benefit of S. 80IC and the revision of returns, which needed inquiry if the AO felt it to be so. The assessee had not alleged any mala fides. The order for special audit was sustained. The interim stay was to be vacated. (A.Y. 2010-11)
Patanjali Ayurveda Ltd. v. DCIT (2019) 410 ITR 356 / 260 Taxman 253 / 173 DTR 105 / 306 CTR 251 (Delhi)(HC)

1324 **S. 143(1D) : Assessment – Notice u/s. 143(2) is issued for, processing of return – Processing the return for issue of refund is not required – Writ to process the return and issue of refund is dismissed. [S. 143(1), 143(2) 143(3), 241, 241A]**
Dismissing the petition the Court held that, when the notice u/s 143(2) is issued and assessment is pending, right to claim refund could not accrue. Decision of the AO using his discretion under S. 143(1D), did not process these returns considering fact that substantial demand would be raised on completion of scrutiny assessment of these years is held to be justified. Instruction No. 2/2015, dt. 13-1-2015.(A.Y. 2014-15 to 2017-18)
Vodafone Mobile Services Ltd. v. ACIT (2019) 260 Taxman 417 / 173 DTR 34 / 306 CTR 12 / (2020) 421 ITR 193 (Delhi)(HC)

1325 **S. 143(2) : Assessment – Notice – Mere mentioning of new address in the return of income is not enough – If change of address is not specifically intimated to the AO, he is justified in sending the notice at the address mentioned in PAN database – If the notice is sent within the period prescribed in S. 143(2), actual service of the notice upon the assessee is immaterial – CIT (A) is directed to decide the appeal on merits. [S. 250, 282, 292BB]**
The assessee participated in the assessment proceedings. However, the assessee challenged the notice under S. 143(2) and 142(1) of the Act on the ground that the said notices were not served upon the assessee as the assessee company never received those notices and subsequent notices served and received by the company were beyond the period of limitation prescribed under proviso to S.143 of the Act. The AO has not accepted the contention of the assessee. On appeal the CIT (A) held that the order is bad in law, however the appeal was not decided on merits as regards the merits of the addition. Order of CIT (A) is affirmed by the Tribunal and High Court. On appeal by the revenue allowing the appeal o the Court held that, mere mentioning of new address in

the return of income is not enough. If change of address is not specifically intimated to the AO, he is justified in sending the notice at the address mentioned in PAN database. If the notice is sent within the period prescribed in S. 143(2), actual service of the notice upon the assessee is immaterial. Order of High Court and Tribunal is set aside and CIT (A) is directed to decide the appeal on merits on other grounds. (A.Y. 2006-07)
PCIT v. Iven Interactive Ltd. (2019) 418 ITR 662 / 311 CTR 165 / 182 DTR 473 / 267 Taxman 471 (SC), www.itatonline.org
Editorial : Order in PCIT v. Iven Interactive Ltd. (Bom) (HC), (ITA No. 94 of 2016 dt. 27-06-2018), (2019) 418 ITR 665 (Bom.)(HC) is set aside.

S. 143(2) : Assessment – Notice – Failure to issue a notice u/s 143(2) renders the assessment order void even if the assessee has participated in the proceedings – Deeming fiction does not operate to save complete absence of notice. [S. 292BB] 1326
The failure to issue a notice u/s. 143(2) renders the assessment order void even if the assessee has participated in the proceedings. S. 292BB does not save complete absence of notice. For S. 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself. Deeming fiction does not operate to save complete absence of notice. (*ACIT v. Hotel Blue Moon (2010) 321 ITR 362 (SC)* is referred), (A.Y. 2010-11)
CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 / 266 Taxman 171 / 310 CTR 8 / 180 DTR 313 (SC), www.itatonline.org
Editorial: CIT v. Laxman Das Khandelwal (2019) 108 taxmann.com 182 (MP) (HC) is affirmed.

S. 143(2) : Assessment – Notice – Notice under S. 143(2) of the Income Tax Act was never issued to the Assessee before initiating of proceedings under Section 158 BC of the Income Tax Act – Order is held to be bad in law. [S. 158BB, 158BC, 260A] 1327
Tribunal decided the quantum addition in favour of the assessee. In the cross objection the assessee raised the issue of non-servicing the issue of notice u/s 143(2) of the Act, though the ITAT has not given a finding against the assessee on the issue of notice u/s 143(2) of the Act. Substantial question of law is raised at the time of final hearing of the appeal though it was not raised at the time of admission of appeal. Substantial question of law is admitted on following question of law "Whether non-issuance of notice under S. 143(2) of the Income Tax Act, 1961 vitiates that assessment proceedings under S. 158 BC of the Income Tax Act in view of the Judgment of the Hon'ble Supreme Court in *ACIT v. Hotel Blue Moon 2010 3SCC 259*?" Follo*wing the ratio of Apex Court in ACIT v. Hotel Blue Moon*, the Court held that the omission on the part of the Assessing Authority to issue notice under S. 143(2) cannot be regarded as a procedural irregularity and the same is not curable and such requirement cannot be dispensed with. Hon'ble Apex Court has held that even for the purpose of Chapter XIV-B of the Income Tax Act for determining of undisclosed income for block assessment in proceedings under S. 158BC, provisions of S. 142, 143(2) and 143(3) are applicable and no assessment can be made without issuing notice under S. 142 of the said Act. Accordingly the order is held to be bad in law. (TA No.75 of 2008 /MA No. 179 of 2016 dt 13-09 2019)
CIT v. Fomento Fianance & Investment (P) Ltd. (2019) 183 DTR 340 / (2020) 312 CTR 88 / 421 ITR 146 (Bom.)(HC)

1328 **S. 143(2) : Assessment – Notice – Mandatory – Block assessment – Non issue of notice – Assessment is held to be bad in law. [S. 132, 158BC]**
Dismissing the appeal of the revenue the Court held that the assessment made by the AO without issuing the mandatory notice u/s. 143(2) of the Act is held to be bad in law.
CIT v. Sodder Builder And Developers (P.) Ltd. (2019) 419 ITR 436 (Bom.)(HC)

1329 **S. 143(2) : Assessment – Notice – Defective return – Barred by limitation – On removing the defects in the return with in time permitted relate back to the date of filing of original return – Limitation for issue of notice has to be from the date of filing of original return – Notice issued was held to be in valid. [S. 139(9), 153, Art.226]**
Allowing the petition the Court held that, on removing the defects in the return, with in time permitted relate back to the date of filing of original return. Limitation for issue of notice has to be from the date of filing of original return. Accordingly the notice issued considering the date on which the defects were removed is was held to be in valid. (A.Y. 2016-17)
Atul Projects India Pvt. Ltd. v. UOI (2019) 178 DTR 441 / 309 CTR 392 (Bom.)(HC)

1330 **S. 143(2) : Assessment – Notice – Limitation – Notice was not issued within prescribed time – Order is barred by limitation. [S.143(3)]**
Dismissing the appeal of the revenue the Court held that on the admitted fact situation the notice under S. 143(2) of the Act, was not given within prescribed time, and the Tribunal was justified in law in quashing the draft assessment order in pursuance of the notice under S. 143(2) holding the notice was barred by limitation. (A.Y. 2010-11)
CIT(IT) v. Cameron Singapore Pte. Ltd. (2019) 418 ITR 272 (Raj.)(HC)
Editorial : Order in Cameron Singapore Pte. Ltd. v. Asst. DIT(IT) (2017) 58 ITR 202 (Trib.) (Jaipur) is affirmed.

1331 **S. 143(2) : Assessment – Notice – Non service of notice with in limitation period – Order is bad in law – Provision of S.292BB cannot be invoked since assessee neither appeared nor co-operated in inquiry during assessment proceedings as the order was passed u/s. 144 of the Act. [S. 144, 292BB, Art. 226]**
Assessee had filed the return of income, notice under section 143(2) dated 24-8-2017 is served on 19-12-2017. The assessment was completed u/s 144 on 19-12-2018. The assessee filed the writ petition on the ground that the notice was served beyond limitation period hence the order is bad in law. Revenue submitted that notice dated 24-8-2017 was dispatched to address of assessee and copy of speed post acknowledgment was placed on record for having dispatched same. It was also submitted that e-Portal of department showing date of service as 19-12-2017 could not be considered as service date by ignoring service of notice made through speed post by department. It was found that the copy of speed post acknowledgment neither bore signature of assessee nor indicated date of dispatch/service and, thus it was a vague and inchoate document. Further, copy of e-portal showing date of service of notice as 19-12-2017 could not be disputed by department on ground that there was some technical error in e-Portal maintained by department. As regards applicability of S. 292BB, since assessee neither appeared nor co-operated in inquiry during assessment

proceedings, provisions of said section would not apply. Accordingly the assessment order based on invalid notice, could not survive and, same was liable to be quashed. (A.Y. 2016-2017)
Nittur Vasanth Kumar Mahesh v. ACIT (2019) 265 Taxman 277 / 311 CTR 332 / 183 DTR 150 (Karn.)(HC)

S. 143(2) : Assessment – Notice – Issue of notice beyond period prescribed in proviso to S.143(2) – Assessment is barred by limitation. 1332
For relevant year, assessee filed its return on 30-9-2004. Six months period prescribed in proviso to S. 143(2) would end on 30-9-2005. Notice under S. 143(2), read with S. 142(1) was issued on 8-8-2006.ing the petition the Court held that in view of proviso to S. 143(2), notice was issued after expiry of prescribed time period and, thus, same was clearly hit by limitation. Accordingly entire proceedings including assessment order passed by AO under S. 143(3) was quashed. (A.Y. 2004-05)
Bihar Police Building Construction Corporation (P.) Ltd. v. PCIT (2019) 265 Taxman 373 (Patna)(HC)

S. 143(2) : Assessment – Notice – Notice issued by officer who was neither AO of assessee on the basis of address in PAN application nor AO of assessee as per address mentioned in return – Notice issued illegal. [S. 127, 143 (3)] 1333
In this case the Appellate Tribunal held that the notice issued under section 143(2) had been issued on the basis of the address in the PAN application by the AO Circle 34(1) who was neither the AO of the assessee nor was the AO of the assessee as per the address mentioned in the return. There was no order passed under S. 127 either by the Commissioner of Circle 34(1) or Commissioner of Circle 47(1). The contention that the assessee should have approached the AO for change of address did not hold good. Therefore, the notice issued by the AO of Circle 34(1) was illegal as the AO of Circle 34(1) had no jurisdiction on the assessee either on the basis of his residential address or on the basis of his business address. Further even it could be presumed that the notice issued by the Circle 34(1) officer was valid its service was not proper as there was a difference in the name mentioned in the notice. Therefore, in view of these facts, the notice, even if presumed to be by the jurisdictional AO had not been served properly. (A.Y. 2014-15)
Rajeev Goel v. ACIT (2019) 76 ITR 107 (Delhi)(Trib.)

S. 143(2) : Assessment – Service of notice – Notice served on assessee which was not as per addresses as specified in rule 127(2) of 1962 Rules, assessment based on said notice is not valid assessment. [R. 127(2)] 1334
Before the CIT(A) the assessee contended that in absence of valid service of notice u/s.143(2), assessment done u/s. 143(3) was null and void. CIT (A) allowed the partial relief on merit. The assessee filed an appeal in respect of issue of notice u/s. 143(2) of the Act. Tribunal held that, notice issued at a wrong address cannot be said to be a valid service of notice, since address which had been mentioned in notice u/s. 143(2) was none of addresses as specified in rule 127(2), therefore service of notice could not be regarded as proper or valid service and, thus, consequent assessment made on basis of such invalid. (A.Y. 2009-10)
ITO v. Ajay Raj (2019) 178 ITD 379 (Delhi)(Trib.)

1335 **S. 143(2) : Assessment – Notice – Authorised representative – Objection to service of notice was objected by the assessee – Objection was later withdrawn by the assessee's representative by signing order sheet – Consent given by the representative is binding on the assesse – Challenge to the assessment on the basis that there was valid service is held to be not valid. [S. 288, 292BB]**

The Authorised representative contended before the Tribunal that the notice u/s. 143(2) was not served on the partners of the assessee firm as is the requirement under the law. He submitted that the service of notice on Shri Harish C. Pawar, Manager of the assessee did not tantamount to a valid service and hence the assessment be quashed. Departmental representative placed on record a copy of order sheet of the assessment proceedings The Tribunal noticed that entry dated 13-08-2012 of the assessment proceedings notes that Shri D. P. Lunawat, Advocate attended on behalf of the assessee. This order sheet entry further records that office copy of notice u/s. 143(2) was shown to Shri D. P. Lunawat, duly signed by the assessee firm and received by Shri Harish C. Pawar, Manager. It goes on to state that the ld. AR was asked if he still had any objection to the service of notice, to which Shri Harish C. Pawar stated that 'he has no objection'. Accordingly the Tribunal held that if the assessee objects to the AO's jurisdiction but his Authorised Representative later conveys no-objection, it means that the assessee has withdrawn his objection. Submission that the AR had no authority to convey no-objection and cannot bind the assessee is not acceptable. Once the assessee empowers his Authorised representative to appear before authorities, all of the Authorised representative concessions are binding on the assessee. Accordingly Challenge to the assessment on the basis that there was valid service is held to be not valid. (*Himalayan Cooperative Group Housing Society v. Balwan Singh (2015) 7 SCC 373* distinguished). (ITA No. 1448/Pun/2014, dt. 28.11.2018) (A.Y. 2010-11)

K. C. Cold Storage v. ACIT (Pune)(Trib.), www.itatonline.org

1336 **S. 143(2) : Assessment – Notice – If the notice was not served upon a person authorised to receive it, the notice cannot be said to be validly served and consequently the assessment is void. [S. 282(1)]**

The AO had served notice u/s 143(2) on 27 August 2013 upon a certain person who was in part time employee of the assessee till 31 March 2011. Subsequently, the AO had again issued notice u/s 143(2) on the directors [beyond the time limit for the said notice]. The Tribunal noted that the assessee had submitted affidavit from the part time employee wherein the said person had refused to accept the notice (as he was no longer associated with the assessee) and he could not send the notice to the company due to the change in address. Further, the directors also filed affidavits reconfirming the facts. The Tribunal after analysing the provisions of S. 282 of the Act and the provisions of the Civil Procedure Code, 1908 considered that the notice was not served upon a person who was authorised to receive it and thus lead to invalid service/ non-service of notice and the assessment order u/s 143(3) was to be quashed. (A.Y. 2012-13)

Anidhi Impex Pvt. Ltd. v. ITO (2019) 73 ITR 379 (Mum.)(Trib.)

S. 143(2) : Assessment – Notice – If a notice is issued but is returned unserved by the postal authorities and thereafter no effort is made to serve another notice before the deadline, it shall be deemed to be a case of "non-service" and the assessment order will have to be quashed. [S.292BB, R.127, General Clauses Act, 1897, S. 27] 1337

Tribunal held that there is a difference between "issue" of notice and "service" of notice. Service of notice is a pre-condition for assuming jurisdiction to frame the assessment. Under Rule 127, service at the PAN address is valid even if it is different from the address in the Return. If a notice is issued but is returned unserved by the postal authorities and thereafter no effort is made to serve another notice before the deadline, it shall be deemed to be a case of "non-service" and the assessment order will have to be quashed. (A.Y. 2009-10)

Anil Kisanlal Marda v. ITO (2019) 177 ITD 749 / 182 DTR 153 / 201 TTJ 100 (Pune)(Trib.), www.itatonline.org

S. 143(2) : Assessment – Service of notice to manager is a valid service as the assessee has appeared before the Assessing Officer without taking any objection.[S.292BB] 1338

Tribunal held that, service of notice to manager is a valid service as the assessee has appeared before the Assessing Officer without taking any objection. Provisions of S.292BB would apply. (A.Y. 2010-11)

K. S. Cold Storage v. ACIT (2019) 174 ITD 485 / 175 DTR 433 / 198 TTJ 905 (Pune)(Trib.)

S. 143(3) : Assessment – Method of accounting – Undisclosed income – Admission by a letter without – Prejudice offer cannot be treated as admission of non – disclosure or as an unconditional offer to pay tax. Also, the disclosure is by the USA Co and not by the assessee – It is not the case of the Dept that the amount has been received in the accounts of the assessee or spent for and on behalf of the assessee so as to be treated as undisclosed income of the assessee. [S. 69, 145] 1339

Question raised before the High Court was "whether the Income tax Appellate Tribunal was correct in law deleting the undisclosed income of the Assessee as recoded by the Securities and Exchange Commission in USA ?". High Court reversed the order of the Tribunal placing reliance on two letters written by the assessee and assumed that it was in the form of admission of non-disclosure and an offer was given by the assessee to pay tax and penalty as the case may be. Reversing the order of the High Court the Supreme Court held that, a letter written in rebuttal of allegations contained in a news items with a without-prejudice offer cannot be treated as admission of non-disclosure or as an unconditional offer to pay tax. Also, the disclosure is by the USA Co and not by the assessee. It is not the case of the Dept that the amount has been received in the accounts of the assessee or spent for and on behalf of the assessee so as to be treated as undisclosed income of the assessee. (Note : Order in *CIT v. Goodyear India Ltd. (Delhi) (HC)* (ITA No 223 of 2005 dt 28-04 2008) is set aside. (A.Y. 1972-73 to 1976-77)

Goodyear India Ltd. v. CIT (2019) 311 CTR 260 / 183 DTR 57 / (2020) 269 Taxman 6 (SC), www.itatonline.org

Editorial: From the judgment in CIT v. Goodyear India Ltd. (2008) 9 DTR 107 / 173 Taxman 377 (Delhi) (HC)

1340 **S. 143(3) : Assessment – Jurisdiction – Amalgamation of companies – Notice issued in the name of amalgamating entity after amalgamation is void – The amalgamating entity ceases to exist – Participation in the proceedings by the assessee cannot operate as an estoppel against law. [S. 144C(1), 170(2), 292BB]**

Dismissing the appeal of the revenue the Court held that a notice issued in the name of the amalgamating entity after amalgamation is void because the amalgamating entity ceases to exist. Participation in the proceedings by the assessee cannot operate as an estoppel against law. This is a substantive illegality and not a procedural violation of the nature adverted to in s. 292BB. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable. (A.Y. 2012-13)

PCIT v. Maruti Suzuki India Ltd. (2019) 416 ITR 613 / 265 Taxman 515 / 309 CTR 433 / 180 DTR 185 (SC), www.itatonline.org

Editorial : Order in PCIT v. Maruti Suzuki India Ltd (Successor of Suzuki Powertrain India Ltd) (2017) 397 ITR 681 / (2019) 107 Taxmann.com 472 (Delhi) (HC) is affirmed.

1341 **S. 143(3) : Assessment – Best assessment – Remand by the Tribunal – Additional claim could be made in remand proceedings – Order of Tribunal is set aside.[S. 144, 254(1)]**

The AO made the assessment u/s. 144 of the Act. The Tribunal set aside the matter to the AO for framing a fresh assessment. The AO passed the order u/s. 143(3) r.w.s 254 of the Act by making certain additions and disallowances. Order of the AO is up held by the CIT (A). On appeal the Tribunal once again set aside the order of the CIT (A) and directed the AO to pass fresh order. The AO deleted the addition made in the first two rounds. The assessee made afresh claim as regards the non taxability of income as regards write off liability by Canara Bank which was earlier offered as taxable income. The AO rejected the claim on the ground that in remand proceedings the assessee could not raise a fresh claim. CIT (A) also confirmed the order of the AO. Tribunal also affirmed the order of the CIT (A). On appeal the High Court held that the Tribunal has not appreciated the scope and nature of the remand ordered by the it by its earlier order dt. 10-03 2011. Accordingly the Court allowed to raise the claim and restored the matter back to the AO for evaluation of the said claim on its own merits. (AP. No. 259 of 2018 dt 28-11-2019) (A.Y. 2002-03)

Curewel (India) Ltd. v. ITO (2020) CTCJ-January-P. 87 / 185 DTR 145 / 312 CTR 164 (Delhi)(HC)

1342 **S. 143(3) : Assessment – Acquittal in Criminal proceedings would not justify deletion of additions to income based on facts – Matter remanded to the AO for fresh enquiry. [S. 254(1)]**

On appeal by the revenue the Court held that, mere acquittal of the assessee along with other two co-accused by the High Court, could not by itself result in the setting aside of the assessment made by the assessing authority. The Tribunal being a fact finding body

had erred in dismissing the appeal without appreciating the facts in detail on its own and in rejecting the materials before it. The Tribunal also erred in only relying upon the earlier order passed by the Tribunal by which the matter was remanded. The matter had to be remanded to the assessing authority for fresh enquiry. (A.Y. 1986-87 to 1995-96)
CIT v. R. N. Jayaprakash (2019) 419 ITR 252 (Mad.)(HC)

S. 143(3) : Assessment – Non-existing company – Amalgamation – Assessment on the non-existing is held to be void ab initio. 1343
Dismissing the appeal of the revenue the court held that, AO framed assessment on 22-2-2011 on 'HDTS' that ceased to exist from 25-7-2008 There was a letter dated 19-10-2008 filed with the AO informing him that pursuant to the order dated 25-7-2008, 'HDTS' had amalgamated with 'HICS'. The certified copy of the above order of the Court had been filed with the Registrar of Companies on 17-9-2008. It was stated that 'HDTS' had ceased to exist and HICS had taken over the liability. The said information was also given to the CIT(A) Copies of those letters were placed before the Tribunal. Despite this, the assessment order was framed on 22-2-2011 against the erstwhile company, i.e., HDTS. Order of Tribunal is affirmed.
PCIT v. Transcend MT Services (P.) Ltd. (2019) 267 Taxman 314 (Delhi)(HC)

S. 143(3) : Assessment – Matter remanded by the Tribunal with the direction to grant an opportunity of cross examination – Not giving an opportunity of cross examination – Writ against the order is not maintainable – Issue could be raised in appellate proceedings. [S. 35(1)(ii), 246A(1)(a), 250(4), 254(1) Art. 226] 1344
Dismissing the petition the Court held that, It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute are in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to article 226 of the Constitution. But then the court must have good and sufficient reason to bypass the alternative remedy provided by statute. Matters involving the revenue where statutory remedies are involved are not such matters. A perusal of sub-section (4) of S. 250, of the Income-tax Act, 1961 makes it clear that the statutory appellate authority namely the CIT (A) has powers to make further inquiry by himself or direct the AO to make further inquiry, report the result and thereafter dispose of the statutory appeal on the basis of such inquiry conducted by himself or on the basis of post inquiry report from the AO in this regard. Accordingly not giving an opportunity of cross examination, writ against the order is not maintainable. (A.Y. 2013-14)
Marina Ship Brokers v. ITO (2019) 417 ITR 453 / 183 DTR 190 / 311 CTR 518 (Mad.)(HC)

S. 143(3) : Assessment – Trader transferring he goods to another trader – At a price less than the market price – Transactions showing loss– Addition cannot be made as income from undisclosed sources – No substantial question of law. [S. 260A] 1345
Dismissing the appeal of the revenue the Court held that, if a trader transfers his goods to another trader at a price less than the market price and the transaction is otherwise found to be bona fide, the taxing authority cannot take into account the market price of

those goods ignoring the real price fetched to ascertain the profit from the transaction. No substantial question of law. (A.Y. 2013-14, 2014-15)
CIT v. Pragnesh Ramanlal Patel (2019) 416 ITR 106 / 265 Taxman 434 (Guj.)(HC)

1346 **S. 143(3) : Assessment – Income from undisclosed sources – real estate business – Purchase of land – Alleged cash receipts – Price of the land was paid with other entries in the bank and there was nothing to show that a cash was received in excess of the agreement – Deletion of addition is held to be justified. [S. 69]**
Dismissing the appeal of the revenue the Court held that the price of the land was paid with other entries in the bank and there was nothing to show that a cash receipt was received by the assessee. The Tribunal was justified in deleting the additions.
CIT v. Prestige City Developers P. Ltd. (2019) 415 ITR 149 (Raj.)(HC)
Editorial: SLP of the revenue is dismissed CIT v. Prestige City Developers P. Ltd (2018) 406 ITR 36 (St)

1347 **S. 143(3) : Assessment – Income from undisclosed sources – Purchase of property – Source of funds was not explained satisfactorily – Reduction of addition by Tribunal is held to be not justified. [S. 254(1)]**
Court held that the assessee has not explained the source of funds satisfactorily hence reduction of addition by the Tribunal is not justified. However to avoid multiplicity of litigation considering the assessee being no more only part of addition is confirmed. (A.Y. 2003-04, 2004-05, 2005-06)
CIT v. N. Sheikh Ahmed Haji and Ors. (2019) 415 ITR 32 (Ker.)(HC)

1348 **S. 143(3) : Assessment – Income from undisclosed sources – Cash deposits not explained – Addition is held to be justified. [S. 69]**
Dismissing the appeal the court held that the assessee has not explained the cash deposited in the bank accounts hence the addition is held to be justified. (A.Y. 2011-12)
Parveen Kumar v. CIT (2019) 415 ITR 241 (P&H)(HC)

1349 **S. 143(3) : Assessment – Alternative remedy – Writ against the assessment order is not valid since the assessee had an alternative remedy before Appellate Authority. [S. 246A, Art.226]**
Assessee filed a writ petition challenging assessment order as well as demand notice issued by the AO. High Court dismissed the petition on the ground that the assessee had an alternative remedy of appeal before appellate authority.
Mahesh Kumar Agarwal v. PCIT (2019) 105 taxmann.com 272 / 263 Taxman 469 (Orissa) (HC)
Editorial: SLP of the assessee is dismissed and passed the order stating that no coercive steps will be taken for a period of four weeks from the date of the order in order to avail of the alternative remedy provided. Mahesh Kumar Agarwal v. Pr. CIT (2019) 263 Taxman 468 (SC)

S. 143(3) : Assessment – Jurisdiction – When the Commissioner requires the Assessing Officer to carry out inquiries with respect to specific issues, the jurisdiction of the Assessing Officer to pass fresh order must be confined to such issues only. [S. 263] 1350

Tribunal held that Commissioner's revisional order required the Assessing Officer to examine certain aspects arising out of the return. He could not have travelled beyond such assessment and therefore, his action of making addition of ₹ 2-02 crores towards the entrance fee receipts was beyond the scope of revisional order. On appeal by the revenue, dismissing the appeal the Court held that, when the Commissioner requires the Assessing Officer to carry out inquiries with respect to specific issues, the jurisdiction of the Assessing Officer to pass fresh order must be confined to such issues only, failing which we would be giving the power to the AO to make reassessment.(ITA NO. 1127 of 2016, 1276 of 2016 dt 29-1-2019) (From the judgment of the Tribunal in ITA No. 1654 /2012 dt. 22-07-2015 (A.Y. 2006-07)

PCIT v. Royal Western India Turf Club Ltd. (2019) 175 DTR 285 / 308 CTR 38 / 103 taxmann.com 13 (Bom.)(HC)

Editorial: SLP of revenue is dismissed on account of low tax effect, PCIT v. Royal Western India Turf Club Ltd (2020) 268 Taxman 389 (SC)

S. 143(3) : Assessment – Merger – Amalgamation – Assessment order in respect of an entity which was not in existence – Held to be nullity. [S. 127, 292BB] 1351

Dismissing the appeal of the revenue the Court held that; in the present case, the revenue despite being intimated did not complete the assessment in a composite manner in the hands of transferee company, however completed the assessment in respect of an entity which was not in existence. Accordingly the Tribunal was right in holding that the assessment order was nullity. (A.Y. 2012-13)

PCIT v. BMA Capfin Ltd. (2018) 100 taxmann.com 329 / (2019) 260 Taxman 90 (Delhi)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. BMA Capfin Ltd. (2019) 260 Taxman 89 (SC)

S. 143(3) : Assessment – Transport business – Estimation of income – Tribunal should have adopted same method in case of assessee's son – Income from shares – Assessable in the hands of individual – Question of fact – Estimation of income – Could not be telescoped. [S.5, 145] 1352

Court held that while estimating the income from transport business, Tribunal should have adopted same method in case of assessee's son. As regards income from shares rightly assesses in the hands of individual which is a factual finding. As regards estimation of income could not be telescoped. (A.Y. 1987-88, 1988-89)

S. Dhanapal (Smaller HUF)(Specified) v. ACIT (2019) 410 ITR 230 (Mad.)(HC)
S. Dhanpal (Bigger HUF)(Specified) v. ACIT (2019) 410 ITR 230 (Mad.)(HC)
S. Dhanpal (Individual) v. ACIT (2019) 410 ITR 230 (Mad.)(HC)

S.143(3) : Assessment – Bogus Purchase – In the absence of any corroborative evidence, purchases made by assessee from hawala dealers cannot be treated as bogus purchases and be not added to total income. [S. 69, 148] 1353

The present case was reopened by the AO on the ground that information received from Sales Tax Department that the assessee has obtained entries of bogus purchases from the

Hawala Dealers and during AY 2008-09, assessee has obtained accommodation entries of bogus purchases from various Hawala dealers and have inflated the purchases and accordingly reduced profit. AO had confronted assessee as to show complete details of purchases. In response, assessee contended that complete details of bills, which were being alleged as taken through hawala dealer be supplied to him. Thereafter, AO noted that assessee did not submit such details, and ultimately, assessment was finalized. CIT(A) held that there was no corroborative evidence against the assessee and ruled in favour of assessee. On appeal to Tribunal, it was held that details submitted by Sales-tax Department shows that those details were for AY 2009-10 and not AY 2008-09. It was for Revenue to first prove charge against assessee, only thereafter assessee would be required to explain his position about that matter. It was for AO first to demonstrate with help of some reliable evidence that entries were taken by assessee. There was no such evidence possessed by Revenue. Therefore, Tribunal held that in the absence of any corroborative evidence, purchases made by assessee from Hawala dealers could not be treated as bogus purchases and added to total income. Accordingly, Tribunal ruled in favour of assessee. (A.Y. 2008-09, 2009-10, 2010-11)
Sonal Parekh v. ITO (2019) 76 ITR 65 (SN) (Ahd.)(Trib.)

1354 **S. 143(3) : Assessment – Books of account – TDS return – Difference in income as per 26AS and books of accounts – No additions can be warranted. [S. 28(i), Form, 26AS]**
Assessee received income for some contract work done for Kuvempu University. The Kuvempu university in its TDS Return has recorded higher amount as compared to that recorded by the assessee in its books of accounts. Thus, the AO has made addition based on difference in Form 26AS and books of accounts of the assessee which was also confirmed by CIT(A). On appeal the Tribunal relying on the decision of Hon'ble Mumbai ITAT in case of *TUV India Pvt. Ltd. (2019) 75 ITR 364 (Mum,)(Trib.)* which has similar facts as that of assessee and has held that:

- Addition to total income cannot be made due to discrepancy in receipts as shown in 26AS;
- There is difference in accounting policy followed by assessee and clients who have deducted TDS or the TDS have been deducted by the clients on inclusive of service tax whereas the income reflected by assessee is exclusive of service tax;
- The assessee does not have control over the data base of the Income tax Department as reflected in Form 26AS and at the best it can obtain bonafide explanations for this difference;
- The Department has all the information in its possession and control and thus, should have conducted necessary enquiries to unravel the truth but asking the assessee to do is not warranted.

Thus, no addition can be made on the difference between the income as per Form 26AS and as that reflected in books of accounts. (A.Y. 2010-11)
Roopa Electricals v. ITO (2019) 57 CCH 501 / 76 ITR 39 (SMC) (SN) (Bang.)(Trib.)

S. 143(3) : Assessment – Litigation on sale of land – Protective assessment cannot be made merely on the basis of suspicion. 1355

During the assessment proceedings, the AO tried to examine the genuineness of the transaction between the assessee and the builder. However, for want of details and suspecting the transaction, the AO protectively assessed the transaction in the hands of assessee. He also indicated his opinion for invoking S. 154 if details are made available. On appeal, the CIT(A) held that taxing the income of the builder protectively in the hands of the assessee is not appropriate as mere suspicion cannot lead to taxing of certain income of some other entities. On appeal by the Department, the Tribunal upheld the decision of the CIT(A) and deleted the additions. (A.Y. 2012-13)

ACIT v. Bhosale Builders and Developers P. Ltd. (2019) 74 ITR 67 (SN) (Pune)(Trib.)

S. 143(3) : Assessment – Ad hoc addition – No understatement by assessee – Addition on ad hoc basis at 50% is held to be not sustainable. 1356

Tribunal held that there was no understatement of receipts by the assessee. Further, in first round of appeals no addition in this regard for called for by Tribunal and the same was not controverted by lower authorities. The net income from drama company as a percentage of gross receipts cannot be as high as has been held by CIT(A). In absence of any comparable case put for the by the authorities below, the ad hoc addition sustained by CIT(A) cannot be justified. (A.Y. 1995-96 to 1998-99)

C.L. Chandradhara v. CIT (2019) 55 CCH 468 / 71 ITR 246 (SMC) (Bang.)(Trib.)

S. 143(3) : Assessment – If the case is selected for limited scrutiny of a specific issue, the AO has no jurisdiction to make additions or disallowances on other issues. 1357

Allowing the appeal of the assessee the Tribunal held that, If the case is selected for limited scrutiny of a specific issue, the AO has no jurisdiction to make additions or disallowances on other issues. (ITA No. 434/CHD/2019, dt. 12.09.2019) (A.Y. 2014-15)

Vijay Kumar v. ITO (SMC) (Chd.)(Trib.), www.itatonline.org

S. 143(3) : Assessment – Accrual of income – Year of taxability – Rate of tax – The income was offered in the subsequent year (basis the billing done), tax rate being the same, interest of revenue was not affected, therefore income could not be taxed on accrual basis in the current year. [S. 2(24), 5] 1358

On appeal, the CIT(A) held that the amount of ₹ 47,92,500 was billed by the assessee in the subsequent year i.e., AY 2008-09 and offered to tax by assessee as well as assessed to tax by the AO in the said year. Since, the rate of tax on the income assessed was the same in both the years i.e., AY 2007-08 and AY 2008-09, it was held that the interest of the Revenue will not be affected. Accordingly, the addition made by the Ld. CIT(A) was deleted. Order of Tribunal is affirmed by the Tribunal. Followed *CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC), CIT v. Nagri Mills Co Ltd. (1958) 33 ITR 681 (Bom.)(HC), CIT v. Vishnu Industrial Gases Pvt. Ltd. (Delhi)(HC) (ITA N0 229 of 1988 dt-6-05-2008). (ITA Nos. 6787, 6489/Mum/2014. dt. 27-02-2019* (A.Y. 2007-08)

Deloitte Touche Tohmatsu India P. Ltd. v. DCIT (2019) 71 ITR 301 / 179 ITD 78 (Mum.) (Trib.)

1359 **S. 143(3) : Assessment – Natural justice – Case remitted back as principles of natural justice were violates and opportunity of cross examination not given. [S. 131]**
The assessee had issued shares as premium on preferential allotment. The AO had made inquiry from the shareholders and obtained statements u/s 131. The Tribunal noted that the copies of the statements recorded u/s. 131 were not provided to the assessee. The Tribunal relying on the decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE (2015) 281 CTR 241 (SC) held that as the opportunity of cross-examination as not given to the assessee, it was gross violation of the principles of natural justice. Thus, the Tribunal remanded the matter back to the AO for fresh assessment. (A.Y. 2012-13)
Ankit Metal and Power Ltd. v. JCIT (2019) 73 ITR 374 (Kol.)(Trib.)

1360 **S. 143(3) : Assessment – Order giving effect to revision order – Assessing Officer is bound to follow the directions provided in the order u/s. 263 by the CIT. [S. 263]**
The assesse filed the return of income for A.Y. 2008-09 declaring the total loss of ₹ 283/-which was processed u/s 143(1). Thereafter, Ld. Assessing officer reopened the assessment wherein transaction of share capital and share premium was the subject matter of verification. The re-assessment was completed under u/s 143 r.w.s 147 of the Act determining the total income at ₹ 17,720/-. This re-assessment was subjected to revision proceedings u/s 263 of the Act by the CIT on the ground that the AO had not properly enquired and verified the genuineness and source of application money/share capital as well as identity and creditworthiness of the shareholders who had applied for the shares of the company. Accordingly, CIT set aside the order passed by the AO with certain specific guidelines regarding investigation to be carried out while assessing the assessee de-novo. The. AO in consequential proceedings giving effect to the order of CIT called for the certain details from the assessee. There was no response from the assesse. AO observed that assesse failed in proving the genuineness of the transaction as well as the identity and creditworthiness of the shareholders. Accordingly, AO made addition of ₹ 7,65,00,000/-to the total income of the assesse as unexplained cash credit u/s 68 of the Act. On appeal before CIT (A), CIT (A) upheld the order of AO. Aggrieved by the order of Ld. CIT (A), assessee filed an appeal before the ITAT. The Tribunal observed that entire transaction of share capital and share premium was subject matter of verification in the reassessment proceedings wherein the assessee had responded to the notices u/s 133(6) of the Act. The CIT in the revision order had specifically directed the AO to make inquiries directly from the shareholders and not through the assesse. Hence, non-appearance of the assessee or non-submission of details before the AO does not make any relevance. The Tribunal held that the Ld. AO did not resort to make inquiries in the manner stated by the Ld. CIT u/s. 263 of the Act in-spite of the fact that all the necessary details were available before him. The Ld. CIT had directed the. AO to investigate in to the multiple layers of the investment in shares made by shareholders and identify the ultimate person holding the controlling interest including the change in shareholding, directorship etc. and then take the entire matter to the logical conclusion to bring out the facts on record. However, same had not been done by the AO and hence, the matter was remanded back to the file of AO for de novo assessment and to decide the matter as mandated by the CIT in S. 263 order. (A.Y. 2008-09)
Fortune Vincom Pvt. Ltd. v. ITO (2019) 69 ITR 48 (SN) (Kol.)(Trib.)

S. 143(3) : Assessment – Amalgamation – Merger – Assessment order passed in the name of non-existent entity – Held to be invalid. [S. 143(2)] 1361

Assessee stood amalgamated with UTV Software Ltd from appointed day of 1-4-2013 vide HC order dated 11-4-2014. The fact relating to the amalgamation was brought to the notice of the AO during the course of assessment proceedings. Assessee also submitted its PAN consequent to the merger with the AO. However, AO proceeded to pass an order in the name of the assessee on 3-3-2015. Tribunal held that since the screenshot of the company master data was available with ROC reveals the status of the company was notified as 'amalgamated'. The AO passed an order in the name of the assessee which had ceased to exist in the eyes of law. Thus, AO passed an order against a non-existent entity. Order passed in name of erstwhile company after its amalgamation / merger by virtue of the order of amalgamation passed by the High Court is invalid. Relied on *Spice Infotainment Ltd. v. CIT (2012) 247 CTR 500(Delhi)(HC)*. (A.Y. 2012-13)

Dy. CIT v. First Future Agri & Developers Ltd. (2019) 176 DTR 151 / 198 TTJ 1014 (Mum.)(Trib.)

S. 143(3) : Assessment – Limited verification – The AO has to consider the claim of the assessee to make correct assessment – Matter remanded. 1362

Tribunal held that the AO has to consider the claim of the assessee to make correct assessment. The Department could not take advantage of the ignorance of the assessee to collect more tax than is legitimately due in view of Circular No. 14 dated April 11, 1955. Therefore according to Circular No. 7 of 2017 there is a bar on the jurisdiction of the AO to go beyond the subjected issue under limited scrutiny cases, but he is not restrained from adjudicating issues raised by the assessee. Accordingly the matter remanded. (A.Y. 2014-15)

Thakurraj Kumar v. DCIT (2019) 69 ITR 79 (Asr.)(Trib.)

S. 144 : Best judgment assessment – Statutory remedy of appeal is available – Writ is held to be not maintainable [S.246, Art. 226] 1363

AO on basis of information furnished by Directorate of Intelligence that a certain amount was found deposited in bank account of assessee, issued on assessee a notice under S. 142(1) and thereafter passed a best judgment assessment. Assessee filed writ petition challenging impugned order. Single Judge of High Court had relegated assessee to avail statutory remedy of appeal under S. 246 and dismissed writ petition. Assessee filed writ appeal challenging order of Single Judge of High Court. Division Bench confirmed the order of single judge.

(Note : Appeal from the single Judge in *Ram Pal Singh. v. CIT (WP No 595 of 2019 dt. 20-05-2019)*)

Ram Pal Singh v. CIT (2019) 265 Taxman 51 (Mag.) (Uttarakhand)(HC)

S. 144 : Best judgment assessment – Accommodation entries – Purchase of fictitious silver items – Unexplained sales – Sales not substantiated by providing identity and credit worthiness of buyers – Rejection of books of account is held to be proper – Cryptic order – Addition made by the AO is affirmed. [S.132, 145(3), Voluntary Disclosure of Income Scheme, 1997] 1364

AO held that the assessee failed to prove the identity of the so called buyers of the silver and hence made the addition. CIT (A) deleted the addition, which was affirmed

by the Tribunal. Allowing the appeal of the revenue the Court held that the AO had rightly rejected the books of account of both the assessees and the additions made by him were to be restored. The conclusion drawn by the Assessing Officer that there was no silver at all and the story of purchase and sale of silver was entirely concocted was based on the evidence before him. The sales of over ₹ 30 crores in one assessee's case and ₹ 40 crores in the other assessee's case being put forth entirely as "cash sales" had no valid basis in the books of account. It was obligatory on the assessees to satisfactorily account for the creditworthiness, identity and genuineness of the transactions of the so-called providers of such cash to each of them in such huge sums. This was not forthcoming and the Assessing Officer had rightly disregarded the accounts of both the assessees under S. 145(3). The satisfaction recorded by the AO that the books of account maintained by each assessee deserved to be rejected was not perverse. The discussion of the evidence on record both by the CIT (A) and the Tribunal was cryptic and without adverting properly to the facts referred to by the AO. The Tribunal had erred in confirming the order passed by the CIT (A) and in holding that S. 145(3) was not applicable. (A.Y. 1998-99)

CIT v. Rajiv Gupta (2019) 416 ITR 199 / 181 CTR 116 / 310 CTR 379 / 267 Taxman 301 (Delhi)(HC)

CIT v. Ajay Kumar Gupta (2019) 416 ITR 199 / 181 CTR 116 / 310 CTR 379 (Delhi)(HC)

1365 **S. 144 : Best judgment assessment – Not responding to notices and summons – Best judgment order is held to be valid – Cancellation of registration and exemption is also held to be valid. [S. 10(23C)(vi), 12AA, 132, 142(1), 143(2), 153A]**

Dismissing the appeal the Court held that, the assessee had failed to comply with the notices issued under S. 142(1) and 143(2) and had ignored the summons issued under S. 131 that followed the notices. In such contingency, the AO after taking note of the particulars available on record, the seized documents and the statements recorded during the course of search, completed the assessment. Therefore the best assessment order is valid. The Court also held that the cancellation of exemption u/s. 10(23C(vi) was not retrospective. Accordingly the order dated 18-11-2014 withdrawal of the approval granted under S.10 (23C)(vi) had been given effect from the Assessment year 2010-11 and the order cancelling the assessee's registration u/s. 12AA was from the assessment year 2010-11 is held to be valid. (A.Y. 2010-11, 2011-12)

Prathyusha Educational Trust v. CIT (2019) 416 ITR 129 / 181 DTR 346 / 266 Taxman 105 / 310 CTR 545 (Mad.)(HC)

Editorial: SLP of the assessee is dismissed Prathyusha Educational Trust v. CIT (2019) 416 ITR 132 (SC)

1366 **S. 144 : Best judgment assessment – Additional ground in respect of non-issue of notice u/s. 143(2) was raised first time before Appellate Tribunal – Remanding the matter to CIT(A) is held to be valid. [S. 143(2)]**

Dismissing the appeal of the revenue the Court held that, the Tribunal could not be faulted for having entertained the additional ground relating to non-issuance of notice under S. 143(2) raised by the assessee. The Department did not have sufficient opportunity to meet this point. There had not been a transparent approach by the

Department while completing the assessment. If the assessee which was a registered company had failed to adhere to the commitment made through its chartered accountant by letter dated January 27, 1996, there was no reason why the Assessing Officer should have waited for more than 20 months and issued another letter to the assessee to file the return along with the books of account, vouchers, etc. The reason for not taking any action since February 1996 till October 1997 remained unexplained. Even after the expiry of peremptory time limit fixed in the letter dated October 1, 1997, i. e., up to October 13, 1997, the Assessing Officer did not take any action immediately but waited. There was no necessity for the AO to have waited beyond February 1996 to complete the best judgment assessment under S. 144. Even if the AO or the CIT (A) or the Tribunal issued notices to the authorized representative or the chartered accountant or advocate of the assessee, the notices would have to be issued to the assessee at the registered office. The Tribunal having admitted the additional ground should have considered the contentions advanced by the Department giving it reasonable time and recorded its satisfaction why the matter should be remanded to the CIT (A). The Department was to raise all its contentions on all the grounds before the CIT(A). Matter remanded. (A.Y. 2005-06)
CIT v. J Jay TV Pvt. Ltd. (2019) 412 ITR 285 (Mad.)(HC)

S. 144 : Best judgment assessment – Books destroyed due to flood – Expenditure cannot be disallowed arbitrarily – Best judgment should not be made as a best punishment assessment. [S. 37(1)] 1367
Dismissing the appeal of the revenue the Court held that, best judgment assessment can be resorted by the AO in the absence of any record, but it cannot be arbitrary, when the assessee has filed supporting documents justifying the loss suffered. (A.Y. 2007-08) (ITA No. 857 of 2016 dt. 11-12-2018)
PCIT v. Rahul J. Jain (Bom.)(HC) (UR)
Editorial: Order in ACIT v. Rahul J. Jain (Mum) (Trib.) (ITA NO 5986 /M/ 2013 dt. 28-9-2015) is affirmed

S. 144 : Best judgment assessment – Failure to comply with notices – Denying allowances of interest and salary paid to partners is held to be justified. [S. 148, 184] 1368
Tribunal held that failure to comply with notices under S.142(1) and also 148 passing of order u/s. 144 is held to be justified. Denying allowances of interest and salary paid to partners is also held to be valid by taking support of provisions of S. 184(5) of the Act. (A.Y. 2009-10)
Eastern Engineering Venture v. ITO (2019) 177 ITD 427 / 177 DTR 209 / 199 TTJ 737 (Cuttack)(Trib.)

S. 144 : Best judgment assessment – Unaccounted receipts – Loose papers – Search – Only net profit to be added as income and not gross receipts. [S. 69A, 145] 1369
Dismissing the appeal of the revenue the Tribunal held that; though the books of account is rejected entire gross receipts cannot be assessed as income, only net profit embedded in unaccounted receipts to be taxable as income. (A.Y. 2014-15)
DCIT v. Mehul T. Desai (2019) 174 ITD 584 (Surat)(Trib.)

1370 **S. 144C : Reference to dispute resolution panel – Time limit – Tribunal remanding matter back to DRP – Time limit is to be computed after TPO passes the order and not from the date of DRP order. [S. 144C(5), 144C(13)]**

On appeal by the assessee the Court observed that the TPO has passed the order dt. 10-02-2015 and communicated the same to the AO, who in turn passed the final assessment order dated 10-02–2015. The Court held that the Tribunal was right in holding that there is no jurisdictional error to invalidate the proceedings in toto and the communication of a copy of the direction of the DRP dated 12-03 2014 to the AO stated to have been received by the AO on 21-03-2014 was not a direction within the scope of sub-section (5) of S.144C of the Act. The directions issued by the DRP were to the TPO, who was in turn, required to do the computation after considering the objections of the assessee and it is thereafter they mature in to the directions under sub-section (5) of S. 144C of the Act. Accordingly the appeal of the assessee is dismissed. (TA No. 547 of 2019 dt 6-08-2019) (A.Y. 2008-09)

L & T Thales Technology Services Pvt. Ltd. v. CIT (2019) CTCJ-September-P. 93 (Mad.)(HC)

1371 **S. 144C : Reference to dispute resolution panel – Failure to consider objection – Failure of statutory authority to exercise its jurisdiction and non-application of mind – Amenable to writ jurisdiction – Matter remanded to DRP. [S. 9(1)(vi), Art.226]**

Allowing the petition the Court held that, If this plea of the assessee was not even looked at or examined by the Panel, it would amount to a jurisdictional error. To relegate the assessee to the appellate remedies in order to obtain an order of remand to the Panel, would be unjustified. Significantly, no prejudice would be caused to the Revenue, as the assessee had only sought correction of a jurisdictional error. That the Dispute Resolution Panel had failed to exercise its jurisdiction and had rendered the entire process of dispute resolution under the scheme of the Act farcical. A perusal of the objections recorded by the Panel under S. 144C(5) showed that the main or the basic contention raised by the assessee with respect to the non-taxability of its income under DTAA had not been considered or discussed and adjudicated upon. The Panel had blindly followed the Tribunal's decisions and had held that the web hosting services were interlinked with the domain registration and were ancillary and subsidiary to the application or enjoyment of the right for which payment was received by the assessee as royalty. In the decisions of the Tribunal which had formed the basis of the directions the assessee had taken a stand that it was not a tax resident of the U. S. A., and that it had not claimed any benefit under the provisions of the Double Taxation Avoidance Agreement between India and the U.S. A. The Panel had not taken note of this aspect and had relied upon the decision to uphold the action of the Assessing Officer to treat the receipts on account of domain name registration charges received by the assessee as royalty under S. 9(1)(vi). The Dispute Resolution Panel should have noticed whether or not the distinction from the decision of the Tribunal would have a bearing on the ultimate decision, and dealt with it. It could not have completely ignored it or irrationally applied it. It should have given its reasons for coming to that conclusion and given its findings and directions regarding the taxability of the receipts in the hands of the assessee. The Panel had merely followed the reasoning given therein without giving any indication how it was applicable to the assessee while dealing with the assessee's foremost objection regarding the provisions of the DTAA. The matter was remitted back

to the Dispute Resolution Panel for considering the objections raised by the assessee in detail, and for passing a fresh order on the merits and in accordance with law giving reasons and findings. Matter remanded. (A.Y. 2016-17)
P. D. R. Solutions Fzc v. DRP (2019) 418 ITR 277 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel – Draft assessment order passed in the name of amalgamating company, a non-existent entity on the date of passing such order – Entire assessment proceedings based on such invalid draft assessment order are void ab initio and deserve to be quashed. [S. 292B] 1372
FEIPL merged with the assessee w.e.f. 1-4-2012 and the merger was effective from 1-10-2013 and the AO was intimated about the merger on 1-10-2013. However, AO passed a draft assessment order on 30-1-2015 in the name of amalgamating company which was a non-existing entity in the eyes of law on the date of passing the order. Further, failure on part of the AO to pass a valid assessment order amounts to a jurisdictional defect which cannot be cured under S. 292B of the Act or corrected by passing a final assessment order. The order became an illegal order and the entire assessment proceedings based on such an invalid draft assessment order were void ab initio and deserved to be quashed. (A.Y. 2011-12)
Fedex Express transportation & Supply Chain Services (India) (P) Ltd. v. DCIT (2019) 108 taxmann.com 542 / 181 DTR 282 / 200 TTJ 962 (Mum.)(Trib.)

S. 144C : Reference to dispute resolution panel – Draft assessment order – Assessee is a LLP in Germany – TPO had not proposed any variation – Assessee was not a foreign company assessee is not eligible to draft AO order – Draft assessment order and final order passed by AO held void ab initio – DTAA – India – Germany. [S. 144C(15) (b), Art. 12] 1373
The assessee was a Limited Liability Partnership (LLP) and was incorporated in Germany. It had provided various services to its group entity in India. During Assessment proceedings the AO held that the assessee had received an amount from its Indian Group company, which had to be treated as royalty under Article-12 of India-Germany DTAA and passed the draft assessment order. The DRP refused to interfere with the addition made in the draft assessment order, pursuant to DRP's directions, the AO passed the impugned assessment order. The Tribunal held that, the assessee submitted is not an eligible assessee as per S. 144C(15)(b) of the Act, therefore AO could not have passed the draft assessment order under S. 144C(1) of the Act. Therefore, the draft assessment order as well as the final assessment order passed subsequently was void ab initio. (A.Y. 2013-14)
Maquet Holdings B. V. & Co. KG v. Dy. CIT(IT) (2019) 177 DTR 279 / 200 TTJ 120 (Mum.)(Trib.)

S. 144C : Reference to dispute resolution panel – Not an eligible assessee – Draft assessment order is invalid. [S. 92CA(3)] 1374
Held, dismissing the appeal of the revenue the Tribunal held that; according to the provisions of S. 144C(15)(b), the assessee must be a foreign company or an assessee in whose case there was any variation arising out of or in consequence of an order

passed by the Transfer Pricing Officer in terms of S.92CA(3). There was no variation as a consequence of any order passed by the Transfer Pricing Officer as there was no adjustment made in the case of the assessee. As the assessee had not fulfilled any of the conditions to become an "eligible assessee" in terms of S. 144C(15)(b),the draft assessment order was invalid and the final assessment order was without jurisdiction and null and void. (A.Y. 2010-11)
ACIT v. Espn Star Sports Mauritius SNCET Company (2019) 69 ITR 153 (Delhi)(Trib.)

1375 **S. 145 : Method of accounting – Suppression of sales – Revenue was not able to show any defect in assessee's records or in books of account maintained by assessee – Rejection of books of account is held to be not justified – Deletion of addition on account of suppression of addition is held to be justified. [S. 43CA, 50C, 145(3)]**
The assessee was engaged in the business of property development. During year, the assessee sold several flats and received sale consideration. The AO held that the income on the sale of flats was available to tax in the assessment year 2004-05 and not in the assessment year 2005-06 on the basis that the project was completed in the previous year relevant to the assessment year 2004-05 and not assessment year 2005-06. However, the income offered by assessee for the assessment year 2005-06 was assessed on protective basis. Further, he found that there was suppression of sales value in respect of six flats. Thus, he made an addition on account of suppressed sales value in respect of six flats. CIT(A) partly allowed the assessee's appeal holding that the project was completed in the assessment year 2005-06 and not in the assessment year 2004-05. However, he rejected the books of account under S. 145(3) and completed the assessment on best judgment basis. CIT (A) held that there was an understatement of sales value in respect of all twelve flats as there was suppression of value in all the twelve flats of the project, as the market rate then was ₹ 8,992 per sq. ft. for the assessment year 2005-06. Thus, the above rate of ₹ 8,992 per sq. ft. was applied to all the twelve flats to enhance the assessment to certain amount. On appeal Tribunal set aside the order of CIT (A) and held that neither the AO nor the CIT(A) had any material on record to show that the assessee received more than what was shown in the sale-deeds. Moreover, it held that there was no occasion to apply S. 145(3) so as to reject the books in the absence of any defect in the books on account of being found. Thus, it deleted the enhancement of assessment. On appeal by the revenue, high Court affirmed the order of the Tribunal and also held that, provision introduced with effect from 1-4-2014 for deeming consideration received on sale of goods/assets on basis of stamp duty valuation would be applicable prospectively. (A.Y. 2005-06)
PCIT v. Swananda Properties (P.) Ltd. (2019) 267 Taxman 429 (Bom.)(HC)

1376 **S. 145 : Method of accounting – Rejection of books of account – Suppression of production – Mismatch of consumption of raw material and output of drugs manufactured – Addition is held to be justified.**
Dismissing the appeal of the assessee the Court held that the Tribunal is justified in confirming the rejection of books of account and addition made by the AO when there is Mismatch of consumption of raw material and output of drugs manufactured. (A.Y. 2009-10)
Paras Organics (P.) Ltd. v. ACIT (2019) 263 Taxman 44 (Bom.)(HC)

S. 145 : Method of accounting – Income – Accrual – land development, had been Mercantile system of accounting – Cash system of accounting – Cannot adopt cash system in respect of one project and mercantile system in respect of other projects. [S. 5] 1377

Dismissing the appeal of the assessee the Court held that; where the Assessee is following consistently mercantile system of accounting in respect of all other projects cannot follow cash system of accounting in respect of one project. (A.Y. 2007-08)

Ace Real Estate & Developers v. ACIT (2019) 260 Taxman 37 / 175 DTR 437 / 308 CTR 481 (Bom.)(HC)

S. 145 : Method of accounting – Real estate developer – Project completion method – Addition on the basis of percentage completion method is held to be not justified. [AS-7] 1378

Assessee is engaged in business of construction as a builder /real estate developer.It maintained books of account on basis of project completion method. AO made certain addition to assessee's income by applying percentage completion method. Tribunal held that project completion method followed by assessee would not result in deferment of payment of taxes which were to be assessed annually under Act. Moreover, AS-7 issued by ICAI also recognized position that in case of construction contracts, assessee could follow either project completion method or percentage completion method. Tribunal further opined that there was no jurisdiction on part of AO to adopt percentage completion method for one year on selective basis. Accordingly the Tribunal deleted the addition. On appeal by the revenue the High Court affirmed the order of the Tribunal.

PCIT v. Panchsheel Colonizers (P.) Ltd. (2019) 267 Taxman 571 / 111 taxmann.com 459 (Raj.)(HC)

Editorial : SLP is granted to the revenue, PCIT v. Panchsheel Colonizers (P.) Ltd. (2019) 267 Taxman 570 (SC)

S. 145 : Method of accounting – Not maintaining of stock record – Rejection of books of account is held to be valid – CIT(A) has the power of enhancement after giving an opportunity of hearing – No substantial question of law. [S. 145(3), 251] 1379

Dismissing the appeal of the assessee the Court held that the Assessing Officer is justified in rejecting the books of account for not maintaining the stock register. CIT (A) has the power of enhancement after giving an opportunity of hearing. No substantial question of law. (A.Y. 2004-05)

Deepak Rugs v. CIT (2019) 418 ITR 179 / 310 CTR 135 / 180 DTR 141 / 267 Taxman 262 (All.)(HC)

S. 145 : Method of accounting – Valuation of stock – Goods ready for shipment had not been transferred – Declaration made in accordance with provision of sales tax is not relevant for the purpose of income-tax Act – Valuation of stock at cost or market price at the option of assessee – Held to be valid. 1380

Tribunal took a view that since title of goods ready for shipment had not been transferred to foreign buyers, value of those goods could be included in stock in hand at cost or market price, at option and as per regular practice of assessee. Revenue raised

a plea that for sales tax purpose value of goods lying at port was taken at invoice value and, thus, same value was to be adopted for tax purposes High Court rejected revenue's plea by holding that sales tax computation and declaration would be made in accordance with provisions of Sales-tax Act and same would not make any difference for valuation of stock under provisions of Act.
PCIT v. Jindal Stainless Ltd. (2019) 109 taxmann.com 144 / 266 Taxman 188 (Delhi)(HC)
Editorial: SLP of revenue is dismissed; PCIT v. Jindal Stainless Ltd. (2019) 266 Taxman 187 (SC)

1381 **S. 145 : Method of accounting – Cash method – Reimbursement not received from state government cannot be taxed on accrual basis. [S. 145]**
Assessee adopted cash method of accounting for reimbursement of student concession passes which were to be reimbursed by the state government. AO adopted mercantile method and sought to tax the reimbursement even though it was received in a later year. High Court held that there is no statutory compulsion to account its income on accrual basis but even a mixed or hybrid system of accounting could be adopted. Thus, since reimbursement was not received the same could not be taxed. (A.Y. 1991-92 1992-93)
CIT v. The Tamil Nadu State Transport Corporation (Madurai) Ltd. (2019) 179 DTR 161 / 104 CCH 608 (Mad.)(HC)

1382 **S. 145 : Method of accounting – Bank – Guidelines of Reserve Bank of India – Unreconciled outstanding amounts in inter branch accounts transferred to reserves through profit and loss account – Amount not assessable as Income. [S. 28(i), Banking Regulation Act, 1949]**
Allowing the appeal the Court held that the unreconciled entries in another branch account of the assessee could not be treated as its income. On the facts, the entries were made only for the purpose of maintaining system which was lying in the branch office or the head office and on no accounting principle could it be treated as income of the assessee once it had been shown as reserve fund and as and when accrued, it would be treated as income. It was only an assessment of accounts pursuant to the guidelines issued by the Reserve Bank of India. Order of Tribunal is set aside.
State Bank of Bikaner and Jaipur v. DCIT (2019) 415 ITR 193 (Raj.)(HC)
Editorial: SLP is granted to the revenue CIT v. State Bank of Bikaner and Jaipur (2019) 413 ITR 319 (St.) (SC)

1383 **S. 145 : Method of accounting – Estimating profit rate of 15% per cent which was arrived at with consensus between both parties – Addition is held to be justified.**
On basis of a statement made by one member of assessee-firm, estimate was made taking net profit rate of assessee to be 20 per cent, which was after consensus reached at 15 per cent. Tribunal confirmed the order of AO. High Court upheld the order of the Tribunal. (A.Y. 2008-09)
Mayur Sheet Grah (P.) Ltd. v. CIT (2019) 106 taxmann.com 129 / 264 Taxman 18 (All.) (HC)
Editorial: SLP of the assessee is dismissed, Mayur Sheet Grah (P.) Ltd. v. CIT (2019) 264 Taxman 17 (SC)

S. 145 : Method of accounting – Trading in rice – Assessing Officer was justified in accepting two entries relating to profits and disregarding other two entries concerning losses. 1384

Assessee was engaged in trading of rice. It showed profits in two transactions and loss in two transactions. AO after considering entire material including account books held that loss-making transactions were bogus and, accordingly, disallowed loss. Assessee contended that AO was not justified in accepting two entries in books of account relating to profits and disregarding other two entries concerning losses. High Court held that since books of account or any other material produced before AO by assessee were simply meant to support disclosure of profit or loss set out in its return and it was always open to Assessing Officer to scrutinise such material or entries in books of account before accepting same for purpose of assessment. (A.Y. 1989-90)

Mathur Marketing (P) Ltd. v. CIT (2006) 281 ITR 379 / 151 Taxman 123 (Delhi)(HC)

Editorial: SLP of assessee is dismissed, Mathur Marketing (P.) Ltd. v. CIT (2019) 265 Taxman 316 (SC)

S. 145 : Method of accounting – Stock valuation of gold – LIFO method of valuation – Recognised in law – No substantial question of law. [S. 260A] 1385

Assessee is engaged in business of manufacturing and selling of gold ornaments who followed LIFO method of valuation. AO held that assessee undervalued stock which was below average cost price of gold and made certain addition to assessee's income. Tribunal having accepted assessee's explanation, deleted addition made by AO. High Court affirmed the order of Tribunal. (A.Y. 2010-11)

CIT v. Sharad Mohanlal Shah (2019) 108 taxmann.com 35 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. Sharad Mohanlal Shah (2019) 265 Taxman 539 (SC)

S. 145 : Method of accounting – Stock valuation – Cash credit limits – Discrepancy in stock as per books of account of assessee and that shown in bank statements – Deletion of addition is held to be justified. 1386

AO made addition to assessee's income on account of discrepancy in stock as per books of account of assessee and that shown in bank statements. Tribunal deleted said addition by taking a view that assessee had tendency to show higher value of stock in bank statements in order to enjoy higher cash credit limit. High Court upheld order passed by Tribunal.

PCIT v. Janam Steel and Alloys (2019) 108 taxmann.com 349 / 265 Taxman 552 (Guj.)(HC)

Editorial: SLP is granted to the revenue; PCIT v. Janam Steel and Alloys (2019) 265 Taxman 551 (SC)

S. 145 : Method of accounting – Undervaluation of sales and estimation of gross profit – Deletion of addition is held to be justified. 1387

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the addition made in respect of undervaluation of sales and estimation of gross profit by virtue of the judgment of the CEASTAT. (A.Y. 2007-08)

PCIT v. Zirconia Cera Tech Glazes (2019) 103 taxmann.com 357 / 262 Taxman 201 (Guj.)(HC)

Editorial: SLP of revenue is dismissed; PCIT v. Zirconia Cera Tech Glazes (2019) 262 Taxman 200 (SC)

1388 **S. 145 : Method of accounting – Accrual – Surcharge receivable from customers on delay in payment of electricity bill taxable on receipt basis and not accrual basis. [S. 4, 5]**
The assessee accounted for and offered the surcharge income on receipt basis. The AO sought to tax the same on accrual basis, irrespective of collection. Dismissing the appeal of the revenue the Court held that where the assessee owing to uncertainty in collection, offered the surcharge income on receipt basis and the same was accepted in the earlier years, the addition made in the instant assessment year was also to be deleted and the income is to be taxed on receipt basis. (A.Y. 2005-06)
PCIT v. Dakshin Haryana Bijli Vitran Nigam Ltd. (2019) 175 DTR 429 / 307 CTR 709 (P&H)(HC)

1389 **S. 145 : Method of accounting – Interest on hire purchase transactions – Bifurcation of principal and interest components – Change in accounting method in books of account does not alter position in taxation. [S. 4]**
Allowing the appeal of the assessee the Court held that, change in accounting method in books of account does not alter position in taxation. The assessee has correctly the offered the interest income on hire charges bifurcating the principal and interest.
Sundaram Finance Ltd. v. ACIT (2019) 413 ITR 291 / 262 Taxman 477 (Mad.)(HC)

1390 **S. 145 : Method of accounting – Construction business – Percentage completion method – Brokerage expenditure – Allowable in the year when the expenditure is incurred. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, when the assessee follows percentage completion method, brokerage expenditure is allowable in the year when the expenditure is incurred. (A.Y. 2008-09)
CIT v. DLF Home Developers Ltd. (2019) 411 ITR 378 (Delhi)(HC)

1391 **S. 145 : Method of accounting – Mercantile system – Legal steps taken for enhancement of rent – Rent claimed before the arbitrator should be shown as accruing when the matter is pending before the Arbitration. [S. 22, 23]**
When the assessee has taken legal steps to recover the enhancement of rent. Rent claimed before the arbitrator should be shown as accruing when the matter is pending before the Arbitration. There cannot be protective assessment of income relating to one year in another assessment year. (A.Y. 1985-86, 1996-97 to 2002-03)
CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.)(HC)

1392 **S. 145 : Method of accounting – Rejection of books of account – No allegation from department that books of account of assessee either incorrect or incomplete – Gross profit ratio of one year not be applied to another year for determining profit of some of transactions of another year – Rejection of books is not justified. [S. 144]**
All the purchases and sales made by the assesse were accounted for through vouchers and bills and a stock register which was maintained on tally accounting software. The books were audited and payments made as well as sales consideration was received through banking channels. Further, no allegations that the books were incomplete or

incorrect were made by the Department and any allegations that were made were negated during deviation and remand proceedings. In the Appeal proceedings before the Tribunal, it was held that before rejecting the book results, the Department is duty bound to find patent, latent and glaring defects in the books of account, which was not done and reliance was only placed on a statement made by the managing director which was later retracted and did no relate to booking the bogus expenditure. Even otherwise, once the books of account of the assessee were rejected, the profit had to be estimated on the basis of the proper material available. The gross profit ratio of one year could not be applied to another year for determining the profit of some of the transactions of another year. The Department was not entitled to make a pure guess in making assessment based on a mere suspicion. Thus, the rejection of the books of account by the CIT (A) was not in accordance with law. (A.Y. 2012-13 to 2017-18)
Agson Global Pvt. Ltd. v. ACIT (2019) 76 ITR 504 (Delhi)(Trib.)

S. 145 : Method of accounting – Adjustment on account of MODVAT credit has to be made in respect of closing stock, opening stock, purchases and sales. [S.145A] 1393
Held that, when the unutilized MODVAT credit has been added to the closing stock by invoking the provision of S. 145A it has to be made to the closing stock as well as purchases and sales (A.Y. 2009-10)
Kellogg India (P) Ltd. v. DCIT (2019) 182 DTR 280 / 201 TTJ 393 (Mum.)(Trib.)

S. 145 : Method of accounting – Rejection of books of account – Estimation of gross receipts – Factors to be considered – Estimation pure question of fact – Assessee's turnover growing more than 5 times compared to last year – Reliance on past year's figures not appropriate guide – Comparison with other similar businesses – Application of net profit rate of 8% highly excessive – Where books of account not available, AO should rely on Audit Report – AO is directed to apply net profit of 6%. [S. 145(3)] 1394
The assessee was engaged in civil construction work. Its books of account were rejected under S. 145(3) of the Income-tax Act, 1961 on the ground that during the entire assessment proceedings, no compliance was made on any date. The AO estimated the net profit rate of 12% on gross receipts. The CIT (A) reduced this amount and estimated the net profit rate at 8% on the gross receipts. On cross appeals, the tribunal held that the AO while framing the assessment had lost sight of the fact that during the AY 2012-13, the turnover of the assessee had grown up by more than five times as compared to its preceding year. Assessee could not be expected to report the same rate of net profit as was earned in the preceding year. The audited accounts for the assessment year as well as for the past assessment years were available with the Department. It was not the case of the AO by drawing comparison with the past years audited accounts with the relevant year, the assessee had either shown certain expenses in abnormal terms or that certain expenses were debited for an abnormal amount. Since the turnover has gone up manifold in the year under consideration from reliance to the past years trading results was not to be an appropriate guide. Therefore, the AO was directed to apply the net profit rate of 6% on the gross receipts, without any further deduction. (A.Y. 2012-13)
Shobha Ram Sharma v. ACIT (2019) 75 ITR 394 (Agra)(Trib.)

1395 **S. 145 : Method of accounting – Survey – Estimation of income on the basis of estimated gross profit on sales – Rejection of books of account without any reason – Addition is held to be not valid. [S. 133A, 144]**
The assessee is in the e business of dealing in precious metals and ornaments. During the course of this survey, certain diaries were found indicating unaccounted credit sales. These diaries were impounded by the authorities. On the basis of the entire material and the books of account, the assessee offered to tax additional income on account of stock difference of gold, silver and diamond on account of stock. The assessee filed return accepting this additional income. However the AO made addition on account of estimated gross profit on estimated sales. CIT (A) confirmed the addition. On appeal the Tribunal held that the AO made addition made in respect of the unaccounted sales are far in excess of the actual sales made by the assessee, when the income voluntarily offered to tax on the basis of material on record is far more than income, strictly speaking, legally justified on that basis, there cannot be any good reasons to make separate additions on the basis of the same material. In these circumstances, separate addition on account of income, as profit or as seed capital or for any other related factor, is clearly unwarranted. Accordingly deleted the addition. (A.Y. 2011-12)
Mayankkumar Natwarlal Soni v. ACIT (2019) 179 ITD 444 (Ahd.)(Trib.)

1396 **S. 145 : Method of accounting – Works contract tax(TDS) – When sale is offered corresponding amount of works contract is allowable as deduction. [S. 37(1)]**
When the work is executed and sales accounted for and offered to tax in the year, deduction claimed for the corresponding amount of works contract tax incurred on such erection sales or works receipts is allowable. (A.Y. 2004-05)
Dy. CIT v. Stewarts and Lloyds of India Ltd. (2019) 74 ITR 677 (Kol.)(Trib.)

1397 **S. 145 : Method of accounting – Percentage completion method – Corresponding expenditure incurred in relation to unbilled sales – Sales include sub contract charges – Provision to be made – Rule of constancy to be followed.**
The amount of unbilled sales if represents revenue booked in the accounts on the percentage completion method for incomplete contracts at the end of the year and corresponding expenditure incurred in relation to the unbilled sales including subcontract charges is also provided for in the accounts and this method is followed by the assessee consistently in the earlier years then the claim of the assessee is allowable. (A.Y. 2004-05)
Dy. CIT v. Stewarts and Lloyds of India Ltd. (2019) 74 ITR 677 (Kol.)(Trib.)

1398 **S. 145 : Method of accounting – Inclusive method – There is no need to credit separately made on account of excise duty to the profit and loss account.**
If the inclusive method is followed by the assessee in respect of excise duty and the sales credited by the assessee to the profit and loss account as well as the stock of finished goods were inclusive of excise duty, there is no need of credit separately made on account of excise duty to the profit and loss account. (A.Y. 2004-05)
Dy. CIT v. Stewarts and Lloyds of India Ltd. (2019) 74 ITR 677 (Kol.)(Trib.)

S. 145 : Method of accounting – De-reorganisation was done for default on part of customers; thus, change in method of account was on account of proper reasons, AO was not justified in rejecting the books without finding any fault with such change. 1399

Assessee engaged in business of developing residential townships and providing infrastructure services, following percentage completion method of accounting. During the year, assessee had de-recognised certain sales, of flats as buyers had defaulted in paying instalments, the AO held that assessee could not derecognize sales as assessee, in any way, would sell flats to some other person and accordingly, he rejected change in method of accounting made by assessee and amount so de-recognized was added to income of assessee. Tribunal held that the assessee has chosen to follow the revised guidance note issued by ICAI for accounting for real estate transactions. Though the revised Guidance note applies to projects commenced on or after 1-4-2012, the guidance note allows the same to be applied for the projects commenced prior to 1-4-2012 also. The revised Guidance Note provides for de-recognising income, when there is default on the part of customers. Thus, the change in method of account is on account of proper reasons. Therefore Tribunal held that tax authorities are not justified in rejecting the same, without finding fault with the change. (A.Y. 2014-15, 2015-16)

Global Entropolis (Vizag) (P.) Ltd. v. ACIT (2019) 178 ITD 179 / 202 TTJ 384 (Bang.)(Trib.)

S. 145 : Method of accounting – Estimation of income – Accounts of assessee were subject to statutory as well as tax audit – Accounts not rejected – Addition made on estimate basis was deleted. 1400

Assessee engaged in manufacturing and trading of submersible pumps, filed its return declaring certain taxable income. The AO noted that there was slight increase in raw material consumption ratio and on the basis of increase in raw materials, he estimated increase in sales volume and added difference in estimate sales of income. Tribunal held that, accounts of assessee were subject to statutory as well as tax audit, and same were not rejected by the AO. Further nowhere he had expressed his inability to deduce true income from said accounts, it was also possible that some of items of raw material might be lying in closing stock or in semi-finished goods but such aspect had not been considered by AO while estimating unaccounted sales. Hence, addition made on estimate basis was deleted. (A.Y. 2010-11)

ACIT v. Aroma Hightech Ltd. (2019) 178 ITD 489 (Ahd.)(Trib.)

S. 145 : Method of accounting – Maintenance charges – Addition on notional basis is held to be not justified. [26AS] 1401

Tribunal held that the AO cannot make addition on notional basis in respect of maintenance charges when no maintenance charges were actually received by assessee and same was confirmed by tenants, and same was also got confirmed from perusal of bank statements, TDS certificate and details reflected in Form 26AS. (A.Y. 2012-13)

ACIT v. Seema Sobti (2019) 177 ITD 370 / 181 DTR 132 (Delhi)(Trib.)

1402 **S. 145 : Method of accounting – Valuation of closing stock at nil – Consistent method of accounting – Deletion of addition by CIT(A) is held to be justified.**
Assessee was engaged in business of leather, leather shoes, leather shoe-uppers etc., in respect of which assessee had a closing stock of raw material and finished goods. Assessee had shown value in closing stock of these items at nil. AO took value of closing stock at ₹ 67.83 lakhs and made addition to income of assessee. CIT(A) deleted the addition. Tribunal held that assessee was following similar method of valuation of closing stock year after year and same was accepted in earlier year by revenue and, further, considering nature of these items it was clear that these items day to day reduce in their value, CIT (A) was justified in accepting said valuation of closing stock. (A.Y. 2008-09)
ITO v. Wasan Exports (P.) Ltd. (2019) 177 ITD 115 (Delhi)(Trib.)

1403 **S. 145 : Method of accounting – Project Completion Method – Percentage Completion Method – Project completion method is held to be valid – Deletion of addition in respect of advance received from customers is held to be valid. [S. 145(3)]**
Dismissing the appeal of the revenue the Court held that ; Dept's argument that assessee should have declared profit on percentage completion method because according to AS-7, revised in 2002 with effect from 01.04.2003, the 'Completed Contract method' has been scrapped & ICAI guidelines prefer the percentage completion method is not acceptable. Project completion method s held to be valid. Deletion of addition in respect of advance received from customers is held to be valid. (A.Y. 2012-13)
ITO v. Shanti Construction (2019) 73 ITR 115 / 201 TTJ 41 (UO) (Agra)(Trib.) www.itatonline.org

1404 **S. 145 : Method of accounting – Low gross profit – Books of account cannot be rejected without pointing out any defects – CIT(A) cannot enhance and reject the books of account which was not the subject matter of assessment. [S. 251]**
Tribunal held that merely because low gross profit was shown, books of account cannot be rejected without pointing of any defects in the books of account maintained by the assessee. Tribunal also held that CIT (A) cannot enhance and reject the books of account which was not the subject matter of assessment. (A.Y. 2012-13 to 2014-15)
Zuberi Engineering Company v. DCIT (2019) 69 ITR 261 / 175 ITD 557 / 197 TTJ 659 / 179 DTR 25 (Jaipur)(Trib.)

1405 **S. 145 : Method of accounting – Project completion – Profit and loss account and Balance sheet is prepared on completion of project, provision for expenses in respect of ancillary work yet to be completed has to be taken in to consideration – When the payee is not known it is not possible to deduct tax at source on estimated expenditure – Not liable to deduct tax at source – No disallowance can be made. [S. 40(a)(ia)]**
Tribunal held that; since in the project completion method, the entire expenses and the entire sales should be shown, it was necessary for the assessee to make provision for estimated expenditure to be incurred in subsequent years on account of minor or miscellaneous work. Accordingly the treatment of the assessee in respect of the

estimated expenditure like expenses on minor or miscellaneous work, in its books of account was proper. Since the assessee had disclosed its entire project receipts of its project in the assessment 2012-13, all the expenses incurred or to be incurred in connection with the project were also taken into account so as to arrive at the correct net profit from this project. When the payee is not known it is not possible to deduct tax at source on estimated expenditure the assessee is not liable to deduct tax at source hence no disallowance can be made (A.Y. 2012-13)
Bengal Peerless Housing Development Co. Ltd. v. DCIT (2019) 69 ITR 217 / 175 ITD 671 / 178 DTR 5 / 199 TTJ 1003 (Kol.)(Trib.)

S. 145 : Method of accounting – Mercantile system – Mixed system of accounting – Assessee cannot follow cash system selectively for certain receipts – Statutory provisions under Act would prevail over any observation / objection / remark of audit party of CAG. 1406
The Tribunal held that the assessee is not permitted to follow cash system of accounting for some of items while following mercantile system of accounting for rest of items in computation of income chargeable under head profits and gains of business or profession or income from other sources as mixed system of accounting has lost statutory mandate with effect from assessment year 1989-90 in view of amendment to S. 145. Statutory provisions under Act would prevail over any observation/objection/ remark of audit party of CAG. (A.Y. 2007-08).
Housing & Urban Development Corporation Ltd. v. ACIT (2019) 174 ITD 785 (Delhi)(Trib.)

S. 145 : Method of accounting – Cash system – Deduction at source – Mismatch of professional receipts appearing in form no 26AS – Credit for tax deduction at source was claimed – Corresponding professional receipts cannot be assessed to tax if such receipts were otherwise not assessable as income for the relevant year. [S. 194A, 194J, 199, R.37 BA, form 26AS] 1407
Tribunal held that when the assessee following cash system of accounting due to mismatch of professional receipts appearing in form no 26AS, merely because credit for tax deduction at source was claimed corresponding professional receipts cannot be assessed to tax if such receipts were otherwise not assessable as income for the relevant year. Matter was remanded to the AO to recompute income in accordance with cash system of accounting followed by the assessee. (A.Y. 2011-12)
Dhruv Sachdeva v. ACIT (2019) 174 ITD 504 (Delhi)(Trib.)

S. 145 : Method of accounting – Survey – In the course of survey incriminating material was found indicating unaccounted sale of flats – Rejection of books of account and estimation of income at 11 percent of gross sales is held to be justified. [S. 69] 1408
Tribunal held that, in the course of survey incriminating material was found indicating unaccounted sale of flats-Rejection of books of account and estimation of income at 11 percent of gross sales is held to be justified. (A.Y. 2012-13)
Golla Narayana Rao v. ACIT (2019) 174 ITD 67 / 176 DTR 201 / 198 TTJ 407 (Vishakha) (Trib.)

1409 **S. 145A : Method of accounting – Valuation – Excise duty though not paid is liable to be included in valuation of closing stock. [S. 145A(b)]**

Assesse-society was engaged in business of manufacturing of sugar Assessee's claim was that since excise duty had not been paid, value of said duty was not liable to be added in valuation of closing stock. Tribunal held that in view of S. 145A(b) which was inserted by Finance (No. 2) Act, with effect from 1-4-1999, it was clear that closing stock would include amount of excise duty which had been incurred by assessee to bring goods to place of its location. High Court also opined that excise duty was payable as soon as excisable item was produced or manufactured and, thus, liability to pay excise duty did not depend on any subsequent event although it may be collected after sometime. Order of tribunal is affirmed.(A.Y. 2002-03)

Kisan Sahkari Chini Mills Ltd. v. CIT (2019) 267 Taxman 384 / 111 taxmann.com 384 (All.)(HC)

Editorial: SLP is granted to the assessee, Kisan Sahkari Chini Mills Ltd. v. CIT (2019) 267 Taxman 383 (SC)

1410 **S. 145A : Method of accounting – Interest – Compulsory acquisition of Land – Interest on enhanced compensation – Assessable in year of receipt under head Income from other sources. [S. 2(28A) 56(2) (viii), Land Acquisition Act, 1894, S.28]**

Court held that the expression "interest" occurring in clause (28A) of section 2 of the Income-tax Act, 1961, widens the scope of the term "interest" for the purposes of the Act. The cumulative effect of S. 145A(b) and S. 56(2)(viii) would be that where land has been acquired compulsorily by the Government any interest received on compensation or on enhanced compensation would be taxable under the head "Income from other sources" in the year of receipt. (A.Y. 2010-11)

Puneet Singh v. CIT (2019) 415 ITR 215 / 182 DTR 194 / 310 CTR 817 (P&H) (HC)

1411 **S. 145A : Method of accounting – Valuation of stock – Excise duty – Not added to purchases, sales or valuation of inventories – Valuation of closing stock, excise duty had rightly been excluded from value of closing stock of finished goods at end of accounting period.**

Tribunal held that where no excise duty, etc., were added to purchases, sales or valuation of inventories and no excisable item of closing stock was removed from factory premises till end of accounting year, following net method of valuation of closing stock, excise duty had rightly been excluded from value of closing stock of finished goods at year end. (A.Y. 2014-15)

ACIT v. U.P. Asbestos Ltd. (2019) 176 ITD 518 / 200 TTJ 886 / 180 DTR 305 (Luck.)(Trib.)

S. 147 : Reassessment – Change of opinion – High court is directed to decide whether requirement of S. 148 is satisfied or not. [S. 143(1), 143(3)] 1412

Allowing the appeal of the revenue the Court held that, High Court should decide (i) validity of S. 148 notice where assessment is made u/s. 143(1) & not u/s. 143(3), (ii) whether notice can be said to be based on change of opinion if there is no foundation to form any such opinion, (iii) Whether requirements of S. 148 are satisfied, namely, that it contains the facts constituting the "reasons to believe" and furnishes the necessary details for assessing the escaped income and (iv) whether finding recorded by ITAT on merits is legally sustainable. (AY. 1999-2000)

PCIT v. Nokia India Pvt. Ltd. (2019) 413 ITR 146 / 176 DTR 291 / 308 CTR 20 (SC), www.itatonline.org

Editorial: Order in (ITA No. 854 of 2016 dt. 21-04-2017) PCIT v. Nokia India Pvt. Ltd. (Delhi) (HC) is set aside

S. 147 : Reassessment – After the expiry of four years – In absence of any failure on part of assessee to disclose fully and truly all material facts at time of assessment – Reassessment proceedings is held to be bad in law. [S. 80IA, 148] 1413

Dismissing the appeal of the revenue the Court held that notice to reopen assessment had been issued beyond four years from end of relevant assessment year and, there was no failure on part of assessee to disclose fully and truly all material facts at time of assessment. Accordingly the Tribunal rightly held that reassessment notice is issued due to change of opinion. Order of Tribunal is affirmed. (ITA No. 1357 of 2016 dt. 11-1-2019)

PCIT v. L&T Ltd. (2020) 113 taxmann.47 / 268 Taxman 391 (Bom.)(HC)

Editorial: SLP of revenue is dismissed. PCIT v. L&T Ltd. (2020) 268 Taxman 390 (SC)

S. 147 : Reassessment – After the expiry of four years – Change of opinion – Interest income on fixed deposit assessed as business income – Re assessment on the ground that it has to be assessed as income from other sources. [S. 56, 148, Art. 226] 1414

Assessee, in return of income claimed interest income earned on fixed deposit as part of its business income and AO disallowed same on ground that it did not carry out any business during year and passed assessment order under S. 143(3) on 30-3-2014 and subsequently AO issued reopening notice dated 26-3-2018 on ground that interest income was required to be taxed as income from other sources. On writ the Court held that notice was issued beyond period of four years from end of assessment year 2011-12 and there had been a complete disclosure of all material facts on part of assessee during regular assessment proceedings u/s. 143(3), impugned notice was clearly hit by first proviso to section 147 and deserved to be set aside. (AY. 2011-12)

DCIT v. MSEB Holding Co. Ltd. (2019) 102 taxmann.com 288 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, since tax effect is less than ₹ 2 Crore. DCIT v. MSEB Holding Co. Ltd. (2020) 269 Taxman 22 (SC)

S. 147 : Reassessment – After the expiry of four years – Bogus purchases – Change of opinion – Sale of goods – Stock in trade – Reassessment notice is held to be bad in law. [S. 68, 148, Art. 226] 1415

Court held that, the assessee had produced all material such as acknowledgment of return, balance sheet, profit and loss account, tax audit report, return of income of

directors, shareholding pattern, bank account details etc. during original assessment – Therefore, profit and loss account was thoroughly scrutinized during original assessment and, thereafter, an assessment order was passed. Accordingly, there was no failure on part of assessee to produce all material particulars during original assessment. Allowing the petition the Court held that it cannot be said that there was any failure on part of the assessee to produce any material particulars, accordingly the notice issued by the AO is quashed. (WP. No. 2386 of 2019 dt. 9-10-2019 (AY. 2012-13)
Sutra Ventures Pvt. Ltd. v. UOI (2019) 111 taxmann.com 442 (Bom.)(HC)

1416 **S. 147 : Reassessment – After the expiry of four years – Without there being any element of lack of true and full disclosure on the part of the assessee – Reassessment notice is held to be bad in law. [S. 115-0, 148]**
The reassessment notice was issued on the ground that the assessee has resorted dubious method of buyback of shares to avoid dividend tax. Thus the transaction is a colorable device to avoid tax and it clearly amounts to tax evasion. The assessee company has utilized the accumulated profit for buy back of the shares and this arrangement is a convenient ploy to get round the dividend distribution tax liability and the payment towards buyback was indeed divided. By not paying the dividend, the company has avoided DDT. Instead of paying dividend, the company has offered a buyback offer which is accepted by the holding company and therefore I have reason to believe that the income of ₹ 11,04,29,642/- chargeable to tax has been under assessed. On writ allowing the petition the Court held that issue of notice after expiry of four years, without there being any element of lack of true and full disclosure on the part of the assessee – Reassessment notice is held to be bad in law. (AY. 2011-12)
Firstsource Solutions Ltd. v. Dy. CIT (2019) 176 DTR 151 (Bom.)(HC)

1417 **S. 147 : Reassessment – After the expiry of four years – Bogus purchases – Accommodation entries – No failure to disclosure material facts – Change of opinion – Reassessment is held to be bad in law. [S. 69C, 148]**
The petitioner is a partnership firm carrying on the business of manufacture and exports of diamonds. The assessment was completed u/s. 143(3) and thereafter reopening was done for alleged bogus purchases. The assessment was done by making GP additions. Thereafter the reassessment notice was issued again for alleged accommodation entries. On writ allowing the petition the Court held that the omission of the AO to make an assertion in the reasons that there was a failure to disclose fully and truly all material facts necessary for the assessment is sufficient to set aside the reassessment notice. Also, a notice issued on change of opinion is bad in law. (AY. 2012-13)
Usha Exports v. ACIT (2020) 312 CTR 237 / 185 DTR 87 (Bom.)(HC), www.itatonline.org

1418 **S. 147 : Reassessment – After the expiry of four years – Interest on ECB – No failure to disclose material facts – Reassessment is held to be bad in law – DTAA – India – Mauritius. [S. 148, Art. 226]**
AO passed order u/s. 143(3) by rejecting assessee's claim of such income on securities not being taxable in India, However, he allowed assessee's claim of interest income on ECB. AO issued notice proposing to reopening of assessment for failure on assessee's

part that it did not made true and full disclosure regarding its beneficial ownership status accordingly claim of exemption on interest on ECB was chargeable to tax under Act. Allowing the petition the Court held that AO not only considered assessee's claim during scrutiny assessment, not being satisfied, raised multiple queries during such assessment. Reopening is based on mere change of opinion and would be impressible. Accordingly notice was set aside. (AY. 2011-12)
HSBC Bank (Mauritius) Ltd. v. DCIT(IT) (2019) 307 CTR 456 / 175 DTR 153 / 101 taxmann.com 206 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Exemption – Excessive deduction – No failure to disclose material facts – Reassessment is held to be bad in law. [S. 11(1)(a) 11(2)] 1419
Dismissing the appeal of the revenue the Court held that CIT(A) and Tribunal held that the assessee had disclosed fact of acquisition of asset and transfer of development rights in note attached to return of income and in audited balance-sheet hence, there was no failure on assessee's part in reasons recorded by AO, there was not even an allegation that there was any failure on part of assessee to disclose any material facts which in turn lead to escapement of income. Accordingly the notice of reassessment is held to be bad in law. On appeal High Court also affirmed the order of the Tribunal. Followed *City and Industrial Development Corporation of Maharashtra Ltd. v. ACIT (WP No. 1568 of 2013 dt. 24-03-2014) (2014) 222 Taxman 203 (Mag.) / 44 taxmann.com 443 (Bom.) (HC)* (AY. 2003-04)
CIT(E) v. Marhatta Chamber of Commerce Industries & Agriculture (2019) 175 DTR 137 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Furnishing all details in response to notices – Non-application of mind by assessing officer to materials produced at the time of original assessment – Reassessment is invalid. [S. 142(1), 143(2) 148, Art. 226] 1420
Allowing the petition the Court held that there was no application of mind by the AO to the jurisdictional requirements to issue notice under S. 148. Firstly, the assessment was sought to be reopened after four years and it was not mentioned that the assessee had failed to disclose all material facts in the reasons supporting the notice for reassessment. Secondly, on the facts, there had been no failure by the assessee to fully and truly disclose all the material facts. The reasons in support of the notice of reassessment under S. 147 mentioned the areas in which reassessment needed to be carried out, and the record showed that the material regarding these topics was called for over two occasions from the assessee and was supplied. The first jurisdictional requirement was that the notice must disclose application of mind by the authority seeking to reopen the assessment to the additional requirement under S. 147 in case of reopening after four years was missing. The assessee in its objections had pointed out there was no averment in the reasons that the assessee had failed to disclose fully and truly all the material facts necessary for the assessment, and factually there had been no such failure. While rejecting the objections, the AO had not even noticed this requirement. Accordingly the Court held that, there was no failure by the assessee to fully and truly disclose all

the material facts necessary for the assessment. The assessee had explained in the note how the valuation of share premium was arrived at. Having considered the material, it was clear that there was no failure by the assessee to fully and truly disclose all the material facts for the assessment as regards the reasons supplied under the notice for reassessment. (Referred *Titanor Components Ltd. v. ACIT (2012) 343 ITR 183 (Bom.)(HC).* (AY. 2012-13)
Supra Estates India Pvt. Ltd. v. ITO (2019) 418 ITR 130 / (2020) 268 Taxman 88 (Bom.) (HC)

1421 **S. 147 : Reassessment – After the expiry of four years – Shah Commission's report – Cash credit – Under invoicing – Merely on basis of Shah Commission's Report opining that there was under – invoicing of export price by iron-ore miners and exporters, reassessment could not be initiated when there was nothing to indicate that any particular income had accrued to anyone as a result of price difference – Notice based on report of commission is held to be not valid. [S. 28(i), 68, 148]**
The petition was carrying on business of mining and export of iron ore. After scrutiny, assessment order under S. 143(3) was passed. Reassessment proceedings were initiated after the expiry of four years on basis of information of Shah Commission Report that there was under invoicing of export by exporters of iron ore, Assessing Officer initiated reassessment. The reasons for reopening the assessment was as under (i) There was under invoicing of exports by the assessee, (ii) alternatively, mining activity being illegal, income arising from it ought to be assessed as inform other sources and (iii) escapement of income from assessment was on account of failure on the part of the assessee to disclose wholly and truly all material facts necessary for the assessment. On writ allowing the petition the Court held that since under – invoicing was nothing but a matter of expression of opinion by Commission, AO could not follow same as primary for reopening assessment. As AO had not applied his mind to this aspect of matter, reassessment order was to be quashed as there was nothing to indicate that any particular income has accrued to anyone as a result of such difference in prices. As regards the allegation of illegality the Court held that when the income from the activity of mining and export ore arose also when it was assessed to tax there was nothing to suggest that the activity was illegal. Accordingly the notice of reassessment was held to be invalid. Ratio in *Raymond Woollen Mills Ltd v. ITO (1996) 236 ITR 34 (SC)* is distinguished. (AY. 2008-09)
Sesa Sterlite Ltd. v. ACIT (2019) 417 ITR 334 / 267 Taxman 275 / 310 CTR 668 / 181 DTR 290 (Bom.)(HC)

1422 **S. 147 : Reassessment – After the expiry of four years – Benefit of Double taxation benefit – Tax residency certificate – Introduced subsequently – Reassessment is bad in law – DTAA-India-UAE. [S. 148, Art. 4(b)]**
Allowing the petition the Court held that, no specific reasons were recorded regarding the material which was not truthfully disclosed. In the original assessment the assessee had disclosed that he was governed by the Double Taxation Avoidance Agreement between India and the United Arab Emirates. The details called for had been furnished and placed on record. The passport also was produced to establish the number of days

the assessee was abroad to qualify to be a non-resident. A perusal of the reasons for notice of reassessment clearly showed that the only reason was that the tax residency certificate or any other details were not supplied by the assessee. The requirement to produce the tax residency certificate was introduced by the Finance Act, 2012 with effect from April 1, 2013. The present proceedings were in connection with the assessment year 2005-06 and there was no need of producing such certificate as on that date. Besides that, the requirement of stay in the United Arab Emirates for a period of six months had been introduced in article 4(b) of the amended Double Taxation Avoidance Agreement between India and the United Arab Emirates which came into effect only from November 28, 2007. Accordingly reassessment is held to be not valid. (AY. 2005-06)

Prashant M. Timblo v. CCIT (2019) 414 ITR 507 (Bom.)(HC)

Editorial: SLP of revenue is dismissed CCIT v. Prashant M. Timblo (2018) 408 ITR 72 (St) (SC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose all material facts – Reassessment is bad in law. [S. 80IB(10), 148] 1423

Allowing the petition the Court held that there was no failure to disclose material facts, reassessment is held to be bad in law. (AY. 2011-12)

Akshar Anshul Construction LLP v. ACIT (2019) 264 Taxman 65 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Cash credits – Share capital – Mauritius based company – Supplied certificate of foreign inward remittance of funds, tax residence certificate of foreign company, copy of ledger account showing share application money being credited in bank account and source – Merely on the basis of information from investigation Wing, reassessment is bad in law. [S. 68] 1424

Court held that at time of assessment, assessee had duly supplied certificate of foreign inward remittance of funds, tax residence certificate of foreign company, copy of ledger account showing share application money being credited in bank account and source thereof. Assessment was completed u/s. 143(3). On facts, assessee had disclosed all material facts in course of assessment. Accordingly the initiation of reassessment proceedings after the expiry of four years, merely on basis of information received from Investigation Wing was not permissible. (AY. 2011-12)

NuPower Renewables (P.) Ltd. v. ACIT (2019) 104 taxmann.com 307 / 264 Taxman 27 (Mag.) / 182 DTR 344 / 311 CTR 398 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, ACIT v. NuPower Renewables (P.) Ltd. (2019) 267 Taxman 393 (SC)

S. 147 : Reassessment – After the expiry of four years – Possession of cash amount – All documents were made available at time of original assessment – Reassessment merely on basis of change of opinion was held to be not justified – The fact that the assessee did not disclose the material is not relevant if the AO was otherwise aware of it. [S. 69A, 133A, 148, 153A] 1425

Assessment was completed under S. 153A, read with S. 143(3) of the Act. After expiry of four years from end of relevant year, AO initiated reassessment proceedings on

ground that seized documents disclosed that assessee had cash in hand of ₹ 20 lakhs which did not form part of assessee's return and, thus, escaped assessment. On writ the Court held that AO was in possession of all relevant documents at time of assessment, there being no failure on part of assessee to disclose fully and truly all material facts, initiation of reassessment proceedings merely on basis of change of opinion was not justified. The fact that the assessee did not disclose the material is not relevant if the AO was otherwise aware of it. If the AO had the information during the assessment proceeding, irrespective of the source, but chooses not to utilize it, he cannot allege that the assessee failed to disclose truly and fully all material facts & reopen the assessment. (AY. 2011-12)

Rajbhushan Omprakash Dixit v. DCIT (2019) 416 ITR 89 / 264 Taxman 222 / 180 DTR 153 (Bom.)(HC) www.itatonline.org

1426 **S. 147 : Reassessment – After the expiry of four years – Prior period expenses – Disclosed all material facts necessary for assessment – Initiation of reassessment proceedings merely on basis of change of opinion is not justified. [S. 37(1), 148]**

Allowing the petition the Court held that the assessee had duly disclosed all material facts necessary for assessment in respect of prior period expenses. Accordingly in view of proviso to S. 147, initiation of reassessment proceedings merely on basis of change of opinion is held to be not justified. (AY. 2011-12)

CMI FPE Ltd. v. UOI (2019) 263 Taxman 433 (Bom.)(HC)

1427 **S. 147 : Reassessment – After the expiry of four years – Penny stock – Shares – No failure to disclose all material facts – Merely on basis of information received from Investigation Wing without conducting any independent enquiries. [S. 69A, 148]**

Allowing the petition the Court held that, there was no failure on the part of the assessee to disclose material facts. It was fond that at relevant time period, there was no company by name of Nivyarh Infrastructure & Telecom Services Ltd was in existence and merely on basis of information received from Investigation wing without conducting any independent enquiries issue of notice for initiating reassessment proceedings is held to be bad in law (AY. 2011-12)

South Yarra Holdings v. ITO (2019) 263 Taxman 594 (Bom.)(HC)

1428 **S. 147 : Reassessment – After the expiry of four years – Outstanding creditors for more than 10 years – Capital gains – Where the assessee had made the due disclosure, assessment could not be reopened after four years from the end of the Assessment year. [S. 41(1), 45, 115-O]**

A notice for reopening of assessment was issued beyond a period of our years from the end of the relevant assessment year on three grounds. With respect to the first ground of cessation of liability, the assessee had transferred the outstanding interest in inter-branch accounts to the P&L Account. Since all the relevant details with respect to this issue were already filed in the course of original assessment, there was no failure on the part of the assessee to disclose truly and fully all material facts. With respect to the second ground, the assessee had in the original return of income offered a capital gain of ₹ 4.68 crores to tax, which was erroneously written as ₹ 44.68 crore in the assessment order.

The assessee filed a rectification application before the AO which was accepted and the mistake rectified. In the reopening notice, the AO has contradicted himself by saying that the correct amount of capital gain was not offered to tax. Reopening cannot be sustained on this ground either. In the third ground, the AO argued that in calculating dividend distribution tax, the assessee was allowed to deduct only the dividend received from the subsidiaries in the given financial year. With respect to this ground too, the assessee had truly and fully disclosed all the relevant facts in the original assessment proceedings. The reopening was therefore to be quashed. (Referred *Dr. Amin's Pathology Laboratory (2001) 252 ITR 673 (Bom.)(HC), Raymond Woollen Mills Ltd v. ITO (1999) 236 ITR 34 (SC)* (WP No. 3588 of 2018 dt. 17-01-2019) (AY. 2011-12)
State Bank of India v. ACIT (2019) 175 DTR 335 / 103 taxmann.com 164 / 310 CTR 560 / 418 ITR 485 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – If the AO is of the opinion that the issue requires verification, it tantamounts to fishing or roving inquiry. He is not permitted to reopen merely because in the later year, he took a different view on the basis of similar material – Even if the question of taxing interest income under the DTAA was not in the mind of the AO when he passed the assessment, he cannot reopen if there is no failure to disclose truly and fully all material facts – Reassessment is held to be not valid – DTAA-India-Cyprus. [S. 148, Art. 11(2)] 1429
Allowing the petition the Court held that ; If the AO is of the opinion that the issue requires verification, it tantamounts to fishing or roving inquiry. He is not permitted to reopen merely because in the later year, he took a different view on the basis of similar material. Even if the question of taxing interest income under the DTAA was not in the mind of the AO when he passed the assessment, he cannot reopen if there is no failure to disclose truly and fully all material facts – Reassessment is held to be not valid. Ration in decision in *Raymond Woollen Mills Ltd. v. ITO (1999) 236 ITR 34 (SC)* is explained and decisions of Bombay High Court in *Rabo India Finance Ltd. v. Dy. CIT (2013) 356 ITR 200 (Bom.)(HC), Multiscreen Media Pvt. Ltd. v. UOI (2010) 324 ITR 54 (Bom.)(HC), Sociedade De Formento Industrial P. Ltd v. ACIT (2011) 339 ITR 595 (Bom.) (HC)* is followed. (AY. 2011-12)
Precilion Holdings Ltd v. DCIT (2019) 412 ITR 43 / 262 Taxman 228 / 177 DTR 441 (Bom.) (HC), www.itatonline.org
Editorial : SLP of revenue is dismissed, DCIT v. Precilion Holdings Ltd. (2019) 418 ITR 15 (St)

S. 147 : Reassessment – After the expiry of four years – Interest income – Accrual – No failure to disclose material facts – Reassessment is bad in law. [S. 5, 148] 1430
Dismissing the appeal of the revenue the Court held that ; there was no failure on part of assessee to disclose truly and fully all material facts. Accordingly the reassessment is rightly quashed by the Tribunal. (AY. 2001-02)
PCIT v. State Bank of Saurashtra (2019) 260 Taxman 194 (Bom.)(HC)

1431 **S. 147 : Reassessment – After the expiry of four years – Bogus sales and purchases – Dealer in iron and steel – If the AO disallowed 2.5% of alleged bogus purchases during the regular assessment – Reassessment to disallow entire amount is said to be bad in law – There is difference between revisional powers and reassessment. [S. 68, 69, 148, 263]**

Assessment which was accepted u/s. 143(1) which was reopened on the ground that the purchase from hawala dealers on the basis of information received from Sales tax department. The AO after detailed verification made an addition of 2.5% of alleged bogus purchases. AO once again issued notice u/s. 147 on the ground that as per *N. K. Proteins Ltd. 2017-TIOL-23-SC-IT* the entire amount should have been disallowed. On writ allowing the petition the court held that as per settled law, if a claim or an issue had been examined by the AO during the previous assessment proceedings, in absence of any material available to the AO later on to reassess such income would based on mere change of opinion and, therefore, impermissible. Court also observed, the Act recognizes the revisional powers of the Commissioner to be exercised in case where the assessment order is erroneous and prejudicial to the interest of the revenue. However, the reopening of assessment is an entirely independent and vastly different jurisdiction and cannot be confused with the revisional powers of the higher authority. (WP No. 3495 of 2018, dt. 17.01.2019) (AY. 2011-12)

Saurabh Suryakant Mehta v. ITO (Bom.)(HC), www.itatonline.org

1432 **S. 147 : Reassessment – After the expiry of four years – Finding in case of another assessee – No failure to disclose material facts – Reassessment is not valid. [S. 80IB(10), 148]**

Dismissing the appeal of the revenue the Court held that, reassessment on the basis of finding in case of another assessee is held to be bad in law. Even in recorded reason the AO has not linked any material and the assessment order in Abode Builders was set aside by CIT(A). As there was no failure to disclose material facts. Reassessment is held to be bad in law. (AY. 2004-05) (ITA No. 678 of 2016 dt. 27-11-2018) Arising in ITA No. 5584 / Mum / 2012 dt. 15-07-2015)

PCIT v. Vaman Estate (2020) 113 taxmann.com 405 (Bom.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Vaman Estate (2020) 269 Taxman 196 (SC)

1433 **S. 147 : Reassessment – After the expiry of four years – Information supplied by investigation wing – Issue of notice to a wrong person – Even in a case where return is accepted without scrutiny, the AO cannot proceed mechanically and on erroneous information supplied to him by investigation wing. If AO acts merely upon information submitted by investigation wing and on total lack of application of mind, the reopening is invalid. [S. 131, 143(1), 148]**

Allowing the petition the Court held that ; even in a case where the return filed by the assessee is accepted without scrutiny, as per the settled law, the Assessing Officer can issue a notice of reopening of assessment provided he has reason to believe that income chargeable to tax has escaped assessment. The Assessing Officer cannot proceed mechanically and also on erroneous information that may have been supplied to him.

In fact, we note that in the present case the Assessing Officer had issued a notice to a wrong person. The impugned notice is, therefore, set aside. (AY. 2011-12)
Akshar Builders and Development v. ACIT (2019) 411 ITR 602 (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – After the expiry of four years – Limitation – Family settlement – Notice for assessment year 1999-2000 Notice issued to Power of Attorney holder within six Years – Held not barred by limitation – Reassessment is held to be valid – Dispute settled and consent decree passed – No family settlement – Consideration is held to be taxable as capital gains. [S. 45, 148, 163] 1434

The appellant was a power of attorney holder for two assessee, who were sisters. The sisters were involved in a dispute relating to an immovable property in the State of Goa. In relation to AY. 1999-2000, notices under S. 148 of the Act were issued to the assessees, seeking to reopen the assessment, inter alia, on the ground that the amount was taxable "capital gains". These notices were accompanied by reasons for reopening, in which, it was stated that the power of attorney holder was proposed to be treated as the agent of the assessees as provided in S. 163. This was, however, followed by another communication dated June 21, 2005 in which the Assessing Officer clarified that the notices under S. 148, dated March 14, 2005 may be read as being served upon M as the power of attorney holder. Subsequently the Assessing Officer made an assessment order, bringing to tax the amount of ₹ 5.50 crores as capital gains. This was upheld by the Tribunal. On appeal the Court held that from the clarification contained in the communication dated June 21, 2006, it was apparent that the notice issued to P. P. Mahtame was not in his capacity as the agent of the non-resident assessee, but it was issued to him as the power of attorney holder of the non-resident assessee. In such a situation, the period of limitation for issuance of the notice was always 6 years. Therefore, the notice dated March 14, 2005 being within 6 years from the end of the relevant assessment year, which was 1999-2000, was well within the period of limitation, as then prevalent. Accordingly the reassessment notice is held to be valid. Court also held that dispute settled and consent decree passed. There being no family settlement, consideration is held to be taxable as capital gains. (AY. 1999-2000)
P. P. Mahatme, Power of Attorney Holder v. ACIT (2020) 420 ITR 71 / 186 DTR 260 (Bom.) (HC)

S. 147 : Reassessment – After the expiry of four years – Tangible material is required – Live link with such material for formation of the belief – Reason must specify as to what is the nature of default or failure on the part of the assessee – Reassessment notice is quashed. [S. 40(a)(ia), 148, 194, 194I, Art. 226] 1435

The Petitioner is engaged in the business of real estate and earns income from sale of plots, sale of residential/commercial properties and interest income on FDRs etc. A comprehensive questionnaire was issued to the assessee seeking certain information/clarification. The assessee was required to submit inter alia the audited accounts; computation of income; details of inventories; purchase and sales; details of Tax Deducted at source (TDS) under various heads. The AO issued the notice for assessment. On writ the court held that, if the AO has failed to perform his statutory duty, he cannot review his decision and reopen on a change of opinion. Reopening is

not an empty formality. There has to be relevant tangible material for the AO to come to the conclusion that there is escapement of income and there must be a live link with such material for the formation of the belief. Merely using the expression "failure on the part of the assessee to disclose fully and truly all material facts" is not enough. The reasons must specify as to what is the nature of default or failure on the part of the assessee. (W.P.(C) 13803/2018, dt. 28.11.2019) (AY. 2012-13, 2013-14)
BPTP Ltd. v. PCIT (2020) 185 DTR 372 (Delhi)(HC), www.itatonline.org

1436 **S. 147 : Reassessment – Notice issued beyond six years from the end of relevant AY. 2009-10 – Limitation – Reopened based on the subsequent decision of the Appellate Tribunal – The limitation of six years under S. 149, must be alive on the date of passing of the order of CIT (A). In the present case since, as on 05.10.2011, the time limit for reopening of assessment for AY. 2009-10 had not lapsed, the order of the ITAT was well within the limitation – Notice of reassessment is valid – Petition is dismissed. [S. 80IC, 148, 150, 254(1), Art. 226]**

Petitioner claimed to have started production of the RMPU's, in the Selaqui Unit during the financial year 2007-08, and claimed deduction of profits, under S. 80-IC of the Act, in the concerned AY, 2008-09. The claim filed by the Petitioner for deduction of profits was selected for scrutiny and rejected by the AO, inter alia, on the ground of violation of the conditions prescribed in S. 80-IC(4)(ii) of the Act. Petitioner preferred an appeal before the CIT (A), against the order of the AO and succeeded therein. As a result the deductions claimed by the Petitioner under Section 80-IC of the Act, were allowed. The order of CIT (A), was challenged by the Revenue, before the Income Tax Appellate Tribunal In the meanwhile, Petitioner's case for AY 2009-10 was also selected for scrutiny on the same ground i.e. deductions claimed under S. 80-IC of the Act. Petitioner requested the concerned AO to follow the order of CIT (A), as the same was binding upon him. The concerned AO acceded to Petitioners request and completed the assessment for the AY 2009-10 under S. 143(3) of the Act, without disallowing deduction under S. 80-IC of the Act. Subsequently, vide order dated 16.01.2017, ITAT reversed the findings of the CIT (A) w.r.t. AY 2008-09 and allowed departmental appeal in favour of the revenue. The AO issued the impugned notice dated 25.03.2017, under S. 147 / 150 of the Act, for reassessment of the return filed by the Petitioner for the AY. 2009-10, requiring the Petitioner to file the return for the said AY. Petitioner complied with the notice and sought reasons for re-opening the assessment, which were provided to it by the Revenue. Thereafter, the Petitioner vide letter dated 20.11.2017 raised objections against the reasons provided by the Revenue for reopening the assessment, which were rejected on 07.12.2017, reiterating that reopening of the assessment is necessary and obligatory in consequence of and in order to give effect to, the finding or direction contained in the order dated 16.07.2019 passed by the ITAT. Dismissing the petition the Court held that the legislature has designedly not placed any time limit under S. 150, and reading a period of limitation into it, would be incorrect approach. In the present case, the date relevant for deciding the question of limitation in terms of S. 150(2), and the observations in *Praveen Kumari v. CIT (1999) 237 ITR 339 (SC), Sharma (KM) v. ITO (2002) 254 ITR 772 (SC)* would be the date of the order of the CIT (A), which was passed on 05.10.2011 and was the subject matter of appeal. Thus, the

limitation of six years under S. 149, must be alive on the date of passing of the order of CIT (A). In the present case since, as on 05.10.2011, the time limit for reopening of assessment for AY. 2009-10 had not lapsed, the order of the ITAT was well within the limitation. Accordingly the reopening of the assessment under S. 147, read with S. 150, was within the period of limitation. (AY. 2009-10)
Intec Corporation v. ACIT (2019) 184 DTR 425 / (2020) 312 CTR 3 (Delhi)(HC)

S. 147 : Reassessment – After the expiry of four years – No duty to disclose investments – Notice for failure to disclose investments is held to be not valid. [S. 148, Art. 226] 1437
Allowing the petition the Court held that the notice for reassessment had been issued after four years on the ground that the assessee had failed to disclose investments. It was not in dispute that the form of return of income, i.e., ITR-2, then in force had no separate column for the disclosure of any investment. The notice is held to be not valid. (AY. 2011-12)
Bhavik Bharatbhai Padia v. ITO (2019) 419 ITR 149 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Asset written off and factory land development charges – No allegation of failure to disclose material facts – No new facts – Notice of reassessment is held to be invalid. [S. 148] 1438
Allowing the petition the Court held that, the reasons for reopening were based on two heads, namely, "asset written off and factory land development charges". It was not the case of the Revenue that the amount referable to those two heads were not shown in the profit and loss account. On the other hand, the assessee had enclosed along with the return its trading, profit and loss account wherein these two heads were specifically shown with the referable quantum of amount. It was evident that the materials relevant to the subject matter in issue for reopening, were already on record before the AO. After perusing the return filed along with its enclosures, the Assessing Officer had completed the assessment. Therefore, there was a reasonable presumption that the Assessing Officer had accepted the materials filed with the returns except to the extent where he differed and had stated so in his assessment order. Neither the notice issued under S. 148 nor the proceedings stating the reasons for reopening the assessment, had alleged anywhere that the assessee had failed to disclose fully and truly any material facts necessary for assessment. The notice of reassessment was not valid. (*Girilal and Co v. ITO (2016) 387 ITR 122 (SC)* & *A. Sridevi (Smt.) v. ITO (2018) 409 ITR 502 (Mad.)(HC)* is distinguished. (AY. 2011-12)
S. P. Mani and Mohan Dairy v. ACIT (2019) 418 ITR 703 / 183 DTR 321 / 267 Taxman 450 / 311 CTR 631 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Bogus share application money – Shell company – Money received from dubious companies – Reassessment is held to be valid – Cost of 2 lakh was imposed on assessee for wasting Court's time [S. 68, 143(3), 148, Art. 226] 1439
The assessee is in the business of civil construction. Reassessment notice was issued on the ground that Shri Tarun Goyal who promoted 90 companies is alleged to be

engaged in the business of accommodation entries and he confessed and admitted that to the charge of providing accommodation entries by floating numerous companies and following layering of accounts after cash was introduced in various companies. On writ dismissing the petition the Court held that, one is known by the company one keeps. As the investors have dubious character & are known to have engaged in the business of providing accommodation entries., the genuineness of their transactions with the assessee has come under serious cloud, giving rise to reasonable belief in the mind of the AO that the assessee may have indulged in a dubious transaction to launder its undisclosed income. The fact that the assessee produced evidence during assessment is neither here nor there (*PCIT v. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 (SC)* followed). Costs of ₹ 2L imposed on assessee for wasting Court's time. As noticed hereinabove, learned counsel for the petitioner continued to pursue with his submissions despite this Court informing him, after the matter had been heard at substantial length, that this Court does not find any merit in the petition. This has led to absolutely unnecessary wastage of time of this Court which was avoidable, and could have been utilized to deal with other deserving and pressing cases. To discourage such practice, we are inclined to saddle the petitioner with costs which are quantified at ₹ 2 lakhs. The costs shall be payable to The Delhi High Court Advocates Welfare Trust. A copy of this order be communicated to the aforesaid trust. In case the costs are not deposited within four weeks of the receipt of the copy of this order, the matter may be brought to the notice of this Court by the trustees or their representatives. (AY. 2012-13)
RDS Project Ltd. v. ACIT (2020) 312 CTR 345 / 185 DTR 180 (Delhi)(HC), www.itatonline.org

1440 **S. 147 : Reassessment – After the expiry of four years – Information by Investigation wing – Accommodation entries – Pravin Kumar Jain – One of the beneficiary – Reassessment is held to be valid. [S. 69, 132(4) 148, 151, Art. 226]**
Assessment was completed u/s. 143(3). After completing assessment, received information from Investigation Wing of department that search proceedings were carried out in case of Pravin Kumar Jain wherein he admitted that he was involved in providing accommodation entries to various companies and assessee was one of those beneficiary companies. On basis of aforesaid information, AO issued notice to assessee under S. 148 seeking to reopen assessment. Assessee's objections to initiation of reassessment proceedings were rejected. On writ dismissing the petition the Court held that since it was not a case where AO initiated reassessment proceedings on absolutely vague or unspecific information without taking pains to form his own belief in respect of material supplied by Investigation Wing, validity of impugned proceedings deserved to be upheld. (AY. 2012-13)
Meghavi Minerals (P.) Ltd. v. CIT (2019) 267 Taxman 1 (Guj.)(HC)

1441 **S. 147 : Reassessment – After the expiry of four years – Facts was disclosed to the Assessing Officer in the original assessment proceedings – No new material – Reassessment based on change of opinion – Held to be not valid. [S. 12A, 148, Companies Act, 1956, S. 25]**
Dismissing the appeal of the revenue the Court held that in the assessment order the AO had clearly recorded the presence of the authorised representative of the assessee and

that the case was discussed. Apart from that, the Assessing Officer was fully aware that the assessee – company was registered under section 25 of the Companies Act, 1956, and this was noted in the assessment order. There was absolutely no other material available with the assessee except the records which formed part of the assessment file. Therefore, the reopening was a clear case of change of opinion. The reassessment proceedings were not valid. (AY. 1998-99, 1999-2000, 2002-03)
CIT v. Pentafour Software Employees' Welfare Foundation. (2019) 418 ITR 427 / 267 Taxman 46/ 183 DTR 385 / (2020) 312 CTR 35 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Capital gains – Year of taxability – No new material – Reassessment is held to be not valid. [S. 45, 148] 1442
Assessee sold a property in 2012-13. Assessee filed its return of income for assessment year 2013-14 and claimed that though property was sold in financial year 2012-13, but purchaser made payment in financial year 2013-14, therefore, no capital gain arose during assessment year 2013-14 and same arose in assessment year 2014-15. Claim of assessee was accepted and an assessment order was passed. After four years, AO issued reopening notice on grounds that assessee sold a property in financial year 2012-13 and as per sale deed an amount towards full and final sale consideration was paid to assessee within 16 days i.e. within financial year 2012-13 and, therefore, capital gain was to be considered for assessment year 2013-14 and not 2014-15 as claimed by assessee. On writ the Court held that there was no new tangible material available with Assessing Officer to form a belief that there was escapement of income chargeable to tax. Accordingly notice for reassessment was quashed. (AY. 2013-14)
Nilamben Sandipbhai Parikh v. ACIT (2019) 266 Taxman 191 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Capital gains – No failure on the part of assessee to disclose truly and fairly material facts – Reassessment is held to be bad in law. [S. 50C, 54B, 148] 1443
Assessee claimed deduction under S. 54B in relation to proceeds received upon sale of agricultural lands. During original assessment proceedings the AO examined claim of assessee at considerable length and had raised multiple queries which were duly replied by assessee. Further, in respect of valuation, AO has proposed to apply S. 50C of the Act. Assessee produced sale deeds and pointed out that it was valuation adopted for purpose of stamp duty which was declared as sale proceeds for purpose of income-tax. There was nothing on record to suggest that there was any failure on part of assessee to disclose truly and fully all material facts necessary for assessment. (AY. 2012-13)
Devendrasinh Chhatrasinh Vaghela v. JT. CIT (2018) 97 taxmann.com 173 (Guj.)(HC)
Editorial: SLP of revenue is dismissed due to low tax effect, JT. CIT (OSD) v. Devendrasinh Chhatrasinh Vaghela. (2019) 266 Taxman 90 (SC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Denial of exemption in subsequent year is not aground for reassessment. [S. 10A, 148] 1444
Allowing the petition the Court held that the note on software development projects and the various stages of software development placed by the assessee before the assessing

authority disclosed the stages wherein the assessee was required to carry out the project at the customer's site and this was reflected in the annual reports. Considering these materials, deduction under section 10A was allowed in the order passed under section 143(3). In such circumstances, it would be presumed that the assessing authority had examined the entitlement of the assessee to the deduction under section 10A from all angles. Withdrawal of the deduction allowed under section 10A based on the assessment order relating to the assessment year 2007-08 was without application of mind and nothing but a change of opinion, which amounted to review and was not permissible. There was no material available in the reasons recorded by the Assessing Officer to believe escapement of tax on any such agreement where the assessee had received revenue from foreign companies for deputing the technical members independent of software development work. The notice of reassessment was not valid. (AY. 2004-05 to 2006-07)
Infosys Ltd. v. DCIT (2019) 416 ITR 226 / 182 DTR 308 / (2020) 312 CTR 61 (Karn.)(HC)

1445 **S. 147 : Reassessment – After the expiry of four years – Failure to disclose material facts – Reassessment notice is held to be valid – Disputed questions of facts – Alternative remedy of appeal – Notice of reassessment is held to be valid. [S. 148, 151, Art. 226]**
Dismissing the petition the Court held that, the conditions to be satisfied for reopening assessment for the assessment year 2009-10, in terms of section 147, i.e., reason to believe that the income chargeable to tax had escaped assessment, non-disclosure of material facts fully and truly by the assessee were apparent. The assertion and denial by the parties in this behalf gave rise to disputed questions of fact. Notice under section 148 of the Act had been issued after sanction under S. 151 of the Act. At this stage there was no breach or non-compliance with sections 147, 148 and 151. It gave rise to a factual dispute. There was no jurisdictional error, or lack of jurisdiction forthcoming at this stage. Against reopening of assessment for the assessment year 2009-10, statutory efficacious remedies under the Act were available which could not be allowed to be side-lined, and hence exercise of jurisdiction under article 226 of the Constitution in the background of the factual disputes was not warranted so as to interfere with the proceedings initiated. (AY. 2009-10)
North Eastern Electric Power Corporation Limited and Another v. CIT (2019) 416 ITR 205 / 182 DTR 233 / 310 CTR 856 (Meghalaya)(HC)

1446 **S. 147 : Reassessment – After the expiry of four years – Notice issued within six years – Escaped assessment of more than ₹ 1 lakh – Not barred by limitation – Depreciation – No failure to disclose material facts – Change of opinion – Reassessment is bad on law. [S. 32, 148, 149(1)b)]**
The AO issued a notice for reassessment on the ground that the assessee had been allowed 100 per cent depreciation on temporary site accommodation and on tools, minor equipment, shuttering, centering scaffolding, pile bridge and CCE, etc., whereas under the Income-tax Rules, 1962, the assessee was entitled only to 7.5 per cent depreciation on temporary accommodation and 15 per cent depreciation on shuttering and minor equipment. The assessee filed objections against initiation of reassessment proceedings which were disposed of. The AO passed a reassessment order making additions. The

CIT (A) partly allowed the assessee's appeal. Both the assessee and the Department filed appeals before the Tribunal which held that firstly the reassessment notice under section 148 was issued after four years from the relevant assessment year, and secondly that there was no failure on the part of the assessee and all the materials were disclosed by the assessee while it claimed 100 per cent depreciation. On appeal the Tribunal held that since the amount in question of escapement of income was more than ₹ 1 lakh, the limitation period was six years under S. 149(1)(b) and hence, the notice under S. 148 was not barred by limitation and the finding of the Tribunal on the issue was not sustainable. The Tribunal also held that the assessee had disclosed the full and correct facts and there was no misrepresentation or concealment on the part of the assessee. The Assessing Officer had examined and completed the assessment under S. 143(3) and that being so, the subsequent changed opinion that 100 per cent depreciation had wrongly been allowed, could not be a reason for the re-opening of the assessment. High Court affirmed the order of the Tribunal. (AY. 2005-06)
U. P. State Bridge Corporation Ltd. v. (2019) 416 ITR 82 (All.)(HC)

S. 147 : Reassessment – After the expiry of four years – No new tangible material – Disclosing and explaining all material facts during assessment proceedings – Deficiency in reasons recorded cannot be rectified in affidavit – Reassessment is bad in law. [S. 143(3), 148] 1447
Allowing the petition the Court held that the assessee has disclosed an explained in the course of original assessment proceedings there was no new tangible material hence reassessment is bad in law. Court also held that Deficiency in reasons recorded cannot be rectified in affidavit. (AY. 2011-12)
Best Cybercity (India) Pvt. Ltd. v. ITO (2019) 414 ITR 385 / 178 DTR 409 / 265 Taxman 100 (Delhi)(HC)

S. 147 : Reassessment – After the expiry of four years – Approved garrulity fund – Failure to produce original order of approval does not amount to failure to disclose material facts – Reassessment notice is held to be not valid. [S. 36(1)(v), 148] 1448
Allowing the petition the Court held that merely because the assessee did not provide an additional declaration in the return that although its gratuity scheme was approved, it was unable to produce a copy of the order approved by the Commissioner after a long gap of time, this could not be categorised as failure on the part of the assessee to disclose truly and fully all the material facts. If the AO had any doubt about such a claim, it was always open to him to have examined it and asked the assessee to have fulfilled further requirements. Reassessment notice is quashed. (AY. 2010-11)
Valsad District Central Co-Operative Bank Ltd. v. ACIT (2019) 414 ITR 616 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Interest paid on purchase of securities – expenditure for increase in capital – loss on securities – Excess claim of depreciation – There was no failure on part of assessee to disclose fully and truly all relevant material – Reassessment is bad in law. [S. 32, 36(1), 148] 1449
Dismissing the appeal of the revenue the Court held that there was no failure on part of assessee to disclose fully and truly all relevant material resulting in escapement

of income in form of either excess deductions or additions or deductions. All the deductions/allowance/disallowance of expenses were dealt with by Assessing Authority at time of original scrutiny assessment made under S. 143(3) and there was nothing on record to show that there was non-application of mind on part of Assessing Authority on these aspects of matter at time of original scrutiny assessment. Accordingly the reassessment notice was unjustified and, thus, same was rightly quashed by Tribunal. (AY. 1988-89, 1990-91 to 2004-05)
CIT v. City Union Bank Ltd. (2019) 264 Taxman 204 / (2020) 312 CTR 453 / 185 DTR 294 (Mad.)(HC)

1450 **S. 147 : Reassessment – After the expiry of four years – Book profit – Subsidy received by assessee from Government was directly credited to capital reserve account – Sufficient disclosure of facts – Reassessment is held to be bad in law. [S. 115JB, 148]**
The AO initiated reassessment proceedings on ground that subsidy received by assessee from Government was directly credited to capital reserve account which resulted into non-consideration of such amount for computation of assessee's book profit. On writ the court held that there was sufficient disclosure in return filed by the assessee with respect to entry in question and same was also noticed by AO during scrutiny assessment proceedings. Accordingly the Court held that the reassessment proceedings had been initiated merely on basis of change of opinion hence notice was quashed. (AY. 2012-13)
Pandesara Infrastructure Ltd v. Dy. CIT (2019) 105 taxmann.com 181 / 263 Taxman 367 (Guj.)(HC)
Editorial: SLP of revenue is dismissed, Dy. CIT v. Pandesara Infrastructure Ltd. (2019) 263 Taxman 366 (SC)

1451 **S. 147 : Reassessment – After the expiry of four years – Transfer of asset to subsidiary – Subsequent transfer by subsidiary to third party – Transaction was disclosed in the original assessment proceedings – Re assessment is held to be not valid. [S. 148]**
Allowing the petition the Court held that, Explanation 1 to S. 147 would not apply as all the primary facts were disclosed, stated and were known and in the knowledge of the Assessing Officer. This would be a case of "change of opinion" as the assessee had disclosed and had brought on record all facts relating to transfer of the passive infrastructure assets, their book value and fair market value were mentioned in the scheme of arrangement as also that the transferred passive assets became property of I including the dates of transfer and the factum that one-step subsidiary BIV was created for the purpose. These facts were within the knowledge of the AO when he passed the original assessment order for the assessment year 2008-09. The notice of reassessment was not valid. (AY. 2008-09)
Bharti Infratel Ltd. v. DCIT (2019) 411 ITR 403 / 174 DTR 169 (Delhi)(HC)

1452 **S. 147 : Reassessment – After the expiry of four years – Acceptance of loans and deposits – Otherwise than by account payee cheque or account payee bank draft – reassessment proceedings was merely based on change of opinion of Assessing Officer, impugned order passed by Tribunal up held. [S. 148, 269SS]**
Assessment was completed assessment under S. 143(3) making certain additions to income declared. After expiry of four years from end of relevant year, Assessing Officer initiated

reassessment proceedings on ground that assessee had accepted loan, deposits etc. of ₹ 20 thousand or more in cash in violation of provisions of S. 269SS. Tribunal finding that there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment and allegation that deposits were unexplained, were not based on any cogent material evidence on record, set aside assessment proceedings Dismissing the appeal of the revenue the Court held that since initiation of reassessment proceedings was merely based on change of opinion of Assessing Officer, impugned order passed by Tribunal did not require any interference. (AY. 1992-93)
CIT v. Sahara India Mutual Benefit Co. Ltd. (2019) 261 Taxman 83 (Cal.)(HC)
Editorial: SLP of revenue is dismissed CIT v. Sahara India Mutual Benefit Co. Ltd. (2019) 265 Taxman 548 (SC)

S. 147: Reassessment – Failure to file return – Huge loss – National and multi commodity exchange – Objections stating that no income was earned and suffered heavy loss not considered – Reassessment is held to be bad in law. [S. 139, 148 Art. 226] 1453
Assessee is an individual was engaged in trading in commodity exchange. The assessee has suffered heavy loss on accounting transactions in national and multinational exchange. He has not filed the return. On the basis of an information that as per NMS data and ITS details, assessee had made transactions of huge amount in National /multi commodity exchange, but assessee had not filed his return of income during year. Accordingly the notice of reopening was issued. Assessee raised objection that he had earned no income out of trading in commodity exchange and he had actually suffered a loss during year and, therefore, he had not filed return of income. AO rejected the objection and proceeded ahead. On writ the Court held that, the assessee did communicate to Assessing Officer that he had no taxable income and, therefore, there was no requirement to file return however the AO did not carry out any further inquiry before issuing impugned reopening notice. Accordingly the notice was set aside. (AY. 2011-12)
Mohanlal Champalal Jain v. CIT (2019) 102 taxmann.com 293 (Bom.)(HC)
Editorial: SLP of revenue is dismissed ITO v. Mohanlal Champalal Jain (2019) 267 Taxman 391 (SC) / 417 ITR 61 (St.)(SC)

S. 147 : Reassessment – Change of opinion – Housing project – Produced full accounts and provided full details including built-up area of flats sold – Reopening of assessment on basis of same material would be mere change of opinion and hence not permissible. [S. 80IB(10), 148, Art. 226] 1454
Allowing the petition the Court held that during scrutiny assessment, AO had raised queries and assessee had made detail submissions providing materials on allowability of deduction under S. 80IB(10) of the Act and thereafter the claim was allowed. AO sought to reopen assessment on ground that income had escaped assessment as there was no full and true disclosures on part of assessee. Court held that the assessee having produced full accounts and provided full details including built-up area of flats sold, reopening of assessment on basis of same material would be mere change of opinion and hence not permissible. (AY. 2011-12)
Runwal Realty (P.) Ltd. v. Dy. CIT (2019) 107 taxmann.com 284 / 266 Taxman 6 (Mag.) (Bom.)(HC)

1455 **S. 147 : Reassessment – Change of opinion – Amortisation of brand value – Query raised and responded – Issue examined in the original assessment proceedings – Reassessment is held to be bad in law [S. 115JB, 148, Art. 226]**
AO in the original assessment proceedings the AO has raised a specific query as regards amortisation of brand value and allowability of depreciation. The query was replied and after examining the reply the assessment was completed. AO issued notice of reassessment on the ground that income escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts. On writ the Court held that once the issue is raised in the original assessment and examined by the AO, issue of notice for same issue will amount to change of opinion hence the reassessment notice is bad in law. Followed *CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC), GKN Sinter Metals Ltd v. ACIT (2015) 371 ITR 225 (Bom.)(HC)* (AY. 2014-15)
Marico Ltd. v. ACIT (2019) 311 CTR 865 / 183 DTR 353 (Bom.)(HC)

1456 **S. 147 : Reassessment – Failure to file return – Huge loss – National and multicommodity exchange – Objections stating that no income was earned and suffered heavy loss not considered – Reassessment is held to be bad in law. [S. 139, 148 Art. 226]**
Assessee is an individual was engaged in trading in commodity exchange. The assessee has suffered heavy loss on accounting transactions in national and multinational exchange. He has not filed the return. On the basis of an information that as per NMS data and ITS details, assessee had made transactions of huge amount in National / multi commodity exchange, but assessee had not filed his return of income during year. Accordingly the notice of reopening was issued. Assessee raised objection that he had earned no income out of trading in commodity exchange and he had actually suffered a loss during year and, therefore, he had not filed return of income. AO rejected the objection and proceeded ahead. On writ the Court held that, the assessee did communicate to AO that he had no taxable income and, therefore, there was no requirement to file return however the AO did not carry out any further inquiry before issuing impugned reopening notice. Accordingly the notice was set aside. (AY. 2011-12)
Mohanlal Champalal Jain v. CIT (2019) 102 taxmann.com 293 (Bom.)(HC)
Editorial: SLP of revenue is dismissed ITO v. Mohanlal Champalal Jain (2019) 267 Taxman 391 (SC)

1457 **S. 147 : Reassessment – Alternative remedy – Writ petition was dismissed on the ground that the assessee had availed alternative remedy. [S. 148, 251, Art. 226]**
Assessee challenged the reassessment proceedings. High Court dismissed the petition on the ground that the assessee had already availed remedy of appeal challenging assessment order, it could raise all grounds as raised in writ petition in the appeal proceedings.
Kisan Agro Mart (P.) Ltd. v. ITO (2019) 103 taxmann.com 374 / 266 Taxman 374 (Bom.)(HC)
Editorial: SLP of assessee is dismissed, Kisan Agro Mart (P.) Ltd. v. ITO (2019) 266 Taxman 373 (SC) / 417 ITR 63 (St.)(SC)

1458 **S. 147 : Reassessment – Fishing enquiry – Information from intelligence wing – Builder – Make detailed enquiry – Reassessment is held to be bad in law. [S. 28(i), 148, Art. 226]**
The assessee is builder. The assessment was completed u/s. 143(3) Subsequently AO reopened the assessment on the ground that record of assessee was checked and it was

found that it was a builder and, therefore, to verify intelligence gathered by Intelligence Wing, it was necessary to carry out detailed inquiry, and the assessee had developed society land which according to information received did not contain any agreement. Assessee repeatedly pointed out to AO that it had neither developed any such project nor claimed exempt income arising out of such project. AO rejected the objection filed by the assessee. On writ the Court held that from reasons recorded it was very clear that AO wished to carry out a fishing inquiry. Accordingly the reopening of assessment could not be permitted for carrying out fishing inquiries. (AY. 2011-12)
Giriraj Enterprises v. ACIT (2019) 174 DTR 409 / 102 taxmann.com 188 (Bom.)(HC)

S. 147 : Reassessment – Export business – No new material – Notice under direction of Commissioner – Reassessment is held to be not valid. [S. 80HHC, 148] 1459
The AO allowed the claim u/s. 80HHC after considering the submission of the assessee. Despite a strong reply to the audit objection, the AO upon requiring him to take "remedial action forthwith", had issued notice dated February 17, 2000, i.e., on the very next day, under S. 148 of the Act, seeking to reopen the assessment. Tribunal quashed the reassessment proceedings. On appeal by the revenue dismissing the appeal the Court held that the material on record indicated that there was no independent application of mind on the part of the AO. The notice was not valid. Distinguished *IPCA Laboratories Ltd v. Dy. CIT (2001) 251 ITR 420 (Bom.)(HC)* (AY. 1995-96)
CIT v. Narcissus Investments P. Ltd. (2019) 417 ITR 512 / 182 DTR 73 (Bom.)(HC)

S. 147 : Reassessment – With in four years – Transfer of leasehold rights – Allegation that the transaction is not genuine – No new material – Reassessment is held to be not valid. [S. 45, 56, 148] 1460
Allowing the petition the Court held that undisputedly, the assessee had disclosed the transaction of having received a sum of ₹ 40.51 crores from Morarji Textiles Ltd under a deed evidencing transfer of leasehold rights in the land. Not only in the return, but during the assessment also, the assessee had made such disclosures. This transaction was also examined by the Assessing Officer during assessment. In the reasons recorded itself, the Assessing Officer had referred to this transaction as emerging from the assessment records. Thus, in clear terms, the assessee had offered such receipt to tax. In the notice for reassessment the Assessing Officer held that the leasehold rights belonged to Morarji Textiles Ltd itself and therefore, Morarji Textiles Ltd was wrong in claiming that it had purchased such rights from the assessee. He recorded the satisfaction that the income of the assessee to the tune of ₹ 40.51 crores chargeable to tax had escaped assessment. The entire issue had been examined by the AO during the original scrutiny assessment. No material outside of the assessment records was shown to have been brought to the notice of the AO. He only referred to the order of the assessment passed by the Assessing Officer of Morarji Textiles Ltd such assessment was based on the documents which were already part of the assessment in the case of the assessee. The notice of reassessment was not valid. (Distinguished *Kalyani Maviji and Co v. CIT (1976) 102 ITR 287 (SC)* and *Phool Chand Bajrang Lal v. ITO (1993) 203 ITR 456 (SC))* (AY. 2013-14)
Integra Garments and Textiles Ltd. v. ITO (2019) 418 ITR 139 / 310 CTR 570 / 175 DTR 241 (Bom.)(HC)

1461 **S. 147 : Reassessment – With in four years – Change of opinion Interest income – Income from other sources – Adjustment of interest income against interest expenditure and remaining amount was transferred to work-in-progress account – Reassessment is held to be not valid. [S. 56, 148]**

Assessee was engaged in business of development of real estate projects. Assessee filed its return wherein it adjusted interest income against interest expenditure and remaining amount was transferred to work-in-progress account. In the course of assessment proceedings, the AO had questioned the assessee regarding the taxability of certain interest income. In its reply, the assessee gave details of such income and also answered as to why such income was not taxable. AO completed assessment under S. 143(3) accepting assessee's treatment of interest income. Subsequently, AO initiated reassessment proceedings taking a view that interest income earned by assessee had to be taxed as income from other sources. On writ allowing the petition the Court held that since entire question of taxing assessee's interest income was minutely scrutinized by AO during original assessment proceedings, in such a case, in absence of any new material, reopening of assessment would be based on mere change of opinion. It is irrelevant that in the original assessment order, the AO had not dealt with this aspect in detail. Accordingly the reassessment proceeding was quashed. (AY. 2013-14)

Rubix Trading (P.) Ltd. v. ITO (2019) 108 taxmann.com 176 / 265 Taxman 424 (Bom.)(HC) / 174 DTR 1 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. Rubix Trading (P.) Ltd. (2019) 265 Taxman 423 (SC) / 416 ITR 136 (St.)(SC)

1462 **S. 147 : Reassessment – Survey – Merely on the basis of statement of partner addition cannot be made in respect of difference between stamp valuation and sale price of property on basis of such offering made by partner – Reassessment was quashed. [S. 43C, 45, 133A, 148]**

AO reopened the completed assessment. On writ the Court held that the assessee did not make voluntary surrender of any additional income. Partner never admitted that flats were sold at a price higher than what was reflected in documents. Court held that the entire approach of the Assessing Officer is wholly incorrect. As is well known, section 50C would enable the revenue to bring to tax by way of deemed capital gain difference between the stamp valuation and the sale price of a capital asset. For obvious reasons, this provision of S. 50C would not apply in case of a builder for whom immovable property is in nature of stock-in-trade and not capital asset. To overcome this difficulty, the legislature had inserted S. 43CA under Finance Act, 2013 with effect from 1-4-2014. This provision would enable the revenue to tax the income arising out of sale of stock by a deeming fiction where subject to certain conditions, stamp valuation of such stock would substitute the actual receipt thereof. In absence of any such statutory provisions, giving rise to the deeming fiction, the revenue cannot tax any amount which has not been received by a seller of an immovable property at the time of sale. In plain terms, in this statement, the partner never admitted that the flats were sold at a price higher than what was reflected in the document. However, in absence of voluntary surrender by the assessee of any additional income, it was simply not possible for the revenue to make any addition on the ground of the difference between the stamp valuation and the

sale price of the property in question. As noted, S. 43CA was inserted with effect from 1-4-2014 and therefore, had no applicability to the assessment year in question. The attempt on the part of the Assessing Officer to make the addition with the aid of the statement of the partner of the assessee and reference to the correct stamp valuation, is simply invalid. What the Assessing Officer wishes to do is to adopt a stamp valuation for the properties in question, superimpose the statement of the partner of the assessee of the declaration of certain additional income and extrapolate such statement to fit within the scheme of S. 43CA. Accordingly the notice of reopening of assessment is set aside. Consequently, the order of assessment is rendered invalid. (AY. 2013-14)
Zain Constructions v. ITO (2019) 265 Taxman 82 (Mag) (Bom.)(HC)

S. 147 : Reassessment – No addition was made on basis of reasons recorded – No other addition could be made in course of reassessment proceedings. [S. 148] 1463
Allowing the petition the Court held that where no addition was made on basis of reasons recorded for reopening of assessment, it was not open for Assessing Officer to bring to tax some other income in course of reassessment proceedings. Followed *CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom.)(HC).* (AY. 1999-2000)
DIT (IT) v. Black & Veatch Prichard, Inc. (2019) 107 taxmann.com 289 / 265 Taxman 93 (Bom.)(HC)
Editorial : SLP is granted to the revenue, DIT (IT) v. Black & Veatch Prichard, Inc. (2019) 265 Taxman 92 (SC)

S. 147 : Reassessment – Failure to follow the procedure laid down in *GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC)* and to pass a separate order to deal with the objections – Renders the assumption of jurisdiction by the Assessing Officer ultra vires. [S. 148] 1464
The AO without making any order disposing of the objections filed by the Appellants, proceeded to make an assessment order dated 26th March, 2004. Tribunal affirmed the order of the AO. High Court admitted the following substantial question of law. " Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal ought to have held that since the respondent did not furnish to the appellant the reasons recorded for reopening of the assessment for the assessment year 1997-98 and did not comply with the mandatory preconditions laid down by the Hon'ble Supreme Court in *GKN Driveshaft (India) Ltd v. ITO (2003) 259 ITR page 19*, the reassessment order was bad in law as being opposed to the principles of natural justice?" Allowing the appeal the Court held that,it is mandatory for the AO to follow the procedure laid down in *GKN Driveshafts (India Ltd v. ITO (2003) 259 ITR 19 (SC)* and to pass a separate order to deal with the objections. The disposal of the objections in the assessment order is not sufficient compliance with the procedure. The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (*Bayer Material Science (P) Ltd. v. Dy. CIT (2010) 382 ITR 333 (Bom.)(HC)* & *KSS Petron Pvt Ltd. v. ACIT (Bom.)(HC)* (ITXA No. 224 of 2014 dt. 20-03-2017 www.itatonline.org followed). (TA No. 63 of 2007, dt. 30.08.2019) (AY. 1997-98)
Fomento Resorts & Hotels Ltd. v. ACIT (Bom.)(HC) (Goa Bench), www.itatonline.org

1465 **S. 147 : Reassessment – Second reassessment – High Court set aside the reassessment on one issue – Second reassessment on another ground is held to be not valid. [S. 32,148]**

Assessee-company was engaged in business of manufacturing, trading and marketing of pesticides. Assessment was completed under section 143(3) making certain additions. Subsequently, AO reopened assessment and made additions on account of provision for diminution in value of assets and provision for doubtful debts. Tribunal set aside reassessment proceedings and High Court upheld order of Tribunal. AO again initiated reassessment proceedings on ground that set off of unabsorbed depreciation against book profit was not in order. On writ the Court held that when High Court had already set aside reassessment proceedings for relevant assessment year, there was no warrant for issue of further notice under S. 148 of the Act. (AY. 2005-06)

Rallis India Ltd. (2018) 411 ITR 452 / 89 taxmann.com 88 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, DCIT v. Rallis India Ltd. (2019) 264 Taxman 25 (SC)

1466 **S. 147 : Reassessment – Shares held as investment – Capital asset – Capital gains – Not considered the objections raised by the assessee – Proceedings stayed – Matter remanded to the AO to pass speaking order. [S. 10(38), 45, 143(1), 148, Art. 226]**

Allowing the petition the Court held that the Assessing Officer did not consider objections raised by assessee that shares which were sold were held for a period in excess of one year before sale entitling exemption under S. 10(38), reassessment was stayed and directed the AO to pass speaking order considering all objections of the assessee. (AY. 2011-12)

Swastik Safe Deposit and Investments Ltd. (2019) 263 Taxman 303 / 176 DTR 423 (Bom.)(HC)

1467 **S. 147 : Reassessment – Non disclosure of receipt – Capital gains – Sale of shares – Long term – STT paid – The attempt of further verification would amount to rowing inquiry – Reassessment is bad in law. [S. 2(29A), 10(38), 115JB, 143(1), 148]**

Allowing the petition the Court held that, even in a case where the return is accepted u/s. 143(1) without scrutiny, the fundamental requirement of income chargeable to tax having escaped assessment must be satisfied. Mere non-disclosure of receipt would not automatically imply escapement of income chargeable to tax from assessment. There has to be something beyond an unintentional oversight or error on the part of the assessee in not disclosing such receipt in the return of income. In other words, even after non-disclosure, if the documents on record conclusively establish that the receipt did not give rise to any taxable income, it would not be open for the AO to reopen the assessment referring only to the non disclosure of the receipt in the return of income. The attempt of further verification would amount to rowing inquiry. (Distinguished, *ACIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC), Raymond Woollen Mills Ltd v. ITO (1999) 236 ITR 34 (SC)* followed *Prashant S. Joshi v. ITO (2010) 324 ITR 154 (Bom) (HC), Inductotherm (India) (P) Ltd. v. M. Gopaln Dy. CIT (2013) 356 ITR 481 (Guj.) (HC)* (AY. 2011-12) (WP No. 1230 of 2019, dt. 25.06.2019)

Swastic Safe Deposit and Investment Ltd. v. ACIT (2019) 265 Taxman 164 / (2020) 312 CTR 389 / 185 DTR 156 (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – Deemed dividend – Audit information – Loan from company – Loan transaction was duly scrutinized by Assessing Officer in original assessment – Notice was issued on insistence of audit party – Reassessment is held to be bad in law. [S. 2(22)(e), 148] 1468

Allowing the petition the Court held that, loan transaction was duly scrutinized by Assessing Officer in original assessment. Notice was issued on insistence of audit party, hence reassessment is held to be bad in law. (AY. 2012-13, 2013-14)

Hamilton Housewares (P.) Ltd. v. DCIT (2019) 262 Taxman 410 (Bom.)(HC)

Hamilton Housewares (P.) Ltd. v. DCIT (2019) 262 Taxman 418 (Bom.)(HC)

S. 147 : Reassessment – With in four years – Cash credits – Bogus accommodation entries – sums were received in earlier assessment year 2010-11 and were already verified and assessed by revenue authorities – Reopening of assessment in current assessment year is held to be not valid. [S. 68, 133, 148] 1469

Allowing the appeal of the assessee the Court held that alleged bogus accommodation entries were received in earlier assessment year 2010-11 and were already verified and assessed by revenue authorities. Hence reopening of assessment in current assessment year is held to be not valid. (AY. 2013-14)

Jalaram Enterprises (P.) Ltd. v. ITO (2019) 262 Taxman 404 (Bom.)(HC)

S. 147 : Reassessment – With in four years – An issue which was never examined by Assessing Officer during original scrutiny assessment, reopening of assessment was justified. [S. 11, 13, 148] 1470

Dismissing the petition of the assessee the Court held that, donation received and reimbursement of expenses was not examined during original assessment proceedings. Accordingly an issue which was never examined by AO during original scrutiny assessment, reopening of assessment was justified. (AY. 2013-14)

Hinduja Foundation v. ITO (2019) 262 Taxman 111 (Bom.)(HC)

S. 147 : Reassessment – With in four years – In the absence of assessee's failure to disclose facts, reassessment was to be quashed. [S. 148] 1471

The AO sought to reopen the assessment proceedings on the ground that considering the nature of business activities of the assessee, it was not entitled to the benefits of Chapter XIIG of the Act. Held that since the AO had already perused the nature of business of the assessee in the original assessment proceedings and the same was explained sufficiently by the assessee, reopening on the same issue within 4 years is not permissible as there was no failure on the part of the assessee to disclose truly and fully all material facts. Further held that since there was no new material on record on the basis of which the proceedings were sought to be reopened, it was also a case of change of opinion. The proceedings were to be quashed. (AY. 2011-12)

Samson Maritime Ltd. v. Dy. CIT (2019) 175 DTR 25 (Bom.)(HC)

1472 **S. 147 : Reassessment – Business expenditure – Capital or revenue – Advertisement and sales promotion – Complete disclosure of all primary material facts on part of assessee in course of assessment – Reassessment proceedings merely on basis of change of opinion was not justified. [S. 37(1), 148]**

Allowing the petition the Court held that there was a complete disclosure of all primary material facts on part of assessee in course of assessment as regards the allowability of advertisement and sale promotion as revenue expenditure. Accordingly reassessment proceedings merely on basis of change as of opinion was not justified. (AY. 2011-12)

Asian Paints Ltd. v. Dy. CIT (2019) 261 Taxman 380 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, Dy. CIT v. Asian Paints Ltd. (2020) 269 Taxman 104 (SC)

1473 **S. 147 : Reassessment – Cash credits – Gift from non relative – Suspicion – Reassessment is held to be not valid. [S. 68, 143(1), 148]**

During year, assessee HUF had filed its return of income. Same was accepted and processed under section 143(1). Reassessment notice was issued against assessee on ground that assessee had received gift of certain cash amount from one, KAB of Hong Kong and said donor was not related to assessee and genuineness of gift was to be proved. Tribunal held that the assessee had filed copy of passport, balance sheet and bank account of donor, which was also perused during assessment proceedings. Since reasons as recorded in support of impugned notice to doubt genuineness of gift was not based on any material so as to form belief that assessee's income had escaped assessment on account of gift not being genuine and it was only a suspicion subject to enquiry, impugned reopening notice issued by Assessing Officer was unjustified. Order of Tribunal is affirmed. (AY. 2004-05)

PCIT v. Rajesh D. Nandu (HUF) (2019) 261 Taxman 110 (Bom.)(HC)

1474 **S. 147 : Reassessment – Change of opinion – Provision for diminution in the value of an asset and provision for doubtful debts – Held to be bad in law. [S. 115JB, 148]**

On writ the proceedings for reassessment was quashed following the order for the AY. 2004-05 in *Rallis India Ltd. v. ACIT (2010) 323 ITR 54 (Bom.)(HC)*. Held, allowing the petition, that in view of the decision of the High Court in the case of the same assessee for the assessment year 2004-05, there was no justification for reopening the assessment for the assessment year 2005-06 on change of opinion. The reassessment proceedings were invalid.

Rallis India Ltd. v. DCIT (2019) 411 ITR 452 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, (2018) 408 ITR 28 (St.)

1475 **S. 147 : Reassessment – Bogus share capital – Though the reopening is based on information supplied by the investigation wing, the reasons do not specify that the investment was non – genuine – The AO cannot reopen to investigate into the source of genuineness and creditworthiness of the investors as it falls within the realm of fishing enquiries which is wholly impermissible in law. [S. 68, 148]**

Allowing the petition the Court held that the reasons only refer to a simple piece of information supplied to the Assessing Officer by the Investigation Wing, stating that the assessee company had received share application money of ₹ 49.99 Crores from

First land. To reiterate, this information is nothing which the Assessing Officer did not have at his command when the Assessment was framed. The reasons do not specify that the information supplied to the Assessing Officer by the Investigation Wing, suggested that such investment was no genuine. In this context, Assessing Officer refers to the requirement of verifying the genuineness of investor and requirement of further investigation. These observations in para 3 of the reasons, would not further the case of the Revenue, these being no information with the Assessing Officer, prima facie, indicating that the investments were not genuine. The investigation into the source of genuineness and creditworthiness of the investor company would fall within the realm of fishing enquiries, which is wholly impermissible in law in the context of the reopening of the assessment. For such reasons, impugned notice is set aside. Petition is allowed. (WP No. 3618 of 2018. dt. 07.03.2019)
Nu Power Renewable Pvt. Ltd. v. ACIT (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – Non-existent reason – Indexation cost was raised in the recorded reason – Court cannot allow the AO to improve upon the reasons in order to support the notice of reassessment – Execution of sale deed by virtue of the judgment of the High Court would relate back to the original agreement to sale, and the assessee is entitle to claim the benefit of cost of indexation from the said date. [S. 2(47), 45, 48, 148] 1476
Allowing the petition the Court held that the revenue's objection of difficulty in computing the indexed cost of acquisition was not raised by the AO in the reasons recorded. Court cannot allow the AO to improve upon the reasons in order to support the notice of reassessment. Court also held that execution of sale deed by virtue of the judgement of the High Court would relate back to the original agreement to sale, and the assessee is entitle to claim the benefit of cost of indexation from the said date. Followed *Hindustan Lever Ltd v. R. B. Wadkar (2004) 268 ITR 332 (Bom.)(HC), Sanjeev Lal & Ors. v. CIT (2014) 269 CTR 1 (SC)* (AY. 2013-14)
Amarjeet Thapar v. ITO (2019) 173 DTR 305 / 261 Taxman 23 / 306 CTR 325 / 411 ITR 626 (Bom.)(HC)

S. 147 : Reassessment – With in four years – Intimation – Wrong recording of reasons – order on disposal of objections must deal with the objection – The mere fact that the return is processed u/s. 143(1) does not give the AO a carte blanche to issue a reopening notice – Reassessment notice is quashed. [S. 143(1), 148] 1477
Allowing the petition the court held that,the basic condition precedent of 'reason to believe' applies even to S. 143(1) intimations. If the assessee claims the facts recorded in the reasons are not correct, the order on objection must deal with them. Otherwise an adverse inference can be drawn against the revenue. (AY. 2011-12)
Ankita A. Choksey v. ITO (2019) 411 ITR 207 (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – Two set of reasons – Gist of reasons same – Sanction was obtained – Mere fact that tax authorities conveyed reason twice would not be fatal – Reassessment is held to be valid [S. 143(1), 148] 1478
Return was processed under S. 143(1) without scrutiny-Objections for reassessment proceedings was rejected. Assessee filed the petition contending that AO had supplied

two sets of reasons and it was not clear which reasons were existing on record when sanction from Principal Commissioner was obtained and impugned notice was issued. Rejecting the petition the Court held that gist of reasons recorded in both sets of communications sent to assessee were same and Joint Commissioner perused such reasons and forwarded same to Principal Commissioner with his own remarks and thereupon Principal Commissioner also put his endorsement that it was a fit case for re-opening of assessment. Mere fact that tax authorities conveyed reason twice would not be fatal and, thus, validity of reassessment proceedings deserved to be upheld. (AY. 2011-12)

Himmatbhai M. Viradiya v. ITO (2019) 261 Taxman 132 / 308 CTR 771 / 174 DTR 251 (Bom.)(HC)

1479 **S. 147 : Reassessment – Share application money – Merely because AO examined the transactions does not preclude him from subsequent inquiry if additional material prime facie shows that disclosures made by assessee were not true. Requirement of true and full disclosure runs through the entire assessment and does not end on filing of return. Reasons have to read as a whole – Mere non recitation of allegation regarding failure of full & true disclosure does not invalidate the reasons or the fact that the reasons are based on allegations of lack of true and full particulars. [S. 148]**

Dismissing the petition the Court held that ; Merely because AO examined the transactions does not preclude him from subsequent inquiry if additional material prime facie shows that disclosures made by assessee were not true. Requirement of true and full disclosure runs through the entire assessment and does not end on filing of return. Reasons have to read as a whole. Mere non recitation of allegation regarding failure of full & true disclosure does not invalidate the reasons or the fact that the reasons are based on allegations of lack of true and full particulars (WP. No. 3656 of 2018, dt. 08.02.2018)

Kalsha Builder Pvt. Ltd. v. ACIT (Bom.)(HC), www.itatonline.org

1480 **S. 147 : Reassessment – Identical issue is pending before CIT(A) for the AY. 2015-16 – Writ is held to be not maintainable. [S. 80G, 115BBC, 148, Art. 226]**

Dismissing the petition the Court held that, identical issue is pending before CIT (A) for the AY. 2015-16, accordingly the writ is held to be not maintainable. All the issues are kept open. (AY. 2013-14)

Shri Saibaba Sansthan Trust (Shirdi) v. UOI (2019) 173 DTR 257 / 306 CTR 620 (Bom.)(HC)

1481 **S. 147 : Reassessment – Report of investigation Wing – Accommodation entries – Assessment u/s. 143(1) – Notice for reassessment is valid. [S. 143(1), 148]**

Dismissing the petition the Court held that, there was no scrutiny assessment, therefore the question of change of opinion will not arise, information supplied by the Investigation Wing to the AO formed a prima facie basis to form the opinion that income chargeable to tax has escaped assessment. (AY. 2011-12)

Avirat Star Homes Venture (P) Ltd. v. ITO (2019) 411 ITR 321 / 173 DTR 207 / 261 Taxman 184 (Bom.)(HC)

S. 147 : Reassessment – Delay in filing objections – If the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints 296 ITR 90 (Bom.) that the AO should not pass the assessment order for 4 weeks – A writ petition to challenge the reopening is not entertained. [S. 148, Art. 226] 1482

The Petitioner raised the objections before the AO to the notice of reopening of the assessment on 14.12.2018. Objections were disposed of by the AO on 28.12.2018. Since the last date for framing the assessment was fast approaching and the assessment would get time barred on 31st December, 2018, the AO passed the order of assessment on 28.12.2018. The Petitioner has approached the Court challenging very notice of reopening of the assessment and also including the challenge to the order of reassessment as consequential to the main challenge to reopening of the assessment. Dismissing the petition the Court held that reasons for reopening of the assessment by the Assessing Officer was supplied to the assessee on 14.9.2018. Without filing the objection the assessee approached the Court by filing the Writ Petition in November, 2018 After withdrawing the petition on 13.11.2018 the objection was filed on 14.12.2018. Dismissing the petition, considering the facts of the case the Court held that; if the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in *Asian Paints Ltd v. Dy. CIT (2008) 296 ITR 90 (Bom.)* that the AO should not pass the assessment order for 4 weeks. Accordingly the writ petition was not entertained. (WP No. 284 of 2019, dt. 01.02.2019) (AY. 2011-12)

Cenveo Publisher services India Ltd. v. UOI (2019) 180 DTR 244 (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – The stay is operating against passing of the final assessment order – Stay the assessment proceedings is dismissed. [S. 143(2), 148, 158BC, Art. 226] 1483

By the interim order the Court directed not to pass the final order. In the mean time the AO issued notice u/s. 143(2) of the Act. The assesses filed the writ petition and contended that the notice and further proceedings be stayed. Dismissing the petition the Court held that, the stay order has been granted t pursuant to request made by the Petitioner. If the Petitioner would not have pressed for the same, the Respondents would have been bound to pass the order within the statutory period prescribed under S. 153. The stay is operating against passing of the final assessment order. That does not mean that the continuation of the reassessment proceedings, in the mean time would be contrary to the statute. Court also observed that if the Petitioner were to succeed, such proceedings would be infructuous and the same are being conducted at the risk and peril of the Respondents. Accordingly no prejudice being caused to the Petitioner in any manner. Accordingly the petition is dismissed. (AY. 2011-12)

Devendra Kumar Singh v. CIT (2019) 184 DTR 281 / (2020) 312 CTR 49 / 269 Taxman 123 (Delhi)(HC)

1484 **S. 147 : Reassessment – Change of opinion – Business expenditure – Technical know how – Depreciation – TP adjustments were made in the original assessment proceedings – Reassessment is held to be not valid. [S. 32(1)(ii), 37(1)]**

Original assessment was done u/s 143(3). AO issued the notice for reassessment to disallow payment on account of technical know how fees paid by it by holding it to be only adding as intangible asset falling within domain of S. 32(1)(ii) and allowing only 25 per cent depreciation. Order of the AO affirmed by the CIT(A). Tribunal held that reassessment is not valid. On appeal dismissing the appeal of the revenue the Court held that it was clear from records that issue of payment of technical know how fee was already considered by AO and matter was also referred to Transfer Pricing Officer who had considered payment of technical know how fee while analysing various such payments for international transactions on basis of Transactional Net Margin Method (TNMM) under rule 10B. He had also assessed amount of TP adjustments which was included in assessed income separately by AO in the original assessment order u/s. 143(3) of the Act. Accordingly the Court held that reassessment was done merely based on a change of opinion and, therefore, same is held to be unjustified. (*Dr. Amin's Pathology laboratory v. P. N. Prasad JCIT (2001) 252 ITR 673 (Bom.)(HC)* distinguished, Followed *CIT v. Kelvinator India Ltd. (2010) 320 ITR 561 (SC)*. (AY. 2003-04)
CIT v. Hyundai Motor India Ltd. (2019) 267 Taxman 200 (Mad.)(HC)

1485 **S. 147 : Reassessment – Change of opinion – Original return processed by intimation No failure to disclose truly and fully all material and no new tangible material available with AO Reassessment is held to be not valid. [S. 143(1), 143(3), 148]**

Allowing the appeal the Court held that S. 147 based on the original return filed by the assessee would be a case of change of opinion and consequently bad in law. It was not in dispute that the reopening was based upon the return of income filed by the assessee in the first instance. There was no allegation against the assessee that there was failure on its part to make a true disclosure, nor had the AO relied on any tangible material, which had come to his knowledge after the filing of the return and the intimation under S. 143(1) justifying the reopening. The Tribunal was not correct in confirming the order of reassessment made under S. 147 read with S. 143 by the AO in the second attempt when there were no fresh materials in his possession justifying the action. (AY. 2001-02)
Tenzing Match Works v. Dy. CIT (2019) 419 ITR 338 / 182 DTR 1 (Mad.)(HC)

1486 **S. 147 : Reassessment – Change of opinion – Re assessment on the basis of subsequent assessment year where in deduction u/s. 80IA was not allowed – No tangible material having live link with the formation of belief – Reassessment notice is quashed. [S. 148, Art. 226]**

The assessee is engaged in the business of infrastructure projects and claimed deduction u/s 80IA of the Act. The claim was allowed from the AY. 2001-02 to 2007-08 however the claim was disallowed for the AY. 2008-09. The AO issued the notice to reassess the income for the AY. 2006-07. The assessee challenged the notice by filing the writ petition. Allowing the petition the Court held that the AO has not brought any tangible material having live link with the formation of belief. Accordingly the reassessment notice is quashed. (WP No. 1054 of 2011 dt. 4-12-2019) (AY. 2006-07)
Selvel Transsit Advertising P. Ltd. v. CIT (2020) CTCJ-January-P 88 (Cal.)(HC)

S. 147 : Reassessment – Capital gains – Year of taxability – Transfer of land under Development agreement – Amounts received offered to tax as capital gains and assessed for AY. 1999-2000 up to 2003-04 – No adjudication regarding date of effective transfer of land – Reassessment is valid – Tribunal while granting the relief ought to have granted consequential reliefs – AO is directed to give relief for AY. 1999-2000 to 2003-04. [S. 45, 148, 154, 254(1)] 1487

On appeal the Court held that there was no effective adjudication as to what would be the effective date of transfer while deciding the correctness of the reassessment for the year 1996-97 while making protective assessment for the year 2001-02. The CIT(A) after elaborately considering the terms of agreement, was right in concluding that the transfer came to be actually completed during the financial year 1999-2000 and consequently, that the entire capital gains relating to 40 per cent of the undivided share of land were subjected to tax for the AY. 2000-01. The Tribunal re-examined the factual position and pointed out that the assessees had never admitted the capital gains on sale of 40 per cent. of undivided portion of the land, against which, consideration was held to be 60 per cent of the constructed area. After noting that the assessees had shown the capital gains on the basis of individual sale deeds executed in favour of the nominees of the developer, it held that the assessment order could not be stated to have merged with the appellate order because the issue was never raised by the assessees to be decided by the appellate authority. Moreover, the assessees had been taking inconsistent stands and this had been clearly noted and highlighted by the Tribunal. There was a submission that capital gains should have been assessed for the AY. 1996-97 because transfer took place on October 4, 1995 itself, i.e. the date of the execution of the development agreement. Subsequently, the assessees took the stand that the transfer took place when the assessees actually executed sale deeds in various years in favour of the nominees of the developer. The assessees had taken yet another contrary stand in an application under S. 154 of the Act for the AY. 2001-02 stating that such assessment should be rectified in line with the decision taken for the AYs. 2000-01. The reassessment was valid. However it could not be disputed by the Revenue that for all the years, the assessees had offered capital gains for taxation, from the AYs. 1999-2000 up to 2003-04 and in fact, these particulars were noted in the orders passed by the CIT(A). The assessees offered the capital gains for taxation up to 2003-04. Therefore, the Tribunal, while granting the relief, should have granted relief to the assessees for the AY. 1999-2000 up to 2003-04. Accordingly, the AO was to give effect to the orders passed by the Tribunal by modifying the orders for the AY. 1999-2000 up to 2003-04. (AY. 1999-2000 to 2003-04)

C. Venkatachalam (HUF) v. ACIT (2019) 419 ITR 204 (Mad.)(HC)

C. Sudarsana Srinivasan (HUF) v. ACIT (2019) 419 ITR 204 (Mad.)(HC)

S. 147 : Reassessment – Bogus transactions – Accommodation entries – bogus long term capital gains – Sale of shares – Report by investigation wing – Search of third person – Reasons can be explained further in affidavit – Reasons Can Be Explained Further In Affidavit – Notice of reassessment is held to be valid. [S. 45, 148, 153A(1)(b), Art. 226] 1488

Dismissing the petition the Court held that the AO had filed a detailed affidavit and had also placed on record the appraisal report on the basis of which he had formed the opinion that income chargeable to tax had escaped assessment in the case of the

assessee. A perusal of the appraisal report revealed that there was sufficient material for the Assessing Officer to form the belief that income chargeable to tax had escaped assessment. The material also specifically referred to the assessee, which clearly established a link between the materials relied upon and the assessee. Accordingly the Court held that the reassessment proceedings were valid. (AY. 2011-12)
Purnima Komalkant Sharma v. Dy. CIT (2019) 419 ITR 361 (Guj.)(HC)

1489 **S. 147 : Reassessment – Report of Investigation wing of Income – Tax Department – AO analysing report and forming belief that income had escaped assessment – Reassessment notice is valid. [S. 148, Art. 226]**
Dismissing the petition the Court held that having regard to the materials on record it could not be said that there was total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. It also could not be said that his conclusion was merely based on the observations and information received from the Investigation Wing. The AO could be said to have applied his mind to them. The case on hand was not one where the AO on absolutely vague or unspecific information, initiated proceedings for reassessment without taking the pains to form his own belief in respect of such materials. In the overall view of the matter, no case was made out by the assessee for interference with the notice of reassessment. (AY. 2011-12)
Hemjay Construction Co. Pvt. Ltd. Through Deenaben Yogeshbhai Shah v. ITO (2019) 419 ITR 39 / 311 CTR 413 / 183 DTR 113 (Guj.)(HC)

1490 **S. 147 : Reassessment – Based on facts of later assessment year – Tangible material – Reassessment is held to be valid – Income derived from installation and maintenance of ATM Machines – Not entitled to deduction u/s. 80IA. [S. 80IA, 143(1), 143(3), 148]**
Dismissing the appeal of the revenue the Court held that the assessment for the AY. 1999-2000 was completed under S. 143(1) of the Act accepting the income admitted in the revised return of income filed by the assessee and the assessment was reopened under S. 147 based on the information which came to the notice of the Assessing Officer during the course of the assessment proceedings for the AY. 2001-02 during which the Assessing Officer found that the assessee did not carry out any maintenance work from its industrial unit at Pondicherry Court held that the reason for reopening was based upon tangible material which came to the notice of the AO subsequent to the intimation under S. 143(1). Therefore, the reassessment initiated under S. 143(3) read with S. 147 was legal and valid. (AY. 1999-2000)
Diebold Systems Private Limited v. ITO (OSD) (2019) 419 ITR 333 (Mad.)(HC)

1491 **S. 147 : Reassessment – Capital gains – Cash sales – Failure to disclose material facts – Notice of reassessment is held to be valid. [S. 45, 48 148, Art. 226]**
Assessment was completed u/s. 143(3) of the Act accepting capital gain declared by assessee. On the basis of information that assessee had used routing cash sale consideration of land to sales initiated reassessment proceedings. Assessee filed a petition raising an objection that there was true and full disclosure of all material facts and, thus, reassessment proceedings could not be initiated on basis of change of opinion. Dismissing the petition the Court held that question of true value of land not

being reflected in sale consideration and transaction itself not reflecting correct value received by assessee, objection raised by assessee deserved to be rejected. (AY. 2008-09)
J. P. Iscon Ltd. v. Dy. CIT (2019) 267 Taxman 481/ 111 taxmann.com 260 (Guj.)(HC)
Editorial: SLP is granted to the assessee, J. P. Iscon Ltd. v. Dy. CIT (2019) 267 Taxman 480 (SC)

S. 147 : Reassessment – Notice – Non disposal of assesses objections – Direction u/s. 144A – Assessment without disposing the objection is held to be bad in law – AO is directed to pass the reasoned order after considering the objection. [S. 144A, 148, Art. 226] 1492

AO did not dispose of the objections prior to completing the assessment under sub s (3) of s. 143 r.w.s. 147. On writ the court held that the assessment is bad in law. Assessee also made an application to the Addl. CIT seeking a direction under S. 144A and the latter passed an order directing the AO to pass an appropriate order after giving an adequate opportunity of hearing to the assessee. Court held that the while issuing a direction under s. 144A, the Addl. CIT could not have bypassed the well settled laws and directed the AO to act contrary to law. Accordingly the assessment order is quashed and set aside AO and is directed to decide the objections raised by the assessee by passing a reasoned order before undertaking the assessment. (AY. 2011-12) (dt. 3-9 2019) (As regards objections relating to jurisdiction prior to passing of the order impugned. Court held that this argument cannot be countenanced for having invited an order under S. 144A by the Addl. CIT. Accordingly the writ petition is disposed of with liberty to file an appeal before an appropriate authority in accordance with law) (WP No. 828 of 2019 dt 3-09-2019, WP No. 1374 of 2019 dt. 7-02-2019)
Swadesh Trading Co. v. DCIT (2019) 182 DTR 81 / 310 CTR 810 (Karn.)(HC)
Swadesh Trading Co. v. DCIT (2019) 182 ITR 85 / 310 CTR 814 (Karn.)(HC)

S. 147 : Reassessment – Agricultural income – Advisory issued by the department – Verify the income – Undisclosed income – No tangible material – Reassessment is held to be bad in law. [S. 2(IA), 148, Art. 226] 1493

Assessee filed its return of income showing agricultural income of certain amount which was accepted. On the basis of an advisory issued by department the AO was directed to thoroughly verify claims in respect of agricultural income earned by several parties including assessee. On basis of same, AO issued notice u/s. 148 against assessee so as to treat its agricultural income as income from undisclosed sources. On writ the revenue admitted that the advisory contained in a letter which was issued in light of an order passed by this Court on a public interest litigation and required verification of agricultural income for certain period, which also included assessment year in question. Advisory directed AO to verify whether there was any data entry error in returns filed; to provide feedback where assessment was complete and in cases where assessment was pending, to thoroughly verify claims on agricultural income. Allowing the petition the Court held that reopening was simply founded on advisory issued by department and there was no tangible material in possession of AO for formation of belief about escarpment of income chargeable to tax, therefore reopening notice was unjustified. (AY. 2011-12)
Rabindra Kumar (HUF) v. CIT (2019) 419 ITR 308 / 266 Taxman 506 / 311 CTR 912 / 184 DTR 315 (Patna)(HC)

1494 **S. 147 : Reassessment – Legal representative – Liability – Not inherited anything from his father – Huge deposits prior to death – Reassessment is held to be bad in law. [S. 144, 148, 159, Art. 226]**

Allowing the petition the Court held that, liability of a legal representative under Act is limited to extent to which estate is capable of meeting said liability. Accordingly where assessee did not inherit anything from his father and, moreover, he had nothing to do with his father's bank account, assessment order passed under S. 144, read with S 147, on ground that there were huge deposits in said account in relevant year prior to death of his father, was not sustainable, the order was set aside.

C. Naveen Kumar v. ITO (2019) 266 Taxman 74 (Mad.)(HC)

1495 **S. 147 : Reassessment – With in four years – Report of investigation wing showing over valuation of shares – Original assessment u/s. 143(1) – Notice on the ground of over valuation shares is held to be valid. [S. 143(1), 143(3), 148]**

Dismissing the petition the Court held that the returns of Nitin Sabharwal for the two assessment years were accepted as such and intimations were sent to him under S. 143(1). Consequently, there was no occasion for the Assessing Officer to form any opinion in the first place. Therefore, there was no question of change of opinion in his cases as far as the notice under S. 147 / 148 was concerned. The notice of reassessment was valid. In the case of Chetan Sabharwal the original assessment orders for both the assessment years under S. 143(3) of the Act did not give any indication on the AO having formed any opinion whatsoever on the basis of which the reopening had been ordered. The notice of reassessment was valid. (AY. 2008-09, 2009-10)

Chetan Sabharwal v. ACIT (2019) 418 ITR 8 / 310 CTR 690 / 181 DTR 313 (Delhi)(HC)
Nitin Sabharwal v. ACIT (2019) 418 ITR 8 / 310 CTR 690 / 181 DTR 313 (Delhi)(HC)

1496 **S. 147 : Reassessment – Change of opinion – Export receivables could be written off during the pendency of the application for approval from the Reserve Bank of India – Claim of bad debt was allowed after scrutiny – Reassessment is held to be not valid. [S. 36(1)(vii), 148]**

Allowing the petition the Court held that the notice of reassessment was based on the ground that the allowance for bad debt was erroneous. During the original assessment proceedings, the AO had considered the claim of the assessee in detail. The assessee had submitted all the required details called for by the Assessing Officer in respect of the claim of bad debts written off including the bad debts written off pertaining to export receivables. The AO had formed an opinion that the bad debts from export receivables could be written off during the pendency of the application for approval from the Reserve Bank of India and he could not have formed a different opinion that income had escaped assessment because the assessee did not have permission from the Reserve Bank of India to write off the bad debts from the export receivables. The notice was not valid. (AY. 2013-14)

Chamunda Pharma Machinery Pvt. Ltd. v. ACIT (2019) 417 ITR 671 / 180 DTR 321 / 265 Taxman 83 (Mag) (Guj.)(HC)

S. 147 : Reassessment – Bogus purchases – Manufacture of diamonds – Information received from Director (Inv) – Statement of searched party – Not discharging the burden – No prayer was made by the assessee before the Assessing Officer to summon Parvin Jain for his cross – examination – Reassessment is held to be valid – On merit the Tribunal confirmed the addition of 15% of alleged bogus purchases. [S. 10AA, 132(4), 148] 1497

Dismissing the appeal the Court held that the view taken by the Tribunal was based on the facts proved by the statement under S. 132(4) of Pravin Jain the party in respect of whom the search was conducted. The assessee despite being provided opportunity failed to prove the genuineness of the transactions and to produce the parties from whom such transactions were made with their books of account for verification. Indisputably, the Assessing Officer at the subsequent stage had relied upon the statement of Pravin Jain recorded under S. 132(4) based on which he had called upon the assessee to prove the genuineness of the transactions. As regards the contention of the assessee that it was not provided opportunity to cross examine Pravin Jain the party who had given the statement, firstly, the Assessing Officer himself had required the assessee to produce the representative of the concerned parties along with their books of account and he had failed to produce them. Secondly, no such prayer was ever made by the assessee before the AO to summon Pravin Jain for his cross-examination. No question of law arose. (AY. 2007-08)

Goenka Jewellers v. CIT (2019) 417 ITR 686 (Raj.)(HC)

Editorial: SLP of assessee is dismissed Goenka Jewellers. v. CIT (2019) 416 ITR 77 (St.)

S. 147 : Reassessment – Change of opinion – Information was furnished in the original assessment proceedings – Reopening of assessment on same issue amounts to change of opinion hence untenable – Amounts to change of opinion and untenable. [S. 148] 1498

Allowing the petition the Court held that the reopening of the assessment is nothing but a change of opinion. The then AO upon due consideration of all the necessary details and information furnished by the assessee had not made any addition in respect of the transaction of receipt of ₹ 6 crores or the repayment of that amount while he made the assessment under S. 143(3). The action of reopening of the assessment merely based on change of opinion was untenable. The notice issued under S. 148 was to be quashed and set aside. (AY. 2011-12)

Rajendra Suganchand Shah v. ACIT (2019) 417 ITR 583 (Guj.)(HC)

S. 147 : Reassessment – Salaries paid to employees – Reconciliation statement was filed – Reassessment proceedings was quashed. [S. 37(1), 148] 1499

Assessment was completed u/s. 143(3). AO initiated reassessment proceedings on ground that assessee had debited higher amount of salaries paid to employees in profit and loss account as against actual payment of salaries mentioned in salary register, in view of fact that assessee had submitted all relevant facts in respect of salary expenditure at time of completing assessment and, moreover, assessee had also filed a reconciliation statement showing that amount paid as per salary registers was same as debited in profit and loss account. On writ the reassessment was quashed. (AY. 2011-12)

Kapadia Money Changers (P.) Ltd. v. ACIT (2019) 266 Taxman 160 (Guj.)(HC)

1500 **S. 147 : Reassessment – Deemed dividend – Advances received from company – Two partners are shareholders with substantial interest – Reassessment is held to be valid. [S. 2(22)(e), 148]**

Dismissing the appeal the Court held that failure to disclose material facts during assessment proceedings u/s. 143(3) as regards advance received from company wherein two partners are shareholders with substantial interest. Reassessment is held to be valid. (AY. 1998-99, 1999-2000)

Aswani Enterprises v. ACIT (2019) 417 ITR 223 (Mad.)(HC)

1501 **S. 147 : Reassessment – Method of accounting – Full and true disclosure of all material facts regarding change in method of accounting in respect of Non-Performing Assets (NPAs) at time of assessment itself – Reassessment is held to be bad in law. [S. 145, 148]**

AO initiated reassessment proceedings on ground that there was change of accounting method in respect of Non-Performing Assets ('NPAs') – Tribunal found that assessee had made full and true disclosure of all material facts regarding change in method of accounting at time of assessment. Tribunal thus taking a view that precondition stipulated in first proviso to S. 147 was not satisfied, set aside reassessment proceedings. High Court upheld order passed by Tribunal. (AY. 2006-07)

PCIT v. Punjab and Sind Bank (2019) 108 taxmann.com 351 / 265 Taxman 538 (Delhi) (HC)

Editorial: SLP of revenue is dismissed, PCIT v. Punjab and Sind Bank (2019) 265 Taxman 537 (SC)

1502 **S. 147 : Reassessment – Housing project – Claim was examined in original assessment proceedings – Merely because the AO did not examine such claim from angle of clauses (e) and (f) thereof, would not be a valid ground for reopening assessment. [S. 80IB(10), 148]**

During course of scrutiny assessment, AO examined assessee's claim for deduction under S. 80IB(10) in detail and raised several queries and thereafter accepted same. Subsequently, AO issued impugned notice under S. 147 seeking to reopen assessment on ground that seven flats had been allotted either to family members or to same individual in contravention of clauses (e) and (f) of S. 80-IB(10). On writ the Court held that the assessee had disclosed all material facts necessary for assessment and Assessing Officer allowed claim under S. 80IB(10) after examining same in detail, merely because he did not examine such claim from angle of clauses (e) and (f) thereof, would not be a valid ground for reopening assessment. (AY. 2012-13)

Royal Infrastructure v. DCIT (2019) 265 Taxman 103 (Mag) (Guj.)(HC)

1503 **S. 147 : Reassessment – Filing of return not an admission that notice is valid – Exempt from filing of return – Investment in subsidiary did not give rise to taxable income – Re assessment notice is held to be not valid. [S. 115A (5), 148, Art. 226]**

The assessee was a company incorporated in Switzerland. A notice of reassessment was issued to it. The reasons stated were that the assessee had been identified as a foreign company in the non-filers monitoring system category and that during the financial

year 2010-11 relevant to the assessment year 2011-12 it had entered into a share transaction. The assessee filed a return and raised the following objections : (i) that the assessee's income from India consisted only of dividend and interest on which tax had been deducted at source in accordance with the Act or the Double Taxation Avoidance Agreement between India and Switzerland ; and (ii) that the share transaction was with its subsidiary and no taxable income had been generated. The objections were rejected. On a writ petition against the order the Court held that the averment of the assessee that during the assessment year 2011-12 its receipts from its Indian subsidiary was comprising only of dividend and interest on which tax was deductible at source and had been deducted in accordance with the provisions of the Act had not been disputed by the Revenue. It was also not disputed that the assessee was specifically exempted from filing the return under S. 115A(5). The principal objection of the assessee that its investment in the shares of its subsidiary could not be treated as income was well founded. Therefore the fundamental premise that the investment by the assessee in the shares of its subsidiary amounted to "income" which had escaped assessment was flawed. The question of such a transaction forming a live link for reasons to believe that income had escaped assessment was entirely without basis. The notice was not valid. (AY. 2011-12)

Nestle SA. v. ACIT (2019) 417 ITR 213 / 311 CTR 344 / 181 DTR 211 (Delhi)(HC)

S. 147 : Reassessment – Survey – Retraction – Notice based solely on statement recorded during survey – Held to be not valid. [S. 132 (4), 133A(iii), 148] 1504

Allowing the petition the Court held that the utility of a statement recorded in the course of survey is limited to the extent to which it is useful or relevant to any proceeding under the Act. A statement recorded in the course of survey can, at best, support a proceeding for reassessment. It cannot be the sole basis for reassessment. Accordingly, as the department had yielded no tangible incriminating material reassessment based solely upon the sworn statement recorded under S. 133A from one of the partners which he had retracted later. The notice of reassessment was not valid. (AY. 2013-14 to 2015-16)

A. Thangavel Nadir Stores v. ITO (2019) 417 ITR 50 (Mad.)(HC)

S. 147 : Reassessment – Doctrine of merger – Undisclosed investment – Issue which was subject matter of appeal – Reassessment is held to be bad in law. [S. 69, 148, 153A] 1505

An assessment was completed under S. 143(3), read with S. 153A of the Act by making additions u/s. 69 of the Act. CIT (A) deleted the addition.. Subsequently, AO issued a notice under S. 148 seeking to reopen assessment on ground that certain amount escaped assessment towards undisclosed investment. Allowing the petition the Court held that since, in instant case, Assessing Officer sought to reopen assessment in respect of income involving a matter which was subject matter of appeal before Commissioner (Appeals), said reopening of assessment was hit by third proviso to S. 147 which was not permissible in law. Accordingly the reassessment proceedings were quashed. (AY. 2011-12)

Jhankit Chandulal Prajapati v. DCIT (2019) 265 Taxman 33 (Mag.) (Guj.)(HC)

1506 **S. 147 : Reassessment – No failure to disclose material facts – Reassessment is bad in law. [S. 148]**
High Court dismissed the appeal of the revenue on the ground that there was no failure to disclosure material facts. Followed *CIT v. Rama Singh (2008) 306 ITR 343 (Raj.)(HC) PCIT v. Mahendra Singh Asoliya (2019) 107 taxmann.com / 264 Taxman 288 (Raj.)(HC)*
Editorial: SLP of revenue is dismissed, PCIT v. Mahendra Singh Asoliya (2019) 264 Taxman 287 (SC)

1507 **S. 147 : Reassessment – Reasons for issue of notice must be given – Objections must considered by passing speaking order – Reassessment is held to be not valid – Existence of alternative remedy would not bar issue of writ. [S. 148, Art. 226]**
Allowing the petition the Court held that the reasons for re-opening the assessments had not been furnished to the assessee. The orders of reassessment had been passed without hearing the assessee and a consequent demand notice had also been issued. There had been a breach of the principles of natural justice and the procedure required to be adopted for passing assessment orders on reassessment and demand orders had not been followed. Therefore, an exceptional case had been made out for invoking power under Article 226 of the Constitution of India. Both the orders being unsustainable the assessment and demand orders were liable to be quashed. (AY. 2012-13 to 2016-17)
North Eastern Electric Power Corporation v. PCIT (2019) 416 ITR 425 / 182 DTR 16 / 310 CTR 706 (Meghalaya)(HC)

1508 **S. 147 : Reassessment – Notice – Order passed without disposing of objections raised by assessee – Reassessment Order is set aside to consider the objections. [S. 148]**
Allowing the petition the Court held that, the AO passed a reassessment order under S. 147 of the Act, pursuant to the notice issued under S. 148 without disposing of the objections filed by the assessee against the reopening of the assessment. Accordingly the reassessment order was to be set aside. The AO was to consider the objections raised by the assessee to the reopening of the assessment under S. 147 and dispose of those objections by a reasoned order. (AY. 2011-12)
Surendra Kumar Jain v. CIT (2019) 416 ITR 340 (Delhi)(HC)

1509 **S. 147 : Reassessment – Amalgamation of companies – Change of previous year allowed by AO – Reassessment proceedings on ground that AO was not aware of amalgamation of companies – Held to be not valid. [S. 148]**
Court held that the documents produced by the Department made it clear that the Assessing Officer was in the know of the amalgamation proceedings. The request for change of previous year specifically indicated that the amalgamation process was on and that the companies expected the order of the High Court approving the scheme of amalgamation, shortly. In such circumstances, there was no warrant to assume that the assessment order was passed without knowledge of the amalgamation. The reassessment proceedings were not valid. (AY. 1983-84 to 1985-86)
CIT v. Harrisons Malayalam Ltd. (2019) 416 ITR 509 (Ker.)(HC)

S. 147 : Reassessment – With in four years – Change of opinion – Details were submitted in the original assessment proceedings – Reassessment for purpose of verification and investigation is held to be not valid. [S. 148] 1510

Allowing the petition the Court held that the AO has passed the original assessment order by calling the information and getting the confirmation from the parties. The AO cannot reopen the assessment on the ground that further verification and investigation was required. On the basis of the very same material, the assessment could not be reopened on some change of opinion. In the facts and circumstances of the case, the notice of reassessment was not valid. (AY. 2013-14)

Jarun Pharmaceuticals Pvt. Ltd. v. ITO (2019) 416 ITR 249 (Guj.)(HC)

S. 147 : Reassessment – With in four years – Change of opinion – No new material – Reassessment is held to be bad in law. [S. 80IA(4)] 1511

Dismissing the appeal of the revenue the Court held that the reassessment proceedings were initiated on the basis of the same material which was available before the AO and a mere change of opinion had led to the reassessment, which was not permissible. (AY. 2007-08)

CIT v. Balaji Neemuch Infrastructure Pvt. Ltd. (2019) 414 ITR 707 (MP)(HC)

S. 147 : Reassessment – With in four years – General allegation – No violation of provisions of S. 11(3)(d) – Reassessment is bad in law. [S. 10(23C), 11, 12AA, 13, 148] 1512

Allowing the petition the Court held that the hospital was not a trust or institution registered under S. 12AA. The hospital did not fall within the ambit of any of the sub-clauses of S. 10(23C) specified in S. 11(3)(d). There was a general allegation of breach of S. 11 to 13, without stating why such violation was alleged. Violation of S. 11(2) had been alleged only as a consequence of violation of the provisions of S. 11(3)(d) of the Act. Accordingly on the reasons recorded, the AO could not have formed the belief that income chargeable to tax had escaped assessment. The notice of reassessment was not valid. (AY. 2016-17)

Areez Khambatta Benevolent Trust v. DCIT (2019) 415 ITR 70 (Guj.)(HC)

S. 147 : Reassessment – With in four years – Notice based solely on report of District valuation Officer is not valid. [S. 142A, 148] 1513

Court held that before making the reference to the District Valuation Officer, the Assessing Officer did not reject the books of account and on the contrary, he framed the assessment on the basis of the cost of construction as reflected in the books of account. Under the circumstances, in the first place, no reference under S. 142A of the Act as it stood at the relevant time could have been made without rejecting the books of account. Moreover, merely on the basis of the District Valuation Officer's report, without any other material indicating escapement of income for the year under consideration, the Assessing Officer was not justified in reopening the assessment. The notice of reassessment was not valid. (AY. 2011-12)

Darshan Buildcon v. ITO (2019) 416 ITR 66 (Guj.)(HC)

1514 **S. 147 : Reassessment – With in four years – Change of opinion – Loss on account of sale of stores – No new material – Reassessment is not valid. [S. 144(1)(c), 148]**
Dismissing the appeal the court held that there was no new material hence reassessment on mere change of opinion is bad in law. (AY. 2007-08)
CIT v. Atul Ltd. (2019) 415 ITR 1 (Guj.)(HC)

1515 **S. 147 : Reassessment – With in four years – No new tangible material – Reassessment is bad in law. [S. 148]**
Allowing the petition the Court held that the assessing authority had applied his mind and passed the original assessment order and there was no fresh material on record to permit the Department to initiate the reassessment proceedings. Reassessment is bad in law. (AY. 2007-08)
Pawan Sood v. CIT (2019) 415 ITR 350 (All.)(HC)

1516 **S. 147 : Reassessment – With in four years – No failure to disclose all material facts fully and truly – Reassessment on change of opinion is held to be not valid. [S. 148]**
Allowing the petition the Court held that reassessment is based upon a second opinion on the same facts by a subsequent Assessing Officer. A notice under S. 148 was to be premised on fresh or tangible material made available with the Department within the time granted or within the extended time under S. 147 or if material documents, which had significance on the reassessment were withheld or improperly disclosed. The notice for reopening the assessment was quashed. (AY. 2011-12)
IHHR Hospitality Pvt. Ltd. v. ACIT (2019) 415 ITR 459 (Delhi)(HC)

1517 **S. 147 : Reassessment – Bogus expenditure – Information received subsequent to scrutiny assessment – Survey report and statements of employees during course of survey – Reassessment is held to be valid. [S. 133A, 148]**
Dismissing the petition the Court held that the materials on record which were made available to the Assessing Officer were in the form of a survey report after the conclusion of the scrutiny assessments for both the assessment years 2011-12 and 2012-13 and the relevant records were shared with the AO only on March 19, 2018. Given the time constraint after analysing the report of the survey including the statement recorded during the survey, the AO was of the opinion that the issue of profitability required re-examination not because of a second opinion or review but because of the survey conducted subsequently. The materials on record showed that the sales declared were suspicious. Reassessment proceedings are held to be valid. (AY. 2011-12, 2012-13)
Sanjivani Non-Ferrous Trading Pvt. Ltd. ITO (2019) 415 ITR 485 / 177 DTR 276 / 308 CTR 532 (Delhi)(HC)

1518 **S. 147 : Reassessment – Cash credits – Share application money – Huge premium – Genuineness of transaction or creditworthiness of individual providing money were apparently not established – Issue of reassessment notice is held to be justified. [S. 68, 148]**
The AO issued reassessment notice under S. 148 observing that the authorised capital of the assessee-company was ₹ 20 lakh and issued capital was ₹ 1 lakh. The balance

capital to be issued was ₹ 19 lakh. The assessee-company received ₹ 87 crores as share application money against the pending share capital of ₹ 19 lakh meaning that the assessee was getting a premium of ₹ 45.69 lakhs. The share premium was 457 times the face value of ₹ 10 each. The financials of the assessee-company did not support such high valuation. Accordingly the transactions with respect to credits of ₹ 87 crores was not genuine which is the basis of reason for formation of belief that the income had been escaped assessment. Dismissing the petition the Court held that, the reassessment notice in this case was clearly warranted. Though the assessee had sought to explain that the share application amounts were received and later the shareholding rights were transferred by Anjali Singh to his family trust. The identity of Anjali Singh was known, however, looking at the transaction were apparently not established. The revenue was justified in issuing the impugned notice. (AY. 2012-13)

Max Ventures Investments Holdings (P.) Ltd. v. ITO (2019) 415 ITR 395 / 263 Taxman 401 / 179 DTR 279 / 309 CTR 406 (Delhi)(HC)

S. 147 : Reassessment – With in four years – On the day of furnishing the recorded reasons – Reassessment order is passed – Order passed in hasty manner – Order is set aside. [S. 148] 1519

AO issued notice to initiate reassessment. On day of furnishing reasons, re-assessment order was passed. Assessee filed preliminary objections on 27-12-2018. On writ the Court held that since assessee was not provided breathing time to furnish objections, and AO proceeded to conclude re-assessment in hasty manner, re-assessment t set aside and matter remanded. (AY. 2013-14)

Kanchan Agarwal (Mrs.) v. ITO (2019) 263 Taxman 682 (Karn.)(HC)

S. 147 : Reassessment – No objection raised – Deemed to have acquiesced to reopening assessment – Existence of alternative statutory remedy – Writ is held to be not maintainable. [S. 148, Art. 226] 1520

Dismissing the appeal the Court held that the order of the single judge holding that, the assessee having not raised any objection before the assessing authority to the reopening of the assessment under S. 147 should be deemed to have acquiesced to it, did not suffer from any infirmity which called for interference. The assessee having not raised any objection before the assessing authority that the expenditure claimed as revenue expenditure was already considered and allowed, and therefore, to have treated it as capital expenditure later was change of opinion on the part of the assessing authority, it could not be raised in writ jurisdiction. When a specific and adequate alternative remedy of appeal before the appellate forum was available to the assessee to take such a plea to find as to whether the expenditure claimed was to be treated as revenue expenditure or capital expenditure, the High Court would not entertain the controversy on its merits. The 1961 Act was a self contained Act and the High Court under S. 260A in its appellate jurisdiction was not the proper forum to decide such a mixed question of fact and law. (AY. 2011-12)

Hanon Automotive Systems India Pvt. Ltd. v. DCIT (2019) 413 ITR 431 / 263 Taxman 417 / 180 DTR 205 / 311 CTR 901 (Mad.)(HC)

1521 **S. 147 : Reassessment – All material facts disclosed in the original assessment proceedings – Reassessment to verify cash intensive transactions is held to be not valid. [S. 148]**

Allowing the petition the Court held that where the assessee had disclosed all the material facts. Reassessment to verify cash intensive transactions is held to be not valid. (AY. 2009-10)

Revolution Forever Marketing Pvt. Ltd. v. ITO (2019) 413 ITR 400 (Delhi)(HC)

1522 **S. 147 : Reassessment – Mixed question of facts and law – Writ is held to be not maintainable – Time limit for issue of ₹ 1 lakh of is applicable to S. 149(1)(b) and not for S. 149(1) (a) of the Act – Notice to reassessment issued within six years is not barred by limitation. [S. 148, 149(1)(a), 149(1)(b), Art. 226]**

Dismissing the petition the Court held that, certain mixed questions of law could not be decided in favour of the assessee nor could the Department be deprived of its right to probe the matter further and formulate an opinion with reference to the provisions of the Act and pass orders. The assessee's case was one of mixed questions of law and facts and therefore, the Assessing Officer had to consider all the materials available on record for the purpose of reopening the assessment including the objections submitted by the assessee, before passing an assessment order. The assessee was entitled to submit all its objections and legal grounds and materials before the Assessing Officer enabling him to consider them and pass an assessment order. The contention of the assessee that it was entitled to the benefit of the proviso to S. 147 could be considered only with reference to the facts and materials on record before the Assessing Officer and that exercise could not be done by the court in writ jurisdiction under Article 226 of the Constitution of India. Court also held that, S. 149(1)(a) was not applicable to the assessee since the purported escapement of income chargeable to tax was beyond ₹ 1 lakh. S. 149(1)(b) was applicable to the assessee. Accordingly the notice issued within a period of six years is held to be with in the period of limitation. (AY. 1996-97)

S.C.V. Engineering Pvt. Ltd. v. ACIT (2019) 413 ITR 319 (Mad.)(HC)

1523 **S. 147 : Reassessment – Search in premises of third party – Discovery that the assessee was not a genuine company – Notice for reassessment is valid. [S. 148]**

Dismissing the petition the Court held that the Assessing Officer had stated in the reasons for issue of the notice of reassessment that during the course of search operations in SPIL it had been found that various concerns of the group including the assessee were not genuine. The Department conducted a very detailed and thorough investigation, evidence was gathered, a large number of persons were examined, and a huge amount of hard and soft data was looked into. The assessee had not shown any business activity for the relevant year and had not filed any audited account before the Income-tax Department, at least till the time of initiation of the proceedings under S. 147 and had filed only its Income-tax return. It was prima facie established that the assessee was a dummy company. The reasons recorded in the matter were communicated to the assessee. The objections of the assessee had been properly dealt with and it was not a case of mere suspicion. It was a case wherein the competent authority had reason to believe to reopen the assessment. There was specific information

available with the authorities. The reasons to believe had been properly understood by the authorities and there was material on the basis of which notice was issued. The notice was valid.(AY. 2011-12)
Etiam Emedia Ltd. v. ITO (2019) 412 ITR 87 (MP)(HC)

S. 147 : Reassessment – Audit objection – Business expenditure – Forex gain – merely on the basis of audit objection – Reassessment is not valid. [S. 37(1), 148] 1524
AO issued reassessment notice on basis of audit objection that assessee-company had wrongly claimed and was allowed deduction on account of Forex Gain on interest income which was not an allowable expense. On Writ the Court held that, since audit objection is merely an information reassessment order is bad in law. (AY. 2010-11)
ACIT v. FIS Global Business Solutions India (P.) Ltd. (2019) 102 taxmann.com 471 (Delhi)(HC)
Editorial: SLP of revenue is dismissed, ACIT v. FIS Global Business Solutions India (P.) Ltd. (2019) 262 Taxman 369 (SC)

S. 147: Reassessment – Change of opinion – Loans or advances to share holders – Disclosed material facts – Reassessment is held to be not valid. [S. 2(22)(e), 148] 1525
Allowing the petition the Court held that, since assessee had made full disclosure of all material facts at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified. (AY. 2010-11)
ITO v. Sanjeev Ghei (2019) 104 taxmann.com 80 / 262 Taxman 265 (Delhi)(HC)
Editorial: SLP of revenue is dismissed; ITO v. Sanjeev Ghei (2019) 262 Taxman 264 (SC)

S. 147 : Reassessment – Change of opinion – Reassessment in the absence of any new material on record amounts to change of opinion – Reassessment proceedings to be quashed. [S. 148, 154] 1526
Reassessment proceedings were sought to be initiated on the ground that the creditors were not genuine. Held that the department had no fresh/tangible material in its possession, which was not there at the time of original assessment, to reach the conclusion of there being an escapement of income. Perusing of the same material, which was there at the time of original assessment, to reopen the assessment proceedings amounts to change of opinion. The reassessment proceedings were to be quashed. (AY. 2007-08)
Pawan Sood v. ITO (2019) 175 DTR 217 / 307 CTR 452 (All.)(HC)

S. 147 : Reassessment – Notice – Non disposal of objection by observing that it was not feasible to pass separate speaking order in respect of objections raised – It is mandatory to decide objections one way or other – Not curable defects – Non-adjudication of objections after receiving same, would render consequential actions and orders illegal. [S. 144, 148] 1527
AO Officer issued notice under S. 148. Assessee filed objections. After receipt of objections, drastically on next day, revenue passed impugned order of assessment. Reason for not considering objections was that it was not feasible to pass separate

speaking order in respect of objections raised. On writ allowing the petition the Court held that it is mandatory to decide objections one way or other, it cannot be said that non-decision thereof would be curable. Non-adjudication of objections after receiving same, would render consequential actions and orders illegal. (AY. 2006-07, 2007-08)
Raninder Singh v. CIT (2019) 261 Taxman 214 (P&H)(HC)

1528 **S. 147 : Reassessment – Certificate was not produced – Inadvertently the deduction was allowed – Based on earlier years appellate order reassessment is held to be valid. [S. 80HHC, 148]**
Dismissing the appeal the Court held that admittedly, no certificates were produced by the assessee and inadvertently the Assessing Officer had allowed the deduction for the two years. On receipt of information by way of the appellate order, the Assessing Officer realised the escapement of assessment in the assessment years 1987-88 and 1988-89. Reassessment is valid it is not change of opinion. (AY. 1987-88, 1988-89)
Baby Marine Exports. v. ACIT (2019) 411 ITR 230 / 175 DTR 364 (Ker.)(HC)

1529 **S. 147 : Reassessment – Notice based on appellate order – Documents showing share transactions were not genuine – Stockbrokers had elucidated on the sham and bogus nature of the share transaction – Matter remanded. [S. 68, 148]**
Allowing the appeal of the revenue the Court held that; the stockbrokers had elucidated on the sham and bogus nature of the share transaction, i. e., investment and sale of worthless shares through unknown persons who were the assessee's representatives. The other facts had been accepted and admitted in the statement recorded by the Investigation Wing. The notice of reassessment for the assessment year 1999-2000 was valid. The Tribunal for the assessment year 2000-01 did not record the "reasons to believe" and without reproducing and examining them, following the reasons given for the assessment year 1999-2000, quashed the reopening of the assessment under S. 147 and 148 of the Act and also deleted the addition of ₹ 40 lakhs made by the Commissioner (Appeals) on substantive basis. As the Tribunal had not considered and examined the "reasons to believe" for the assessment year 2000-01, an order of remand was to be issued for fresh consideration. (AY. 1999-2000, 2000-01)
CIT v. Geetanjali Credits And Capital Limited. (2019) 411 ITR 338 / 307 CTR 125 / 174 DTR 217 (Delhi)(HC)

1530 **S. 147 : Reassessment – Claim for deduction cannot be made in Reassessment – Limitation – Not barred by limitation. [S. 149]**
Reassessment is to benefit the revenue. Claim for deduction cannot be made in reassessment proceedings. Notice for AY. 1985-86 on 3-7-1995, 1996-97 on 25-8-1998 and 1998-99, 1999-2000 and 2000-01 on 11-2-2003 is not barred by limitation. (AY. 1985-86, 1996-97 to 2002-03)
CIT v. Punalur Paper Mills Ltd. (2019) 411 ITR 563 / 176 DTR 342 / 309 CTR 42 (Ker.) (HC)

S. 147 : Reassessment – Non-resident – Limitation – Offshore trust – Amendment to S. 149, by Finance Act, 2012, which extended limitation for initiation of reassessment proceedings to sixteen years, could not be resorted for reopening concluded proceedings in respect of which limitation had already expired before amendment became effective – Notice issued in 2015 for the assessment year 1998-99 was quashed. [S. 148, 149] 1531

The revenue relying upon his statement, issued impugned notice dated 24-3-2015 under S. 148 seeking to initiate reassessment proceedings for assessment year 1998-99, on the suspicion that the, income of the assessee had escaped assessment. The assessee contended that the limitation for re-assessment for assessment year 1998-99 had expired on 31-3-2005 and therefore, re-assessment was bared by limitation. The AO contended that the proceedings were initiated within the extended period of 16 years from the end of the relevant assessment year by relying on section 149(1)(c), introduced by the Finance Act, 2012, with effect from 1-7-2012. On writ allowing the petition the Court held that ; reassessment for 1998-99 could not be reopened beyond 31-3-2005 in terms of provisions of S. 149 as applicable at the relevant time. The assessees return for assessment year 1998-99 became barred by limitation on 31-3-2005. The question of revival of the period of limitation for reopening assessment for assessment year 1998-99 by taking recourse to the subsequent amendment made in section 149 in the year 2012, i.e., more than 8 years after expiration of limitation on 31-3-2005, has been dealt with in *K. M. Sharma v. ITO (2002) 254 ITR 772 (SC),* accordingly the reassessment notice was quashed. (AY. 1998-99)

Brahm Datt v. ACIT (2019) 260 Taxman 380 / 173 DTR 1 / 306 CTR 114 (Delhi)(HC)

S. 147 : Reassessment – Audit objection – Undervaluation of stock – Reassessment is held to be not valid. [S. 145, 148] 1532

Dismissing the appeal of the revenue the Court held that; reassessment proceedings on ground that said proceedings were based on mere audit objection that there was undervaluation of closing stock. (AY. 2007-08)

PCIT v. S. Chand & Co. Ltd. (2018) 100 Taxman.com 352 / (2019) 260 Taxman 108 (Delhi) (HC)

Editorial: SLP of revenue is dismissed; PCIT v. S. Chand & Co. Ltd. (2019) 260 Taxman 107 (SC)

S. 147 : Reassessment – Scientific research expenditure – Absence of concluded facts – Writ petition was dismissed. [S. 148, Art. 226] 1533

Dismissing the petition the Court held that, in the absence of concluded facts being available before the court, it was not proper to interfere with the notice for reassessment and the order of rejection of objections raised by the assessee in writ proceeding. The assessee was at liberty to avail of statutory alternative remedies. (AY. 2011-12)

Alkem Laboratories Ltd. v. CIT (2019) 410 ITR 205 (Pat.)(HC)

Editorial: SLP of assessee is dismissed; Alkem Laboratories Ltd. v. CIT (2018) 409 ITR 4 (St.)/ (2019) 260 Taxman 101 (SC)

1534 **S. 147 : Reassessment – Notice sent to old address – Duty of Assessing Officer to access changed Permanent Account Number database of assessee – Return filed showing new address – Reassessment is held to be bad in law. [S. 144, 148, R. 127]**
Allowing the petition, the Court held that, rule 127(2) states that the addresses to which a notice or summons or requisition or order or any other communication may be delivered or transmitted shall be either available in the permanent account number database of the assessee or the address available in the Income-tax return to which the communication relates or the address available in the last Income-tax return filed by the assessee : all these options have to be resorted to by the concerned authority, in this case the AO. On facts the AO had omitted to access the changed permanent account database and had mechanically sent notices to the old address of the assessee. The subsequent notices under S. 142(1) were also sent to the old address and the reassessment proceedings were completed on best judgment basis. The AO had mechanically proceeded on the information supplied to him by the bank without following the correct procedure in law and had failed to ensure that the reassessment notice was issued properly and served at the correct address in the manner known to law. The reassessment notice issued under S. 148, the subsequent order under S. 144 read with S. 147 and the consequential action of attachment of the assessee's bank accounts were quashed. (AY. 2010-11)
Veena Devi Karnani v. ITO (2019) 410 ITR 23 (Delhi)(HC)

1535 **S. 147 : Reassessment – With in four years – Failure to disclose material facts – Fails to challenge the reopening at the appropriate time before the Court – Not entitled to seek such indulgence, after allowing the Officer to pass the order of assessment – Writ Court cannot sit as an Appellate Authority and decide the merits of the assessment – Writ is held to be not maintainable. [S. 148, Art. 226]**
Dismissing the petition the Court held that, while original return was filed, audit was not completed and report was not available before assessee, still assessee had chosen to indicate wrong date of audit report, while filing original return. Therefore, it was evident that date of audit report furnished in original return was not true information or disclosure of material facts and therefore, reasons for reopening assessment indicating that there was failure on part of assessee to disclose truly and fully material facts, was valid. Court directed the assessee to file regular appeal against order of assessment before concerned Appellate Authority. (AY. 2010-11)
Doosan Bobcat India Pvt. Ltd. v. DCIT (2019) 184 DTR 393 / (2020) 312 CTR 257 (Mad.)(HC)

1536 **S. 147 : Reassessment – After the expiry of four years – Client code modifications (CCM) – Recorded reasons being vague merely on the basis of information received from the office of DIT (Intell CR Inv.) reassessment is held to be bad in law. [S. 148]**
Allowing the appeal of the assessee the Tribunal held that as per the recorded reasons by the AO indicated that the assessee is treated as share broker and not mentioned how the figures are arrived. Accordingly the Tribunal held that as the recorded reasons being vague merely on the basis of information received from the office of DIT (Intell CR Inv.) reassessment is held to be bad in law. Followed *Chhigamal Rajpal v. S. P Chaliha (1971) 79 ITR 603 (SC)*, *Sheo Nath Singh v. ACIT (1971) 82 ITR 147 (SC)*. (Refer *Coronation Agro Industries Ltd v. Dy. CIT (2017) 390 ITR 464 (Bom.)(HC)* (AY. 2009-10)
Dy. CIT v. Sertu Securities Pvt. Ltd. (Mum.)(Trib.) (UR)

S. 147 : Reassessment – After the expiry of four years – Capital gains – Cost of acquisition – In absence of fresh tangible material and in the absence of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment – Reassessment is held to be in valid. [S. 45, 49, 68, 148] 1537

Allowing the cross objection of the assessee the Tribunal held that, in absence of fresh tangible material and in the absence of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Reassessment is held to be in valid (ITA No. 583/Mum/2016 dt. 18-1-2019, ITA No. 584/Mum/2016 dt. 18-1-2019 (AY. 2006-07)

ACIT v. Dhruv Khaitan (Mum.)(Trib.)
ACIT v. Archana Kahitan (Mrs.) (Mum.)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Two house properties – Annual value – Deemed let out – All relevant facts were brought on record at time of assessment – Reassessment is bad in law. [S. 22, 23(1), 148] 1538

Allowing the appeal of the assessee the Tribunal held that, all relevant facts were brought on record at time of assessment, in view of proviso to S. 147, reassessment is held to be not valid. (AY. 2008-09, 2012-13, 2013-14)

Pankaj Wadhwa v. ITO (2019) 174 ITD 479 (Mum.)(Trib.)

S. 147 : Reassessment – After the expiry of four years – No additions sustained on the reasons recorded – Reassessment is bad in law. [S. 147] 1539

Where the reasons for reopening are non-existent or not sustained, there is no question of making any other additions as the reassessment itself is bad in law. (AY 2004-05)

Ratnagiri District Central Co-Operative Bank Ltd. v. DCIT (2019) 197 TTJ 649 / 175 DTR 327 (Pune)(Trib.)

S. 147 : Reassessment – After the expiry of four years – AO had made elaborate enquiry during original assessment and the Assessee had fully and truly disclosed all material facts – Reassessment is held to be bad in law. [S. 68, 148] 1540

The Tribunal observed that during the course of original assessment proceedings u/s. 143(3), the Assessee was specifically asked by the AO to discharge its onus u/s. 68 of the Act for the share application money received by it and after satisfying himself, he had accepted the transaction as genuine. Therefore, in the light of the proviso to u/s. 147 of the Act, there was no failure on part of the Assessee to disclose fully and truly, all material facts relating to the information regarding accommodation entries which was considered as new tangible material by the AO to validate the reopening of the assessment. Further, there was no such allegation in the reasons recorded by the AO for reopening that the Assessee had failed to disclose fully and truly the material facts necessary for assessment. In view of the above, the Tribunal held that the notice issued u/s. 148 was bad in law and the assessment framed u/s. 147 was rightly quashed by the first appellate authority. (AY. 2007-08)

ACIT v. Kad Housing P. Ltd. (2019) 69 ITR 550 (Delhi)(Trib.)

1541 **S. 147 : Reassessment – After the expiry of four years – No scrutiny assessment – Reopening solely based on information from Investigation Wing – No independent application of mind – Reassessment is held to be invalid. [S. 148]**

The assessee filed return of income, but no scrutiny assessment was carried out. There was information obtained from the Principal Directorate of Income-Tax (Inv). The information provided that the modification of client code in the stock exchange by brokers was misused for manipulative activities, including tax evasion. On investigation by SEBI and Investigation Directorate Ahmedabad, the assessee name appeared in the list of beneficiaries. A.O. based on information held it has reasons to believe that income of the escaped assessment. According to the Tribunal, the reassessment is invalid, as it was based on the information from the investigation wing without making independent verification and application of mind by the AO. (AY. 2009-10)

Magan Behari Lal v. DCIT (2019) 75 ITR 322 (Delhi)(Trib.)

1542 **S. 147 : Reassessment – After the expiry of four years – AO should record 'reason to believe' that certain income chargeable to tax has escaped assessment – This belief should be based on independent enquires / application of mind and not on borrowed satisfaction ie basis information from Investigation Wing – Sanction – Sanction granted by the CIT under S. 151 by simply writing "Yes, I am satisfied" is also invalid. [S. 147, 148]**

Held by the Tribunal that:

- For re-opening, the condition precedent of 'reason to believe' that there escapement of income is sine qua non. Re-opening merely on the basis of information given by the Addl DIT (Inv.), without application of mind / independent enquires by AO is erroneous as it does not satisfy the jurisdictional fact and law for reopening. Hence, both the reopening and reassessment order are quashed
- As the CIT has simply written 'Yes I am satisfied' on the same day on which AO has issued reasons recorded does not clear as to whether the senior officer / sanctioning authority has applied his mind before sanctioning, the sanction granted by the CIT under S. 151 is invalid and therefore, the notice under S. 148 is bad in law and quashed. (AY. 2009-10)

Vinod Commodities v. ACIT (2019) 182 DTR 49 / 200 TTJ 273 (Jodhpur)(Trib.)

1543 **S. 147 : Reassessment – After the expiry of four years – AO is not analysing details of expenditure while forming belief that income had escaped assessment – No specific expenditure could be termed as incurred exclusively for personal needs of assessee – Completed assessment of assessee after four years could not be reopened. [S. 148]**

Assessee was the director of a company. Records of the company were subject to an audit survey wherein the Assessee had disallowed a sum. On observing an amount related to personal expenditure, the AO formed a belief that income had escaped assessment as he believed that expenditure on personal needs was a prerequisite in the return, thereby reopening the assessment after 4 years. Commissioner (Appeals) quashed the reassessment order. In Appeal held that there was no specific expenditure which could be termed as personal expenditure as there could not be any benefit of personal nature in advertisement expenditure and could not be reopened after 4 years. That the assessee had shareholding of 9 per cent and 4.3 per cent. in 2 companies. He did

not have substantial interest in these companies. Though the Assessing Officer had to form a prima facie belief only he had not analysed any of these details while forming a belief that income had escaped assessment. Reassessment Order was rightly quashed. (AY. 2008-09)
Dy. CIT v. Shekhar G. Patel (2019) 70 ITR 456 (Ahd.)(Trib.)

S. 147 : Reassessment – After the expiry of four years – The assessment framed by AO who had not issued notice u/s. 148 of the Act is void-ab-initio – Notice was issued by the AO who had no jurisdiction – Reassessment is held to be bad in law. [S. 2(7A), 148] 1544
The ITO-1 (5), Ludhiana reopened the assessment and issued notice dated 30.03.2017 u/s. 148 of the Act on the basis of reasons so recorded. In response to such notice, assessee filed return of income declaring income of ₹ 49,320/-. Thereafter, the assessment was framed by ITO-1(5), Jalandhar assessing the income at ₹ 6,71,915/-. Aggrieved by the same, assessee filed an appeal before the CIT (A) and raised the objection to the jurisdiction of AO but the Ld. CIT (A) did not find the merit in the objection of the assessee by observing that this objection was not raised before the Ld. AO and upheld the order of Ld. AO. Being aggrieved the assessee carried the matter to the ITAT. The Tribunal observed that ITO-1 (5), Ludhiana issued the notice u/s. 148 r.w.s. 147 and thereafter the jurisdiction was transferred to ITO-1(5), Jalandhar who never issued the notice u/s 148 of the Act but framed the assessment u/s 143 of the Act. The Tribunal also observed that the erstwhile AO while issuing the notice u/s. 148 of the Act mentioned that assessee had deposited a cash of ₹ 1,39,28,640/-in the bank account which had escaped assessment. However to the contrary, in the assessment order, the subsequent AO mentioned that the cash deposited in the bank was ₹ 51,24,064/-. The Tribunal thus concluded that reasons recorded by earlier AO were not emerging from the record available with him. The Tribunal further relying on the decision of the ITAT Agra Bench in case of *Jawahar Lal Agarwal v. ITO* where the issue was similar held that the AO may assess or reassess any income escaping assessment, if he has reason to believe such escapement of income. The section starts with the words 'If the Assessing Officer has reason to believe'. As per S. 2(7A) of the Act, 'Assessing Officer means an Officer, as named therein, who is vested with the relevant jurisdiction. Thus, it was only the Officer having jurisdiction of the matter who u/s. 147 of the Act, could have formed any reason to believe escaping assessment and none other. In view of the above, Tribunal held that since the reasons were recorded by the AO who did not exercise the relevant jurisdiction, such reasons were non-est, being in-flagrant violation of the express provision of S. 147 r.w.s 2(7A) of the Act. Thus the reassessment order was quashed. (AY. 2010-11)
Gaurav Joshi v. ITO (2019) 174 DTR 353 / 197 TTJ 946 (Asr.)(Trib.)

S. 147: Reassessment – Subject matter of appeal – Merger – Bad debt – Matters which are subject matter of appeal, reference or revision cannot be reopened [S. 36(1)(vii), 37(1), 148, 251] 1545
The Tribunal held that the matters which are subject matter of appeal, reference or revision cannot be reopened. Followed Writ Petition (for AY. 2003-04) No. 1765 of 2011 dated 09.11.2011 in assesses own case. (AY. 2004-05)
Dy. CIT v. ICICI Bank Ltd (2019) 202 TTJ 560 / (2020) 185 DTR 233 (Mum.)(Trib.)

1546 **S. 147 : Reassessment – Jurisdiction of authorities – No specific order passed by principal CIT under s. 120(4)(B) authorising Joint Commissioner to act as an AO – Reassessment Order passed by Joint Commissioner liable to be quashed. [S. 2(7A), 120(4)(b), 148]**

In this case the Appellate Tribunal held that according to S. 2(7A) of the Act, the term "Assessing Officer" would include Joint Commissioner or Additional Commissioner, provided such Joint Commissioner or Additional Commissioner was empowered by the Board by a general or specific order authorising the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner to empower the Joint Commissioner or Additional Commissioner by way of separate order under S. 120(4)(b) of the Act to act as an AO. According to the provisions of S. 120(4)(b) of the Act, the Board, might by general or special order and subject to such conditions, restrictions or limitations as might be specified therein, authorise any Principal Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner to issue orders in writing that the powers and functions of an AO to the Joint Commissioner or Additional Commissioner in cases of persons or classes of persons. Unless the Joint Commissioner or Additional Commissioner was empowered by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner by an order in writing to act as an AO and perform such functions, the Joint Commissioner could not act as an Assessing Officer. Admittedly, the Department had failed to file any specific order passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner, under S. 120(4)(b), authorising the Joint Commissioner to act as an AO in the case of the assessee. Although the Department had filed a copy of the Board general notification authorising the Joint Commissioner or Additional Commissioner to act as an Assessing Officer, it failed to file any order of the Principal Commissioner under S. 120(4)(b) of the Act empowering the Joint Commissioner to act as an Assessing Officer. Although the Department had filed order of the Principal Commissioner passed under S. 120(1) and (2) of the Act, the order was not under S. 120(4)(b) of the Act. Therefore, the reassessment order passed by the Joint Commissioner was void ab initio and liable to be quashed because the Assessing Officer who had passed the reassessment order had no valid jurisdiction and authority to pass such order, in the absence of proper order in writing under S. 120(4)(b) of the Act. (AY. 2006-07, 2007-08)

Kishore Vithaldas v. JCIT (2019) 76 ITR 623 (Mum.)(Trib.)

1547 **S. 147 : Reassessment – With in four years – Reopening for taxing Bogus share capital – Even in a S. 143(1) intimation, the AO is not entitled to reopen on the ground that the assessee has received "huge share premium" which was not "examined" by the AO. The AO cannot reopen in the absence of tangible material that shows income has escaped assessment. [S. 68, 143(1)]**

The assessment was reopened under S. 147. Accordingly, notice under section 148 was issued to the assessee. The Assessing Officer noted that during the relevant period the assessee company introduced a sum of ₹ 1,36,50,000/-on account of share application and added the entire amount under section 68 of the Act. The CIT(A) held that the basic requirement of reopening of the assessment i.e., "reason to believe" is not fulfilled at the time of recording the reasons for reopening. An appeal filed by the Revenue is

against the order of CIT (A). The Tribunal held that there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147. (AY. 2009-10)
Dy. CIT v. Kargwal Products P. Ltd. (2019) 69 ITR 77 (SN) (Mum.)(Trib.)

S. 147 : Reassessment – Intimation – Bogus share capital – Share premium – Reopening for taxing Bogus share capital – Even in a s. 143(1) intimation, the AO is not entitled to reopen on the ground that the assessee has received "huge share premium" which was not "examined" by the AO. The AO cannot reopen in the absence of tangible material that shows income has escaped assessment. [S. 68, 143(1)] 1548
Dismissing the appeal of the revenue, the Tribunal held that ; Even in a S. 143(1) intimation, the AO is not entitled to reopen on the ground that the assessee has received "huge share premium" which was not "examined" by the AO. The AO cannot reopen in the absence of tangible material that shows income has escaped assessment. (ITA No. 1462/Mum/2017, dt. 26.09.2018) (AY. 2009-10)
DCIT v. Kargwal Products P. Ltd. (Mum.)(Trib.), www.itatonline.org

S. 147 : Reassessment – Legal representatives – Notice issued in name of deceased assessee – No subsequent notice issued on legal heirs of deceased assessee – Reassessment is not valid. [S. 148, 159] 1549
The assessee had expired on November 26, 2008 as per the death certificate dated February 11, 2009 issued by the Jaipur Municipal Corporation. The reasons for reopening the assessment for the assessment year 2006-07 under S. 147 of the were recorded on March 15, 2013. A notice under S. 148 was issued in the name of the deceased assessee on March 20, 2013. Further, there was no subsequent notice under S. 148 which had been issued by the AO on the legal heirs of the deceased assessee and therefore, the provisions of S. 159 could not be invoked. Therefore, the reassessment proceedings initiated by issuance notice on the deceased assessee were to be quashed for want of jurisdiction. (AY. 2006-07)
Bhura Ram (Late) v. ITO (2019) 76 ITR 681 (Jaipur)(Trib.)

S. 147 : Reassessment – Reassessment proceedings initiated without any application of mind and examination of information received from investigation wing amounts to borrowed satisfaction – Notice is quashed. [S. 148] 1550
AO issued a notice under S. 148 of the Act based on information received from DGIT (Inv.) pertaining to a search case of entry operator bringing to tax in the assessee's hands undisclosed income by way of accommodation entry. The tribunal held that the reasons to believe neither show any reasons recorded by independent application of mind by AO nor any nexus between tangible material and formation of belief that income had escaped assessment. Conclusion of the AO on the basis of information received by him constituted a borrowed satisfaction and the reasons for initiating reassessment proceedings are against the spirit of the provisions of S. 147 and notice issued under S. 148 of the Acton suggestions of DGIT(Inv.) by AO is bad in law. (AY. 2010-11)
Lakshya Ice & Cold Storage Pvt. Ltd. v. ITO (2019) 73 ITR 95 / 201 TTJ 211 / 56 CCH 281 / 181 DTR 153 (Agra)(Trib.)

1551 **S. 147 : Reassessment – Income from other sources – Reassessment proceedings initiated on suspicion – when nothing incriminating was found to suggest that anything over and above Re. 1 per share was paid by assessee – Reassessment is held to be invalid. [S. 56(2)(viia), 148]**

Held that, the provisions of S. 56(2)(viia) which came into effect from 1st June, 2010, did not apply to the transactions entered (May 2010) before the commencement date. Further, nothing incriminating was found in the course of survey and search that assessee had paid anything over and above Re. 1 per share. Therefore reassessment under S. 147 and consequent addition under S. 56(2)(viia) were invalid. (AY. 2011-12)

Priya Tools (P) Ltd. v. ACIT (2019) 182 DTR 249 / 201 TTJ 505 / 73 ITR 546 (Chd.)(Trib.)

1552 **S. 147 : Reassessment – Information obtained from the sales tax department – No independent enquiry or application of mind – Reassessment invalid – Assessment – Notice – Issuance of notice u/s. 143(2) is mandatory – Failure renders the reassessment invalid [S. 69C, 143(2), 148]**

The A.O. initiated reassessment proceedings and recorded reasons based on the information received from Investigation Wing of the Department. According to the information, a survey conducted by the sales tax department showed that the assessee suppresses his turnover by maintaining a duplicate set of books. The A.O. and CIT(A) made additions u/s. 69C on account of suppressed sales. On appeal to the Tribunal, the assessee raised additional grounds on the jurisdiction to reopen the case. The Tribunal on considered the proceedings before the sales tax and income tax department noted that the authorities of both the departments had abrogated various stands based on the survey report. The A.O. failed to consider the subsequent sales tax proceedings before the High Court and the Appellant Authority. The Tribunal held that the reasons recorded cannot be said to form a belief of escapement of income, as the information so received was neither well found, nor the A.O. made any efforts to make any verification or application of his mind. Further, the Tribunal noted that no notice was issued u/s. 143(2) nor was there any evidence of any dispatch, which was a sine *qua* non for making an assessment. Failure to issue notice u/s. 143(2) that is mandatory in the reassessment proceedings renders the reassessment proceedings invalid. (AY. 2005-06)

Hari Steels and General Industries Ltd. v. DCIT (2019) 75 ITR 90 / 104 Taxmann.com 293 (Delhi)(Trib.)

1553 **S. 147 : Reassessment – Audit objection – Full and true disclosure of facts by assessee during original assessment – Mere change of opinion – Reopening invalid and bad in law. [S. 10(23C)(iiiab), 148]**

The assessee is a Public Charitable educational institution assessed as AOP which has claimed exemption under S. 10(23C)(iiiab) of the Act. The AO reopened the case of assessee on the basis of audit objections as he noticed that the assessee was not eligible for exemption under S. 10(23C)(iiiab) of the Act and thereby disallowed the exemption under S. 10(23C)(iiiab) of the Act in reassessment proceedings on the ground that it is not wholly and substantively financed by the Government. The CIT(A) also confirmed the order of the AO and held that the reopening made by the AO is valid. On appeal the Tribunal held that the AO has duly examined and scrutinized the

details submitted during the course of assessment proceedings and has applied his mind regarding exemption under S. 10(23C)(iiiab) of the Act. Therefore, there was no new tangible material which had come into possession of the AO to form belief that by reason of non-disclosure truly and fully all material facts, necessary for assessment, the income chargeable to tax has escaped assessment. Relying on various judicial precedents held that reopening of assessment on the basis of Revenue Audit Objection does not constitute an information for the purpose of reopening of assessment. Further, the Tribunal also held that reopening on the same material amounts to mere change of opinion which is not permissible under the law relying on various judicial precedents. It is well settled that the power under S. 147 of the Act is not a power of review but a power to reassess, thus permitting reopening of assessment on a change of opinion as to the taxability of the income of the assessee is outside the scope of S. 147 of the Act. (AY. 2010-11)

Sanatan Dharam Shiksha Samittee v. ITO (2019) 57 CCH 367 / 76 ITR 25 (SN)(Delhi) (Trib.)

S. 147 : Reassessment – Invalid if the ground on which reopening have been done has disappeared – Incorrect reasons recorded. [S. 14A, 148] 1554

The AO had during the re-assessment proceedings issued notice on the ground that since assessee had not filed return of income, there was reason to believe that income of ₹ 35 lakhs had escaped assessment. However, subsequently it was brought to notice of AO that assessee had filed return of income and therefore AO had recorded wrong reasons for re-opening that assessee had not filed return of income. Further, the re-assessment was initiated and the reasons recorded was that assessee had undertaken all market transactions of 7000 shares but the AO did not make any addition in re-assessment order for which re-opening was done. However, AO made disallowance under S. 14A of the Act. The Tribunal after placing reliance on the decision of Bombay High Court in case of *CIT v. Jet Airways Ltd. (2011) 331 ITR 236(Bom.)(HC))* and *Ranbaxy Laboratories Ltd v. CIT (2011) 336 ITR 136 (Bom.)(HC))* held that re-assessment proceedings were invalid and bad in law as the AO had not made any addition in re-assessment order for which re-opening was done and thereby quashed the re-opening of the assessment and allowed the assessee's appeal. (AY. 2009-10)

Vibhut Builders and Engineering P. Ltd. v. ITO (2019) 76 ITR 24 (SN) (Delhi)(Trib.)

S. 147 : Reassessment – Reasons recorded and additions made – CIT(A) deleted some additions which formed part of reasons – other additions not part of reasons survived – held no other addition could survive in respect of which reasons are not recorded. [S. 148] 1555

The assessee is a government contractor and its assessment under S. 143(3) of the Act was completed by AO after making certain additions. Thereafter, reopening proceedings were initiated by issuing notice under S. 148 of the Act. After recording reasons, the AO made certain additions in the reassessment order of which some were part of reasons for reopening and some did not form part of reasons for reopening. These additions were challenged before the CIT(A) and the CIT(A) deleted those additions which were part of the reasons for reopening and confirmed the other additions. Aggrieved by the

same, the assessee preferred an appeal before the Tribunal. The Tribunal relying on the various judicial precedents in case of Adhunik Niryat Ispat Ltd. (ITA No. 2090 of 2010) and *Ranbaxy Laboratories Ltd v. CIT (2011) 242 CTR 117 (Delhi)(HC)* held that when the additions in respect of which reasons were recorded are deleted, the additions made on account of the items other than the items in reasons recorded, cannot survive. Hence the AO was directed to delete the additions accordingly. (AY. 2009-10)
Naresh Kumar Garg, Prop. Grag Electricals v. ACIT (2019) 76 ITR 18 (SN) (Delhi)(Trib.)

1556 **S. 147 : Reassessment – Reopening without jurisdiction – Non-recording of satisfaction that income has escaped assessment by reason of failure on the part of Assessee to disclose material facts and hence quashed reopening proceedings. [S. 148]**
Assessee engaged in the business of manufacturing had filed its return of income for which AO had completed assessment. Subsequently, AO issued notice and initiated reopening under S. 147 of the Act. Assessee submitted that return of income filed be treated as return of income filed in compliance to notice. Subsequently, Assessee was provided with copy of reasons for reopening wherein it was stated that in view of the provisions of S. 43A of the Act, cost of the asset required to be increased to the extent of loss in foreign exchange fluctuation account not done resulting in underassessment of income after providing for depreciation required to be added to the cost of the asset. Incidentally, during the previous year, the foreign exchange fluctuation gain was reduced from the cost of the asset and not credited to the profit and loss account. Accordingly AO concluded that income of the Assessee has escaped assessment made addition CIT(A) confirmed addition made by AO. On Appeal, Tribunal held that reopening was initiated after expiry of 4 years and there is nothing in reasons recorded for reopening the assessment indicating that there is any failure of Assessee to disclose fully and truly all material facts necessary for its assessment. Assumption of jurisdiction S. 147 of the Act by issuing notice section 148 of the Act is without jurisdiction, particularly, when AO failed to record his satisfaction that income has escaped assessment by reason of failure on the part of Assessee to disclose fully and truly all material facts necessary for its assessment. Accordingly, Tribunal held that Assumption of jurisdiction under S. 147 of the Act is invalid, bad in law and thus quashed the reopening proceedings and ruled in favour of Assessee. (AY. 2008-09)
Nandam Exim Ltd. v. Dy. CIT (2019) 76 ITR 34 (SN) (Ahd.)(Trib.)

1557 **S. 147 : Reassessment – Notice – Notice was neither served upon assessee nor sent at proper address – Reassessment is held to be not valid. [S. 148]**
Tribunal held that the assessee was regularly assessed to tax, Since the AY. 2003-04, he had been regularly filing the returns up to the AY. 2018-19, at Kanpur and the address mentioned was a Kanpur address. If in the Income-tax records and in the permanent account number data base, the assessee's address and the jurisdiction of the AO had been categorically given, then without verifying the address, the ITO could not issue a notice at a wrong address. The case was reopened mentioned wrong address on which notice had been sent, which, as brought out by the assessee was not an address at all. Tribunal held that, neither the notice u/s. 148 been served upon the assessee nor had been sent at the proper address. Accordingly in absence of any valid service of notice

u/s. 148 which is the condition precedent for assuming the jurisdiction for reopening the case u/s. 147, the entire proceedings were void ab initio and to be held as null and void. (AY. 2009-10)
Vikrant Tiwari v. ITO (2019) 76 ITR 310 (Delhi)(Trib.)

S. 147 : Reassessment – Reopening on same issue merely for making fishing or roving inquiries is impermissible in law. [S. 148] 1558
The Tribunal held that, reopening of the assessment could not be permitted for fishing or a roving inquiry, as in the original assessment the AO had gone through all the facts and taken a decision. Notice of reopening u/s. 148 on the same issue was merely for making fishing or roving inquiries which would not permit the requirement of reopening. Hence, reopening is bad in law. (AY. 2010-11)
Anurag v. ITO (2019) 76 ITR 38 (SN) (Delhi)(Trib.)

S. 147 : Reassessment – Notice – Assessment order passed without issue of mandatory notice u/s. 143(2) of the Act is bad in law. [S. 143(2), 148, 292B] 1559
Allowing the appeal of the assessee the Tribunal held that assessment order passed without issue of mandatory notice u/s. 143(2) of the Act is bad in law and liable to be quashed. (AY. 2006-07)
Gulab Badgujar (HUF) v. ITO (2019) 179 ITD 807 (Pune)(Trib.)

S. 147 : Reassessment – Sale of agricultural land – Book profit – Erroneous application of law – Mechanical application of mind – Reassessment is held to be not valid. [S. 2(14(iii), 115JB, 148, 151, 263] 1560
The assessee has sold agriculture land which has resulted into gain of ₹ 13,98,46,990/-. As per the AO, the said land being located in rural area though does not form the part of the capital asset within the meaning of Section 2(14)(iii) of the Act, at the same time, while computing book profits u/s. 115JB of the Act, gain so derived on sale of agriculture land cannot be excluded while computing the book profits. For this reason, the assessment was re-opened and notice u/s. 148 was issued. As per the AO such gain is not income derived from land but is the income derived from sale of the land which cannot be termed as agriculture income which can be claimed as exempt under S. 10 of the Act. Accordingly applied the provision of S. 115JB in the reassessment proceedings. On appeal the CIT(A) held that gain on sale of agriculture land is eligible for exclusion from book profits u/s. 115JB of the Act. However, the assessee' s ground challenging the reopening of the assessment u/s. 147 was decided against the assessee and in favour of the Revenue. On appeal by the revenue and cross objection by the assessee the Tribunal held that, if the AO has incorrectly or erroneously applied law and income chargeable to tax has escaped assessment, the Revenue should resort to s. 263 and revise the assessment and not reopen u/s. 147. When matter was referred to the CIT for seeking approval, instead of holding that the matter falls u/s. 263 and not u/s. 148, has given approval u/s. 151 which shows non-application of mind and mechanical grant of approval. Therefore, the assumption of jurisdiction u/s. 147 cannot be sustained and is held as invalid in

eyes of law. Accordingly the cross objection is decided in favour of the assessee. (ITA No. 237/JP/2019, dt. 23.12.2019) (AY. 2013-14)
Krish Home Pvt. Ltd. v. ITO (2020) 78 ITR 101 (Jaipur)(Trib.), www.itatonline.org

1561 **S. 147 : Reassessment – Foreign bequest – Request to transfer is pending – Bequest received by assessee at Sri Lanka could not be recognized as income – Reopening is held to be bad on law. [S. 2(24)(iia), 5,11(2), 12AA, 143(3), 148, 160(1) (iv), 161(1)]**
Assessee, a charitable trust exemption u/s 11 is allowed in the original assessment proceedings. The assessment was reopened on the grounds that assessee had received UK based bequest of certain amount which was credited to assessee's Sri Lanka based bank account and same was entitled to be treated as income of assessee as same was neither claimed for exemption under S. 11(1) nor set apart under S. 11(2). The Assessee contended that it was not in receipt of impugned sum since due permission seeking transfer of impugned sum to India was still pending and, therefore, above sum was wrongly treated as taxable income of assessee. Allowing the appeal the Tribunal held that the amount in question was lying in treasury of bank at Sri Lanka and the Assessee's request seeking its transfer to India was pending till date. Accordingly London based bequest transfer to Sri Lanka of assessee could not be considered as income of assessee and, therefore, impugned reopening was unjustified. (AY. 2007-08)
Mahabodhi Society of India v. ITO (2019) 74 ITR(T) 485 / 179 ITD 564 (Kol.)(Trib.)

1562 **S. 147 : Reassessment – Reasons for reopening was communicated to assessee – No objections made by assessee – AO assumed valid jurisdiction – Reassessment is held to be valid. [S. 148, 151]**
Assessee had requested for reasons for reopening on 05.11.2007. However, the same was served to the assessee on 12.02.2008. However, assessee did not raise any objections in this regard and subsequently challenged the validity of assumption of jurisdiction by AO under section 147/148 for commencing reassessment proceedings. The Tribunal held that the assessee has asked for reasons for reopening which were validly served to the assessee and that the AO has validly and correctly assumed jurisdiction under S. 147 of the Act for commencing reassessment proceedings. Thus, there is no violation of provisions contained in S. 151 of the Act. Thus, the appeal of the assessee is dismissed. (AY. 1995-96 to 1998-99)
C.L. Chandradhara v. CIT (2019) 55 CCH 468 / 71 ITR 246 (Bang.)(Trib.)

1563 **S. 147 : Reassessment – Assessment made in the name of a non-existing entity is void and liable to be quashed – Jurisdictional defect cannot be cured – Mere participation by the assessee had no effect as there can be no estoppel against law. [S. 148, 292B, R. 27]**
The assessee (amalgamating company) had amalgamated with TAIL (amalgamated company) with effect from April 1, 2007 pursuant to an order of the Hon'ble Delhi High Court and ceased to exist with effect from the said date. The reassessment proceedings were initiated and completed by the AO on the amalgamating company. The Revenue had filed appeals before the Tribunal on merits against the order of the CIT(A) deleting the addition made by the AO in the reassessment proceedings. Before the Tribunal the assessee, vide an application made under Rule 27 of the Income-tax Appellate Tribunal

Rules, 1963 contended that the assessment order passed u/s 143(3) r.w. s. 147 of the Act was passed against a non-existent entity and hence was invalid and without jurisdiction. The Tribunal noticed that the Assessee had brought the fact of amalgamation to the knowledge of the AO when the notice u/s 148 was issued to the Assessee. Thereafter, it was incumbent on the income-tax authorities to substitute the successor in place of the 'dead person'. However, the AO proceeded to frame the assessment in the name of KN Guruswamy Oil Mills Limited (amalgamating company) which was clearly void. It was a defect which cannot be treated as procedural and mere participation by the Assessee had no effect as there can be no estoppel against law. The Tribunal held that provisions of S. 292B of the Act were inapplicable to the present facts because framing of assessment against a non-existent entity/person goes to the root of the matter which was not a procedural irregularity but a jurisdictional defect as there would not be any assessment against a 'dead person'. Accordingly, the assessment order framed in the name of a non-existing person was quashed. (AY. 2004-05, 2005-06)
ACIT v. K.N. Guruswamy Oil Mills P. Ltd. (2019) 71 ITR 108 (Delhi)(Trib.)

S. 147 : Reassessment – Order passed without disposing the objections – Order is bad in law. [S. 148] 1564
Tribunal held that when the Assessee filed objections to reasons recorded within sixty days, the AO did not dispose of them by a speaking order but passed the reassessment order which had caused serious prejudice to the interests of the Assessee. Accordingly, as the AO had not followed the law as laid down by the Hon'ble Supreme Court of India in the case of *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)*, the Tribunal held that the reassessment order was liable to be quashed. (AY. 2007-08, 2008-09, 2009-10)
Nimitaya Hotel & Resorts Ltd. v. ACIT (2019) 71 ITR 313 (Delhi)(Trib.)

S. 147 : Reassessment – Capital asset – Agricultural land – Location of land from local limits of Chennai Municipal Corporation was relevant to decide as to whether said land was an agricultural land within meaning of S. 2(14)(iii) and distance of land from Chennai Metropolitan area was not relevant – Reassessment is held to be bad in law. [S. 2(14)(iii), 148] 1565
Assessee sold a land and gain arising from sale was claimed to be exempt on ground that said land being an agricultural land was not a capital asset within meaning of S. 2(14)(iii) of the Act on the basis of certificate issued by Tehsildar showing that land sold was located 20 km. away from limit of Chennai Municipal Corporation. AO allowed the exemption. The assessment was reopened on basis of information received in form of a communication from DDIT (Inv.) which stated that area of Chennai Metropolitan region was much larger than what was stated by Tehsildar in his report and land sold by assessees was situated at about 3 kms from Chennai Metropolitan area, thus, same was not rural agricultural land. On appeal the Tribunal held that location of land from local limits of Chennai Municipal Corporation was relevant to decide as to whether said land was an agricultural land within meaning of clause (iii) of S. 2(14) and distance of land from Chennai Metropolitan area was not relevant in this context. Accordingly the reassessment is held to be bad in law. (AY. 2011-12)
Naiyer Sultan v. ITO (2019) 177 ITD 201 (Kol.)(Trib.)

1566 **S. 147 : Reassessment – With in four years – Provision for doubtful debt – Unabsorbed depreciation – Reassessment is held to be valid [S. 32(2), 148]**
Failure on the part of the AO to consider provision for doubtful debt and unabsorbed depreciation in the original assessment proceedings, reassessment is held to be valid. (AY. 2010-11)
Health and Glow Retailing P. Ltd. v. ACIT (2019) 70 ITR 163 (Chennai)(Trib.)

1567 **S. 147 : Reassessment – With in four years – Non application of mind – Recording of incorrect figures – Merely repeating investigation report – Reassessment is held to be invalid. [S. 148]**
Tribunal held that there was a total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. He had recorded an incorrect amount as having escaped assessment. His conclusion was merely based on the observations and information received from the Director of Income-tax, which were not brought on record and his conclusion was merely based on doubts because he was not sure whether or not the transaction was genuine. The AO merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax had escaped assessment without arriving at his satisfaction. Accordingly the reassessment is held to be bad in law. (AY. 2005-06)
KEY Components P. Ltd. v. ITO (2019) 70 ITR 211 (Delhi)(Trib.)

1568 **S. 147 : Reassessment – Information from the Dy. DIT(Inv) – Live link between the tangible material and formation of belief and reasons recorded – Mismatch of exempt long term capital gains – Reassessment is held to be valid. [S. 10(38), 45, 148]**
On the basis of information received by the Dy. DIT(Inv) on the basis of allegations received by a Member of Parliament who was Chairman of Standing Committee of Finance. Based on the letter the Dy. DIT(Inv) issues a letter to the AO along with the detailed transactions in the demat account of the assessee and her husband in respect of capital gains exemption claimed. AO independently applied his mind to this information and verified from the return of income. After examination of details issued the notice for reassessment. Tribunal held that there is live link between the tangible material and formation of belief and reasons recorded. Mismatch of exempt long term capital gains. Reassessment is held to be valid. (AY. 2009-10, 2010-11)
Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org
Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

1569 **S. 147 : Reassessment – Share capital – Assessing Officer never formed an opinion that there was escapement of income – Reassessment is held to be not valid. [S. 68 148].**
Tribunal held that Assessing Officer never formed an opinion that there was escapement of income in hands of company. Accordingly the reassessment is held to be not valid. (AY. 1996-97, 1997-98)
Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17 / 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd v. Dy CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

S. 147 : Reassessment – Reasons recorded mentioned incorrect amount – No reason to believe – Reassessment is held to be bad in law. [S. 148] 1570

Assessee engaged in business of civil contract work. Assessee's firm was converted into a private company. Subsequently, notice under section 148 of the Act was issued in the name of the firm which was not in existence on the date of the notice. Reasons recorded that assessee received ₹ 30 cr from PACL for developing land. However, subsequently the reasons recorded a changed amount of ₹ 15 cr admittedly the correct amount showing a casual manner in which alleged reasons were recorded for reopening. Tribunal held that the reasons recorded did not contain reason to believe under section 147 and could not justify reopening of assessment after lapse of several years. Reopening was bad in law as there was no material before the AO to show that expenses claimed were not allowable as the receipt of 15 cr was disclosed in the return. The reopening was held invalid. (AY. 2012-13)

Ambey Construction Co. v. ACIT (2019) 176 DTR 396 / 198 TTJ 969 / 71 ITR 422 (Asr.) (Trib.)

S. 147 : Reassessment – Change of opinion – Reassessment proceedings on ground that loss arising from switching over from one plan of mutual funds to another was of capital nature when he himself had treated profits from sale of mutual funds as business income – Reassessment is held to be not valid. [S. 28(1), 43(5), 148] 1571

Assessing Officer initiated reassessment proceedings on two grounds, firstly, loss arising from switching over from one plan of mutual funds to another was of capital nature and therefore, assessee was not entitled to deduct aforesaid loss from profits of business activity. Another ground for reopening assessment was that loss arising from derivative contracts was speculative in nature and therefore assessee was not entitled to adjust same against non-speculative business income. Tribunal held that as regards first reason, it was noted that Assessing Officer had treated profit from sale of mutual funds as business income and thus loss transaction from sale of mutual funds could not be given a differential treatment. So far as other reason was concerned, it was undisputed that all relevant facts were placed on record while claiming loss arising from derivative transactions to be business loss which were duly accepted and, in such a case, reopening of assessment was merely based on change of opinion. Accordingly the reassessment proceedings were quashed. (AY. 2005-06)

Pratham Investments v. DCIT (2019) 175 ITD 114 (Ahd.)(Trib.)

S. 147 : Reassessment – Bogus share capital – Intimation – The AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s. 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. [S. 143(1), 148] 1572

Tribunal held that, the AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis

in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s. 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. (ITA. No. 566 & 567/JP/2018, dt. 30.01.2019) (AY. 2006-07 & 2007-08)
Balaji Health Care Pvt. Ltd. v. ITO (2019) 199 TTJ 966 (Jaipur) (Trib.), www.itatonline.org

1573 **S. 147 : Reassessment – Notice – Reassessment without issuance of notice u/s. 143(2) is invalid and liable to be quashed. [S. 148]**
The Tribunal, following the judgment of the Hon'ble Delhi High Court in the case of *Shri Jai Shiv Shankar traders Pvt. Ltd. (2016) 383 ITR 448 (Delhi)(HC)* held that issuance of notice u/s. 143(2) was mandatory after receipt of return filed in response to the notice u/s. 148, without which the reassessment order passed u/s. 143(3) r.w.s. 147 of the Act was invalid, bad in law and void ab initio and thus liable to be quashed. (AY. 2011-12)
ACIT v. Sukhamani Cotton Industries (2019) 69 ITR 138 (Indore)(Trib.)

1574 **S. 147 : Reassessment – Bogus share capital – Intimation – The AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital – The assumption of jurisdiction has no legal basis and resultant reassessment proceedings deserve to be set-aside. [S. 143(1), 148]**
Tribunal held that, the AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s. 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. (ITA. No. 566 & 567/JP/2018, dt. 30.01.2019), (AY. 2006-07 & 2007-08)
Balaji Health Care Pvt. Ltd. v. ITO (2019) 199 TTJ 966 (Jaipur)(Trib.), www.itatonline.org

1575 **S. 148 : Reassessment – Objection to reopening notice – Breach of procedure laid down by Supreme Court in case of *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)* – Writ is held to be not maintainable. [S. 143(3), 147, Art, 226]**
Assessee after being supplied reasons for reopening of assessment by AO on 14.9.2018, approached Writ Court by filing Writ Petition without first raising objections before AO. This was in clear breach of procedure laid down by Supreme Court in case of GKN Driveshafts. Assessee could not without any reason or explanation, choose to file Writ Petition directly before Court. In present case, assessee raised objections promptly after withdrawing petition from Court, would not in any manner dilute fact that it was on ground of assessee's conduct that AO was left with little time to dispose of his objections and thereafter complete assessment before it became time barred. In a case where order of assessment was passed, jurisdiction of AO to pass such an order based on validity of reopening of assessment would be one part of challenge. Another part would involve challenge to assessment made by AO and would necessarily entail examination of facts on record which High Court would be loath to do as a Writ Court. Ordinarily, therefore, Court would insist that in such a situation assessee should take appellate route. Otherwise, assessee would argue jurisdictional question in High Court

and if he fails, would opt to challenge order on merits before Appellate Authority, which would be most convenient. Hence petition not entertained. (AY. 2011-12)
Cenveo Publisher Services India Ltd. v. UOI (2019) 180 DTR 244 / 311 CTR 843 (Bom) (HC)

S. 148 : Reassessment – Notice – Issue of notice prior to recording of reasons for reopening of assessment is held to be without jurisdiction – Deserves to be quashed – Defects could not be cured by invoking S. 292B of the Act. [S. 147, 292B] 1576
Dismissing the appeal of the revenue the Court held that issue of notice u/s. 148 without recording reasons for same was not a mere case of clerical error, but substantial condition for valid issue of reopening notice had not been fulfilled and, such a defect could not be cured by invoking provisions of S. 292B of the Act. (AY. 2004-05)
PCIT v. Tata Sons Ltd. (2019) 267 Taxman 13 (Bom.)(HC)

S. 148 : Reassessment – Territorial Jurisdiction of High Court – Assessment at Hyderabad – Notice of reassessment at Mumbai – Bombay High Court has discretion to refuse to consider writ petition. [S. 147, Art. 226] 1577
Assessee is assessed at Hyderabad. Notice of reassessment is issued at Mumbai. The Assessee challenged the notice before Bombay High Court. Dismissing the petition the Court held that the assessee was being assessed to tax consistently at Hyderabad. The assessee had a permanent account number card at such place. The assessee had never applied for transfer of the permanent account number card. Admittedly, therefore, against the assessments appeals would lie before the C.I.T.(A) stationed there. Further appeal by the aggrieved party would lie before the I.T.A.T. S. 269 of the Income-tax Act, 1961 defines the High Court as to mean in relation to any State, the High Court for that State. Any challenge to the orders of the A. O., the C.I.T.(A) the Tribunal would lie before the High Court of Telangana (previously High Court of Andhra Pradesh). The A.O. and the appellate authorities therefore would be bound by the law propounded by the High Court. In the context of challenge to the notice of reassessment issued in Bombay, the Bombay High Court would apply the decisions of that High Court. This would be wholly undesirable. Accordingly the Bombay High Court refused to entertain the writ petition. (AY. 2011-12)
HSBC Holdings Plc v. DCIT (2019) 417 ITR 74 / 266 Taxman 82 / 183 DTR 269 / 311 CTR 565 (Bom.)(HC)

S. 148 : Reassessment – Notice to dead person – Notice to legal heir of deceased – Assessment order is held to be invalid. [S. 147, Art. 226] 1578
Allowing the petition the Court held that as per settled law, notice for reopening of assessment against a dead person is invalid. The fact that the AO was not informed of the death before issue of notice is irrelevant. Consequently, the S. 148 notice is set aside and order of assessment stands annulled. Followed *Alamelu Veerappan v. ITO (2018) 257 Taxman 72 (Mad) (HC)* and *Chandreshbhai Jayntibhai Patel v. ITO (2019) 413 ITR 276 (Guj.)(HC),* followed). (WP No. 404 of 2019, dt. 05.04.2019) (AY. 2007-08)
Rupa Shyamsundar Dhumatkar v. ACIT (2020) 420 ITR 256 (Bom.)(HC) www.itatonline.org

1579 **S. 148 : Reassessment – Notice – Mere issue of a notice is not sufficient – service of notice is essential – If the postal authorities return the notice unserved, the Dept has to serve under Rule 127(2) using one of the four sources of address (such as PAN address, Bank address etc.). The failure to do so renders the reassessment proceedings invalid. [S. 127, 147, 149, 282, Rule 127]**

Petitioner never filed the return of income since she did not have any taxable income. The AO issued the notice u/s. 148 which was returned with a remark "Left". Assessment was passed ex-parte. The AO started recovery proceedings. On getting the information telephonically about certain dispatches by the Department she rushed from Jabalpur to Mumbai and gathered basic information. The assessee challenged the reopening of the assessment and consequential actions taken by the department. Allowing the petition the, Court held that mere issue of a S. 148 notice is not sufficient. Service is essential. If the postal authorities return the notice unserved, the Dept. has to serve under Rule 127(2) using one of the four sources of address (such as PAN address, Bank address etc). The failure to do so renders the reassessment proceedings invalid. Followed *Y. Narayan Chetty v. ITO (1959) 35 ITR 388 (SC).* (WP No. 513 of 2019, dt. 16.07.2019) (AY. 2011-12)
Harjeet Suraprakash Girotra v. UOI (2019) 266 Taxman 29 / 311 CTR 260 / 180 DTR 257 (Bom.)(HC), www.itatonline.org

1580 **S. 148 : Reassessment – Notice in the name of deceased assessee – For acquiring jurisdiction to reopen an assessment, notice should be issued in the name of living person, i.e., legal heir of deceased assessee – S. 292B could not be invoked to correct a fundamental/substantial error – Notice is held to be bad in law. [S. 147, 292B, 292BB]**

The petitioner, who is the legal heir challenged the issue of notice on the ground that it was without jurisdiction on the ground that it was issued in the name of deceased assessee. Allowing the petition, the court held that, the issue of a notice under S. 148 is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Accordingly a notice which has been issued in the name of the dead person is also not protected either by provisions of S. 292B or S. 292BB. Therefore, both the impugned notice dated 29-3-2018 and the order dated 13-11-2018 was quashed and set aside. (AY. 2011-12)
Sumit Balkrishna Gupta v. ACIT (2019) 414 ITR 292 / 262 Taxman 61 / 178 DTR 286 / 309 CTR 182 (Bom.)(HC)

1581 **S. 148 : Reassessment – Notice issued in name of legal heirs – Held to be valid. [S. 147]**

Dismissing the petition the Court held that,where notice under S. 148 was not issued simply in name of dead person rather it was also issued in name of his legal heirs, validity of said notice could not be challenged on ground that same being in name of dead person was void and, thus, liable to be quashed.
S. M. Sarveswaran (HUF) v. ITO (2019) 267 Taxman 542 (Mad.)(HC)

S. 148 : Reassessment – Jurisdiction – Deputy Commissioner had jurisdiction to issue notice – Petition dismissed. [S. 147, Art. 226] 1582

Dismissing the petition the Court held that the Deputy Commissioner's action was not without authority of law. The petition was premature for the reason that the Deputy Commissioner had specifically stated that the assessee would be afforded adequate opportunity to explain his case before passing order on objective appraisal of the evidence available. The assessee's rights had not been affected.

Epson India P. Ltd. v. ACIT (2019) 418 ITR 267 / 311 CTR 925 (Karn.)(HC)

S. 148 : Reassessment – Notice – Notice issued in name of a dead person is not valid and liable to be quashed. [S. 147, 159] 1583

A.O. ssessing Officer issued a reopening notice in name of Smt. Bhatiben Harendra Modi on the basis of information in Annual Information Return (AIR), from where, it was found that said deceased assessee had sold one immovable property amounting to ₹ 82.89 lakhs but did not file any income tax return, thus, income to that extent had escaped assessment due to failure of Smt. Bhatiben Harendra Modi to submit her return of income Petitioner being heir and legal representative of Smt. Bhatiben Harendra Modi contended that Bhatiben Harendra Modi had already expired and, therefore, impugned notice in name of Smt. Bhatiben Harendra Modi was not valid. High Court held that notice issued under section 148 against Smt. Bhatiben Harendra Modi was to be quashed and set aside. (AY. 2012-13)

Bharti Harendra Modi v. ITO (2019) 266 Taxman 314 (Guj.)(HC)

S. 148 : Reassessment – Notice issued in name of dead person – Objection raised – Notice is not valid – Subsequent proceedings are also to be quashed. [S. 159, 292B] 1584

Allowing the petition the Court held that the Department's contention that if a notice under S. 148 was issued to a dead person instead of upon his or her legal representatives, it was valid in view of the provisions of S. 292B and that in view of S. 159(2)(b) and (3), the legal representative of the deceased assessee should for all practical purposes be deemed to be an assessee was not tenable. The notice issued by the Department under S. 148 in the name of a dead person and the order disposing of the objections raised by the legal heir and representative of the deceased assessee, and all the proceedings pursuant thereto were to be quashed and set aside. (AY. 2012-13)

Pranav Ravindrabhai Shah v. ITO (2019) 417 ITR 200 (Guj.)(HC)

S. 148 : Reassessment – Settlement of cases – Order passed by Settlement Commission – Notice of reassessment in respect of issues covered by such order is held to be not valid. [S. 147, 245C, 245D(4), 245I & Art. 226] 1585

The petitioner filed his return which was accepted under S. 143(1). The petitioner filed the application before u/s. 245C of the Act which was admitted and final order was passed u/s. 245D(4) of the Act. Thereafter the petitioner received the notice u/s. 148 of the Act. The petitioner filed the writ petition challenging the issue of notice. Allowing the petition the Court held that there is a difference between assessment in law (regular assessment or assessment under section 143(1)) and assessment by settlement under Chapter XIX-A. The order under S. 245D(4) of the Income-tax Act,

1961 is not an order of regular assessment. An application under S. 245C is akin to a return of income, wherein the assessee is required to make a full and true disclosure of his income and the order under S. 245D(4) of the Act is in the nature of an assessment order. Therefore, the assessment of the total income of the assessee for the assessment year in relation to which the Settlement Commission has passed the order under S. 245D(4) of the Act stands concluded and in terms of S. 245-I of the Act, such order 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, be reopened in any proceeding under the Act or under any other law for the time being in force. Therefore, once an order is passed by the Settlement Commission under S. 245D(4), it is conclusive in so far as the assessment year involved is concerned. The only ground on which an order of settlement made under S. 245D of the Act can be reopened is, if it is subsequently found by the Settlement Commission that the order under S. 245D(4) of the Act had been obtained by fraud or misrepresentation of facts. Therefore, once an order has been passed under S. 245D of the Act by the Settlement Commission, the assessment for the year stands concluded and the AO thereafter has no jurisdiction to reopen the assessment. (AY. 2011-12)

Komalkant Faikirchand Sharma v. DCIT (2019) 417 ITR 11 / 265 Taxman 284 / 183 DTR 225 / 311 CTR 705 (Guj.)(HC)

1586 **S. 148 : Reassessment – Notice issued to deceased person – Legal Representative of such person not waiving right to notice – Notice is held to be invalid. [S. 147, 292B]**

Allowing the petition, the Court held that a notice under S. 148 is a jurisdictional notice and existence of a valid notice under S. 148 is a condition precedent for exercise of jurisdiction by the AO to assess or reassess under S. 147 of the Act. Notice issued to deceased person and when the legal Representative of such person not waiving right to notice. Notice is held to be invalid and consequently, the provisions of S. 292B of the Act would not be attracted. (AY. 2012-13)

Nanduben Ratilal Patel v. DCIT (2019) 417 ITR 31 (Guj.)(HC)

1587 **S. 148 : Reassessment – The officer recording the reasons and the officer issuing notice has to be the same person – Any inherent defect therein cannot be cured – The fact that the assessee participated in the proceedings is irrelevant. [S. 147, 148(2), 292B]**

Allowing the petition the Court held that the officer recording the reasons u/s. 148(2) for reopening the assessment & the officer issuing notice u/s. 148(1) has to be the same person – If the reasons are recorded by the DCIT but the notice is issued by the ITO, the reassessment proceedings are invalid. The S. 148 notice is a jurisdictional notice. Any inherent defect therein cannot be cured u/s. 292B. The fact that the assessee participated in the proceedings is irrelevant. Accordingly the notice issued u/s. 148 and all proceedings pursuant thereto including the assessment order are quashed. (CA. No. 230 of 2019, dt. 09.04.2019), (AY. 2011-12)

Pankajbhai Jaysukhlal Shah v. ACIT (2020) 312 CTR 300 / 185 DTR 306 (Guj.)(HC), www.itatonline.org

S. 148 : Reassessment–Notice issued in name of deceased assessee Department attempting to correct error by changing name of entity in reasons to believe" – Not curable defect – Notice is invalid Failure to issue notice u/s. 143(2)with in the prescribed time Reassessment is invalid [S. 143(2), 147, 159, 292BB] 1588

The notice was issued in the name of deceased assessee and an attempt was made by the revenue to correct error by changing name of entity in reason to believe. On writ, allowing the petition, the Court held that in the absence of any provision in the Act, to fasten the liability upon a deceased individual assessee and in the absence of any pending or previously instituted proceedings, the Department could not impose the tax burden upon the legal representative. Court also held that the omission to issue the mandatory notice under S. 143(2) rendered the re-assessment void. The reassessment notice, the consequential proceedings and the reassessment order passed were to be quashed. (AY. 2010-11)

Rajender Kumar Sehgal v. ITO (2019) 414 ITR 286 (Delhi)(HC)

S. 148 : Reassessment – Notice – Reasons for reassessment need not be given in notice – Writ is held to be not maintainable – Respondent was directed to furnish the reasons recorded for reopening the assessment – Petitioner can file objection, if any, against the recorded reasons within four weeks from the date of receipt of the reasons. [S. 147, Art. 226] 1589

Dismissing the petition the Court held that mere issuance of notice can never be construed as a final order. Initiation of proceedings is to be construed as information to the assessee and can never be concluded as final proceedings. The initiation cannot be interfered with by the court in writ proceedings in a routine manner. Judicial review against such initiations under the provisions of the Act, is certainly limited. The court cannot intervene in such initiations in a routine manner in the absence of any valid and acceptable legal grounds. Respondent was directed to furnish the reasons recoded for reopening and on the receipt of reasons the Petitioner can file objection, if any, against the recorded reasons within four weeks from the date of receipt of the reasons. (AY. 1995-96, 1996-97 1997-98) and (WP No. 43902 of 2006 / 29882 and 29884 of 2017 AY. 1999-2000, 2001-2002, 2002-03) (SJ) dt. 16-10-2019)

Seshasayee Paper and Boards Ltd. v. UOI (2019) 413 ITR 370 / 179 DTR 209 / 310 CTR 648 (Mad.)(HC)

Seshasayee Paper and Boards Ltd. v. UOI (2020) 269 Taxman 120 (Mad.)(HC)

S. 148 : Reassessment – Recorded reasons not communicated – Produced before the Tribunal – Reassessment is bad in law. [S. 147] 1590

Dismissing the appeal of the revenue the Court held that, Tribunal is justified in quashing the reassessment order on ground that reasons recorded by assessing authority for reopening were never communicated to assessee though same were produced before Tribunal. (AY. 2009-10)

PCIT v. Ramaiah (2019) 103 taxmann.com 201 / 262 Taxman 17 (Karn.)(HC)

Editorial : SLP of revenue is dismissed. PCIT v. Ramaiah (2019) 262 Taxman 16 (SC)

1591 **S. 148 : Reassessment – Notice – Notice against dead person – Merely because in response to notice issued against Jayantilal Harilal Patel petitioner had informed AO about death of assessee and asked him to drop proceedings – it could not, by any stretch of imagination, be construed as petitioner having participated in proceedings and, therefore, provisions of section 292B would not be attracted – Notice is held to be invalid. [S. 2(7) / 2(29), 159, 147 & 292B]**

Original assessee, namely Jayantilal Harilal Patel died on 24-6-2015. AO issued a notice under section 148 in name of Jayantilal Harilal Patel to reopen assessment. Petitioner being heir and legal representative of Jayantilal Harilal Patel informed AO that Jayantilal Harilal Patel had already expired and, therefore, notice in his name was not valid. He also enclosed death certificate. AO disposed of objections raised by petitioner stating that since original assessee's son-legal heir had received notice and replied to it, he had participated in proceedings and, thus, defect in issue of notice was automatically cured as per provisions of S. 292B. Accordingly, AO continued with reassessment proceedings against Jayantilal Hailal Patel. On writ allowing the petition the Court held that merely because in response to notice issued against Jayantilal Hailal Patel petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not, by any stretch of imagination, be construed as petitioner having participated in proceedings and, therefore, provisions of S. 292B would not be attracted. Accordingly the issued under S. 148 was to be treated as invalid. (AY. 2011-12)

Chandreshbhai Jayantibhai Patel v. ITO (2019) 413 ITR 276 / 261 Taxman 137 / 177 DTR 451 / 308 CTR 737 (Guj.)(HC)

1592 **S. 148 : Reassessment – Merged with another company – Notice issued in name of assessee became invalid and quashed. [S. 147].**

Allowing the petition the Court held that by the time of issuance of said reassessment notice, assessee had already merged with another company and thereby lost its legal existence, notice issued in name of assessee became invalid and, therefore, impugned reassessment proceedings deserved to be quashed. (AY. 2010-11)

ACIT v. Dharmnath Shares & Services (P.) Ltd. (2018) 94 taxmann.com 458 / (2019) 410 ITR 431 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, ACIT v. Dharmnath Shares & Services (P.) Ltd. (2019) 260 Taxman 174 / 409 ITR 4 (St.)(SC)

1593 **S. 148 : Reassessment – Notice – Notice has been issued on wrong premise, reopening of assessment is not valid – Notice cannot be issued for certain examination. [S. 147]**

Tribunal held that the main premise i.e. non filing of return of income on the basis of which AO has sought approval for reopening was incorrect as assessee has already filed return of income. Further, relying on various judicial precedents held that the case should not be reopened for verification. The AO never made an opinion that there was escapement of income in the hands of assessee, since even in the reasons it was mentioned that the reopening is for examination and even in the assessment order, the AO also made the aforesaid addition in the hands of assessee on protective basis. Accordingly, considering the aforesaid, reopening of assessment was held as invalid. (AY. 1996-97, 1997-98)

Computerland Integrators (India) Ltd. v. Dy. CIT (2019) 180 DTR 17 (Delhi)(Trib.)

S. 148 : Reassessment – Notice – reopening against assessee firm on basis of order on appeal in case of partner of the assessee – reassessment to bring to tax in hands of firm income wrongly taxed in partner's hands – limitation to be considered as on date of passing assessment order in partner's hands. [S. 147, 149, 150(1)] 1594

Appellate Tribunal held that since the reopening was based on the order of the Commissioner (Appeals), the limitation was relaxed under S. 150(1) subject to the restrictions provided under sub-section (2) of S. 150. The assessment order was passed by the AO in the case of the partner on February 27, 2014 and the limitation had to be considered from the date of passing the assessment order in the wrong hands. As on February 27, 2014 the Assessing Officer could not reopen the assessment of the assessee as it was barred by limitation as provided under S. 149 and the relaxation provided under S. 150(1) and (2) was only applicable, if the AO could have assessed the same income in the hands of the right person as on the date of the order by which the income was wrongly assessed in the hands of other person. (AY. 2006-07)

Goodwill Timber Supply v. ITO (2019) 73 ITR 225 (Jaipur.)(Trib.)

S. 148 : Reassessment – Time Limit for issue of notice – Reopening notice invalid once the time limit to reopen has expired. [S. 147, 149(1)(b), 150, 250] 1595

Assessee filed its return and assessment proceedings under S. 147 were initiated by issuing notice under S. 148. AO calculated capital gains from the property and assessment was completed accordingly.

On appeal, CIT(A) vide order dated 3 May 2019 annulled the assessment order framed by AO but directed AO to execute remedial action on the legal heir of the assessee under S. 148 of the Act.

Tribunal held that in accordance with provisions of S. 149(1)(b), notice under S. 148 could have been issued by end of AY 2018-19. The said period had already elapsed when the order was passed. Therefore, the direction of CIT(A) to reopen the case was not in accordance with law. In the result, Tribunal ruled in favour of assessee. (AY. 2011-12)

Anshuman Ghosh v. ITO (2019) 73 ITR 685 (Luck.)(Trib.)

S. 148 : Reassessment – Notice – Where notice for reopening issued by AO prior to approval by CIT, the reassessment is bad in law. [S. 147] 1596

The AO had initiated reassessment proceedings based on a search / survey operation and made addition u/s. 68 in respect of share capital. On appeal, the CIT(A) deleted the addition. Aggrieved, the Department was in appeal before the Tribunal. The assessee had simultaneously filed cross objections against the validity of the reassessment proceedings as the notice u/s. 148 was issued prior to approval of the concerned. The Tribunal noted that the approval of the CIT was obtained after issuing notice u/s. 148 and accordingly the mandatory conditions of section 148 were violated. Thus, the Tribunal held the reassessment to be void ab initio and bad in law. (AY. 2007-08)

DCIT v. Bhaijee Portfolio Pvt. Ltd. (2019) 73 ITR 403 (Delhi)(Trib.)

1597 **S. 148 : Reassessment – Notice – Order on appeal – If notice u/s. 148 is beyond the time limit, the CIT(Appeals) cannot give direction u/s. 150 to the AO to execute remedial action u/s. 148. [S. 147, 148 149(1)(b), 150]**

The assessee had not filed its return of income for Assessment Year 2008-09. Accordingly, reassessment proceedings u/s. 147 were initiated. The AO had issued notice u/s. 148 beyond the time limit of six years. The AO passed an assessment order disallowing the claim u/s. 80P. On appeal, the CIT (Appeals) *vide* order dated 2 May 2019 annulled the assessment order but gave direction u/s. 150 to consider that the income has escaped assessment and take remedial action u/s. 148 based on a Supreme Court decision. The Tribunal noted that in the present case, notice u/s. 148 could have been issued only by the end of the Assessment Year 2015-16. The Tribunal held that the CIT(A) cannot confer jurisdiction upon the AO which it did not have. Thus, as the limitation period of six years had lapsed, notice u/s. 148 could not be issued and thus reassessment proceedings u/s. 147 cannot be initiated. (AY. 2008-09)

Allahabad Bank Karamchari Co-Operative Credit Society Ltd. v. ITO (2019) 73 ITR 700 / 180 DTR 449 / 179 ITD 108 (Luck.)(Trib.)

1598 **S. 148 : Reassessment – Notice – Dead person – Notice issued on dead person is invalid. [S. 147, 159(2b), 292B, 292BB.]**

Tribunal held that notice issued on dead person is invalid. Followed, *Alamelu Veerappan v. ITO (2018)257 Taxman 72 (Mad) (HC), Sumit Balkrishna Gupta v. Asstt. CIT (2019) 262 Taxman 61 (Bom.)(HC)* (AY. 2007-08)

Aemala Venkateswara Rao v. ITO (2019) 176 ITD 431 (Vishakha)(Trib.)

1599 **S. 148 : Reassessment – Notice – Return filed in response offering lesser income – Assesse cannot raise fresh independent claims having effect of reducing income already declared. [S. 147]**

Authorities below were justified in not accepting the return filed in response to notice under S. 148 declaring income lower than shown in the original return. Assessee cannot raise fresh independent claims having effect of reducing income already declared. Followed *CIT v. Sun Engineering Works Pvt. Ltd. (1992) 198 ITR 297 (SC)* (AY. 2010-11)

Ratnagiri District Central Co-Operative Bank Ltd. v. DCIT (2019) 197 TTJ 649 / 175 DTR 327 (Pune)(Trib.)

1600 **S. 151 : Reassessment – Sanction for issue of notice – Sanction by CIT instead JCIT – Reassessment is held to be bad in law. [S. 147, 151]**

Dismissing the appeal of the revenue the Court held that, as the Act provides for sanction by the JCIT, the sanction by the CIT does not meet the requirement of the Act and the reopening notice is without jurisdiction. The fact that the sanction is granted by a superior officer is not relevant. Followed *Ghanshyam K. Khabrani v. ACIT (2012) 346 ITR 443 (Bom.)(HC)* (ITA No. 1035 of 2017, dt. 11.05.2019) (AY. 2008-09)

PCIT v. Khushbu Industries (Bom.)(HC), www.itatonline.org

S. 151 : Reassessment – Sanction for issue of notice – Sanction order indicated non-application of mind to reasons recorded for reopening, therefore, reopening notice was bad in law and quashed. [S. 147, 148] 1601

An information was received from ADIT (Inv.) that during search conducted in case of Himanshu Verma Group, it was found that Himanshu Verma Group was engaged in activity of providing bogus accommodation entries and that assessee was also a beneficiary of Himanshu Verma Group. On basis of such information, reopening notice was issued against assessee. CIT also granted sanction under S. 151 of the Act. It was found that reasons recorded in support of reopening notice recorded activity of Himanshu Verma Group as group providing accommodation entries while order granting sanction proceeded on basis that it was assessee who was engaged in providing accommodation entries. Court held that it is a settled position in law that grant of sanction by CIT under S. 151 is not a mechanical act on his part but it requires due application of mind to reasons recorded before granting sanction. Accordingly, the Court held that the sanction order indicated non-application of mind to reasons recorded for reopening, hence reopening notice was bad in law and quashed. (AY. 2011-12)

My Car (Pune) (P.) Ltd. v. ITO (2019) 263 Taxman 626 / 179 DTR 236 (Bom.)(HC)

S. 151 : Reassessment – Sanction for issue of notice – Notice – Sanction of Additional commissioner instead of Joint Commissioner – Joint Commissioner includes an Additional Commissioner – Notice is held to be valid. [S. 2(28C), 147, 148] 1602

Assessment proceedings were initiated by issuing the notice u/s. 148 of the Act. Assessee filed writ petition contending that notice under S. 148 was not issued with prior sanction of Joint Commissioner, but sanction was accorded by Additional Commissioner and, therefore, said notice was without jurisdiction. High Court held that in terms of S. 2(28C), Joint Commissioner includes an Additional Commissioner as well. Accordingly the petition was dismissed. (AY. 2008-09)

Vikram Singh v. CIT (2019) 267 Taxman 381 / 111 taxmann.com 119 (All)(HC)

Editorial : SLP of assessee is dismissed; Vikram Singh v. CIT (2019) 267 Taxman 380 (SC)

S. 151 : Reassessment – Sanction for issue of notice – Approving authorities giving approval in mechanical manner – Reassessment invalid – Department failing to bring on record any evidence of income earned by assessee – Entire amount of doubtful transactions added as assessee's additional income – Impermissible. [S. 147, 148] 1603

Tribunal held that the PCIT while giving approval had simply mentioned "satisfied". Similarly the Additional Commissioner had simply mentioned "yes", it was a fit case to issue notice under S. 148 of the Income-tax Act, 1961. Since both the approving authorities had given the approval in a mechanical manner, the reassessment proceedings were not in accordance with law. On merits the Tribunal held that even if the Department's theory of the assessee having enabled the clients to claim contrived losses, the Department had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. The AO had

added the entire amount of doubtful transactions by way of the assessee's additional income, which was wholly impermissible. (AY. 2009-10)
Mukesh Chand Garg v. ITO (2019) 76 ITR 344 (Delhi)(Trib.)

1604 **S. 151 : Reassessment – Sanction for issue of notice – Share capital – Share premium – Approval – mechanical approval mentioning " Yes" Non application of mind – Reassessment is held to be bad in law. [S. 147, 148]**
Allowing the appeal of the assessee, the Tribunal held that if the PCIT, while granting approval for issue of notice u/s. 148, has only mentioned "YES", it establishes that the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind. On this count the reassessment is not sustainable in the eyes of law and needs to be quashed. Followed, *United Electrical Company (P) Ltd. v. CIT (2002) 258 ITR 317 (Delhi)(HC), CIT v. S. Goyanka Lime & Chemical Ltd (2015) 64 taxmann.com 313 / (2016) 237 Taxman 378 (SC)* (ITA No. 1061/Del/2019, dt. 02.12.2019) (AY. 2009-10)
Blue Chip Developers(P) Ltd. v. ITO (Trib)(Delhi), www.itatonline.org

1605 **S. 153 : Assessment – Reassessment – Limitation – Revision – When an assessment is set aside or cancelled – Fresh assessment can be made only before expiry of two years from the end of the financial year in which the order u/s. 263 was passed – Order giving effect – Though no limitation is prescribed the order should be passed within reasonable time – Delay of eight and half years is held to be not valid in law. [S. 263]**
Court held that when an assessment or reassessment is set aside or cancelled, pursuant to an order under S. 263, the consequent fresh assessment can only be made, before the expiry of two years from the end of the financial year in which the order under S. 263 was passed and not after that. When such assessment or reassessment or re-computation is made for the purpose of giving effect to any finding or direction in the order u/s. 263, it can be completed, at any time. However though no limitation is prescribed the order should be passed within reasonable time and delay of eight and half years is held to be not valid in law. The order should be passed within reasonable time. (AY. 1990-91)
GET&D India Ltd. v. DCIT (2019) 414 ITR 727 / 180 DTR 234 / 309 CTR 516 (Mad.)(HC)

1606 **S. 153 : Assessment – Reassessment – Limitation – Revision – Revisionary powers could be exercised by Commissioner in all cases where assessment was made and once he exercised his revisionary powers, then provisions of S. 153(2A) would be applicable and limitation would be one year from date of order being passed by Commissioner in revision petition. [S. 153(2A), 153B, 153C, 263]**
A search was carried out on 4-2-2010. Assessment year ended on 31-3-2010 and 21 months period expired on 31-12-2011. Assessments were made on 30-12-2011. Commissioner passed the revision order on 28-3-2014. The assessee contended that period for making assessment was over, no fresh assessment could actually be done because it was beyond period of limitation on the ground that the benefit of sub-section (2A) could not be availed of to extend limitation in cases where Commissioner exercised power under S. 263 where assessment was pursuant to search operations carried out in terms of S. 153A. High Court held that revisionary powers could be exercised by

Commissioner in all cases,where assessment was made and once he exercised his revisionary powers then provisions of S. 153(2A) would be applicable and, limitation would be one year from date of order being passed by Commissioner in revision order. Accordingly the revision order was up held.
Param Transport (P.) Ltd. v. PCIT (2019) 102 Taxmann.com 327 (Chhattishgarh) (HC)
Editorial : SLP of assessee is dismissed, Param Transport (P.) Ltd. v. PCIT (2019) 261 Taxman 346 (SC)

S. 153 : Assessment – Limitation – Capital gains – Reference to valuation officer – No extension of time for assessment as in case of reference under S. 142A – Assessment order to be passed on or before 31.03.2016 whereas the same was passed on 19.05.2016 – Order barred by limitation. [S. 45, 50C 55A, 142A] 1607
In this case, it has been held that explanation 1 to sub-clause (iv) of S. 153 provides an extension from the two years where the AO makes a reference to the Valuation Officer under sub-section (1) of S. 142A and did not talk about the extension of time. The first reference was made under S. 55A and the second reference was made under S. 50C(2). Neither of the references was made under S. 142A. Therefore, the assessment order had to be passed on or before March 31, 2016 whereas the order had been passed on May 19, 2016 and therefore, the assessment order was barred by limitation. (AY. 2013-14)
Naina Saluja v. DCIT (2019) 76 ITR 135 (Luck.)(Trib.)

S. 153 : Assessment – Limitation – Special audit under section 142(2A) is not in accordance with law, time limit for making assessment cannot be extended for time taken for special audit. [S. 142(2A)] 1608
Tribunal held that though the notice directing special audit referred to accounts of both AY. 2008-09 and 2009-10, the financial statements of only AY. 2009-10 were considered for special audit. Thus, the AO did not apply his mind and mechanically adopted the figure of AY. 2009-10 and passed the order under S. 142(2A) of the Act for AY. 2009-10 without realizing that he is dealing with AY. 2008-09. Therefore, the Tribunal noted that if the period taken for special audit is not excluded, the assessment order passed by the AO would be time barred. Further, the Tribunal remarked that even though order under S. 142(2A) of the Act is not appealable, it is well within the rights of Tribunal to consider all material aspects which were considered while framing the assessment order. Accordingly, since the order framed under S. 142(2A) was not for concerned AY. 2008-09, the Tribunal quashed the assessment order as it was barred by limitation. (AY. 2008-09)
Consulting Engineering Services India (P) Ltd. v. ACIT (2019) 175 DTR 217 / 198 TTJ 21 (Delhi)(Trib.)

S. 153 : Assessment – Reassessment – Limitation – Commissioner (Appeals) set aside order of Assessing Officer dt. 29-3-2000 vide his order dt. 27-11-2000 – Set aside assessment was completed on 31-3-2003 – Set aside assessment was to be completed before 31-3-2002 – Assessment was completed on 31-3-2003 – Barred by limitation – Order passed by CIT(A)) after 1-4-2000 – new assessment is to be completed within one year from end of financial year in which order was passed by CIT(A). [S. 153(2A)] 1609
CIT(A) set aside order of AO dt. 29-3-2000 vide his order dt. 27-11-2000. Set aside assessment was completed on 31-3-2003. Set aside assessment was to be completed

before 31-3-2002. Since set aside assessment was completed on 31-3-2003, same was clearly barred by limitation. Order passed by CIT(A) after 1-4-2000, new assessment is to be completed within one year from end of financial year in which order was passed by CIT(A). Circular No. 14 of 2001, dt. 27-11-2001. (AY. 1997-98)
Awanindra Singh v. DCIT (2019) 176 ITD 355 / 180 DTR 17/ 200 TTJ 427 (Delhi)(Trib.)
Computerland Integrators (India) Ltd. v. Dy CIT (2019) 200 TTJ 427 / 180 DTR 17 (Delhi) (Trib.)

1610 **S. 153 : Assessment – Limitation – Order of assessment passed within time but dispatched after expiry of time limit, Assessment held to be barred by limitation. [S. 153(2A)].**
The Assessment Order was passed on December 30, 2011 (i.e. within the time limit of passing order), however, the same was dispatched on January 09, 2012 (i.e. after the time limit of passing order). The Assessee contented that the order passed by the AO is barred by limitation as the same was dispatched after the time limit. The CIT(A) held that the order of assessment were within time. On an appeal to Tribunal, the Tribunal held that the date of dispatch of the order of assessment was to be construed as the date of the order of assessment and therefore, the order of assessment was held to be barred by limitation. (AY. 2001-02 to 2003-04)
Globe Transport Corporation v. ACIT (2019) 69 ITR 69 (SN) (Bang.)(Trib.)

1611 **S. 153A : Assessment – Search – Address at which search could be conducted would be place or location, where books of accounts, documents, jewellery, unaccounted assets could be located and it need not be registered office of person concerned – Proceedings u/s. 153A is held to be valid. [S. 133A, 153A, Art. 226].**
Assessee is a partnership firm. A search action took place at residential premises of partners of assessee and a survey action took place at business premises of assessee. AO framed assessment under S. 143(3) read with S. 153A making certain additions in hands of assessee. Assessee alleged that search was carried out at house of partners of assessee and not at registered office of assessee and, therefore, proceedings under S. 153A could not have been taken against assessee. Dismissing the petition the Court held that the address at which search could be conducted would be place or location, where books of accounts, documents, jewellery, unaccounted assets could be located and it need not be registered office of person concerned and thus, contention that no proceedings under S. 153A could have been initiated against assessee did not merit acceptance. (AY. 2012-13)
Zinzuwadia and Sons v. DCIT (2019) 419 ITR 169/265 Taxman 261 / 183 DTR 65 / 311 CTR 297 (Guj.)(HC)

1612 **S. 153A : Assessment – Search – Block assessment – Search warrant in the name of firm – Documents seized – Subsequent change of address of firm – Search not invalidated – Assessment is held to be valid. [S. 132]**
A search was conducted in the case of Shri K. M. Vishwanath group of cases on 10 th December, 2010. Various documents were seized. Proceedings u/s. 153A were initiated for the assessment years 2005-06 to 2010-11. Notice was also served on shri K. M. Vishwanath who was partner of the firm. No return was filed, however, Shri K.

M. Vishwanath sent a communication stating that he had retired from the firm. After recording the statements of other partners the assessment was framed. CIT(A) up held the order. However the Tribunal held that address indicated in the search warrant pursuant to which the search was carried out being different from the address of the assessee firm it was improper search and allowed the appeal of the assessee. On appeal by the revenue, the Court held that, search warrant in the name of firm, documents seized from the premises of the firm. Subsequent change of address of firm, search not invalidated Accordingly the assessment is held to be valid. (AY. 2005-06 to 2010-11)
PCIT v. Associated Mining Co (2019) 417 ITR 420 / 184 DTR 364 / (2020) 312 CTR 531 (Karn.)(HC)

S. 153A : Assessment – Search – Not furnishing the reasons – Notice and assessment – Alternative remedy is available – Writ is held to be not maintainable. [Art. 226] 1613
Assessee filed writ petition challenging notice under S. 153A on ground that no reason for issuance of impugned notice had been furnished by ITO AO has passed the order after filing of writ petition. Court held that assessee had an alternate and efficacious remedy of filing appeal before CIT(A). Accordingly the on facts, ITO was to be directed to furnish reason to assessee for issuance of impugned notice and assessee should challenge assessment order in appeal before Commissioner (Appeals). Matter remanded.
Rajendra v. ITO (2019) 265 Taxman 223 (Karn.)(HC)

S. 153A : Assessment – Search – Undisclosed income – Books of account found unreliable – Estimate of income on the basis of estimate is held to be valid. [S. 132(4)] 1614
Court held that as the books of account is found to be unreliable estimate of income on the basis of estimate is held to be valid. (AY. 2003-04 to 2009-10)
Rajan Jewellery v. CIT (2019) 414 ITR 621 / 177 DTR 369 / 308 CTR 602 / 266 Taxman 357 (Ker.)(HC)

S. 153A : Assessment – Search – Assessment not dependent on recovery of incriminating material during search in respect of pending assessment – Provision of S. 153A is a non obstacle clause having overriding effect over sections 139, 147, 151, 153 and 158 of the Act. [S. 147, 151, 153, 158] 1615
Court held that when a notice is issued pursuant to a search under S. 132, for assessment under S. 153A, all pending proceedings with respect to a regularly initiated assessment or reassessment would stand abated. For these years, the proceedings under S. 153A would be continued and the assessments concluded on that basis. However, when and if the assessment proceeded with and concluded under S. 153A is set aside by the statutory authorities or by the High Court, then necessarily the original proceedings which stood abated would revive, which is the enabling provision under sub-section(2) of S. 153A. There can be no corollary inferred from these provisions to find certain years to be of "concluded assessment" being possible of re-assessment only on incriminating material recovered in search relating to that year. (AY. 2002-03, 2003-04)
CIT v. K. P. Ummer, Prop. Star Rolling Mill (2019) 413 ITR 251 / 177 DTR 379 / 308 CTR 613 (Ker.)(HC)

1616 **S. 153A : Assessment – Search or requisition – Cash deposited in Bank – Pradhan Mantri Garib Kalyan Yojana, 2016 (PMGKY) – [S. 131, 132, Pradhan Mantri Garib Kalyan Yojana, 2016, S. 199I, 199j]**

Notice was issued u/s. 131 by ADI(Inv) to furnish details of cash deposited in Pradhan Mantri Garib Kalyan Yojana, 2016. Not being satisfied with the reply, search was conducted at residential and business premises of assessee and issued a notice under S. 153A of the Act. The assessee filed the writ petition challenging the issue of notice u/s. 153A of the Act on the ground that the assessee's case was that after deposit of aforesaid amount of tax, surcharge and penalty, he was entitled for benefit of provisions of clauses 199I and 199J of PMGKY, 2016 and, therefore, income which was disclosed as aforesaid could not be included in total income. Dismissing the petition, the Court held that a mere show cause notice as challenge was premature. Even otherwise, since grievance of assessee stood fully redressed in light of written instructions of revenue which stated that income which had been disclosed by him under PMGKY would be excluded from assessment of block year for which notice under S. 153A had been issued, instant petition was to be dismissed.

Gopal Kesarwani v. DGI (Inv) (2019) 260 Taxman 391 (All.)(HC)

1617 **S. 153A : Assessment – Search – No search in the premises of the firm – Writ to quash the notice is held to be not maintainable – Assesee has alternative remedy to purse the remedy available under the Act. [S. 124, 132(1), Art. 226]**

Validity of notice u/s. 153A was challenged on the ground that there was no search at premises of the firm and in order to issue notice under S. 153A(1) there must be initiation of Search in case of noticee. Mere search authorisation is not sufficient. Dismissing the petition the Court held that, there is clear distinction between search authorisation and conduct of the search, in sub section (1) of S. 153A, therefore, the legislature has advisably used the expression 'Where a search is initiated under S. 132'. On facts once the AO passes final order it will be always be open to challenge under the Act. Accordingly the writ petition was dismissed.

Bansilal B. Raisoni & Sons v. ACIT (2019) 306 CTR 166 / 173 DTR 68 / 260 Taxman 281 (Bom.)(HC)

1618 **S. 153A : Assessment – Search – Addition to income on account of receipt of share application money and premium – AO not referring to any seized material or other material found during course of search – Addition is unsustainable.**

Search and seizure operation was conducted upon the assessee. Pursuant to the search action, notice was sent to the assessee under S. 153A of the Act, requiring the assessee to submit its return. In reply to the said notice, assessee declared a net income of ₹ 84,740 as against the returned total income of ₹ 74,831. The AO noted that the assessee had received share application money and premium totaling to ₹ 1,11,00,000 from three companies but the required documents evidencing creditworthiness, genuineness and identity of the investors were not furnished. The assessment was completed at an income of ₹ 1,11,84,740 after making an addition of ₹ 1,11,00,000 under section 68 on account of bogus share capital. The CIT(A) deleted the addition on the ground that the additions made by the AO were beyond the scope of S. 153C because

no incriminating material or evidence had been found during the course of search so as to doubt the transactions. In the entire assessment order, the AO had not referred to any seized material or other material for the year 2009-10 having being found during the course of search in the case of the assessee. Therefore the action of the AO was based upon conjectures and surmises and the addition made was not sustainable in the eyes of law. (AY. 2009-10)
Dy. CIT v. Madhyam Housing Pvt. Ltd. (2019) 76 ITR 82 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – Addition made towards undisclosed income on the basis of statement made after the period of search – having no nexus with the incriminating material found during search – not sustainable. [S. 132(4)] 1619
Allowing the Assessee's appeal, the Tribunal held that statement made after the period of search cannot be considered as the statement given under S. 132(4) of the Act. Further, it was held that additions made merely on the basis of statement given without correlating the addition with the incriminating seized material cannot be sustained. (AY. 2014-15)
Ultimate Builders v. ACIT (2019) 183 DTR 179 / 202 TTJ 91 / 74 ITR 566 (Indore)(Trib.)

S. 153A : Assessment – Search – Assessee was not in existence at time of first search – No documents found in second search belonging to assessee – Payment of interest on post-dated cheques outside books beyond six months from sale deed – No addition could be sustained. 1620
Tribunal held that, there was nothing on record to show that during the course of search that took place, any document either belonging to the assessee or relating to the assessee was found, i.e. either from the premises of the assessee or any of its group concerns. When the assessee was not in existence at the time of first search and none of the documents found during the course of second search belonged to the assessee, further AO had not referred to any seized material found during the course of second search with respect to payment of interest on post-dated cheques out of books beyond six months from the sale deed, no addition could be sustained in the hands of the Assessee. (AY. 2011-12)
Utkarsh Realtech Pvt. Ltd. v. ACIT (2019) 76 ITR 688 (Delhi)(Trib.)

S. 153A : Assessment – Search – Time limit for issue of notice u/s. 143(2) and completion of assessment already lapsed as on date of search – Addition is unsustainable. [S. 143(2)] 1621
The Tribunal while dismissing the appeal of the revenue held that, the time limit for issue of notice u/s. 143(2) and completion of the assessment had already lapsed as on the date of the search. The additions made were not based on incriminating material found during the course of search but on record not related to material found during the search. In such a situation, the additions made were beyond the scope of proceedings u/s. 153A. The additions have to be made only on the basis of the seized material. Hence, addition made by the AO is not sustainable. (AY. 2011-12, 2012-13)
Dy. CIT v. Forum Sales P. Ltd. (2019) 76 ITR 51 (SN) (Delhi)(Trib.)

1622 **S. 153A : Assessment – Search – No incriminating material was found – Addition cannot be made. [S. 68, 132]**

When no incriminating material is found during the course of the search no addition can be made against the assessee and the addition if any made by the Assessing Officer is without jurisdiction. (AY. 2011-12, 2014-15, 2015-16)

Dy. CIT v. Pacific Industries Ltd. (2019) 72 ITR 634 (Jodh.)(Trib.)

Dy. CIT v. Pacific Leasing And Research Ltd. (2019) 72 ITR 634 (Jodh.)(Trib.)

1623 **S. 153A : Assessment – Search – Share application money – No incriminating material was found – Addition cannot be made – Opportunity to cross examination must be given of the entry operators. [S. 68, 132]**

When no incriminating material is found during the course of the search, then the additions, if any, made by the A.O. are unsustainable and are liable to be deleted.

The assessee must be allowed to cross examine third party entry operators who make statements which are relied upon by the A.O. while passing an assessment order and in the absence of such cross examination no addition can be made.

If undisclosed income has already been added to the total income of the share applicant, then the same income cannot be added to the income of the investee company and be subject to double taxation. (AY. 2008-09 to 2013-14)

Dy. CIT v. Rashmi Metaliks Ltd. (2019) 72 ITR 226 / 201 TTJ 160 (Kol.)(Trib.)

Dy. CIT v. Ramani Joseph (2019) 72 ITR 226 / 201 TTJ 160 (Kol.)(Trib.)

1624 **S. 153A : Assessment – Search or requisition – Assessment for relevant year completed – No addition could be made. [S. 68, 132]**

The assessee was a group concern and subjected to search and seizure action under S. 132 of the Income-tax Act, 1961. The AO initiated proceedings under S. 153A pursuant to the search action and made various additions under S. 68 on account of share application money and special deposits against the issue of preferential equity shares treating them as accommodation entries availed of by the assessee from entry providers. The CIT(A) deleted the major part of the addition on the ground that the Assessing Officer had no material in his possession but confirmed the addition in respect of which the statement of the entry provider was with the AO. On appeal. Held, (i) that the addition made by the A.O. under S. 153A was not sustainable and liable to be deleted, when the assessment for the assessment year 2010-11 had been completed and was not pending as on the date of the search (ii) that the assessee had repeatedly requested and demanded the cross-examination of the witnesses whose statements were relied upon by the AO in the assessment order. The denial of cross-examination was a gross violation of the principles of natural justice. (iii) That once the assessee had produced the relevant documentary evidence in support of the transaction, then in the absence of any contrary material the addition was not sustainable. The AO made an addition in respect of share capital received from three companies but it was deleted by the CIT(A) for want of supporting material as well as statement of alleged entry operator. On appeal: Held, that the assessee had produced all the relevant documentary evidence to establish the identity, creditworthiness and genuineness of the transactions. Hence in the absence of any discrepancy or otherwise any material on record, the addition made by the AO was not justified. (AY. 2010-11, 2011-12)

Dy. CIT v. Jammu Metalic Oxides Pvt. Ltd. (2019) 72 ITR 449 (Jaipur)(Trib.)

S. 153A : Assessment – Search or requisition – Share application moneys – no evidence of receipt of unsecured loan – In the absence of incriminating material found during search – Addition on account of share application money is held to be not justified. [S. 68, 132(4)] 1625

The assessee was engaged in the business of marble mining and selling. A search and seizure action under S. 132 of the Income-tax Act, 1961 was carried out at the residential premises of its partner including other group concerns of the assessee. During the search action, assessee in his statement recorded under S. 132(4) admitted taking accommodation entries in the form of long-term capital gains. The Assessing Officer made an addition on account of unsecured loans received by the assessee from the three parties aggregating to ₹ 76,65,206 under S. 68. The CIT(A) deleted the addition holding that during the search assesse made disclosure of income in the form of long-term capital gains in his individual capacity and there was no clinching evidence for routing the unaccounted income through unsecured loan during the search, and it was not legally tenable to make addition in the absence of incriminating material found during the search. The addition having been made on the basis of third-party information, the CIT(A) deleted the addition on the merits. On appeal: Held, that the Assessing Officer had not brought out any defect or discrepancy in the evidence brought on record by the assessee. Therefore, the addition made by the AO since the assessment year was without jurisdiction. Thus, the assessment order was invalid, consequent upon which the entire addition made therein were deleted. (AY. 2010-11 2014-15 to 2016-17).

Dy. CIT v. Krishna Marble (2019) 72 ITR 418 (Jodhpur)(Trib.)

S. 153A : Assessment – Search or requisition – income from undisclosed sources – excess stock – waste included by assessee in stock of yarn – department treating it as fresh yarn and making addition – Addition is held to be not valid. 1626

Tribunal held in the stock of yarn, the assessee had included yarn of 11182.31 kgs. which was actually waste and found during the course of survey. However, the Department had valued it as stock of fresh yarn and there was no justification in upholding the addition of 11182.31 kgs. of yarn amounting to ₹ 19,64,396.40. Accordingly, there was no merit in the action of the Commissioner (Appeals) for upholding the addition of ₹ 19,64,396.40. The AO was directed to delete the entire addition of ₹ 1,02,46,949.32 made under the head of yarn. (AY. 2013-14)

Shreeji Sulz P. Ltd. v. ACIT (2019) 73 ITR 165 (Jaipur)(Trib.)

S. 153A : Assessment – Search or requisition – Unaccounted sales – Seized documents containing both accounted as well as unaccounted sales – No material on record suggesting sales made over and above sales recorded in seized documents – Addition to be confined to income from unaccounted sales recorded in seized documents search and seizure. 1627

It was held that the seized material contained notings in respect to certain unaccounted sales. The assessment order did not bring on record any such seized material which showed sales outside the books corresponding to each and every sale. Since S. 153A of the Income-tax Act, 1961 can be invoked only with respect to the incriminating material found during the course of the search, and extrapolation without any incriminating

material would be contrary to the spirit of the section. Hence, the CIT(A) was justified in confining the addition to the income that arose from unaccounted sales recorded in the seized documents and dismissing the extrapolation made by the AO. (AY. 2008-09, 2009-10)
Dy. CIT v. Gupta And Co. Pvt. Ltd. (2019) 70 ITR 608 (Delhi)(Trib.)

1628 **S. 153A : Assessment – Search – Pending assessment abate – Order is set aside to determine the income as per S. 153A of the Act. [S. 132, 143(2)]**
Tribunal held that challenge to validity of assessment order for want of issue of notice under S. 143(2) became academic, in view of fact that prior to completion of assessment for relevant year, a search was carried out in case of assessee and, thus assessee's income had to be determined as per provisions of S. 153A of the Act. Matter remanded to the AO. (AY. 2015-16)
DCIT v. Rajlaxmi Denim (2019) 71 ITR 173 (Jaipur)(Trib.)

1629 **S. 153A : Assessment – Search – Burden is on the department to prove that the seizure of the document and content thereof, so as to treat the document to be an incriminating document – Deletion of addition is held to be justified. [S. 131]**
In search & seizure operations, the authorities found a single entry of payment made in case amounting to ₹ 4.5 crore. The assessee stated that no such payment were made by him. The Ld. AO brought the same to tax as unexplained income. The CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that in order to prove live link by the department, the statement should have been recorded categorically mentioning that the documents in dispute belong to the Assessee. In fact, the assessee in the statement u/s. 131 had denied the execution of such documents and content thereof. Since, the department has not proved the seizure of the document and content thereof, so as to treat the document to be an incriminating document, the same could not be the basis of making addition. (AY. 2007-08)
ACIT v. Dr. Ranjan Pai (2019) 71 ITR 435 / 178 ITD 647 (Bang.)(Trib.)

1630 **S. 153A : Assessment – Search – Even if search happens in case of assessee, the AO cannot initiate proceedings u/s. 153A – if incriminating material is found during search of other person – Proceedings should be initiated u/s. 153C and failure to do so renders the addition in the S. 153A assessment avoid-ab-initio. [S. 153C]**
Search action was initiated against the assessee u/s. 132 of the Act. During the course of search action the assesee surrendered income of ₹ 1.2 crore for the amount spent on the marriage of the daughter. Notice u/s. 153A was issued to the assessee. Before the Tribunal, it was contended that for making addition on the basis of any material including document found during the course of search at the premises of the third party, the procedure laid down under S. 153C of the Act to be followed by the AO, therefore, the addition cannot be legally sustained. Allowing the appeal the Tribunal held that, the Act has separate provisions for making assessment in case of material found in the course of search from premises of assessee (S. 153A) as well as material found in course of search at premises of third party (S. 153C). Even if search happens in case of assessee, the AO cannot initiate proceedings u/s. 153A, if incriminating material is found

during search of other person. Proceedings should be initiated u/s. 153C and failure to do so renders the addition in the S. 153A assessment void-ab-initio (*Vinod Kumar Gupta v. DCIT (2018) 165 DTR 409 (Delhi)(HC)*) is distinguished) (ITA No. 5870/Del/2017, dt. 20.08.2019) (AY. 2009-10)
Trilok Chand Chaudhary v. ACIT (Delhi)(Trib.), www.itatonline.org

S. 153A : Assessment – Search – Assessment completed on date of search – Additional ground raised before Tribunal – No incriminating material found – No jurisdiction to frame the assessment. [S. 69C, 254(1)] 1631
Tribunal admitted the additional ground and held that, assessment was completed on date of search and no incriminating material found. AO has no jurisdiction to frame the assessment. (AY. 2003-04 to 2005-06)
Flex Engineering Ltd. v. DCIT (2019) 70 ITR 417 (Delhi)(Trib.)

S. 153A : Assessment – Search – Income of any other person – Recording of satisfaction is mandatory – Notice has to be issued by Assessing Officer to other person under S 153A although such Assessing Officer gets jurisdiction under S. 153C – In the case of searched person there is no requirement of recording of satisfaction. [S. 132, 153C] 1632
In case of proceedings initiated on a person other than searched person, notice has to be issued by Assessing Officer to other person under S. 153A although such AO gets jurisdiction under S. 153C. For issuing notice under S. 153A in case of person other than searched person, Assessing officer issuing such notice has to record satisfaction that books of account or documents or assets seized have a bearing on determination of total income of such other person, but in case of searched person, there is no such requirement prescribed under S. 153A. Accordingly the assessment is held to be valid. (AY. 2005-06)
Rajesh Kumar v. ACIT (2019) 175 ITD 734 / 181 DTR 79 (Bang.)(Trib.)

S. 153A : Assessment – Search – Assessment was completed on the basis of return filed – No incriminating material being found during subsequent search, there could not be any assessment under section 153A/153C. [S. 143(3), 153C] 1633
Dismissing the appeal of the revenue the Tribunal held that; Assessment was completed on the basis of return filed. No incriminating material being found during subsequent search, there could not be any assessment under S. 153A/153C. (AY. 2011-12)
ACIT v. RPD Earth Movers (P.) Ltd. (2019) 174 ITD 717 (Chennai)(Trib.)

S. 153B : Assessment – Search and seizure – Limitation – Order of assessment was dispatched on last day prescribed – Not barred by limitation. [S. 132] 1634
Court held that in a block assessment where the officer passes the order on the last day of limitation and dispatches it after office hours, it cannot be said to be a factor vitiating the order or enabling the limitation period to be applied. (AY. 2003-04 to 2009-10)
Rajan Jewellery v. CIT (2019) 414 ITR 621 / 177 DTR 369 / 308 CTR 602 / 266 Taxman 357 (Ker.)(HC)

1635 **S. 153C : Assessment – Income of any other person – Search – Cash receipts – No payments were made in relevant assessment year – Impugned addition made in assessment year – Deletion of addition is held to be justified. [S. 69A]**
Assessee, an interior designer, rendered services to 'S'. A search was conducted in premises of 'S' during of which certain documents were seized showing that some unaccounted cash payments were made to assessee. Accordingly, proceedings were initiated under S. 153C and addition was made to assessee's taxable income. Tribunal held that no unexplained payment was made in relevant assessment year accordingly deleted the addition. High Court affirmed the order of the Tribunal. (AY. 2007-08)
PCIT v. Jayant K. Furnishers (2018) 98 taxmann.com 394 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Jayant K. Furnishers (2019) 266 Taxman 91 (SC)

1636 **S. 153C : Assessment – Income of any other person – Search – Pendency of writ petition the AO passed the assessment order – Directed to file an appeal and all contentions are left open. [Art. 226]**
A search action was carried out a search against a person other than assessee and thereafter, a notice dated 27-4-2018 under S. 153C was issued on the ground that incriminating material was found during such search against person other than searched person. Assessee filed writ petition challenging impugned notice dated 27-4-2018. During pendency of petition, the A.O. passed assessment orders on assessee pursuant to notice issued under section 153C. Court advised to adopt appeal remedy against orders of assessment passed by AO.
Gemini Engi-Fab Ltd. v. DCIT (2019) 265 Taxman 195 / 181 DTR 405 / 310 CTR 587 (Bom.)(HC)

1637 **S. 153C : Assessment – Income of any other person – Search and seizure – Satisfaction of AO of person in respect of whom search conducted that document seized belonged to some other person – Satisfaction not discernible from satisfaction note – Notice is held to be invalid. [S. 132, 132(4A), 292C]**
Dismissing the appeal of the revenue the Court held that there was no good reason to interfere with the concurrent findings recorded by the two appellate authorities as regards the satisfaction arrived at by the Assessing Officer without there being any cogent or tangible material. In the documents seized during the course of search, there might be some reference to the assessee, but that itself would not be sufficient. It was necessary to show some nexus on the basis of some cogent materials between the documents seized and the assessee. Relied on *Pepsi Foods P. Ltd. v. ACIT (2014) 367 ITR 112 (Delhi)(HC).* (AY. 2010-11)
PCIT v. Himanshu Chandulal Patel (2019) 419 ITR 132 / 267 Taxman 305 (Guj.)(HC)

1638 **S. 153C : Assessment – Income of any other person – Search and seizure – Cash credits – Addition made not on material seized during search – Unsustainable. [S. 68, 132, 153A]**
Dismissing the appeal of the revenue the Court held that there were concurrent findings of fact to the effect that the additions made by the AO under S. 68 were not based on

any incriminating document found or seized during the search action under S. 132 of the Act. Accordingly the assumption of jurisdiction under S. 153C by the AO was not justified and deletion of addition is held to be valid. (AY. 2007-08)
PCIT v. Ankush Saluja (2019) 419 ITR 431 (Delhi)(HC)

S. 153C : Assessment – Income of any other person – Search prior to 1-6-2015 – S. 153C as amended w.e.f. 1-6-2015 is not applicable – Limitation – Notice issued for the assessment years beyond six assessment years would be beyond jurisdiction – Writ is maintainable. [S. 132, 153A, 153B Art. 226] 1639

Allowing the petition the Court held that the search was conducted in all the cases on a date prior to June 1, 2015. Therefore, on the date of the search, the AO of the person in respect of whom the search was conducted could only have recorded satisfaction to the effect that the seized material or belonged to the other person. The hard disc containing the information relating to the assessees admittedly did not belong to them, therefore, as on the date of the search, the essential jurisdictional requirement to justify assumption of jurisdiction under S. 153C in case of the assessees, did not exist. The notices under S. 153C were not valid. As regards alternative remedy the Court held that the assessees had responded to the notices under S. 153C of the Act and after receipt of the satisfaction notice, objected to the jurisdiction of the AO in issuing such notices. The AO, in majority of the cases had rejected the objections and it was at this stage that the assessees had approached the court challenging the notices. When the proceedings were claimed to be wholly without jurisdiction, the alternative remedy would not operate as a bar to a writ petition. The writ petition was maintainable. As regards the limitation the Court held that, S. 153B provides for the limitation for completion of assessment and neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of the satisfaction note under S. 153C of the Act and consequent issuance of notice to the other person. Admittedly, such satisfaction had not been recorded at the time of or along with the initiation of proceedings against the person in respect of whom the search was conducted under S. 153A of the Act. Accordingly the relevant date for computation of the six assessment years in respect of which notice was required to be issued was the immediately preceding assessment year relevant to the previous year in which such search was conducted or requisition was made. If notices under S. 153C of the Act had been issued for assessment years beyond these six assessment years they would be beyond jurisdiction. (AY. 2008-09 to 2014-15)
Anilkumar Gopikishan Agrawal v. CIT (2019) 418 ITR 25 / (2020) 186 DTR 273 (Guj.)(HC)

S. 153C : Assessment – Income of any other person – Search – Search took place prior to date of amendment – Burden is on department to prove seized documents belonged to assessee – Statement of searched party containing information relating to assessee – Documents are not belonging assessee – Wrongly assumed jurisdiction – No question of law. [S. 68, 132(4)] 1640

Dismissing the appeal of the revenue, the Court held that the search and the issuance of notice under S. 153C pertained to the period prior to June 1, 2015 and S. 153C as it stood at the relevant time applied. The change brought about prospectively with effect from June 1, 2015 by the amended S. 153C(1) did not apply. Therefore, the onus was

on the Department to show that the incriminating material or documents recovered at the time of search belonged to the assessee. It was not enough for the Department to show that the documents either pertained to the assessee or contained information that related to the assessee. The Department had relied on three documents to justify the assumption of jurisdiction under S. 153C against the assessee. Two of them, viz., the licence issued to the assessee by the Director, Town and Country Planning and the letter issued by him permitting the assessee to transfer such licence, had no relevance for the purposes of determining escapement of income of the assessee for the assessment year 2005-06. Consequently, even if those two documents could be said to have belonged to the assessee they were not documents on the basis of which jurisdiction could be assumed by the AO Officer under S. 153C. The third document, the statement made by the searched party during the search and survey proceedings, was not a document that "belonged" to the assessee. While it contained information that "related" to the assessee, it could not be said to be a document that "belonged" to the assessee. Therefore, the jurisdictional requirement of S. 153C as it stood at the relevant time, was not met. No question of law arose. (AY. 2005-06)

CIT v. Dreamcity Buildwell P. Ltd. (2019) 417 ITR 617 / 310 CTR 738 / 266 Taxman 465 / 182 DTR 121 (Delhi)(HC)

1641 **S. 153C : Assessment – Income of any other person – Search and seizure – Addition made based on document seized at the premises of third party – Held, presumption u/s. 292C would apply in case of person from whose premise the document was seized – Held, initial burden on the AO in such case – Held, no proper enquiry by the AO – Held addition deleted. [S. 69, 292C]**

AO made certain addition u/s. 69 in respect of undisclosed investment, in the hands of the assessee firm based on certain handwritten documents seized from the premises of another person. Such note was alleged to be written by one of the partners of the assessee firm. The High Court held that presumption u/s. 292C essentially applies in case of the person from whose premises the material was unearthed and for using such material against a third party, some other corroborative material is required. Further, the AO in the case neither proved that the handwriting was of one of the partners of the firm nor inquired into the fair market value of the property. The High Court accordingly, deleted the additions.

CIT v. Cordial Company (2019) 308 CTR 159 / 176 DTR 185 (Ker.)(HC)

1642 **S. 153C : Assessment – Income of any other person – Search – A satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the Assessing Officer who has jurisdiction over such other person – Not furnishing the reasons for satisfaction – Proceedings is held to be invalid.**

Allowing the petition the Court held that, a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the Assessing Officer who has jurisdiction over such other person. The note would disclose that it was only a note prepared for initiating proceedings under S. 153C. It neither had any heading or title, to indicate that it was a satisfaction recorded nor did the contents suggest the satisfaction of the Assessing Officer. Hence, the note was incomplete. This

aspect went to the root of the matter. Hence proceedings initiated under S. 153C of the Act were without jurisdiction and were vitiated in law. (AY. 2008-09)
SVK Minerals v. DCIT (2019) 411 ITR 709 / 311 CTR 789 / 184 DTR 36 (Karn.)(HC)
Shyamraj Singh v. DCIT (2019) 411 ITR 709 / 311 CTR 789 / 184 DTR 36 (Karn.)(HC)

S. 153C : Assessment – Income of any other person – Search – Seized documents not belonging to assessee – No incriminating documents / materials seized – Addition cannot be sustained. 1643
Tribunal held that, when the seized documents did not belong to the assessee and no incriminating documents or materials had been seized from other persons, which were assessed u/s. 153C r.w.s. 143(3) no addition can be sustained in the hands of the assessee for such assessment year. (AY. 2009-10, 2010-11)
Unicon Merchants P. Ltd. v. JCIT (2019) 76 ITR 381 (Cuttack)(Trib.)

S. 153C : Assessment – Income of any other person – Search and seizure – Audited balance sheet and financial statements – Not incriminating material – Assessment is held to be not valid. [S. 132] 1644
Dismissing the appeal of the revenue the Tribunal held that it was not in dispute that the only material on the basis of which proceedings u/s. 153C were initiated was the audited balance sheet and financial statements of the Assessee for the year ended on 31st March 2009. The Tribunal noted that the same seized material was considered by the Hon'ble High Court *PCIT v. Index Securities (P.) Ltd. [2017] 86 taxmann.com 84 (Delhi)(HC)* wherein it was held that the seized documents must be incriminating and it must relate to the assessment year whose assessments are sought to be reopened. In the instant case, the requirement that the document should relate to the assessment year sought to be reopened is not fulfilled. Moreover, how the audited balance sheet and financial statements of the assessee for AY. 2009-10 are incriminating material was also not proved. In view of the above, the Tribunal, following the order of the Hon'ble High Court in Index Securities (supra), quashed the initiation of proceedings u/s. 153C of the Act. (AY. 2010-11)
ACIT v. Anush Finlease & Construction Pvt. Ltd. (2019) 70 ITR 336 (Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Recording of satisfaction is mandatory even if the AO of the person in respect of whom the search was conducted and the other person was one and the same – Additions were deleted. [S. 132] 1645
Allowing the appeals, that the Central Board of Direct Taxes by Circular No. 24 of 2015 dated December 31, 2015 had issued directions with regard to recording of satisfaction under S. 153C of the Act and clarified that even if the Assessing Officer of the person in respect of whom the search was conducted and the other person was one and the same, he was required to record his satisfaction. Therefore, the provisions of law had to be complied with for initiating the proceedings under S. 153C of the Act. The seized documents could be handed over by the AO of the person in respect of whom the search was conducted to the AO of the assessee or the other person only after recording the satisfaction under S. 153C of the Act. Therefore, the AO could proceed under S. 153C of the Act from the date of recording of satisfaction on September 8, 2010 for the preceding six assessment years 2005-06 to 2010-11. The assessments made by

the AO under S. 153C for the assessment years 2003-04 and 2004-05 were beyond the jurisdiction. Accordingly the additions were deleted. (AY. 2003-04 to 2008-09)
Satkar Fincap Ltd. v. ACIT (2019) 70 ITR 294 (Delhi)(Trib.)

1646 **S. 153C : Assessment – Income of any other person – Search – Profit and loss account and balance sheet – Not Incriminating documents Addition is held to be not valid. [S. 132]**
Tribunal held that only incriminating documents relating to the assessee was the balance-sheet and profit and loss account as on March 31, 2010 which would not relate to assessment years under appeal, i.e., assessment years 2006-07 to 2008-09. Thus, no incriminating material was found during the course of search so as to proceed against the assessee under section 153C. It was a general satisfaction recorded, and the Assessing Officer was not justified in proceeding against the assessee under S. 153C of the Act. (AY. 2006-07 to 2008-09)
Wisdom Realtors P. Ltd. v. ACIT (2019) 70 ITR 181 (Delhi)(Trib.)

1647 **S. 153C : Assessment – Income of any other person – Search – Audited balance sheet – Initiation of proceedings – Held to be not valid.**
Tribunal held that the only material on the basis of which proceedings under S. 153C were initiated was the audited balance-sheet and financial statements of the assessee for the year ended on March 31, 2009 which related to assessment year 2009-10 while the assessment reopened was for the assessment year 2010-11. Therefore, the requirement that the document should relate to the assessment year sought to be reopened was not fulfilled. Audited balance-sheet and financial statements of the assessee were incriminating material had also not been proved. Therefore the initiation of proceedings under S. 153C was quashed. (AY. 2010-11)
Anush Finlease and Construction Pvt. Ltd. (2019) 70 ITR 336 (Delhi)(Trib.)

1648 **S. 153D : Assessment – Search – Approval – Question of validity of approval goes to the root of the matter and could have been raised at any time – Casual and mechanical manner without application of mind – Order is bad in law [S. 143(3), 153C]**
Dismissing the appeal of the revenue the Court held that, the question of validity of approval goes to the root of the matter and could have been raised at any time. On facts, the Addl. CIT has granted the approval in a casual and mechanical manner and without application of mind hence the order is bad in law. (AY. 2007-08) (ITA No. 668 of 2016 dt. 27-11-2018) (Arising ITA No. 4061 / M / 2012 dt 19-08-2015 (2015) 173 TTJ 332/(2017) 88 taxmann.com 383 (Mum.)(Trib.).
PCIT v. Shreelekha Damani (Smt.) (2019) 307 CTR 218 / 174 DTR 86 (Bom.)(HC)

1649 **S. 154 : Rectification of mistake – Natural justice – Order passed enhancing the tax liability, without giving an opportunity of hearing is quashed. [S. 80P, 155, 251, Art. 226]**
Tribunal remitted the appeal to the file of CIT(A). While giving effect to the order of CIT(A) the AO issued notice under S. 154/155 proposing to rectify order and passed order enhancing tax. On writ the Court held that furnishing details of rectification, which Authority is proposing to, is sine qua non for passing rectification order. In

absence of such particulars made available to assessee, assessee is deprived to meet proposals made which would result in violation of principles of natural justice. Accordingly the order is quashed a set aside. The CIT(A) is directed to hear the appeal with in six months. (AY. 2013-14)
Badagabettu Credit Co-Operative Society Ltd. v. CIT(A) (2019) 184 DTR 313 (Karn.)(HC)

S. 154 : Rectification of mistake – Pendency of appeal or revision is no bar on the AO on power of amendment or rectification – Matter did not assume character of a sub-judice matter. [S. 154(IA), Art. 226] 1650
Assessee filed an rectification before the AO on the ground that credit of payment of advance tax had not been given and the assessee is entitle to a refund. AO rejected the application on the ground that the assessee has filed an appeal before the CIT(A) and one fo the ground is not granting the credit for advance tax paid. The AO held that as the issue being sub-judice the application for rectification was rejected. On writ the Court held that Pendency of appeal or revision is no bar on the AO on power of amendment or rectification. Matter did not assume character of a sub-judice matter. Order of the AO is quashed and application filed before the AO is restored to the file of the AO and directed to dispose the application on merit. (AY. 2015-16)
Piramal Investment Opportinites Fund v. ACIT (2019) 267 Taxman 297 / 182 DTR 305 / 311 CTR 4 (Bom.)(HC)

S. 154 : Rectification of mistake – Fringe benefits tax – Assessing Officer enhancing assessable fringe benefits by passing rectification order – Held to be not valid. [S. 115WE(3)] 1651
Dismissing the appeal of the revenue the Court held that the Assessing Officer having examined the assessee's claim and having passed the order accepting the fringe benefits tax after scrutiny, could not have modified such an order in purported exercise of rectification powers under S. 154. The power of rectification was not the same as review power. Under such power the AO could rectify errors apparent on record. Detailed consideration was impermissible. (AY. 2008-09)
CIT v. Aristo Pharmaceuticals Pvt. Ltd. (2019) 412 ITR 112 (Bom.)(HC)

S. 154 : Rectification of mistake – An order of rectification, on the basis of the law declared by the Supreme Court or the High Court is permissible – Non-resident – Shipping business – option to assessee – Interest can be levied. [S. 172, 234B, 234C] 1652
The assessee was a non-resident shipping company, represented by its agent at that point of time, who filed an option under S. 172(7) to be assessed regularly under the provisions of the Act, before the expiry of the assessment year. The order of assessment was passed levying interest under S. 234A, but not levying interest under S. 234B and 234C. Thereafter, noticing Circular No. 9 of 2001 dated July 9, 2001, a rectification order was passed levying interest under S. 234B and 234C. The order of rectification was set aside by the CIT(A) and this was confirmed by the Tribunal. On appeal the Court held that the rectification was made on the basis of a decision of the Supreme Court which was the declared law even when the original order which was rectified, was passed. Circular No. 730 dated December 14, 1995 had lost its significance and validity, on the Supreme Court authoritatively

speaking on the provision under S. 172(7) and the effect of the option exercised, in *A. S. Glittre d/5 i/s Garonne v. CIT (1997) 225 ITR 739 (SC)* There was hence an error apparent on the face of the record. The order of rectification was valid. (AY. 1996-97)
CIT v. Norasia Lines (Malta) Ltd. (2019) 416 ITR 271 (Ker.)(HC)

1653 **S. 154 : Rectification of mistake – Amalgamation of companies – Rectification to disallow claim allowed u/s. 80HHC is held to be not valid. [S. 80HHC]**
Dismissing the appeal of the revenue the Court held that, there was no infirmity in this. The rectification proceedings for disallowance of claim which was allowed u/s. 80HHC is held to be not valid. (AY. 1983-84 to 1985-86)
CIT v. Harrisons Malayalam Ltd. (2019) 416 ITR 509 (Ker.)(HC)

1654 **S. 154 : Rectification of mistake – Relief for income-tax – Arrears or advance of salary – Failure to claim in return–Rectification order passed by the AO is held to be without jurisdiction. [S. 89(1)]**
Assessee, employee of a bank, received subsistence allowance from bank for a period he was placed on suspension in view of a order of Court setting aside suspension of assessee. AO held that assessee was entitled to relief under S. 89(1) in respect of subsistence allowance received by it which was affirmed by the CIT(A). The AO, thereafter, initiated proceedings u/s. 154 on ground that assessee had not claimed any relief under section 89(1) in the return of income and thus, the order passed by authority needed to be rectified by withdrawing benefit allowed under S. 89(1) of the Act. The said notice was challenged by filing writ petition. Allowing the petition the Court held that the order passed by the AO and affirmed by CIT(A) had attained finality and became binding. Accordingly, the proceedings u/s. 154 is held to be bad in law. Accordingly the petition filed is allowed, the show cause notice dt. 9-5-2017 and the subsequent order dt. 1-8-2017 are quashed and it is directed that the petitioner is entitled to and shall be paid his dues mentioned in order dt. 5-12-2014 by the Income-tax Department within two months with allowable interest.
Gurmeet Singh Vilkhu v. PCIT (2019) 263 Taxman 636 / 307 CTR 799 / 176 DTR 105 (MP)(HC)

1655 **S. 154 : Rectification of mistake – Amount received as rent by assessee who was not owner of properties – Rent passed on to owners – Tribunal holding assessee was not liable to deduct tax at source on such rents – Plausible View – Rectification proceedings holding assessee liable to deduct tax at Source – Not justified.**
Court held that the Assessing Officer did not dispute the fact that the assessee passed on the rent collected to the respective owners. The tax deducted at source at the time of such passing on of rental income was also deposited by the assessee. Further, the owners did disclose the rental income in their returns. Thus on the one hand, there was credit of tax deducted at source and on the other hand there was debit of tax paid on behalf of the owners. There was no occasion to invoke S. 154 of the Act, since the issue was a debatable one. The decision of the CIT(A) as affirmed by the Tribunal took a plausible view which deserved to be upheld. (AY. 1995-96 to 2009-10)
Gopal Das Estates and Housing Pvt. Ltd. v. CIT (2019) 412 ITR 489 / 263 Taxman 8 / 176 DTR 193 (Delhi)(HC)

S. 154 : Rectification of mistake – Deduction at source – Interest other than interest on securities – Merger – Order of Commissioner (Appeals) stood merged with order of Tribunal, and further with subsequent orders of High Court and Supreme Court; hence, there did not remain or survive any jurisdiction with Commissioner to seek any rectification or correction in his earlier order – Rectification order was quashed [S. 194A, 201(1), 201(IA), 250] 1656

CIT(A) passed order that NOIDA being an industrial development authority, was eligible to benefit of S. 194A(3)(iii)(f). Accordingly, he opined that petitioner – bank was entitled in law not to make deduction of TDS on interest payment made to NOIDA. That issue was specifically carried in appeal by Revenue to Tribunal and Tribunal, after specifically examining the issue, held that assessee was not liable under S. 201(1) and 201(1A) of the Act. Revenue's appeal before High Court and Supreme Court were dismissed. CIT(A) thereafter passed rectification order treating the asssessee in default. On writ allowing the petition the Court held that order of CIT(A) stood merged with order of Tribunal, and further with subsequent orders of High Court and Supreme Court; hence, there did not remain or survive any jurisdiction with Commissioner to seek any rectification or correction in his earlier order.

Canara Bank v. CIT(A) (2019) 261 Taxman 204 / 180 DTR 106 / 310 CTR 126 (All.)(HC)

S. 154 : Rectification of mistake – Failure to consider the Judgment of High Court or Supreme Court – Mistake apparent from record – Can be subject matter of rectification though the claim is not made during original assessment proceedings or appellate proceedings. 1657

Failure to consider the Judgment of High Court or Supreme Court is a mistake apparent from record which can be subject matter of rectification though the claim is not made during original assessment proceedings or appellate proceedings. (AY. 2013-2014)

Dy. CIT v. Sharda Cropchem Ltd. (2019) 178 DTR 83/ 71 ITR 141 / 199 TTJ 960 (Mum.) (Trib.)

S. 154 : Rectification of mistake – When issues were debatable one, where more than one opinion was possible, no adjustment under section 143(1)(a) is permissible. [S. 143(1)(a)] 1658

Tribunal held that while considering scope of S. 154 for making prima facie adjustment while processing return under S. 143(1)(a), whenever any debatable issue was involved and an explanation of assessee was required, then on such issue, no prima facie adjustment in an ex-parte proceedings could be made. (AY. 2015-16)

City Manager Association v. ACIT (2019) 74 ITR 57 (SN) (Ahd.)(Trib.)

S. 154 : Rectification of mistake – Reassessment – After conclusion of reassessment proceedings addition cannot be made by taking aid of explanation 3 to S. 147. [S. 147, 148] 1659

Assessment which was completed u/s. 143(1) was reopened u/s. 148 and disallowed the travelling expenses. Subsequently the AO issued the notice u/s. 154 /155 of the Act and made addition in respect of difference of closing stock. Order of the AO is affirmed by CIT(A). On appeal the Tribunal held that the AO cannot, after conclusion of proceedings

u/s. 147, take aid of Explanation 3 to S. 147 to make any addition u/s. 154. If the Dept's argument is accepted that u/s. 154 the AO is empowered to deal with escapement of income even after the S. 147 assessment is completed, it would empower the AO to go on making one addition after the other by taking shelter of Explanation 3 to S. 147 endlessly. Such a course is not permissible. (AY. 2007-08)
JDC Traders Pvt. Ltd. v. DCIT (2019) 184 DTR 377 (Delhi)(Trib.), www.itatonline.org

1660 **S. 154 : Rectification of mistake – Expenditure incurred on issue of bonus shares – Allowable as revenue expenditure – Non-consideration of a decision of jurisdictional court or of the Supreme Court was a mistake apparent from the record and therefore liable to be rectified. [S. 35D, 37(1)]**
During the year, assessee had claimed expenditure u/s. 35D of the Act being one-fifth of expenditure incurred on account of issue of bonus shares. The AO following decision of Hon'ble Supreme Court in the case of *Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798 (SC)* disallowed the said expenditure by treating it as capital expenditure. The assessee contested other additions/disallowance before the appellate authority and accepted the disallowance of expenditure u/s. 35D made by the AO. While the AO was giving effect to the order of Ld. CIT(A), the assessee moved rectification application u/s. 154 of the Act by submitting that the expenditure on bonus shares was fully allowable as revenue expenditure in view of decision of Hon'ble Bombay High Court in *CIT v. WMI Cranes Ltd. (2010) 326 ITR 523 (Bom.)(HC)* as well as decision of Hon'ble Supreme Court in *CIT v. General Insurance Corporation (2006) 286 ITR 232 (SC)*. The AO as well as the first appellate authority denied the assessee claim by stating that assessee had accepted the said disallowance by not raising any ground of appeal before the appellate authority and therefore there was no mistake apparent from record either in original assessment order or in order giving appeal effect. On appeal, Tribunal relying on the decision of Hon'ble Supreme Court in *ACIT v. Saurashtra Kutch Stock Exchange Ltd. (2008) 305 ITR 227 (SC)* held that non-consideration of a decision of the jurisdictional court or the Supreme Court could be termed as 'mistake apparent from the record' and can be subject matter of rectification u/s. 154 of the Act, notwithstanding the fact that the same was not claimed by the assessee during the original assessment as well as appellate proceedings. It is further held that, it is trite law that true income was to be assessed and the Revenue cannot derive the benefit out of the assessee's ignorance or procedural defect. Further, on merits, Tribunal held that the expenditure incurred on account of issuance of bonus shares would be revenue in nature and hence fully allowable u/s. 37(1) of the Act. (AY. 2012-13)
Sharda Cropchem Ltd v. DCIT (2019) 71 ITR 141 / 178 DTR 83 / 199 TTJ 960 (Mum.)(Trib.)

1661 **S. 158BB : Block assessment – Computation – Undisclosed income Estimation of profits can be made on the basis of both, material recovered in the search as well as the material available with the AO – Appeal of the revenue is partly allowed.**
While carrying out block assessment, the AO is entitled to proceed on the basis of his best judgment and can make estimations for the period. However, he must restrict himself to the aspects which have a direct correlation with the materials, transactions etc. discovered during the search. In carrying out the estimation exercise, he may refer

to the material found out during the search as well as the material available with him. The AO can also refer to the balance sheet obtained from the bank pursuant to enquiry conducted after the search. Appeal of the revenue is partly allowed. (BP. 1990-91 to 2-03-2000) (dt. 1-10-2019)
CIT v. Orma Marble Palace (P) Ltd. (2019) 177 DTR 350 / 308 CTR 584 / 110 taxmann.com 186 (Ker.)(HC)
Editorial : SLP of the assessee is dismissed Orma Marble Palace (P) Ltd. v. CIT (2019) 267 Taxman 436 (SC)

S. 158BC : Block assessment – Undisclosed income – Telescoped – Tribunal remanding the order is held to be erroneous – Addition made by the AO is held to be valid. [S. 132, 254(1)] 1662
Allowing the appeal of the revenue the Court held that there was no duplication of assessment, as could be seen from the order of the Assessing Officer. The issue of fixed deposit receipts found in two banks, in bogus names was telescoped and the AO in the subject assessment years had made addition only to the extent of ₹ 27.22 lakhs. This was not liable to be interfered with. The regular assessments made against the assessee for the years 1995-96 and 1996-97 had to be restored. (AY 1995-96, 1996-97)
CIT v. Malayil Bankers (2019) 416 ITR 322 / (2020) 185 DTR 322 (Ker.)(HC)

S. 158BC : Block assessment – Valuation of cost of construction – Valuation report was available before the date of search – No incriminating material was seized during search – Addition is unsustainable. [S. 60, 132] 1663
Allowing the petition the Court held that valuation report was available before the date of search. No incriminating material was seized during search hence addition as undisclosed investment is unsustainable. (BP 1-4-1989 to 31-03-2000)
Babu Manoharan v. CIT (2019) 415 ITR 83 / 266 Taxman 347 / 311 CTR 354 / 183 DTR 17 (Mad.)(HC)

S. 158BC : Block assessment – Undisclosed income – Does not mean entire undisclosed receipts – Tribunal justified in estimating 15% percentage of undisclosed receipts as undisclosed income [S. 158B(b)] 1664
Dismissing the appeal of the revenue the Court held that; the Tribunal after looking into the net profit of the assessee in the different projects, directed 15 per cent of the total undisclosed receipts to be taken as the undisclosed income. No question of law arises.
CIT v. C. Najeeb (2019) 411 ITR 487 / 178 DTR 83 / 309 CTR 77 (Ker.)(HC)

S. 158BD : Block assessment – Undisclosed income of any other person – Separate satisfaction of the AO not necessary when Tribunal had recorded such satisfaction in the case of the searched person. [S. 132 & S. 158BC] 1665
A search took place on the assessee's son wherein certain addition was made in the assessment pursuant to search. On appeal, the Tribunal held that the such addition should have instead been made in the hands of the assessee since the property was held in her name. Proceedings were then initiated under S. 158BD in the hands of the assessee and the addition was made therein. The assessee raised an objection, for the

first time before the CIT(A), that no separate reasons were recorded by the AO while initiating the proceedings against the assessee under S. 158BD. Held that non-recording of reasons by the AO in the proceedings against the assessee not fatal and the same were not required as the Tribunal had already recorded such reasons while adjudicating on the appeal of the assessee's son. Further held that once the issue of non-recording of reasons was not agitated before the AO, the same could not have been agitated for the first time before the CIT(A). (BP. 01.04.1995 to 13.09.2001)
Vijayalakshmi V. (Smt.) v. Dy. CIT (2019) 178 DTR 289 / 107 taxmann.com 450 (Mad.) (HC)

1666 **S. 158BD : Block assessment – Undisclosed income of any other person – To hand over the seized material to the AO of the said person to proceed u/s. 158BC – No substantial question of law. [S. 158BC, 260A]**
Where in the course of search, material is found pertaining to any other person, then in terms of section 158BD, the right course of action is to hand over the seized material to the AO of the said person, who would then proceed to carry out the assessment as per S. 158BC of the Act. Appeal of revenue is dismissed. Question no (b) followed *CIT v. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.)(HC).* As regards depreciation on lease back question is admitted and will be heard along with ITA No. 927 of 2014. (AY. 1996-97 to 1998-99)
PCIT v. HDFC Bank Ltd. (2019) 174 DTR 92 (Bom.)(HC)

1667 **S. 158BE : Block assessment – Time limit – Limitation starts from date of last Panchnama – Search in March 2000 – Panchnama in April 2000 – Assessment order On 24-4-2002 – Not Barred by Limitation. [S. 132, 132(3)]**
Dismissing the appeal of the assessee the Court held that the proceedings commenced on March 16, 2000. There were a number of documents seized on that day which definitely would have taken up the entire day on which the search was conducted. The seizure had to be made on a cursory verification and a prima facie satisfaction being entered into of the need to seize them. A panchnama was drawn up and the other documents which the authorised officer wished to examine were placed in an almirah and it was issued with a restraint order under S. 132(3). The seizure made of the documents which had been issued with a restraint order u/s. 132(3) could not be said to be the last panchnama. The last panchnama was drawn up on April 4, 2000. The assessment order passed on April 24, 2002 was not barred by limitation.
K. V. Padmanabhan v. ACIT (2019) 412 ITR 55 / 177 DTR 262 / 308 CTR 724 / 265 Taxman 36 (Mag.) (Ker.)(HC)

1668 **S. 158BFA : Block assessment – Penalty – Limitation – Pursuant to supreme Court's order deciding quantum appeal in favour of revenue – Dormant penalty proceedings were reinitiated – Order is not barred by limitation – Order of Tribunal has merged with the order of the Supreme Court. [S. 158BFA(3)(c), 253, 271(1)(c) & 275]**
A search was carried out in case of assessee. Pursuant to search proceedings, block assessment order was passed making certain addition to assessee's income. Penalty proceedings were also initiated separately. Tribunal allowed assessee's appeal and addition made by AO was deleted.

High court affirmed the order of Tribunal. On appeal to Supreme Court, the appeal of revenue was allowed and the addition made by the AO is affirmed. Supreme Court also directed to reinitiate dormant penalty proceedings. Assessee filed appeal contending that since penalty proceedings were initiated after expiry of prescribed period of six months from Tribunal's order, same were barred by limitation under section 158BFA(3)(c) of the Act. Court held that appellate order passed by Tribunal got merged in order passed by Supreme Court dt. 2-05-2008 (*CIT v. S. Ajit Kunar (2018) 404 ITR 526 (SC)* and, thus, dormant penalty proceedings which were reinitiated in pursuance of Supreme Court's order, could not be regarded as barred by limitation. (BP. 1-4-1996 to 17-07-2002)
S. Ajit Kumar v. ACIT (2019) 419 ITR 260 / 266 Taxman 380 / 184 DTR 449 (Mad.)(HC)

S. 158BFA : Block assessment – Penalty – Legal representative – No proceedings for penalty for concealment of income was initiated against person prior to his death – Penalty cannot be imposed on legal representatives. [S. 158BC, 159, 271(1)(c)] 1669
The Tribunal held that merely because the legal representative withdrew the appeal pending before the Tribunal against the quantum addition, after the expiry of the assessee, and the legal representative was not in a position to explain the source of investment, that could not be a reason for levying penalty under S. 158BFA(2) of the Act. On appeal by the revenue the court while dismissing the appeal held that no penal proceedings had been initiated against the assessee, when he was alive. The assessment had not been done in the hands of the legal representatives and, therefore, S. 159 could not be applied to the legal representative. Penalty could not be levied on the legal representatives under S. 158BFA.
CIT v. Dr. K. C. G. Verghese (Late) (2019) 416 ITR 155 (Mad.)(HC)

S. 158BFA : Block assessment – Penalty – Undisclosed income – Not disclosed in the return – 15% of undisclosed receipt was added as undisclosed income – Penalty is leviable. [S. 158B(b), 158BC] 1670
Court held that the fact of discovery of the details from the premises of the assessee itself postulated a deliberate defiance in complying with the applicable provisions of law. However, penalty could only be with respect to that income, which was not disclosed in the returns or in the return filed under S. 158BC Penalty was imposable. A recomputation of the undisclosed income was warranted. Penalty could be imposed only on the excess amount of undisclosed income over and above the undisclosed income conceded in the returns filed under S. 158BC. Matter remanded for computation.
CIT v. C. Najeeb (2019) 411 ITR 487 / 178 DTR 83 / 309 CTR 77 (Ker.)(HC)

S. 159 : Legal representatives – Assessment – Assessee is not the legal heir of the deceased – Assessment is held to be bad in law. [S. 142(1), Hindu Succession Act, 1956, S. 8, 15] 1671
Deceased assessee i.e. Rathindranath Bhattachrya while he was alive filed return declaring certain taxable income. After his death, a notice under S. 142(1) was issued to Shri A. K. Chakroborty as alleged legal heir of deceased assessee. Subsequently, assessment was made in name of Smt Sumita Bhattacahrya (Das) as legal heir. CIT(A)

deleted the addition on the ground that assessment in the name of Smt Sumita Bhattacahrya (Das) as legal heir is void. On appeal by the revenue Tribunal affirmed the order of CIT(A) and held that, when the assessee is not the legal heir the assessment is void and bad in law. (AY. 2014-15)
ITO v. Rathindranath Bhattacharya (2019) 179 ITD 349 (Kol.)(Trib.)

1672 **S. 160 : Representative assessee – Transparent entities – When an assessee is a representative assessee of a tax transparent entity, it is the status of beneficiaries or constituents of tax transparent entities which is relevant for the purpose of determining treaty protection – DTAA-India-Netherlands [S. 10(38), 45, Art. 13]**
The assessee is a trustee of ING Emerging Markets Equity Based Funds (INGEMEF) which is registered with the Securities and Exchange Board of India as a sub account of ING Assets Management BV, a registered Foreign Institutional Investor (FII). There is no dispute that INGEMEF is a tax transparent entity, in the sense that while INGEMEF is not taxable in its own right, the constituents of INGEMEF are taxable in respect of their respective shares of earning. The form of its organization is FGR. i.e. Fonds voor Gemene Rekening, which literally means funds for joint account, and this form of organization, under the Dutch law, is in the nature of a contractual arrangement between the investors, fund manager and its custodian. The investors in this case are three entities-namely, ING Institutioneel Emerging Equity Market Fund (INGIEEMF, in short) with a participation share of 53.86%; Nationale-Nederlanden Levensverzekering Maatschappij NV (NNLNV, in short) with a participation share of 19.66% and ING Beleggingfondsen Paraplu N.V. (INGBPNV, in short) with the participation share of 26.48%. These three investors thus account for 100% of INGEMEF ownership. The funds so held by INGEMEF are invested through the custodian, i.e. the assessee who is legal owner of the investments on behalf of the investors, made on the advice of the fund manager ING Asset Management BV (INGAMBV, in short). The AO denied the benefit of exemption of DTAA, which was affirmed by CIT(A).
On appeal, Ground before the Tribunal is "Whether the On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals erred in upholding the action of the Deputy Director of Income Tax (IT) in denying the benefit of Article 13 of the India-Netherlands Double Taxation Avoidance Agreement ("DTAA") and consequently, taxing the capital gains amounting to ₹ 23,38,08,365/- as per the Income Tax Act, 1961."
The Tribunal considering the provisions of the DTAA held that when an assessee is a representative assessee of a tax transparent entity, it is the status of beneficiaries or constituents of tax transparent entities which is relevant for the purpose of determining treaty protection. Accordingly the capital gains is not table in India and entitled to the benefit of DTAA. (Linklaters LLP 9 ITR (Trib) 217 (Mum) followed). (A.Y. 2007-08)
ING Bewaar Maatschappiji BV v. DCIT (2019) 184 DTR 321 (Mum.)(Trib.), www.itatonline.org

S. 179 : Private company – Liability of directors – Recovery of tax – Attachment and sale of immovable property – Limitation – Final order under S. 143(3) and not Intimation u/s. 143(1) – Not barred by limitation. [S. 226, Sch. II, R. 68B, Art. 226] 1673
Dismissing the petition the Court held that after S. 143(1) acknowledgment, the regular assessment took place under S. 143(3). The scrutiny assessment under S. 143(3) was challenged before the CIT(A). In the interregnum, i.e., between the acknowledgment under S. 143(1) and passing of the scrutiny assessment under S. 143(3), to protect the interests of the Revenue, the attachment order was passed. Against the final order of assessment under S. 143(3) an appeal was preferred by the assessee before the CIT(A), which was dismissed and, as on date, an appeal was pending before the Appellate Tribunal. In such circumstances, it could not be said that the order had become conclusive. The period of limitation would be reckoned only from the date the order becomes conclusive. The order was not barred by limitation. (AY. 2010-11)
Gauravbhai Hargovindhai v. TRO (2019) 419 ITR 227 / 267 Taxman 305 (Guj.)(HC)

S. 179 : Private company – Liability of directors – Alternative remedy is available by way of revision – Writ petition is dismissed. [S. 264, Art. 226] 1674
Petitioner was a director of company A& G Projects Technologies Ltd. AO issued show cause notice to the petitioner as joint and severally liable qua the income tax liability of the Company. In Writ, the petitioner contended that he has resigned from the company as a director prior to commencement of assessment proceedings. The revenue contended that the petitioner has the alternative remedy u/s. 264 of the Act hence the writ is not maintainable. Court held that as the alternative remedy is available the petitioner was directed to avail the alternate remedy by way of a statutory revision under S. 264 of the Act (Referred *Collector of Central Excise Chandan v. Dunlop India Ltd. 1984 taxmann.com 492 (SC), United Bank of India v. Satyawati Tondon (2010) 8 SCC 110, Authorised Officer State Bank of Travancore v. Mathew K.C. (2018) 89 taxmann.com 429 (SC))* (WP No. 23222 of 2019 dt. 8-8-2019 (SJ) (AY. 1999-2000 to 2006-07)
B. Muralidhar v. DCIT (2019) 267 Taxman 35 (Mad.)(HC)

S. 179 : Private company – Liability of directors – There was nothing on record to suggest that tax dues could not be recovered from company and same could be attributed to any gross neglect, misfeasance or breach of duty on part of assessee in relation to affairs of company, impugned recovery proceedings deserved to be quashed. [Art. 226] 1675
Assessee was a director of the company. For relevant year, Assessing Officer completed assessment in case of said company giving rise to certain tax demand. During pendency of appellate proceedings, AO issued a notice to assessee under S. 179 seeking to recover tax dues of company. The assessee raised a plea that there was nothing on record to suggest that tax dues could not be recovered from the company and same could be attributed to any gross neglect, misfeasance or breach of duty on part of assessee in relation to affairs of company. AO rejected the application of the assessee. On writ the Court held that in order to apply provisions of sub-section (1) of S. 179, first requirement is that tax dues cannot be recovered from private company and even in such a case, it is open for concerned director to prove that such non-recovery cannot be

attributed to any gross negligence, misfeasance or breach of duty on his part in relation to affairs of company, since aforesaid requirements were not satisfied in assessee's case, impugned order passed by AO was set aside. (AY. 2015-16)
Vanraj V. Shah v. DCIT (2019) 266 Taxman 137 / 181 DTR 5 (Bom.)(HC)

1676 **S. 188A : Firm – Joint and several liability of partners – Stay – C.I.T.(Appeals) granted stay by depositing 20 per cent of demand by installments – AO invoked S. 188A and issued notice to him to deposit tax – Proceedings against partner was stayed. [S. 226]**
Allowing the petition the Court held that; when the CIT(A) granted stay by depositing 20 per cent of demand by installments the firm is complying the directions. Action of the AO invoking S. 188A and issuing the notice to partner to deposit tax is held to be not valid. Proceedings against partner was stayed, matter remanded. (AY. 2015-16)
Mukesh Kumar Prabhatbhai Desai v. ITO (2019) 260 Taxman 343 (Guj.)(HC)

1677 **S. 192 : Deduction at source – Salary – 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. [S. 15]**
Allowing the appeal of the revenue the Court held that ; the salary in question was not directly received by the congregation or religion by overriding diversion of title, but were paid by the State to the teachers who were nuns or missionaries. Hence there was no diversion of income by overriding title. That an old circular issued on January 24, 1944, much prior to independence of the country in the year 1947 and much prior to the coming into force of the 1961 Act, and that too vaguely worded and too narrowly worded to cover only the "fees" received by missionaries and subsequently made over to the society, did not have any effect on the controversy. The 1977 circular, though in the subject caption referring to "taxes on salaries", in the body of the circular, only talks of "fees or earnings" in the hands of the missionaries and referring to the old circular of January 24, 1944, again reiterated that the same would not be taxable in the hands of the missionaries, as there was an overriding title to such fees which would entitle the missionaries to exemption from payment of Income-tax. It did not, in so many words discuss the salary received by nuns and missionaries as teachers to be exempt from payment of Income-tax under the 1961 Act. The old circulars themselves had been overridden and clarified by the subsequent circulars of February 26, 2016 and April 7, 2016, in which the Board had clearly stated that these old circulars would not cover the case of salary and pension payable to such nuns or missionaries working as teachers. That tax had to be deducted at source on the salaries.
By the court : The State Government as a payer of salary under the Income-tax Act is not bound by any religious tenets or provisions of canon law. It has nothing to do with the religious freedom as guaranteed under articles 25 and 26 of the Constitution of India. The State Government could not be said to be bound to pay such salary in favour of the church or diocese in place of teachers concerned who may be nuns or missionaries and who may even leave and come out of such religious order on their own volition. On the other hand, the State authorities, if they did not deduct tax at source on such salary payments, might be held guilty of not following the provisions

of the Income-tax Act rendering them liable to pay penalty and even face prosecution. Therefore, neither the Income-tax Department nor the State Government had anything to do with the religious character of the institution, may be teachers or nuns or missionaries and therefore, they could not take a stand for not making the tax deduction at source in view of the canon law.

UOI v. The Society of Mary Immaculate (2019) 412 ITR 545 / 262 Taxman 496 / 308 CTR 423 / 177 DTR 60 (Mad.)(HC)

Editorial : Decision of single judge is reversed. WPNo. 37565 to 37567 of 2015 dt. 22-12-2016.

S. 192 : Deduction at source – Salary – Hospital – Consultant Doctors are not employees – Not liable to deduct tax at source as salary – Payments for call centre expenses – Tax deductible at source under S. 194C – Services of Managers of another organisation utilised – Reimbursement of expenses – Not liable to deduct tax at source. [S. 194C, 194J, 201(1), 201(IA)] 1678

Dismissing the appeal of the revenue the Court held that there existed no relationship of employer and employee between the assessee and the consultant doctors employed in the hospital. Hence the provisions of section 192 were not applicable. Followed *CIT (TDS) v. Grant Medical Foundation (Ruby Hall Clinic) (2015) 375 ITR 49 (Bom.)(HC).* Payments made to HTMT/HGS Ltd., towards call centre expenses for providing the customer information pertaining to the hospital and fixing appointments, Tribunal is justified in holding that tax was correctly deducted at source under S. 194C. Service charges paid for supplying the drugs correctly deducted the tax at source u/s. 194C.. Reimbursement of expenses of services of Managers of another organisation utilised, not liable to deduct tax at source.

PCIT (TDS) v. National Health And Education Society (2019) 412 ITR 404 / 262 Taxman 240 (Bom.)(HC)

S. 194A : Deduction at source – Interest other than interest on securities – Branches of Bank – Deduction of tax at source – Jurisdiction of Assessing Officer – Branches of bank were spread over many districts, Assessing Officer (TDS) of district, where in Head Office was situated, had no jurisdiction in respect of branches spread over other districts. [S. 133A, 201, 260A] 1679

The assessee is a Regional Rural Bank having Head Office in district of Hubbali and had more than 451 branches over 9 districts of Karnataka. Out of 451 branches 118 were situated in Hubbali. A survey conducted under S. 133A at the premises of assessee to ascertain as to whether there had been compliance of S. 194A relating to credit payment of interest made in excess of ₹ 10,000. The AO found that the assessee bank had failed to comply with the provisions of the Act and had not deducted tax at source(TDS). Hence, the bank was held to be an assessee-in-default. The assessment orders came to be passed by the AO TDS, Ward I, Hubbali under S. 201(1) relating to all 451 branches. CIT(A) affirmed the order of the AO. The Tribunal held that in the teeth of S. 194A, the income credited or interest paid in respect of term deposit by the bank would be computed with reference to the income credited or paid by the branch of banking company. It was also held that each and every branch was recognized as a separate

assessee responsible for TDS under section 194A and the Assessing Officer had taken the composite amount of interest paid or credited by all branches of the assessee bank and, therefore, the Assessing Officer had exceeded its jurisdiction insofar as order which touched the interest paid by the branches which were situated beyond the jurisdiction of the Assessing Officer. On remand, the Commissioner (Appeals) held that all branches had their own Drawing and Disbursing Officer (DDOs) and each DDO had separate TAN number. It was further held that ITO-TDS, Ward-1, Hubbali had jurisdiction over 118 branches only. On further appeal, the Tribunal relying on the direction issued by the co-ordinate bench of the Tribunal in the order passed in ITA Nos. 1172 to 1175/ Bang/2015 on 25-5-2016 relating to same assessee restricted the order under S. 201(1) to only 118 branches only. On the revenue's appeal to the High Court, the finding of the co-ordinate Bench of the Tribunal had not been challenged by the revenue which was related to same assessee and as such it cannot be re-agitated. The Tribunal has rightly dismissed the appeals. (AY. 2008-09, 2011-12)
CIT v. Karnataka Vikas Grameen Bank (2019) 266 Taxman 78 (Karn.)(HC)

1680 **S. 194B : Deduction at source – Winning from lottery – Lucky draw price coupons – Gratuitous distribution without any price being paid by customers – Not lottery – Not liable to deduct tax at source. [S. 2(24)(ix), 115BB]**
The assessee had made purchases of cloth from a shop. He won one Kg. of gold in lucky draw. He was issued 600 grams of gold coins and balance was deducted under S. 194B being 40 per cent of the prize money. The 1 Kg. of gold coins was valued at ₹ 4.29 lakh and total tax deducted at source including surcharge was ₹ 1.89 lakh on the impugned amount. The AO held that the tax had been rightly deducted at source by the Trust authorities. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that The term 'lottery' is required to be construed without the aid of Explanation. The Explanation was added with effect from 1-4-2002. Explanation is neither retrospective nor merely clarificatory in this case. The term 'lottery' is widened to bring within the ambit also price won without any contribution for participation. In other words the Explanation, added with effect from 1-4-2002, is not applicable to this appeal which relates to assessment year 2000-2001. Accordingly the essential ingredients of 'lottery' as it stood prior to the insertion of Explanation to S. 2(24)(ix) is absent in the facts and circumstances of the case and the same cannot be taxed as a 'lottery'. Hence, the order of the CIT(A) is reversed. (AY. 2000-01)
Rajmohan V.V. Kumbalappalli v. ITO (2019) 179 ITD 288 (Cochin)(Trib.)

1681 **S. 194B : Deduction at source – Winning from lottery – Cross word puzzle – stake money – Money paid to horse owners for winning races The position of TDS on 'stake money' has not changed even after amendment in S. 194B of the Act by Finance Act, 2001 and the position prior to amendment continues to prevail, i.e. stake money is not liable to deduct tax at source either under S. 194BB or under S. 194B of the Act – Recipients have shown the income received from the assessee and paid the taxes – Assessee cannot be treated as an assessee in default – Interest levied is set aside. [S. 194BB, 201(1), 201(IA)]**
The Tribunal held that the 'stake money' will not be taxable as TDS under S. 194B or S. 194BB of the Act. When a specific provision, S. 194BB, has been provided for dealing

with the horse races, general provision, S. 194B, cannot be used to affix liability on the assessee. (CBDT Circular No. 8 of 2005 dt 29-08-2005 (2005) 277 ITR 20 (St)) It held that horse racing is a "skill-based game" and not a "luck-based game" and hence, S. 194 BB will not be applicable to the 'stake money'. Stake money is different from 'winnings' under S. 194BB and is not taxable under it (CBDT Circular No. 240 dt. 17.05.1978 (2017) 117 ITR 17(St)). The recipients have already paid the tax and filed return showing the same. Assessee cannot be treated as an assessee in default accordingly the interest levied is set-aside. (Followed the decision in *U.P. State Electricity Board and Anr. v. Harishankar Jain and Ors. (AIR 1979 SC 65)*; *LIC v. D.J. Bahadur and Ors. AIR 1980 SC 2181)*; *Dr. K.R. Lakshmanan v. State of Tamil Nadu (1996) 2 SCC 226*; *Bangalore Turf Club Ltd. v. UOI (2014) 52 taxman.com 290 (Karn.)(HC)*; *Madras Club v. DCIT ITA No. 646-657 / Mds / 2015* and *Hyderabad Race Club ITA No. 319 / 323 / Hyd / 2015, Hindustan Coca-Cola Beverages (P) Ltd. v. CIT (2007) 293 ITR 226 (SC)*. (AY. 2012-13)
Royal Western India Turf Club Ltd. v. ACIT (2019) 201 TTJ 871 / 178 ITD 18 / 73 ITR 670 / 184 DTR 393 (Mum.)(Trib.)

S. 194C : Deduction at source – Contractors – Placement fees/carriage fees – work contract and not fees for technical service [S. 194J] 1682
The question before the High Court was "Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the placement fees/carriage fees paid to cable operators/MSO/DTH Operators are payments for work contract covered u/s. 194C and not fees for technical service u/s. 194J, without appreciating that the service received by the assessee are technical in nature? Following the order in *CIT v. UTV Entertainment Television Ltd (2017) 399 ITR 443 (Bom.)(HC),* decided in favour of the assessee. (Arising out of ITA No. 669/Mum/2012 dt. 17/03/2015) (ITA No. 399 of 2016 dt. 14/08/2018) (AY. 2008-09, 2009-10)
CIT v. Times Global Broadcasting Co. Ltd. (2019) 105 taxman.com 313 / 263 Taxman 466(Bom)(HC)
Editorial: SLP of revenue is dismissed, CIT v. Times Global Broadcasting Co. Ltd. (2019) 263 Taxman 465 (SC) / (SLP No. 6242 of 2019)(2019) 412 ITR 41 (St.)(SC)

S. 194C : Deduction at source – Contractors advertisement services – Principle of natural justice must be followed – Assessing Officer is not justified in deciding that tax should be deducted under Section 194J without giving an opportunity of hearing. [S. 194J, 197, 201(1) 201(IA), Art. 226] 1683
The assessee is an advertising and media agency, engaged in the business of advertising by creative and production work, media planning and incidental activities. The assessee deducted the tax as per S. 194C of the Act. According to the revenue, tax should have been deducted as per S. 194J of the Act as the rate applicable to professional or technical services. The Income-tax Officer (TDS) passed orders u/s. 201(1)/(1A) and held that the assessee had short tax deducted/not deducted tax at source to the tune of ₹ 91.10 crores during the assessment years. On a writ petition to quash the order the Court held that the orders could not survive the test of following the principles of natural justice. The Income-tax Officer (TDS) had collected extensive material, which was attributable to his own research, but never put such material to the assessee for

its comments and most importantly his entire orders were founded on such research material. The orders were not valid. Accordingly the order was quashed. (AY. 2017-18)
TLG India Pvt. Ltd. v. ITO (TDS) (2019) 418 ITR 324 / 267 Taxman 319 / 184 DTR 329 / (2020) 312 CTR 179 (Bom.)(HC)

1684 **S. 194C : Deduction at source – Contractors – Services clerical in nature – Not technical or managerial services – Provisions of S. 194C is applicable and not S. 194J. [S. 194J]**
Dismissing the appeal of the revenue the Court held that where the payment made to services clerical in nature provisions of S. 194C is applicable and not provision of S. 194J of the act.
CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551 / 264 Taxman 296 (Bom.)(HC)

1685 **S. 194C : Deduction at source – Contractors – Placement fees / carriage fees – work contract and not fees for technical service [S. 194J]**
The question before the High Court was "Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the placement fees/carriage fees paid to cable operators/MSO/DTH Operators are payments for work contract covered u/s. 194C and not fees for technical service u/s. 194J, without appreciating that the service received by the assessee are technical in nature?. Following the order in *CIT v. UTV Entertainment Television Ltd. (2017) 399 ITR 443 (Bom.)(HC),* decided in favour of the assessee. (AY. 2009-10)
CIT v. Times Global Broadcasting Co. Ltd. (2019) 105 taxman.com 313 / 263 Taxman 466 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Times Global Broadcasting Co. Ltd. (2019) 263 Taxman 465 (SC)

1686 **S. 194C : Deduction at source – Contractors – Catering services – Rightly deducted the tax at source u/s. 194C and provision of S. 194J is not applicable. [S. 194J]**
Dismissing the appeal of the revenue the Court held that payment to contractor the tax was rightly deducted as contractor and service of cooking did not include any technical service.
CIT v. Saifee Hospital Trust. (2019) 262 Taxman 461 (Bom.)(HC)

1687 **S. 194C : Deduction at source – Contractors – Annual Maintenance Contract in respect of various specialised hospital equipments – Not in nature of fees for technical services – Deduction of tax at source as contractor – Held to be proper. [S. 194J]**
Dismissing the appeal of the revenue the Court held that Annual Maintenance Contract in respect of various specialised hospital equipments is not in the nature of fees for technical services hence deduction of tax at source as contractor is held to be proper. (Followed *CIT v. Grant Medical Foundation (2015) 375 ITR 49 (Bom.)(HC)*)
CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019) 262 Taxman 395 (Bom.)(HC)

1688 **S. 194C : Deduction at source – Contractors – Payments for services rendered towards maintenance of its medical equipments Liable to deduct tax at source u/s. 194C and not under S. 194J of the Act. [S. 194J]**
Dismissing the appeal of the revenue the Court held that, payments made were payments for work contract covered under S. 194C of the Act and the same does not

involve any technical service which would require deduction of tax at source u/s. 194J of the Act. (AY. 2008-09, 2009-10, 2010-11)
CIT v. Saifee Hospital (2019) 262 Taxman 343 (Bom.)(HC)

S. 194C : Deduction at source – Contractors – Composite sales invoice – Matter remanded. [S. 40(a)(ia), 194C(iv)] 1689
Court held that since authorities below had not dealt with exclusionary part in Explanation (iv) to S. 194C of the Act, order was set aside and the matter was to be remanded back for disposal afresh. (AY. 2012-13)
Kramski Stamping & Molding India (P.) Ltd. v. ACIT (2019) 106 taxmann.com 247 / 264 Taxman 26 (Mag.) / 180 DTR 225 (Mad.)(HC)

S. 194C : Deduction at source – Contractors – Finance Act states that it would be applicable from a particular date – Section cannot be applied retrospectively. [S. 40(a)(ia), 194(6), 263] 1690
The assessee made payment of ₹ 5,00,000/-to a transporter for which no tax was deducted as source as it was exempt from TDS. However the AO disallowed the same under section 40(a)(ia) of the Act for non deduction of TDS under section 194C(6). The CIT(A) upheld this disallowance made by the AO. On appeal to the Tribunal, the Tribunal held that the amendment in respect of section 194C(6) has been inserted by Finance Act, 2015 w.e.f. 1.6.2015 wherein TDS was applicable on transporter. There was no reason whatsoever to apply the provisions with a retrospective effect in order to make a disallowance and thereby directed to delete the addition made by AO. (AY. 2011-12)
Oruganti Sowbhagyam v. DCIT (2019) 76 ITR 79 (SN) (Cuttack)(Trib.)

S. 194C : Deduction at source – Contractors – Payment made to farmers for purchase of sugarcane as harvesting charges – Not liable to TDS – No disallowance can be made. [S. 40(a)(ia)] 1691
The assessee paid harvesting charges to the farmers as purchase price of sugarcane without deducing TDS while making payments. The farmers were responsible for harvesting and delivering the cane to the gate of the assessees factory. The AO held that TDS was to be deducted u/s. 194C and disallowed the deduction claimed by the assessee u/s. 40(a)(ia). CIT(A) upheld the action of the AO. The Tribunal held that, payments made by assessee for harvesting and transportation are to be regarded as payments made for purchase of sugarcane & hence provisions of section 194C do not get attracted. (AY. 2011-12)
DCIT v. NSL Sugars (2019) 76 ITR 1 (SN) (Bang.)(Trib.)

S. 194C : Deduction at source – Contractors – Payments to artists – Participation in reality show – Payment made do not fall with in the ambit of S. 194J as professional fees. [S. 194J, 201(1)] 1692
Allowing the appeal of the assessee the Tribunal held that, payments to various artists like singers, musicians etc who participated in reality shows hosted by it as guests or judges, tax was required to be deducted, rightly deducted tax at source under

S. 194C and provision of S. 194J is not applicable Hence ley of interest is not valid. (AY. 2010-11)
Malayalam Communications Ltd. v. ITO (2019) 175 ITD 433 / 199 TTJ 502 / 177 DTR 85 (Cochin)(Trib.)

1693 **S. 194D : Deduction at source – Insurance commission – Tax was rightly deducted on net commission excluding service tax.**
Dismissing the appeal of the revenue the Court held that tax was rightly deducted on net commission excluding service tax.
CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551 / 264 Taxman 296 (Bom.)(HC)

1694 **S. 194H : Deduction at source – Commission or brokerage – Bank credit card payment – Not liable to deduct tax at source – Lounce charges are covered u/s. 194C and not u/s. 194I of the Act. [S. 40(a)(ia), 194I]**
Questions raised before the High court was; "Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the order of the CIT(A) and holding that the amount retained by a bank/credit card agency out of the sale consideration of the tickets booked through credit cards is not covered under the definition of "commission or brokerage" given in the Explanation (i) to section 194H of the Act and the assessee was not liable to deduct tax at source under section 194H in respect of this amount?"
"(b) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the use of lounge premises paid by the assessee were payments for contract of work under S. 194C of the I.T. Act and not in the nature of rent as per section 1941 of the I.T. Act"
Following the ratio in *CIT v. JDS Apparsal Ltd. (2015) 370 ITR 454 (Delhi)(HC)* first question is answered in favour of the assessee. As regards question no (b) Following the *Japan Airlines Company Ltd. (2015) 377 ITR 372 (SC)* has overruled such decision of Delhi High Court. Supreme Court approved the view of Madras High Court in case of *CIT v. Singapore Airlines Ltd. (2013) 358 ITR 237 (Mad)(HC)* (ITA No. 628 of 2018 dt. 23-04 2019) (AY 2009-10)
CIT v. Jet Airways India Ltd. (2019) 180 DTR 115 / (2020) 420 ITR 389 (Bom.)(HC)

1695 **S. 194H : Deduction at source – Commission or brokerage – Guarantee commission paid to bank is not covered under commission or brokerage – Not liable to deduct tax at source. [S. 201(1), 201(IA)]**
Dismissing the appeal of the revenue the Court held that payment of guarantee commission made by assessee to banks was not covered under commission or brokerage as defined under S. 194H of the Act. Followed *CIT v. Larsen & Toubro Ltd (2019) 260 Taxman 271 (Bom.)(HC).*
CIT v. Nimbus Communications Ltd. (2019) 266 Taxman 376 (Bom.)(HC)
Editorial : SLP of revenue is dismissed ; CIT v. Nimbus Communications Ltd. (2019) 266 Taxman 375 (SC)/ 416 ITR 128 (St.)(SC)

S. 194H : Deduction at source – Commission or brokerage – Bank guarantee commission is not in the nature of commission paid to agent, it is bank charges for providing one of banking services – Not liable to deduct tax at source. 1696

Dismissing the appeal of the revenue, the Court held that, Bank guarantee commission is not in the nature of commission paid to agent, it is bank charges for providing one of banking services. Accordingly not liable to deduct tax at source. (AY. 2010-11)

CIT v. Larsen & Toubro Ltd. (2019) 260 Taxman 271 / 307 CTR 464 / 174 DTR 246 (Bom.) (HC)

S. 194H : Deduction at source – Bank guarantee commission – No principal – agent relationship – Not liable deduct tax at source. [S. 2(28A) and 194A(3)(iii)] 1697

The AO held the assessee is liable to deduct tax u/s. 194H on the bank guarantee commission under the new scheme by Notification No. 56/2012 which came into force on 01-01-2013. The Tribunal reversed the lower authorities order, as there is no principal-agent relationship between the bank and the assessee, which is a mandatory condition for invoking the provisions of S. 194H. Further, it noted that the bank guarantee commission partook the character of interest u/s. 2(28A), and the exemption provided u/s. 194A(3)(iii) is available to assessee qua such payment. (AY. 2012-13)

Navnirman Highway Project Pvt. Ltd. v. DCIT (2019) 75 ITR 67 (Delhi)(Trib.)

S. 194H : Deduction at source – Commission or brokerage – SIM distributors – Not liable to deduct tax at source – Roaming charges Process of roaming does not require human intervention and cannot be considered as a technical service – Not liable to deduct tax at source. [S. 194J] 1698

Allowing the appeal of the assessee the Tribunal held that discount extended to pre-paid SIM distributors on transfer of pre-paid SIM cards/talk time is not liable to deduct tax at source. Tribunal also held that process of roaming does not require human intervention and cannot be considered as a technical service hence not liable to deduct tax at source. (AY. 2007-08 to 2013-14)

Vodafone Idea Ltd. v. ACIT (2019) 179 ITD 207 (Chd.)(Trib.)

S. 194IA : Deduction at source – Immoveable property – Purchase through power of attorney holder for Consideration of ₹ 60.12 lakhs – Each co-owners share is less than 50 lakhs – Not liable to deduct tax at source – Addition confirmed by the CIT(A) is deleted. [S. 201(1), 201(IA)] 1699

Assessee Purchased an Immovable Property from Power of Attorney holder of two joint owners of said property for consideration of ₹ 60.12 lakhs. Share of each Co-Owner was ₹ 30.06 lakhs. Assessee deducted one per cent TDS on sale consideration paid by it. AO held that TDS should have been deducted in name of actual owners and not in name of Power of Attorney holder and since the assessee had not mentioned PAN details of joint owners, tax at source was deductible at rate of 20 Per Cent of purchase consideration accordingly created a demand under S. 201(1) along with interest under S. 201(1A) of the Act. The CIT(A) confirmed the addition. On appeal, the Tribunal held that, even though admitted position is that assessee buyer/ transferee had not deducted tax in hands of joint owners of property, still sub-Section(2) of S. 194IA provides an exception

from deducting tax of 1 Per Cent of sale consideration, when sale consideration for transfer of an immovable property is less than ₹ 50 Lakhs. Since consideration for each transferor came to ₹ 30.06 Lakhs each, which was below prescribed limit of ₹ 50 Lakhs given by statute S. 194IA is not applicable and Assessee was not required to deduct tax at source while making payment for said purchase. Accordingly the addition confirmed by the CIT(A) is deleted. (AY. 2016-17)
Oxcia Enterprises (P.) Ltd. v. DCIT (2019) 178 ITD 520 (Jodhpur)(Trib.)

1700 **S. 194J : Deduction at source – Fees for professional or technical services – Tax deducted at source as contractor – Demand is raised for short deduction of tax at source – Order passed without following the principle of natural justice – Order set aside. [S. 194C, 201(1), 201(IA)]**
AO passed the order raising the demand for short deduction of tax at source. The AO relied on the various research material without providing an opportunity of hearing. On writ, the Court held that the AO has to follow the principles of natural justice. The least, that he was expected to do was to share such material with the Petitioner giving an opportunity to rebut the same, if so desired by the Petitioner. By suggesting that the Petitioner is already engaged in the same business and therefore, would be aware about intrinsic nature of services rendered, is begging the question. In plain terms, the impugned orders cannot survive the test of principles of natural justice. In the result, the orders are quashed only on this ground. The Petitioner would have six weeks from today to make a representation along with desired material before the said authority. If the same is done, the Income Tax Officer (TDS) shall take it into consideration before passing final orders (WP No. 1788 of 2019 dt. 29-07-2019) (AY. 2017-18)
TLG India Pvt. Ltd. v. ITO (2019) 184 DTR 331 / (2012) 312 CTR 182 (Bom.)(HC)

1701 **S. 194J : Deduction at source – Fees for professional or technical services – Tax deducted at source as contractor – Demand is raised for short deduction of tax at source – Order passed without following the principle of natural justice – Order set aside. [S. 194C, 201(1), 201(IA)]**
AO passed the order raising the demand for short deduction of tax at source. The AO relied on the various research material without providing an opportunity of hearing. On writ the Court held that the AO has to follow the principles of natural justice. The least that he was expected to do was to share such material with the Petitioner giving an opportunity to rebut the same if so desired by the Petitioner. By suggesting that the Petitioner is already engaged in the same business and therefore would be aware about intrinsic nature services rendered, is begging the question. In plain terms, the impugned orders cannot survive the test of following principles of natural justice. In the result, the orders are quashed only on this ground. The Petitioner would have six weeks from today to make a representation along with desired material before the said authority. If the same is done, the Income Tax Officer (TDS) shall take it into consideration before passing final orders (WP No. 1788 of 2019 dt. 29-07-2019) (AY. 2017-18)
TLG India Pvt. Ltd. v. ITO (2019) 184 DTR 331 / (2012) 312 CTR 182 (Bom.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Payment to doctors – No employer and employee relation ship – Not liable to deduct tax at source as salary. [S. 192] 1702

Dismissing the appeal of the revenue the Court held that the Tribunal rightly held that there did not exist employer-employee relationship between the assessee and full time consultant doctors and the payments made to them by the assessee came in the purview of section 194J. Accordingly, order passed by the Assessing Officer was set aside. (AY. 2011-12)

CIT v. Saifee Hospital Trust. (2019) 262 Taxman 461 (Bom.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Payment to doctors – No employer and employee relation ship – Not liable to deduct tax at source as salary. [S. 192] 1703

Dismissing the appeal of the revenue the Court held that the Tribunal rightly held that there did not exist employer-employee relationship between the assessee and full time consultant doctors and the payments made to them by the assessee came in the purview of section 194J. Accordingly, order passed by the Assessing Officer was set aside.

CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019) 262 Taxman 471 (Bom.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Doctors – Payment to full time consultant doctors would fall within purview of S. 194J as fees for professional services, and not under S. 192 as salary [S. 192] 1704

Dismissing the appeal of the revenue, the court held that payment to full time consultant doctors would fall within purview of S.194J as fees for professional services, and not under S. 192 as salary. (Followed *CIT v. Grant Medical Foundation (2015) 375 ITR 49 (Bom.)(HC))*

CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019) 262 Taxman 395 (Bom.) (HC)

S. 194J : Deduction at source – Fees for professional or technical services – Examinations through various colleges – reimbursement of expenses – Not liable to deduct tax at source. 1705

Dismissing the appeal of the revenue the Court held that reimbursement of expenses of affiliated colleges/centers incurred/various types of expenditure both administrative and procedural in conducting examinations is not liable to deduct tax at source. (AY. 2009-10)

PCIT v. M. P. Biscuits (P.) Ltd. (2019) 260 Taxman 378 (All.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Arbitration charges – Payments to arbitrators is in nature of professional services rendered by legal professionals liable to deduct tax at source. [S. 40(a)(ia)] 1706

Assessee made payments to arbitration without deducting TDS u/s. 194J. Since services of arbitrators were in the nature of court procedure for out of court settlement, TDS was not required to be deducted on the payment made to them. The AO rejected explanation of the assessee to deduct TDS and disallowed same u/s. 40(a)(ia). Tribunal by rejecting the claim of the assessee held that, since amount paid is in nature of professional services rendered by legal professionals involved in profession/occupation/vocation of

arbitration, same is liable to TDS as per provisions of S. 194J. Circular No. 3 of 2015 dt. 12-2 2015) (2015) 371 ITR 359 (St.) (AY. 2012-13)
ACIT v. HAL Offshore Ltd. (2019) 178 ITD 272 / 202 TTJ 308 / (2020) 185 DTR 392 (Delhi) (Trib.)

1707 **S. 195 : Deduction at source – Non-resident – When the payment is not taxable – Not liable to deduct tax at source.**
Dismissing the appeal of the revenue the Court held that, an assessee paying any sum to a non-resident is not liable to deduct tax, if the sum is not chargeable to tax under the Act, as the expression in S. 195(1) of the Act is chargeable under the provisions of the Act. (AY. 2006-07)
PCIT v. Dishman Pharmaceuticals and Chemicals Ltd. (2019) 417 ITR 373 (Guj.)(HC)

1708 **S. 195 : Deduction at source – Non-resident – Royalty – Licence fee for use of software – Liable to deduct tax at source – Levy of interest is valid – DTAA-India-USA. [S. 90, 201(1), 201 (IA), Art. 12(3)]**
Dismissing the appeal the Court held that the Tribunal was right in holding that the assessee ought to have deducted tax at source on the licence fee under S. 195 and deposited to the Treasury, because it constituted royalty under article 12(3) of the Double Taxation Avoidance Agreement between India and U. S. A., and on account of its failure to do so, it was also liable to pay interest thereon under S. 201(1A) of the Act. (AY. 2001-02, 2002-03)
Zylog Systems Ltd. v. ITO (2019) 415 ITR 311 / (2020) 185 DTR 319 (Mad.)(HC)

1709 **S. 195 : Deduction at source – Non-resident – Royalties and fee for technical services – Banking services – Foreign bank – Rendering financial services in order to raise capital abroad through issuance of Global Depository Receipts ('GDRs') – Not liable to tax in India as fee for technical services – Not liable to deduct tax at source – Article 12 of OECD Model Convention. [S. 9(1)(i), 9(1) (vii)]**
Assessee was a scheduled bank engaged in banking business duly registered under Banking Regulation Act. For its need for capital, assessee bank decided to raise capital abroad through issuance of Global Depository Receipts ('GDRs'). Assessee had engaged one Amas Bank which was incorporated under laws of United Arab Emirates and was carrying on financial services, for providing services such as Global coordinator and Lead Manager to said GDR offer. AO held that payments made to Amas bank were liable to tax in India as fee for technical services. Tribunal held that services rendered by Amas Bank were purely of a commercial nature and bore character of income arising to it wholly outside India, emanating from commercial services rendered by Bank in course of carrying on of its business wholly outside India. Tribunal further held that such services were neither rendered in India nor utilized in India and therefore, payments for services so rendered did not partake character of fees for technical services. Accordingly the addition was deleted. On appeal High Court up held the order of the Tribunal.
CIT (IT) v. Indusind Bank Ltd. (2019) 415 ITR 115 / 264 Taxman 190 / 179 DTR 18 / 311 CTR 858 (Bom.)(HC)

S. 195 : Deduction at source – Non-resident – Deputation – Contract between assessee manpower provider and Kuwait based company – Employee was deputed in Kuwaiti company who was under employment of assessee – assessee was not required to deduct tax at source. [S. 9(1)(vii), 40(a)(ia)] 1710

Dismissing the appeal of the revenue the Court held that as per manpower supply contract, assessee manpower provider supplied commissioning engineer to Kuwait based company. Kuwaiti company paid deputation charges of US $ 5500 per month to assessee and assessee paid US $ 4000 per month to employee. While Kuwait based company would enjoy considerable supervising powers over said employee as long as employee was working for it, neverthless, assessee-company continued to enjoy employer-employee relationship with said employee. Court held that assessee-company was not required to deduct tax in respect of payment of remuneration made to deputed employee.

PCIT v. Supriya Suhas Joshi (Smt.) (2019) 106 taxmann.com 57 / 264 Taxman 25 (Mag) / 182 DTR 109 (Bom.)(HC)

S. 195 : Deduction at source – Non-resident – Income deemed to accrue or arise in India – Royalty – Doctrine of treaty override – DTAA-India-Singapore. [S. 9(1)(vi), Art. 12] 1711

The Grievance of the revenue is the learned CIT(A) erred in holding that the assessee did not have tax withholding obligation in respect of payments of 'bandwidth services' to Reliance Jio Infocomm Pte Ltd, Singapore. The question raised in the grounds of appeal is "Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in holding that tax was not required to be deducted at source on the payment made by the assessee to Reliance Jio Infocomm Pte Limited, Singapore (RJIPL) for availing bandwidth services as it did not amount to income of the payee by way of royalty U/s. 9(1)(vi) of the IT Act, 1961 read with Article 12 of India-Singapore DTAA?" Honourable Tribunal explained entire law on whether the retrospective amendments to the definition of "royalty" in s. 9(1)(vi) of the Act can have bearing on the interpretation of the same term in the DTAAs explained with reference to the doctrine of "treaty override" and the Vienna Convention (*CIT v. Siemens Aktiongessellschaft (2009) 310 ITR 320 (Bom.)(HC)* explained). Appeal of revenue is dismissed. (AY. 2018-19)

ACIT v. Reliance Jio Infocomm Ltd. (2019) 184 DTR 139 / (2020) 77 ITR 578 (Mum.)(Trib.) www.itatonline.org

S. 195 : Deduction at source – Non-resident – Other sums – Payment for purchase of software was in the nature of business income, in the absence of PE, tax was not required to be deducted on such payments. [S. 37, 92] 1712

The foreign AE purchased software on behalf of the assessee and the license fee was reimbursed by the assessee to the AE. The AO held that the payment was in the nature of royalty and tax was required to be deducted, in the absence of which, the expenditure was to be disallowed under section 40. Held that the payment was in the nature of business income and since the AE did not have a PE in India, its income was not taxable and accordingly tax was not deductible at source. In any event, the payment was only a reimbursement of cost and there was no income element, therefore the question of deducting tax at source does not arise.

Assessee entered into an agreement with a third party manufacturer who was required to carry out manufacturing on behalf of the assessee. In consideration for the same, the assessee was liable to pay certain minimum conversion charges and if the actual charges were in excess, the assessee required to make good the short-fall. For the relevant previous year, there was an alleged short-fall, however, the same was in dispute between the parties. Such dispute was settled in the subsequent years when the actual payment required to be made crystallized. Held that in view of the dispute in this year, the deduction for the expenditure could not be granted in this year. The same would be granted only in the subsequent year in which the dispute was settled and the payable amount had crystallized.

The assessee had two segments. Under one segment, it sold active pharmaceutical ingredients/bulk drugs to the AE, which were further processed by the AE before selling the final product to the customer. Under the second segment, the assessee directly manufactured and sold formulations, which were in the nature of final products, to the end customers. Held that the nature of product manufactured in the two segments was different. Also, the risk undertaken in the two segments was different in so far as there was limited risk in the AE sales, as compared to full fledged risk in the third party sales. Accordingly, the two segments were not comparable. (AY. 2005-06)

Organon (India) Ltd. v. Addl. CIT (2019) 179 DTR 1 / 200 TTJ 635 (Kol.)(Trib.)

1713 **S. 195 : Deduction at source – Non-resident – Other sums – remittance – in nature of reimbursement of cost – Necessary documents to be examined – restored to AO for de novo adjudication. [S. 195(2)]**

Assessee entered into a cost sharing agreement with its German AE, as per which assessee was required to remit a certain sum, to its foreign counterpart, towards reimbursement of common cost allocated to assessee. The Assessee submitted that remittance to Foreign concern was in nature of reimbursement of cost and it was not an income chargeable to tax in India in hands of recipient and it made applications u/s. 195(2) seeking permission for remitting amount in question without deducting TDS. The Assessing Officer had rejected the said applications filed by the assessee on the ground that services rendered by Foreign AE to whom remittances were to be made are in the nature of fees for technical services and directed assessee to deduct TDS @10% on remittances on gross basis. The Tribunal held the AO's order to be cryptic and further held that all necessary and relevant documents including cost sharing agreement, auditor's report as well as other additional evidences filed by assessee needs to be properly analysed and examined. Therefore, the issues raised was restored to AO for de novo adjudication. (AY. 2014-15)

BASF India Ltd. v. Dy. CIT (IT) (2019) 174 DTR 16 / 197 TTJ 724 (Mum.)(Trib.)

1714 **S. 197 : Deduction at source – Certificate for lower rate – Quasi judicial – Must be supported by valid and cogent reasons – Orders passed by a statutory authority under "dictation" of a superior officer or anyone else is bad in law. [R. 28AA]**

Court held that an order u/s. 197 is quasi-judicial & must be supported by valid & cogent reasoning. It has to be based on objective criteria and relevant material. On facts, there is arbitrariness and non-application of mind at various levels which

vitiates the certificate. The reasons do not conform to the requirement of s. 197 r. w. Rule 28AA. The settled legal position is that orders passed by a statutory authority under "dictation" of a superior officer or anyone else is bad in law. The Court directed the AO for issuance of a lower withholding certificate under Section 197(1) of the Act afresh in accordance with law. (W.P.(C) 7744/2019 and CM APPL. 32145/2019 (stay), dt. 29.07.2019). (AY. 2019-20)
Bently Nevada LLC v. ITO (2019) 267 Taxnan 333 / 183 DTR 257 / 311 CTR 677 (Delhi) (HC), www.itatonline.org

S. 197 : Deduction at source – Certificate for lower rate – Alternative remedy – Revision would be futile / academic in nature – Writ is maintainable. [S. 201(1), 201(IA), 264, Art. 226] 1715
Allowing the petition the Court held that, certificates dated 10-9-2019 being primarily based upon the order dt. 9-09 2019 passed u/s. 201(1), 201(IA) of the Act is required to be set aside as a consequence of having set aside the order dated 9-09-2019. Court also held that revision, if filed against the said certificates, would be futile/academic in nature as the basis of the certificates dt. 10-09-2019 has already been set aside. Accordingly the certificates and order are set aside. (AY. 2017-18,2018-19, 2019-20). (WP No. 2574 of 2019 dt. 18-11-2019)
TLG India (P) Ltd. v. Dy. CIT (2019) 184 DTR 345 (Bom.)(HC)

S. 197 : Deduction at source – Certificate for lower rate – Capital gains – Sale of shares by non-resident – Rejection of application on ground that transaction of sale of shares was not genuine – Rejection of application is held to be not Justified – Substance over form – piercing the corporate veil – DTAA-India-Mauritius. [S. 9(1)(i), 90, 195 Art. 13] 1716
The assessee, a Mauritius based company, had made a sizable investment in an Indian non-banking financial company of which the assessee was a majority stakeholder. At the appropriate time, when the share prices were high, the assessee decided to book its profits in part. A portion of the shareholding was off-loaded. This gave rise to a net gain to the tune of about ₹ 800 crores. The assessee filed an application under S. 197. The Assistant Commissioner carried out detailed inquiry in relation to such application of the assessee. He called upon the assessee to provide several documents which the assessee did. At the end of the inquiry, the said authority passed an order rejecting the application of the assessee for certificate under S. 197 of the Act on the ground that the entire transaction was not genuine. On writ, the Court held that the mere fact that the assessee-company had not transacted any other business by itself may not be conclusive. The observation that mere transfer of money through banking channels would not be conclusive, may be correct but it could not be a ground against the assessee unless there was adverse material. The extent of administrative expenditure and the employment structure may be some of the factors which eventually would go to establish whether the transaction was sham and the very existence of the assessee was fraudulent, but by themselves they were not sufficient. The order dated June 20, 2018 passed under S. 197 of the Act had to be quashed. The Revenue may invoke the "substance over

form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the transaction is a sham or tax avoidant. After balancing the equities, the court directed the respondents to release the withheld payment subject to adjustment in the assessment.
Indostar Capital v. ACIT (2019) 415 ITR 513 / 178 DTR 161 / 309 CTR 202 / 265 Taxman 59 (Bom.)(HC)

1717 **S. 199 : Deduction at source – Credit for tax deducted – Mismatch of TDS figures – Failure of deductor to upload the correct details in form No 26A – Benefit of tax deducted at source should be given to the assessee on the basis of evidence produced before the revenue authorities. [S. 205, Form 26A]**
In the assessment proceedings the revenue objected to assessee's claim of Tax Deducted at Source from payments made on ground that there was mis-match in TDS certificate issued by deductors and aggregate amounts arrived at as appearing in Form 26-A. On appeal, Tribunal held that though in case, deductor failed to upload correct details in Form 26-A, benefit of TDS should be given to assessee on basis of evidence produced before Department. Accordingly Tribunal directed the AO to verify correct facts and give credit of TDS to assessee. Tribunal relied on *Yashpal Sahni v. Rekha Hajarnvis, Asstt CIT (2007) 165 Taxman 44 / 293 ITR 539 / 211 CTR 1 (Bom.)(HC).* On appeal by the Revenue High Court dismissed the appeal of the revenue. (Arising out of ITA No. 852 & 853/Mum/2014 dt. 29.07.2015) (ITA No. 1745 & 1746 of 2016, dt. 22.01.2019) (AY. 2010-11, 2011-12)
PCIT v. Tata Communications Ltd. (2019) 267 Taxman 498 / 111 taxmann.com 258 (Bom.) (HC)
Editorial : SLP of revenue is dismissed; PCIT v. Tata Communications Ltd. (2019) 267 Taxman 497 (SC) / 417 ITR 58 (St.)(SC)

1718 **S. 199 : Deduction at source – Credit for tax deducted – Property sold – rent passed on the respective owner – on such passing TDS also deducted by assessee – Held, credit of TDS deducted by original tenant can be claimed by the assessee.**
Assessee had received certain rent and TDS was deducted on the same in respect of property let out. Such properties were sold and the respective rent was passed on to the owners. On such passing TDS was deducted by the assessee and deposited with the Government. The original TDS deducted by the tenants was claimed as credit by the assessee. The High Court held that such credit can be taken by the assessee. (AY. 1995-96 to 2009-10) (ITA No. 210 of 2003 dt. 20.03.2019)
CIT v. Gopal Das Estates & Housing (P) Ltd. (2019) 308 CTR 201 (Delhi)(HC)

1719 **S. 199 : Deduction at source – Credit to tax deducted – Point in time Credit in the year in which income is assessable – TDS credit is allowed. [R. 37BA]**
Assessee is engaged in the business of providing software. It raised invoice on Ashoka Leyland, Chennai in March 2011. Ashoka Leyland deposited the tax in April 2011 (succeeding financial year). The A.O. denied the credit by applying Rule 37BA(1) of the Income Tax Rules, 1962. The assessee submitted that benefits of tax deducted at

source (TDS) should be allowed in the year in which the corresponding income is recorded. The Tribunal considered rule 37BA, that grants TDS credit to a person, to whom payment is made, or credit has been given, based on information furnished by the deductor. There is no denial to the TDS by Ashok Leyland. Rule 37BA(3) provides for the "point of time" at which the benefit of TDS is granted. It equivocally provides for credit on tax deducted at source in the year in which income is assessable. Applying the rule, it allowed the TDS credit. (AY. 2011-12)
Mahesh Software Systems P. Ltd. v. ACIT (2019) 75 ITR 100 / 112 taxmann.com 354 (Pune)(Trib.)

S. 200A : Processing of statements of tax deducted at source – Clause (c) inserted in section 200A with effect from 1-6-2015, is prospective in nature – Appeal of the assessee is allowed. [S. 234E] 1720
The AO, while processing the TDS returns/statement issued intimation to the assessee under section 200A and levied late filing fee under S. 234E. The assessee filed appeal before the CIT(A) which was dismissed. Tribunal held that clause (c) inserted in S. 200A with effect from 1-6-2015, is prospective in nature and, therefore, no computation of late fee for demand or intimation for late fee under S. 234E could be made for TDS deducted for respective assessment years prior to 1-6-2015. Appeal of the assessee is allowed. (AY. 2013-14 to 2015-16)
Station Headquarters (Army) v. ACIT (2019) 178 ITD 211 (Jodhpur)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Natural justice violated – The order of revenue must speak for itself and cannot be improved upon by an affidavit – in-reply filed by assessee, its not permitted – Orders of revenue were set aside – Matter restored to revenue for fresh disposal of show cause notice after following principles of natural justice i.e. due consideration of assessee submission by speaking order. [S. 40(a)(ia), 194C, 194J, 197, 201(1), 201(IA), Art. 226] 1721
Assessee, advertising agency, recovers amount from its clients and makes payment to media owners for advertisement of its clients, on its media. While making payment, Assessee's clients deduct tax at source u/s. 194C and assessee again deducts tax at source u/s. 194C while making payment to media owners. Show-cause notices were issued as to why it should not be treated as assessee in default u/s. 201(1) and 201(1A) for failure to deduct tax on payments u/s. 194J and failure to deduct tax on provisions for expenses, which was disallowed u/s. 40(a)(ia) of the Act. Assessee filed the reply, however the AO held that assessee in default u/s. 201(1) and 201(1A) of the Act. On writ, the Court held that when assessee filed representation in respect of proceedings u/s. 201 and 201(1A), revenue was in undue haste passed an order determining huge sums payable by assessee for failure to appropriately deduct tax. This entire exercise was done in undue haste as Revenue was obliged to issue tax deduction certificate u/s. 197. It was only on determination of assessee's tax liability, could revenue reduce amount of tax to be deducted by assessee's customers while making payment. Court held that the entire proceedings leading to orders were vitiated for breach of natural justice. Orders of revenue were set aside. The Court also observed that the order of revenue must speak for itself and cannot be improved upon by an affidavit-in-reply filed by

assessee, its not permitted. Matter restored to revenue for fresh disposal of show cause notice after following principles of natural justice i.e. due consideration of assessee submission by speaking order. (AY. 2017-18, 2018-19, 2019-20)
TIG India Pvt. Ltd. v. DCIT (2019) 184 DTR 349 / (2020) 312 CTR 199 (Bom.)(HC)

1722 **S. 201 : Deduction at source – Failure to deduct or pay – ₹ 10 Million US Dollars in escrow account – TDS liability – Notices issued under S. 201 and 201(1A) would stand stayed during pendency of proceedings. [S. 195, 201(1), 201(IA)]**
Court held that in view of fact that assessee had kept a sum of ₹ 10 Million US Dollars in escrow account which would be, by and large sufficient to meet with its TDS requirement, if ultimately so arose, notices issued to assessee under S. 201 and 201(1A) would stand stayed during pendency of proceedings. The writ petition was posted for hearing on 14-06-2019.
Business Process Outsourcing, LLC v. AAR (2019) 264 Taxman 59 (Bom.)(HC)

1723 **S. 201 : Deduction at source – Failure to deduct or pay – Time limit for passing order – Amendment by Finance Act, 2014 is only procedural – Order has been passed within seven years – Order within limitation. [S. 2(22)(e), 194, 201(3)]**
The AO observed that the loan granted to the shareholder would be deemed dividend u/s. 2(22)(e). The AO issued notice u/s. 201/201(1A) for alleged default in non-deduction of tax and interest for payments made to shareholder. The AO passed an order dated 17-10-2016 holding 'assessee-in-default' for having failed to deducted tax at source as obliged u/s. 194.
Under the pre-amended law, the order u/s. 201/ 201(1A) should be passed with 6 years, post-amendment by the Finance (No 2) Act, 2014 with effect from 1-10-2014 the limitation was changed to 7 years. In the facts of the case, under pre-amended law, the order ought to be passed on 31.03.2016, on the other hand, post-amended law the order ought to be passed on 31.03.2017.
Aggrieved by the order, the assessee challenged the same before the CIT(A) on the ground that the proceedings u/s. 201/ 201(1A) are barred by limitation, as it is passed beyond six years from the end of the relevant financial year. The CIT(A) held that the pre-amended law would apply and hence the order was barred by limitation. Tribunal reversed the order of the CIT(A).
The Tribunal held that the law on limitation stipulated in section 201(3) could not be considered as substantial law but procedural law. In the case of procedural law, the amendment provisions would apply. The show-cause notice was issued within six years from the time of default was committed as well as continuing. Accordingly, the AO can press upon the amended provisions as the cause of action was continuing and was subsisting. The assessee would have no rights to claim immunity from the applicability of S. 201(1) for alleged default where the order has been passed within seven years. In the facts of the case, the last date of passing the order was 31-03-2017, thus within limitation. (AY. 2010-11)
ITO (TDS) v. Shri Rang Infrastructure (P.) Ltd. (2019) 75 ITR 104 / (2020) 180 ITD 680 (Ahd.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Limitation – Increased limitation of seven years with effect from 1-04-2014 shall not apply retrospectively – Order is barred by limitation. [S. 201(1), 201(IA)] 1724

Allowing the appeal of the assessee the Tribunal held that, increased limitation of seven years under S. 201(3) as amended by Finance (No. 2) Act, 2014, with effect from 1-4-2014 shall not apply retrospectively to orders which has already become time barred under old time limitation of two years as set out by unamended S. 201(3)(i) and, hence, no order under S. 201(1)/201(1A) deeming tax deductor to be assessee-in-default can be passed, if limitation has already expired as on 1-10-2014. Accordingly order is barred by limitation. (AY. 2010-11, 2011-12)

Sodexo SVC India (P.) Ltd. v. DCIT (2019) 72 ITR 132 / 178 ITD 39 (Mum.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Non-residents – Limitation period prescribed in sub-section (3) of section 201 would be equally applicable in respect of non-residents – Order held to be in valid. [S. 40(a)(ia), 195, 201(3)] 1725

The assessee company is engaged in the business of generation, purchase, transmission and distribution of electricity. The assessee had made a remittances to certain foreign parties without deduction of any tax at source. AO treated the assessee in default and passed the order u/s. 201(1) and 201(IA of the Act. CIT(A) confirmed the disallowance. The assessee challenged the order passed by the CIT(A) on the grounds viz. that, the order passed by the ITO(IT) – TDS, Range-2, Mumbai was beyond the period specified in the proviso to S. 201(3) Act and therefore, the same was barred by limitation. Tribunal quashed the order on the ground that limitation period prescribed in sub-section (3) of section 201 would be equally applicable in respect of non-residents. The Tribunal also held that the revenue had not taken any action against the payee viz. Entec U.K Ltd for non deduction of tax at source and also the time limit for taking such action against them u/s 148 had expired, therefore, the order against the payer assessee under S. 201(1) & 201(IA) read with S. 195 dt. 31-10-2013 would be in valid. Accordingly the order passed ITO (TDS) is also struck down. (AY. 2007-08)

Tata Power Co. Ltd. v. ITO(IT) (2019) 179 ITD 779 (Mum.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Airline – Not liable to deduct tax at source for passenger service fee collected by it from passengers and handed over to airport authorities and the amounts retained by banks from the passengers for booking tickets to fly in the aircrafts operated by the Assessee. [S. 194H, 194J, 201(1), 201(IA)] 1726

Dismissing the appeal of the revenue the Tribunal held that Assessee, an airline company, is not liable to deduct tax at source u/s. 194J of the Act for passenger service fee collected by it from passengers and handed over to airport authorities and also for amounts retained by banks from the passengers for booking tickets to fly in the aircrafts operated by the Assessee. (AY. 2012-13)

ACIT v. Spice Jet Ltd. (2019) 71 ITR 56 (Delhi)(Trib.)

1727 **S. 201 : Deduction at source – Failure to deduct or pay – Bona fide estimate – Cannot be held to be assessee – in default – Payments made to employees towards death cum retirement gratuity, pension or leave salary would not be liable for TDS to extent permitted under provisions. [S. 10(10), 10(10AA)]**

AO denied exemption under S. 10(10), 10(10A) and 10(10AA) to assessee – University on ground that Income-tax Act clearly distinguishes an University from State Government and, thus, assessee could not be treated as part of Government and employees of University did not fall under category of Government employees. Tribunal held that University was created by State Government to discharge one of its sovereign function of imparting higher education in State and State Government exercised direct control over financial and administrative matters of University and since employees of assessee were found to be holding civil posts under State Government, provisions of S. 10(10)(i), 10(10A) and 10(10AA) were fully attracted and, consequently, payments made by assessee to its employees towards death cum retirement gratuity, pension or leave salary would not be liable for TDS to extent permitted under provisions of S. 10(10)(i), 10(10A) and 10(10AA) of the Act. (AY. 2106-17, 2017 18)

ITO(TDS) v. Mahatma Gandhi University, (2019) 177 ITD 508 / 73 ITR 508 (Cochin)(Trib.)

1728 **S. 201 : Deduction at source – Failure to deduct or pay – Order passed after six years from expiry of financial year 2005-06 relevant to impugned assessment year – Held to be barred by limitation. [S. 195(2), 201(1), 201(IA)]**

AO initiated proceedings under S. 201 by issuing a notice on 28-3-2013 for not deducting tax at source and passed an order under S. 201(1) treating assessee as an assessee in default for having not deducted tax at source under S. 195(1) on 27-3-2015. Tribunal held that order passed after six years from expiry of financial year 2005-06 relevant to impugned assessment year, were barred by limitation. (AY. 2006-07)

Aditya Birla Nuvo Ltd. v. ITO (2019) 177 ITD 434 (Mum.)(Trib.)

1729 **S. 201 : Deduction at source – Failure to deduct or pay – Non-Resident – Royalty – Payment for purchase of copyrighted software Not royalty – DTAA override the provisions of the Act – Lease Line Charges – Reimbursement of Expenses – Training availed of by employees of assessee Web based services available on internet – No technical knowledge imparted by service provider – No transfer of technology – Not fees for technical Services – Not liable to deduct tax at source – DTAA-India-USA. [S. 9(1)(vi), 9(1)(vii), 195 201(1), 201(IA), Art. 12(b)]**

Tribunal held that the software purchased by the assessee being a copyrighted article, payment therefore, was not covered by the term "royalty" under S. 9(1)(vi). Where the assessee did not acquire any copyright in the software, the payment was not covered under Explanation 2 to S. 9(1)(vi). The amended definition of "royalty" under the domestic law could not be extended to the definition of "royalty" under the Agreement, where the term "royalty" originally defined had not been amended. In terms of the definition of "royalty" under the Agreement, it was payment received in consideration for use or right to use any copyright of literary, artistic or scientific work, etc. Thus, purchase of copyrighted article did not fall in realm of royalty. Since the provisions of the Agreement would override the provisions of the Act and were more beneficial and the definition

of "royalty" having not undergone any amendment in the Agreement, the assessee was not liable to deduct tax for payments made for purchase of software. The assessee could not be held to be in default. Payment made to Lease Line charges and reimbursement of expenses are not liable to deduct tax at source. Training availed of by employees of assessee Web based services available on internet is not technical knowledge imparted by service provider, hence no transfer of technology, hence not fees for technical Services, accordingly not liable to deduct tax at source. (AY. 2007-08, 2008-09)
John Deere India P. Ltd. v. DIT (2019) 70 ITR 73 / 199 TTJ 281 (Pune)(Trib.)

S. 201 : Deduction at source – Shortfall in deposit of TDS – Adjusted against the excess deposit in earlier years – No interest u/s. 201(1A) – Net result after adjustment is excess deposit of TDS by assessee. [S. 201(IA), 245] 1730
Assessee made *adhoc* payment of TDS on estimated basis. On finalization of bills of the contractors and sub-contractors, the actual TDS liability was determined. Thus, there was shortfall in payment of TDS for some years and excess deposit for some years. The AO did not adjust the excess deposit against the shortfall and raised the demand including interest u/s. 201(1A) of the Act. The Tribunal held that the stand taken by revenue was contrary to the communication issued by the CPC (TDS) which stated that excess deposit of TDS can be adjusted against the shortfall. The Tribunal further relied on S. 245 of the Act and held that the assessee was entitled for adjustment of the excess deposit of TDS made in earlier year against the TDS payable for subsequent years and directed the AO to recompute the amount payable/refundable to the assessee.
Steel Authority of India Ltd. v. DCIT (TDS) (2019) 69 ITR 88 (SN) (Kol.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Date of tendering of cheque for payment of Government dues could be deemed to be date of payment of tax – Delay in remittance of said amount to Government account by Bank, no interest can be levied. [S. 201(IA)] 1731
Tribunal held that for purpose of levy of interest under S. 201(1A) for late deposit of TDS, date of tendering of cheque for payment of Government dues could be deemed to be date of payment of tax and, where bank causes delay in remittance of said amount to Government account, no interest can be levied u/s. 201(1A) from assessee. Followed *CIT v. K. Kalpana Saraswathi v. P.S.S. Somasundram Chettiar 1980 AIR 512 (SC)* CBDT Circular No. 261 [F. No. 385/61/79-IT (B)], dated 8-8-1979, date of tendering of cheque for payment of Government dues would be deemed to be the date of payment of such taxes. The aforesaid CBDT circular was applicable to all Government dues, and made no distinction whether the payment was by way of TDS, advance tax, self-assessment tax etc. (AY. 2008-09)
Oil and Natural Gas Corporation Ltd. v. DCIT (2019) 176 ITD 124 / 197 TTJ 137 (Mum.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Bona fide belief that as employees of State Government and were entitled to exemption of entire sum of unutilised leave encashment – Failure to deduct tax at source – Cannot be treated as assessee in default. [S. 10(10AA(ii), 192, 201(1), 201(IA)] 1732
Tribunal held that the assessee was under bona fide belief that its employees were to be regarded as employees of State Government and were entitled to exemption of entire

sum of unutilised leave encashment under S. 10(10AA)(ii) of the Act. Failure to deduct tax at source was under bonfide belief hence, proceedings under S. 201(1) and 201(1A) of the Act was quashed. (AY. 2013-14, 2015-16)
Karnataka Power Transmission Corporation Ltd. v. ITO (TDS) (2019) 70 ITR 352 / 175 ITD 504 / 198 TTJ 470 / 175 DTR 313 / 199 TTJ 377 / 177 DTR 256 (Bang.)(Trib.)

1733 **S. 201 : Deduction at source – Failure to deduct or pay – Limitation – Cross objection – Non-residents – Additional grounds – Royalty – Fee for technical services – In cases of payments made to non-residents, an order passed after one year from the end of the financial year in which the proceedings were initiated is void ab initio and liable to be quashed. [S. 9(1)(vi), 9(1)(vii), 201(1), 201(3), 201(4), 253(5), 254(1)]**
Appellate Tribunal admitted additional grounds on limitation. Referred *Special Bench Mahindra & Mahindra Ltd v. Dy. CIT (2009) 122 TTJ 577 / (2010) 122 ITD 216 (SB) (Mum.) (Trib)* affirmed in *DIT(IT) v. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom.)(HC).* The AO passed the order dt. 6-2-2014, where as the order should have been passed on or before 31-03-2013 i.e. with in one year from the end of the financial year in which proceedings u/s. 201 are initiated. Tribunal held that since, the order is beyond the period of limitation the same is void ab initio and subsequent proceedings arising there form are vitiated. The departmental representative argued that the time limit specified in S. 201(3) & 201(4) for passing orders does not apply to cases, where payments are made to non-residents. Allowing the appeal and additional grounds the Tribunal held that in cases of payments made to non-residents also an order passed after one year from the end of the financial year in which the proceedings were initiated is void ab initio and liable to be quashed. As the order passed by the AO u/s. 201(1) and 201(IA) is held to be void-ab initio, the subsequent proceedings arising there from are vitiated and the appeals of the revenue are dismissed. (AY 2008-09, 2009-10, 2010-11)
Atlas Copco (India) Ltd. v. DCIT (2019) 202 TTJ 395 / 184 DTR 73 (Pune)(Trib.), www.itatonline.org

1734 **S. 205 : Deduction at source – Credit for tax deduction at source – Bar against direct demand – No recovery from the assessee for default committed by the deductor to deposit the tax deducted amount with the Government Treasury – Garnishee proceedings was quashed and directed the revenue to refund the amount recovered from the assessee. [S. 199, 226(3)]**
Allowing the petition the Court held that it is always open for the department and in fact the Act contains sufficient provisions to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers. Garnishee proceedings was quashed and directed the revenue to refund the amount recovered from the assessee. Followed *Yashpal Sahani v. Rekha Hajarnvis (2007) 293 ITR 539 (Bom.)(HC)* (AY. 2006-17)
Pushkar Prabhat Chandra Jain v. UOI (2019) 176 DTR 99 / 262 Taxman 118 / 309 CTR 218 (Bom.)(HC)

S. 206C : Collection at source – Trading – Forest produce – Bidi-Processing – Contractors are liable to pay TCS on purchasing such tendu leaves from State forest department and they were not eligible for benefit of exemption under S. 206C(1A) of the Act. S. 271CA, Maharashtra Forest Produce (Regulation of Trade) Act, 1969 and the Maharashtra Forest Produce (Regulation of Trade in Tendu Leaves) Rules, 1969. S. 4(1)] 1735
Assessee association was engaged in manufacturing of bidi. Assessee had appointed agents/contractors who after purchasing tendu leaves from State forest department and after carrying out activities of drying, sprinkling of waters, sorting and screening of leaves, bundling it, etc., supplied same to assessee for manufacturing of bidis. Assessee filed writ petition stating that there contractors of tendu leaves were entitled to exemption under S. 206C(1) while purchasing tendu leaves from State forest department. Dismissing the petition the Court held that processing of tendu leaves would qualify as trading or sale, but not as manufacturing thus, contractors were liable to pay TCS on purchasing such tendu leaves from State forest department and they were not eligible for benefit of exemption under S. 206C(1A) of the Act. Petition was dismissed.
Gondia Beedi Leaves Contractors Association v. UOI (2019) 267 Taxman 528 (Bom.)(HC)

S. 206C : Collection of tax at source – Failure to collect tax at source Limitation – No limitation is prescribed – Reasonable period of limitation of four years from end of financial year in question was to be followed – order is quashed. [S. 201(3), 206C(6A)] 1736
During the year, the assessee sold 'scarp' to various parties on which tax was not collected at source as contemplated u/s. 206C(1). The AO treated the assessee as in default u/s. 206C(6A) in respect of failure to collect tax. Tribunal held that, the limitation prescribed under one provision of the Act cannot be applied straightway to some other provisions of the Act. The legislature, in its wisdom, inserted sub-section (3) under section 201 by the Finance (No. 2) Act, 2009 w.e.f. 2001 proposing time limit for passing orders u/s. 201 with reference to tax deduction at source. However, no limitation provision has been enacted with regard to tax collection at source as provided in s. 206C and in the absence of statutory time limit prescribed for passing order with reference to collection of tax, the reasonable time limit is followed to be four years from the end of the financial year for passing the order u/s. 206C. Order of the AO is quashed. (AY. 2009-10)
Adani Enterprise Ltd. v. DCIT (2019) 178 ITD 373 (Ahd.)(Trib.)

S. 206C : Collection of tax at source – Sale of scrap – Tax cannot be collected at source on those items which are capable of being used as such without any modification. [S. 206(1)] 1737
The AO observed that, assessee failed to collect tax at source on certain items at time of sale of scrap arising on dismantling of ships and hence he passed an order u/s. 206C(1) directing assessee to collect tax at source along with interest.
Tribunal held that, tax was not required to be collected at source on those items which could be used as such without modification. Items sold which were capable of being used as such without any modification would fall outside purview of Explanation (b) to S. 206C. (AY. 2008-09)
ACIT v. Bansal Ship Breakers (P.) Ltd. (2019) 178 ITD 473 (Ahd.)(Trib.)

1738 **S. 206C : Collection at source – Scrap – Ship breaking – Declaration from buyer that he is purchasing goods for reuse in manufacturing process or producing article or things – Tax not required to be collected. [S. 206C(7), 206(IA)]**
Dismissing the appeal of the revenue the Tribunal held that the assessee had submitted declaration before Assessing Officer from the buyer stating that he is purchasing goods for reuse in manufacturing process or producing article or things hence tax not required to be collected. (AY. 2014-15)
ACIT (OSD) v. Bansal Ship Breakers (P.) Ltd. (2019) 176 ITD 319 (Ahd.)(Trib.)

1739 **S. 215 : Interest payable by assessee – Non-deposit of advance tax in respect of consideration received by non resident – Not liable to pay interest.**
Dismissing the appeal of the revenue the Court held that, non-deposit of advance tax in respect of consideration received by non resident is not liable to pay interest.
CIT v. Shanghai Electric Group Co. Ltd. (2019) 103 taxmann.com 376 / 262 Taxman 206 (Delhi)(HC)
Editorial : SLP of revenue is received, CIT v. Shanghai Electric Group Co. Ltd. (2019) 262 Taxman 205 (SC)

1740 **S. 215 : Interest payable by assessee – Advance tax – Non deposit of amount by non-resident assessee – Levy was held to be not valid – No question of law. [S. 260A]**
Dismissing the appeal of the revenue the Court held that, the Tribunal has followed the decisions of jurisdictional High Court in *DIT v. Jacabs Civil Incorporated (2001) 330 ITR 578 (Delhi)(HC)*, *DIT v. GE Packaged Power (2015) 373 ITR 65 (Delhi) (HC)* and *CIT v. ZTE Corporation (2017) 392 ITR 80 (Delhi))* and also referred *CIT(IT) v. Shanghai Group Co. Ltd.* (ITA Nos 409-410 of 2018 dt. 9-4-2018. Accordingly for non deposit of amount of advance tax by non-resident assessee, the interest was held to be not applicable.
CIT(IT) v. Shanghai Electric Group Co. Ltd. (2019) 103 taxmann.com 112 / 262 Taxman 26 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, CIT (IT) v. Shanghai Electric Group Co. Ltd. (2019) 262 Taxman 25 (SC)

1741 **S. 220 : Collection and recovery – Assessee deemed in default – Natural justice – Stay – Recovery – When an opportunity of personal audience is requested the law requires due consideration – Rejection of application without affording an opportunity of hearing is set aside – Directed the AO to pass speaking order after giving an opportunity of hearing. [S. 220(3), Art. 14]**
Allowing the petition the Court held that, S. 220(3) vests discretion with the AO to grant some relief to the assessee who falls with in its parameters. This discretion is to be exercised according to the rules of reasons of justice. It is not a mughal discretion. Principle of natural justice being part of Art. 14 of the constitution are in built in every public power subject to all just exceptions. Accordingly when an opportunity of personal audience is requested the law requires due consideration. Hence rejection of application without affording an opportunity of hearing is set aside. AO is directed to pass speaking order after giving an opportunity of hearing. (AY. 2013-14)
Manjula (Smt.) v. ITO (2019) 178 DTR 361 / 309 CTR 287 (Karn.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Pendency of appeal before CIT(A) – Stay was granted till the disposal of appeal by paying an additional amount of ₹ 1.25 crores. [S. 132, 153A] 1742

Pursuant to search carried out in case of assessee trust, assessments were completed. During pendency of appellate proceedings, assessee filed a stay application before AO. The A.O. disposed of stay application directing assessee to pay 20 per cent of total demand raised. Against the said direction, a writ petition was filed and the Court held that in view of fact that assessee had already paid ₹ 3.75 crore out of total demand of ₹ 59.67 crore, it would be appropriate to direct assessee to pay a further sum of ₹ 1.25 crore and provide one immovable property as a security till disposal of its appeals by appellate authority. (AY. 2011-12 to 2017-18)

Uthangarai Sri Vidya Mandir Educational & Social Welfare Trust v. PCIT (2019) 344 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Pendency of appeal before CIT(A) – Application for stay of recovery can be made before the CIT(A) to stay the demand till disposal of appeal by the CIT(A). [S. 115Q, 220 (6), 246A, 264, Art. 226] 1743

The AO passed an order under S. 115Q read with 115-0 of the Act raising tax demand. The assessee invoked extraordinary jurisdiction of the High Court against the order of the AO and stated that no effective alternative remedy except for filing of revision application under S. 264 of the Act. High Court advised to file an appeal before CIT(A) to decide the maintainability of the appeal. CIT(A) held that the appeal is maintainable. Assesee sought direction from the High Court that revenue should not adopt any coerocive proceedings till the disposal of the appeal by the CIT(A). Allowing the petition the Court held that the application for stay of recovery can be made before the CIT(A) to stay the demand till disposal of appeal by the CIT(A). Court also held that, if the order on such application is adverse to the assessee, then for a period of two weeks thereafter, no coercive proceedings will be adopted by the revenue.

Grasim Industries Ltd. v. Dy. CIT (2019) 267 Taxman 524 (Bom.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Relevant consideration – Conflicting decisions of Tribunal – Complete stay of demand may be granted – Decision of Jurisdictional High Court is binding on the CIT(A) – Stay was granted. [S. 220(6), Art. 226] 1744

Allowing the petition, the Court held that CBDT Circular No. 530 dt. 6th March 1989 (1989) 176 ITR 240 (St), states that stay of demand be granted, where there are conflicting decisions of the High Court. This principle can be extended to the conflicting decisions of the different Benches of the Tribunal. Accordingly, complete stay is warranted. The CIT(A) is bound to follow the decision of jurisdictional High Court and not justified in following the decision of the CIT(A) for earlier year. CIT(A) is directed to early disposal of the appeal. Referred Circular No. 530 dt. 6-3-1989 (1989) 176 ITR 240 (St), Instruction No 1914 (F. No. 404/72/93–ITCC) dt. 2-2-1993,(Feb-04) Income tax Review P. 78, Office Memorandum F. No. 404 /72/93-ITCC dt. 29-2-2016 (2016) 132 DTR 341 (St), Office Memorandum F. No. 404 /72/93-ITCG dt. 31-7-2017 (2017) 154 DTR 37

(St)/ 296 CTR 641 (St), *Mumbai, Metropolitan Region Development Authority v. Dy. CIT (2014) 112 DTR 201 / (2015) 273 CTR 317 (Bom.)(HC), Kee International Ltd v. B. R. Balakrishan (2001) 251 ITR 158 (Bom.)(HC), UTI Mutual Fund v. ITO (2012) 345 ITR 71 (Bom.)(HC), UTI Mutual Fund v. ITO (2013) 260 CTR 56 / 86 DTR 301 (Bom.)(HC)* (AY. 2017-18)

General Insurance Corporation of India v. ACIT (2019) 311 CTR 851 / 267 Taxman 596 / 184 DTR 249 (Bom.)(HC).

Editorial : Also refer Circular no 96 (F.NO 1/6/69-ITC) dt. 21-8-1969 Circular dt. 11-12-1970 – Reg – Assurance Given by the Minister for Revenue and Expenditure on the floor of Lok Sabha on 11-12-1970. (Reproduced in Vikrambhai Punjabhai Plakhiwala v. S.M Ajbanji Recovery Officer and others (1990) 182 ITR 413 (Guj.)(HC) (at 420, 421)

Circular No. 334 dated 3-4-1982 (1982) 135 ITR 10 (st)

Circular No. 530 dated 6-3-1989 (1989) 176 ITR 240 (st)

Circular No. 589 dated 16-1-1991 (1991) 187 ITR 79 (st)

Instruction No. 1944-dt 27-8-1997 Feb 04 Income Tax Review Feb-04. P. 78.

Mumbai Metropoliton Region Development v DDIT (2015) 273 CTR 317 (Bom.)(HC)

Maheshwari Agro Industries v. UOI (2012) 346 ITR 375 (Raj.)(HC)

Flipkart India (P) Ltd. v. ACIT (2017) 396 ITR 551 (Karn.)(HC)

PCIT v. LG Eletronics India Pvt. Ltd. (CANO 6850 of 2018 dt. 20-07-2018 www.itatonline.org

RPG Enterprises Ltd. v. Dy. CIT (2001) 251 ITR AT 20 (30) (Mum.)

Maharashtra Housing & Area Development Authority v. ADIT (E) [2014] 160 TTJ 129 (Mum (Trib.)

1745 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Penalty – Pendency of review petition – Discretion must be exercised judiciously – Rejection of application for stay of recovery of penalty is held to be without application of mind – Not waiting for three days in terms of order passed – Held to be not valid. [S. 220(6), 245, 271(1)(c), Art. 226]**

Allowing the petition the Court held that discretion to grant the stay must be exercised judiciously. Rejection of application for stay of recovery of penalty is held to be without application of mind. Since the AO had started making recovery without giving any time till the application for review filed by the assessee before the PCIT could be heard, the conduct in not waiting for even three days in terms of the order passed by him and making coercive recovery, had created a situation which had compelled the assessee to approach the court for relief. Considering the totality of the facts as emerging from the record, the petition under article 226 of the Constitution of India was maintainable. The assessee was entitled to stay of recovery of the penalty. (AY. 2012-13)

Vodafone India Services P. Ltd. v. UOI (2019) 418 ITR 376 / 310 CTR 298 / 179 DTR 129 (Guj.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Pendency of appeal before CIT(A) and condonation of delay – Offered to pay 10% of tax demand – Court directed the CIT(A) to dispose the application for condonation of delay – Not to recover further tax amount until disposal of applications for condonation of delay. [S. 246A, Art. 226] 1746

Petitioner filed appeals before CIT(A) along with applications for condonation of delay in filing appeals as also for stay on assessment orders. Petitioner, apprehending that respondent authority would go to next step and withdraw entire tax amount from its account already frozen by revenue, filed writ petition seeking direction to CIT(A) to keep all coercive proceedings including freezing of bank accounts of petitioner under abeyance till final disposal of said appeals. Petitioner also offered to deposit 10 percent of tax as demanded in assessment orders. Court directed the petitioner to deposit 10 percent of tax amount within a week whereas revenue should not recover tax amount until disposal condonation of delay application within two weeks from assessee's representation.

Hi Care Gloves (P.) Ltd. v. DCIT (2019) 267 Taxman 42 (Ker.)(HC)

S. 220 : Collection and recovery – Stay of demand – Assessee deemed in default – Order confirmed by CIT(A) – Discretion of revenue to grant stay subject to deposit of specified percentage of disputed Amount – Assessee cannot insist on such percentage – Recovery of amount before expiry of period of limitation prescribed for filing an appeal before the Tribunal is held to be valid. [S. 225, 226, 253(3)] 1747

On Writ by the assessee against the recovery the single Judge held that the AO is not entitled to recover the entire tax which was assessed by him immediately after the order passed by him is confirmed by the CIT(A) without waiting for appeal to the Tribunal, the period for which is statutorily provided under S. 253(3) of the IT Act. Accordingly single judge directed the AO to refund the amount recovered. On appeal reversing the Judgement of single Judge the division Bench held that on assessment order is set aside the refund is not automatic. Amount recovered is directed to be refunded with in four weeks from the date of the order passed by the Tribunal, in the event the appeal is decided in favour of the assessee. Court also held that discretion of revenue to grant stay subject to deposit of specified percentage of disputed amount. Assessee cannot insist on such percentage. Court also held that on the facts, there was no infraction of either the statutory provisions, namely, the amounts having been recovered even prior to the period prescribed for filing the appeal having expired or the Department having recovered in excess of 20 per cent as prescribed under the office memorandum dated July 31, 2017. (AY. 2010-11 to 2013-14) (27-05-2019)

CIT v. Bidar Nirmiti Kendra and Another (2019) 417 ITR 491 / 310 CTR 185 / 266 Taxman 427 (Karn.)(HC)

Editorial : Order of single judge in Bidar Nirmiti Kendra v. CIT (2019) 417 ITR 485/ 310 CTR 220 (Karn.)(HC) is partly set aside.

1748 **S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Pendency of appeal before CIT(A) – Demand of payment of tax is reduced from 20% to 10%. [S. 251, Art. 226]**

AO passed an assessment order raising huge tax demands against assessee towards additions made in respect of bogus unsecured loan received by it and bogus investment in properties made by it. Assessee filed appeals before CIT(A) and approached AO and requested for stay of demand pending such appeals. AO directed the assessee to deposit 20 per cent of disputed tax demand, upon which, recovery of remaining amount would be stayed. Assessee contended that this being a case of high pitched assessment, he should not be asked to deposit his 20 per cent of total amount as it was beyond his financial capacity. Court held that it is inbuilt in circular dated 29-2-2016 itself to either decrease or even increase percentage of disputed tax demand to be deposited for an assessee to enjoy stay pending appeal. Therefore in view of fact that total tax demand was quite high and issues were at first appeal stage and even 20 per cent of tax dues would run into lakhs of rupees, requirement of depositing disputed tax dues to enable assessee to enjoy stay during pendency of appeal before CIT(A) was to be reduced to 10 per cent.

Dalpatsinh Ukabhai Vasava v. PCIT (2019) 266 Taxman 125 (Guj.)(HC)

1749 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Rejection of stay application and directing to pay 20 percent of demand, without application of mind is held to be bad in law. (Art. 226]**

Court held that rejection of stay application for stay on demand and directed assessee to pay 20 per cent of amount demanded by relying wholly on CBDT Instruction No. 1914 dated 2-2-1993, impugned order being passed without application of mind was to be set aside. Directed to pay only 10 per cent of demand. (AY. 2012-13)

Zinzuwadia and Sons v. DCIT (2019) 419 ITR 169 / 265 Taxman 261 / 183 DTR 65 / 311 CTR 297 (Guj.)(HC)

1750 **S. 220 : Collection and recovery – Assessee deemed in default – Pendency of appeal before CIT(A) – Stay of demand – The power of the AO to review the situation every six months, would not authorize him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances. [S. 220(6), 254(2A), Art. 226]**

The AO stayed the recovery proceedings when the appeal was pending before the CIT(A) on payment of 15% of tax in disputes. Thereafter he lifted the stay granted earlier relying the judgment of Supreme Court in *Asian Resurfing of Road Agency v. CBI (AIR 2018 SC 2039)* and directed to pay all pending demands with in seven days. The petitioner approached PCIT. The PCIT also rejected the application for stay. The petitioner filed Writ petition challenging the order of the PCIT & the AO. While passing the adinterim order of stay, the Court held that the the Dept is not right in relying upon the decision of the Supreme Court in *Asian Resurfing of Road Agency Pvt. Ltd. v. CBI (AIR 2018 SC 2039)* to contend that any stay against recovery granted would automatically lapse after six months. This is neither the purport of the judgment of the

Supreme Court, nor the observations made in the said judgment in the context of civil and criminal litigation can be imported in present set of quasi judicial proceedings. The power of the AO to review the situation every six months, would not authorize him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances. By way of ad-interim relief, the impugned orders dated 22.1.2019 and 11.2.2019 are stayed. The respondents are prevented from carrying out any further recoveries pursuant to the order of assessment in respect of the petitioner for assessment year 2013-14. (WP No. 542 of 2019, dt. 28.02.2019) (AY. 2013-14)

Oracle Financial Services Software Ltd. v. DCIT (Bom.)(HC), www.itatonline.org

Editorial : It seems the department has accepted the order of High Court. Accordingly the final order was passed on 4-04 2019 which reads as under "Learned counsel for the petitioner stated that on instructions that the issues in the present petition been resolved. He therefore does not press this petition. Disposed as not pressed. Interim relief, if any, stands vacated."

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Recovery of demand is stayed on deposit of 20% of outstanding demand – Advance tax paid and tax deducted at source while filing the return should also be considered. 1751

AO passed the assessment order making certain additions and raising the demand. Appeal is filed and pending for disposal. Petitioner made an application before the AO to keep recovery of tax in abeyance till disposal of its appeal. AO Officer passed order providing that recovery would be stayed pending appeal, if petitioner deposited 20 per cent of outstanding demand. On writ, the Court held that while considering the outstanding demand, advance tax and TDS deposited by petitioner at time of filing of return should be taken into consideration for said purpose. (AY. 2016-17)

Keva Fragrances (P.) Ltd. v. ACIT (2019) 265 Taxman 20 (Mag.) (Bom.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Recovered 38% of disputed tax amount – No special circumstances pointed out to permit revenue to carry out full recoveries – Pending disposal of appeal further recovery proceedings were stayed. 1752

On writ to stay the recovery proceedings the Court held that, as many as 17 appeals were pending against assessee before the CIT(A) and pending appeal, revenue had recovered approximately 38 per cent of disputed tax amount. It was found that instant Court had more than one year back passed interim order preventing revenue from carrying out further recoveries pending appeal. Departmental circulars also envisage stay pending appeal before Commissioner (Appeals), ordinarily upon deposit of 20 per cent of disputed tax. This requirement had also been fulfilled in instant case. Further, no special circumstances were pointed out to permit revenue to carry out full recoveries. Moreover, some appeals had already been decided by CIT(A) and also by Tribunal, which were in favour of assessee Accordingly pending disposal of remaining appeals, revenue would not be permitted to carry out any further recoveries. (WP No. 443 of 208 dt. 3-06-2019)

Vodafone India Ltd. v. CIT (TDS) (2019) 265 Taxman 98 (Bom.)(HC)

1753 **S. 220 : Collection and recovery – Assessee deemed in default – Assessment order remanded – Levy of interest for period taken for re-computation is valid. [S. 156, 234A, 234B, 234C]**

Dismissing the appeal, the Court held that when the assessment order is remanded levy of interest for period taken for re-computation is valid. Circular No. 334 dated April 3, 1982 (1982) 135 ITR 10 (St) had no application to the facts of the case. (AY. 1991-92)

S. Appaswamy v. DCIT (2019) 416 ITR 42 / 311 CTR 650 / 183 DTR 399 (Mad.)(HC)

1754 **S. 220 : Collection and recovery – Stay – Stay was granted subject to payment specified in the order. [S. 226]**

Court held that the demand relating to the royalty issue alone required to be considered while adjudicating upon the stay application and it could not be enlarged at this stage to include the demand raised on transfer pricing and attribution. Accordingly, the assessee was directed to pay a sum of ₹ 400 crores on or before March 31, 2019. The balance amount of ₹ 75 crores shall be paid in two instalments as follows : (a) ₹ 25 crores on or before April 30, 2019 and ₹ 50 crores on or before May 31, 2019. (AY. 2013-14, 2014-2015)

CIT v. Google India P. Ltd. (2019) 414 ITR 608 / 177 DTR 385 / 310 CTR 497 / (2020) 269 Taxman 183 (Karn.)(HC)

1755 **S. 220 : Collection and recovery – Assessee deemed in default – Wilful evasion of payment of tax – waiver of interest is rejected. [S. 158BC, 220(2A)]**

Assessee filed application for waiver of interest on the ground that since levy on interest was on higher side, it was causing great hardship to him. Commissioner rejected the application. On writ the Court held, that since it was a case of wilful evasion of payment of tax and such wilful evasion could never be said to be due to circumstances beyond control of the assessee.

Accordingly, affirmed the order of the Commissioner. (BP. 1-4-1996 to 2-6-2002)

Mansukhlal Pitalia v. PCIT (2019) 264 Taxman 217 / 181 DTR 248 / 310 CTR 474 (MP) (HC)

1756 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Issue decided in favour of assessee by CIT(A) in other proceedings – Pendency of appeal before CIT(A) – AO cannot pass the order to deposit 20% of tax in dispute – Stay was granted against recovery of demand.**

During the pendency of appeal, the AO demanded 20% of the tax in dispute, though the issue was decided in favour of assessee by CIT(A) in other proceedings. On writ, the Court held that AO cannot pass the order to deposit 20% of tax in dispute and stay was granted against recovery of demand.

ARCIL Retail Loan Portfolio 001-D-Trust v. PCIT (2019) 264 Taxman 61 (Bom.)(HC)

1757 **S. 220 : Collection and recovery – Stay – Appeal pending before CIT(A) – Assessee has given liberty to approach the AO to stay the demand. [S. 220(3), 220(6), 246A]**

Court held that when an appeal is pending before CIT(A), the assessee had the liberty to approach AO by paying 20 per cent of disputed demand and sought stay

of impugned demand by filing an application under S. 220(3) or 220(6) Act. (AY. 2016-17)
Veisa Technologies v. ACIT (2019) 263 Taxman 600 (Mad.)(HC)

S. 220 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – AO cannot proceed mechanically in calling upon assessee to remit 20 per cent of demand without examining appropriateness of facts and circumstances of case – Order was set aside. [S. 132, 153A, 220(6)] 1758
Assessee filed an appeal against assessment order and also filed an application seeking a stay of recovery of disputed demand. AO passed an order under S. 220(6) to pay 20 per cent of disputed demand of tax as a pre-condition for grant of stay of recovery. On writ the Court held that grant of stay is conditional upon satisfaction of three primary aspects, i.e., existence of a prima facie case, financial stringency demonstrated and established by assessee and balance of convenience in matter. Since the AO proceeded mechanically in calling upon assessee to remit 20 per cent of demand without examining appropriateness of facts and circumstances of the case order passed by the AO was set aside. (AY. 2011-12 to 2017-18)
Uthangarai Sri Vidya Mandir Educational and Social Welfare Trust v. ACIT (2019) 263 Taxman 422 (Mad.)(HC)

S. 220 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – 20% of the disputed demand – Consideration is not received cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending in appeal. [S. 220(6)] 1759
Court held that the decision of the authorities to demand payment of 20% of the disputed demand is in consonance with the department's circulars. There are no extra ordinary reasons for imposing condition lighter than one imposed by the authorities. The contention that the assessee received no consideration and no tax could have been demanded from him is subject matter of the Appeal proceedings and cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending appeal. (WP No. 1887 of 2019, dt. 15.07.2019)
Kalpana Ashwin Shah v. ACIT (Bom.)(HC), www.itatonline.org

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Non speaking order – Directing to pay 20 percent of demand during pendency of appeal is set aside. [Art. 226] 1760
Assessee's application for interim stay of recovery of demand was disposed of with a conditional order to pay 20 per cent of tax demand made by Assessing Officer relying wholly on CBDT Instruction No. 1914, dated 21-3-1996. PCIT also confirmed said order without even hearing assessee. Allowing the petition the Court held that, since no speaking order was passed by revenue authorities while directing assessee to deposit 20 per cent of demand amount and impugned order was passed relying wholly on CBDT instruction no. 1914, dated 21-3-1996, impugned order being mechanical and passed without application of mind was to be set aside and matter was to be remanded back for disposal afresh.
Shriram Finance v. PCIT (2019) 262 Taxman 220 (Mad.)(HC)

1761 **S. 221 : Collection and recovery – Penalty – Tax in default – Assessee filing return without payment of self-assessment tax – financial constraint and liquidity crunch faced by assessee at time of filing of return – good and sufficient reason for failure – Levy of penalty is held to be not justified. [S. 140A]**

Tribunal held that the assessee could not pay the self-assessment tax liability of ₹ 8,06,90,485 at the time of filing the return. However the self-assessment tax was paid subsequently in instalments over a period of time. The assessee had given very elaborate reasons before the authorities that due to huge financial crunch and hardships, it did not have any liquidity to pay the self-assessment tax. Financial stringency is considered to be good and sufficient cause for not levying penalty under S. 221(1). (AY. 2007-08)

Dy. CIT v. Tulip Star Hotels Ltd. (2019) 73 ITR 694 (Delhi)(Trib.)

1762 **S. 222 : Collection and recovery – Certificate to Tax Recovery Officer – Attachment and sale of immovable property – Limitation – Attachment of immovable property in 1997 – Proclamation of sale in February, 2019 – Barred by limitation. [Sch. II R. 68B, Art. 226]**

Allowing the petition the Court held that, Part D of Chapter XVII of the Income-tax Act, 1961 pertains to collection and recovery of tax. Schedule II to the Act pertains to the procedure for recovery of tax. The Schedule contains detailed rules for recovery of unpaid taxes through various modes envisaged in sub-section (1) of S. 222. One of the modes is attachment and sale of immovable property. Rule 68B was inserted with effect from June 1, 1992. For the first time with effect from June 1, 1992 a time-limit of a period of three years was prescribed for sale of attached immovable property starting from the end of the financial year in which the order giving rise to a demand of tax, interest, etc., became conclusive. Sub-rule (4) of rule 68B provides for the consequences of the immovable property not being sold within such time. Under this sub-rule in such a situation, the attachment order in relation to the property would be deemed to have been vacated on the expiry of the time-limit specified. The Court held, that the attachment of the immovable properties was ordered in the year 1997. The sale proclamation which was made in February, 2019 was thus, hit by the period of limitation prescribed under rule 68B. The sale proclamation was barred by limitation. (AY. 1974-75 to 1999-2000)

Sapana Charudatt Ranadive v. ITO (2019) 418 ITR 193 / 181 DTR 127 / 310 CTR 432 / 266 Taxman 4 (Bom.)(HC)

1763 **S. 222 : Collection and recovery – Certificate to Tax Recovery Officer – Amalgamation – Tax Recovery Officer could not seek recovery of taxes of reassessment from assessee – company in as much as the assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings. [S. 147, 148, Art. 226]**

Company Mahadev Floorings (India) Pvt. Ltd was amalgamated with assessee-company. AO had reopened assessment of company Mahadev Floorings (India) Pvt. Ltd and passed assessment order raising tax demand upon it. Subsequently Tax Recovery Officer issued on assessee company a notice to recover tax dues of company Mahadev

Floorings (India) Pvt. Ltd and on failure of assessee to pay tax dues of company Mahadev Floorings (India) Pvt. Ltd., had attached bank accounts of assessee. On writ, the court held that Tax Recovery Officer could not seek recovery of taxes due of Mahadev Floorings (India) Pvt. Ltd. arising out of order of reassessment from assessee-company in as much as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings. Accordingly, the notice of recovery was set aside and attachment of bank accounts were lifted. (AY. 2010-11)

Hinal Estates (P.) Ltd. v. UOI (2019) 266 Taxman 411 / 184 DTR 297 (Bom.)(HC)

S. 222 : Collection and recovery – Certificate to Tax Recovery Officer Recovery officer can enforce personal attendance of defaulter – High Court rejected the petition on the ground that the assessee had not co-operated in the assessment proceedings. Hence, even if the summons under rule 83 were illegal, the conduct of the petitioner disentitled him to any relief. [Second Schedule, R. 73, 83, Art. 226] 1764

Court held that once recovery proceedings are initiated, they would be governed by the provisions of Schedule II to the Act. Rule 73 is a part of Part V of Schedule II. Part V is with respect to arrest and detention of the defaulter. On the other hand, rule 83 is within Part VI of Schedule II. Part VI is miscellaneous. Once rule 83 clarifies that the Tax Recovery Officer or any other officer, acting under the provisions of Schedule II, shall have the powers of a civil court while trying a suit, it necessarily implies that by virtue of summons under rule 83 of the Second Schedule, the Tax Recovery Officer can compel the personal attendance of the assessee or defaulter. Rule 83 of the Second Schedule to the Act talks about enforcing the attendance of the witnesses and not the assessee himself. When the assessee appears before the Tax Recovery Officer in response to such summons issued to him under rule 83, he could be said to be a witness. The mere absence of the word "assessee" or "defaulter" would not make any difference. It is always open for the Tax Recovery Officer to seek necessary information from the assessee himself and any other witness or witnesses, if any. For effective and expeditious disposal of the recovery proceedings, it is always permissible for the Tax Recovery Officer to call for necessary and relevant information and conduct an inquiry by securing and enforcing the personal attendance of the assessee or defaulter. Court also held that,it is a settled position of law that even if some action of a quasi-judicial authority is found to be not in accordance with law or without jurisdiction, still the High Court may decline to grant any relief in exercise of its equitable jurisdiction under Article 226 of the Constitution of India. On facts the assessee had not co-operated in the assessment proceedings. Hence even if the summons under rule 83 were illegal, the conduct of the petitioner disentitled him to any relief. (AY. 2014-15)

Maulikkumar Vinodkumar Patel v. TRO (2019) 417 ITR 590 / 266 Taxman 221 (Guj.)(HC)

1765 **S. 222 : Collection and recovery – Certificate to Tax Recovery Officer Warrant of arrest – Issue of warrant of arrest without issuing show cause notice did not fulfil requirements prescribed under rule 73(1) of Schedule II of Act – Held to be ultra vires and quashed. [Schedule II, Rule 73(1)]**

The assessee filed petition to quash warrant of arrest was issued by TRO, Debts Recovery Tribunal, without show cause notice being warrant of arrest was procedurally ultra vires. Allowing the petition, the Court held that considering the the provisions of rule 73(1) of Second Schedule of the Act, it is evident that no order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause as to why he should not be committed to civil prison, unless the Tax Recovery Officer is satisfied for the reasons which are mentioned in clauses (a) and (b) of sub-rule (1) of rule 73 of Schedule II of the Act. In the instant case, the impunged notice does not fulfil the requirements prescribed under rule 73(1) of Schedule II of the Act, inasmuch as, no specific show-cause notice has been given to the assessee asking him to show cause as to why he should not be detained in civil prison. Accordingly, order is procedurally ultra vires, hence quashed and set aside.

Lalith kumar Ramani v. Recovery Officer (2019) 265 Taxman 305 (Karn.)(HC)

1766 **S. 222 : Collection and recovery – Certificate to Tax Recovery Officer Attachment order by tax recovery officer – Writ is held to be not maintainable – Directed to make claim before Tax recovery Officer [Second Schedule, R. 11, Art. 222]**

Assessee had filed a writ petition challenging an order of attachment passed by Tax Recovery Officer under S. 222 attaching a property for failure to pay dues by Newempire Infrastructure Pvt. Ltd. and stated that above property belonged to him. Dismissing the writ petition as not maintainable, assessee was directed to file a claim before Tax Recovery Officer in terms of rule 11 of Second Schedule, who would investigate same in accordance with law.

Nilesh Popatlal Patel v. TRO (2019) 417 ITR 627 / 265 Taxman 340 / 311 CTR 78 / 182 DTR 44 (Guj.)(HC)

1767 **S. 225 : Collection and recovery – Stay of proceedings – Pendency of appellate and revision proceedings – Tax recovery officer demanded 50% of tax demand – PCIT directed to pay 20% of tax demand – On writ High Court directed to pay only 5% of tax in dispute. [S. 226, 264 Art. 226]**

Assessee first approached Tax Recovery Officer seeking stay of demands pending appellate and revisional proceedings. Tax Recovery Officer insisted that assessee must deposit 50% of tax demand to avoid recovery of rest. PCIT directed to pay 20% of tax demand. High Court held that assessee would have arguable points against many of additions made by AO. Nature of additions concerns finding of bogus purchases and inflated premium and share application money besides others. Therefore, assessee would deposit 5% of principal tax demand arising out assessment orders for AY. 2009-10, 2010-11, 2011-12.

JIK Industries Ltd v. DCIT (2019) 178 DTR 444 / 310 CTR 287 (Bom.)(HC)

S. 225 : Collection and recovery – Stay of proceedings – ITAT has granted conditional stay against the recoveries – Sizeable amount was recovered–Contempt – Court directed not to recover further and pending the petition directed the petitioner to approach the ITAT for appropriate relief – Fresh petition was dismissed. [S. 226, 254(1), Art. 226] 1768

Assessee, an educational trust had filed return of income. Huge demand was raised and appeal was pending before the Tribunal. Pending appeals the assessee prayed for interim injunction against recovery of unpaid tax and interests before ITAT. ITAT granted conditional stay against recoveries which was again challenged before High Court vide Writ Petition. High Court noticed a misrepresentation of Court's order by President of assessee and in connivance with ITO, assessee withdrew sizeable amount from its Bank accounts. Division Bench of High Court dismissed assessee's Petition on ground of such misdemeanor and also initiated suo moto contempt proceedings against President of assessee and concerned employee of Department. Such Contempt Petition resulted into imposition of jail term against contemptors which was also confirmed by Apex Court. Subsequently, ITAT passed an order in assessee's pending appeals wherein, no relief was granted against conditions imposed by ITAT in its earlier order to enjoy protection against recoveries of unpaid tax and interest, nor fulfilled such conditions. Consequently, fresh stay applications filed by assessee was dismissed. ITAT had passed an order protecting assessee against recoveries of unpaid tax and interest on condition that, assessee deposits with Department, a sum of ₹ 18 Crores in three equal instalments. Since assessee could neither have these conditions altered, nor could assessee fulfil conditions, ITAT later on passed impugned order rejecting stay applications of assessee. This would give rise to recovery of entire tax with interest. Department had initiated coercive recovery.

Whatever be interim events, ITAT had found prima facie case in favour of assessee which persuaded ITAT to grant stay against and further recoveries on condition of depositing said amount. Not protecting assessee at this stage, might have severe adverse effect on running its several educational and medical institutions, rendering staff jobless and students without college. Therefore, put assessee back to same position, ITAT had granted conditional stay to assessee, which order, in any case, Department had not challenged. Assessee was insisted to deposits with Department a total sum upon which, there should be stay against further recoveries. Assessee would also co-operate for early disposal of appeals before ITAT. Division Bench of High Court in Writ Petition, assessee and similarly situated Trusts complained about State Government not releasing educational grants. From said order passed by Division Bench, it was found that under order of Court, State Government had deposited sizeable amount which was payable to assessee. However, Division Bench did not release said amount in favour of assessee. There should be stay against further recoveries of tax and interest dues arising out of assessee's pending appeals till final disposal. By virtue of this order and subject to assessee fulfilling conditions contained, there should be no further recoveries of impugned tax dues from any source. It would be open for assessee to approach Co-ordinate Bench in pending Writ Petition and pray for appropriate relief. Accordingly assessee's writ Petition was partly allowed. (AY. 2009-10, 2014-15)

Sinhgad Technical Education Society v. DCIT (2019) 176 DTR 315 / 310 CTR 292 (Bom.)(HC)

1769 **S. 225 : Collection and recovery – Stay of proceedings – Disputed demand – Deposit of 20 percent tax of demand is not a condition precedent – Directed to pass reasoned order. [S. 226, Art. 226]**

Court held that the AO has to consider the case of the particular assessee on the merits and if he comes to the conclusion that the assessee has a case for grant of stay, then subject to deposit of 20% of the disputed demand, the outstanding demand may be stayed and in certain cases. The condition of pre-deposit of 20% of the disputed demand is neither contemplated by the memorandum nor is there legislative sanction mandating such deposit for hearing of an application for stay. Directed to follow the guidelines prescribed by the Bombay High court in *UTI Mutual Fund v. ITO (2012) 345 ITR 71 (Bom.)(HC), KEC International Ltd v. B. R. Balakrishnan (2001) 251 ITR 158 (Bom.)(HC), Coca Cola India P. Ltd v. Add. CIT (2006) 285 ITR 419 (Bom.)(HC*).

Aarti Sponce & Power Ltd. v. ACIT (2019) 418 ITR 257 (Chhatisgarh)(HC)

1770 **S. 226 : Collection and recovery – Modes of recovery – Joint savings account with husband – TRO cannot issue notice to bank for marking said bank account for lien towards arrears of tax liability of her husband, without issuing a notice to assesse. [S. 226(3)(iii), Art. 226]**

The petitioner was holding joint account with her husband. The TRO issued notice to the bank account of the petitioner for lien towards the arrears of tax liability of the husband of the petitioner. On writ, the petitioner contended that no notice was served on the petitioner in terms of S. 226(3)(iii) of the Act. Allowing the petition, the Court held that issue of notice under sub-section (3)(iii) of section 226 which is sine qua non for recovery of tax, hence the notice was quashed. (AY. 1999-00 to 2006-07) (Single Judge O. dt 18-07-2019)

Beena Muralidhar (Mrs.) v. TRO (2019) 266 Taxman 219 (Karn.)(HC)

1771 **S. 226 : Collection and recovery – Stay – Single judge directed the assessee to deposit 40 percent of total enforceable demand and furnish sufficient security for 35 per cent of the total enforceable demand. [S. 220, 226(3)]**

On a writ petition a single judge after hearing both sides passed an order holding that the assessee shall deposit 40 per cent. of the total enforceable demand and furnish sufficient security for 35 per cent. of the total enforceable demand. On appeal dismissing the appeal the Court held that the assessee had failed to prove the genuineness of the credits in the books of account. The assessee could not prove the identity or creditworthiness of the companies which had contributed to the share capital as well as the genuineness of the transaction. Taking note of the assessee's argument and taking note of Circular No. 1914, the single judge had modified the order of the Assistant Commissioner passed under section 220(6) of the Act demanding the entire enforceable demand and directed deposit of 40 per cent of the total enforceable demand and furnishing of security to an extent of 35 percent of the enforceable total demand which was an equitable order. (AY. 2010-11)

Bright Packaging Private Ltd. v. ACIT (2019) 417 ITR 360 (Karn.)(HC)

Editorial : Decision of single judge is affirmed, Bright Packaging (P.) Ltd. v. ACIT (2018) 256 Taxman 29 / (2019) 417 ITR 356 (Karn.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Recovery proceedings set aside as there was no valid service of assessment notice – Writ petition could not be entertained as alternate remedy was available. [S. 156, Art. 226] 1772

Assessee was in the business of buying and selling paintings and artworks. AO passed an ex-parte assessment order and since no appeal was filed, department initiated recovery proceedings and attached 68 paintings which were thereafter put to sale through auction. Assessee filed writ petition as no valid service of assessment notice was given. Assessment order was invalid and auction process was set aside. Order of assessment on merits should be ordinarily allowed to be examined by the CIT(A) who has statutory powers vested under the Act. High Court held that the writ petition could not be entertained as alternate efficacious statutory remedy of filing appeal before CIT(A) was available.

Camelot Enterprises (P.) Ltd. v. PCIT (2019) 178 DTR 185 / 105 taxmann.com 155 / 310 CTR 444 (Bom.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Insolvency proceedings initiated – Priority of debts – Creditor and department – Declaration of moratorium by National Company Law Tribunal against assessee – Petition is held to be infructuous. [Insolvency and Bankruptcy Code, 2016, S. 14(1), Art. 226, 227] 1773

A writ petition was filed on the question, whether the petitioner bank or the Income-tax Department would have precedence to recover the outstanding liabilities of the assessee under S. 226(3) of the Income-tax Act, 1961. A moratorium had been declared in respect of the assessee under S. 14(1) of the Insolvency and Bankruptcy Code, 2016 by the National Company Law Tribunal, accordingly, court held that in view of the moratorium the petition had become infructuous.

State Bank of India v. CIT (2019) 414 ITR 519 (P&H)(HC)

S. 226 : Collection and recovery – Modes of recovery – Property of guarantor given as collateral to bank – Secured creditor has priority of charge over income-tax dues – Order of attachment by tax recovery Officer is set aside. [S. 222, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(2), 26E, Art. 226] 1774

Court held that the bank being the secured creditor and its claim prevailing over other claims including Crown debts, the Tax Recovery Officer (TDS) was not entitled to continue the attachment over the properties in question any further. The bank was the secured creditor and the properties mortgaged by the corporate guarantor with the bank were the properties covered under the secured credit. The properties attached by the Tax Recovery Officer (TDS) did not belong to the assessee but to the guarantor, who was not the defaulter before the Income-tax authority. Therefore, the attachment made by the Tax Recovery Officer (TDS) of the properties that belonged to the guarantor to recover the Income-tax dues of the assessee was not justified and the properties to be released so as to enable the bank to register the sale certificate before the Joint Sub-Registrar in favour of the auction bidder. It is well-settled that the claim of the secured creditor over the property will prevail over all other dues/debts including Crown debts. (WP No. 26144 of 2018 dt 7-1-2019)

State Bank of India v. TRO (TDS) (2019) 415 ITR 370 / 311 CTR 532 / 183 DTR 52 (Mad.) (HC)

1775 **S. 226 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – Similar addition was decided in favour of other assessee by the CIT(A) – AO cannot direct the Assessee to deposit 20 percent of tax demanded. [S. 246A]**

AO passed the order making certain disallowances. Pending such appeal, assessee requested to keep tax demand in abeyance. AO rejected the application and directed to deposit 20 per cent of tax demand. On writ the court held that since same disallowances and additions made under similar circumstances in case of other similar trusts were deleted by CIT(A) revenue should not recover the tax in dispute when the appeal is pending before CIT(A). (AY. 2016-17)

ARCIL Retail Loan Portfolio001-D-Trust v. PCIT (2019) 263 Taxman 508 (Bom.)(HC)

1776 **S. 226 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – Non speaking order – Garnishee notices to Banks were quashed and attachment of Bank account was lifted. [S. 226(3)]**

Allowing the petition the Court held that the order of the Assessing Officer rejecting the stay petition filed by the assessee was non-speaking and merely made reference to the non-payment of 20 per cent. of the tax demand by the assessee. The order in question was unacceptable on all counts and was to be quashed in limine. The notices issued under S. 226(3) to the assessee's banks by the Assessing Officer were also quashed and the attachment of the bank accounts was lifted forthwith.

Oren Hydrocarbons Pvt. Ltd. v. ACIT (2019) 414 ITR 52 (Mad.)(HC)

1777 **S. 226 : Collection and recovery – Assessee deemed in default – Stay Strictures – Recovery proceedings were stayed – Revenue was directed to re deposit the amount with drawn from the Bank – Order set aside – Court also expressed dismay at the conduct of the Officers of the Revenue – The desire to collect more revenue cannot be at the expense of Rule of law – Revenue to pay cost of ₹ 50,000 to the Petitioner for the unnecessary harassment. [S. 10(23FB) 10(35), 220(6), 226(3), 245, 281B, Art. 226]**

The petitioner is a trust established under Indian Trust Act 1882 and granted a certificate of registration by the SEB as venture capital Fund and the petitioner is entitled to exemption u/s. 10(23FB) of the Act. Earlier years, the Appellate Tribunal decided the issue in favour of the assessee and the assessee is entitled to huge amount of refunds. When the stay application was pending before the CIT, the AO passed provisional attachment u/s. 281B of the Act, attached the Bank Accounts u/s. 226(3) of the Act and also adjusted the refunds U/s. 245 of the Act. On writ, the Court held that revenue authorities should apply the law equally to all and not be over zealous in seeking to collect revenue ignoring the statutory provisions as well as binding decisions. The petitioner is being singled out for unfair treatment. Accordingly recovery proceedings were stayed. Revenue was directed to redeposit the amount withdrawn from the Bank. Order set-a-side. Court also observed as under "we have to express our dismay at the conduct of the Officers of the Revenue in this matter. We pride ourselves as a State which believes in rule of law. Therefore, the least that is expected of the Officers of the State is to apply the law equally to all and not be over zealous in seeking to collect the revenue ignoring the statutory provisions as well as the binding decisions of

this Court. Revenue was also directed to pay cost of ₹ 50,000 to the Petitioner for the unnecessary harassment. (AY. 2016-17)
Milestone Real Estate Funds v. ACIT (2019) 415 ITR 467 / 178 DTR 265 / 263 Taxman 523 / 311 CTR 953 (Bom.)(HC), www.itatonline.org

S. 226 : Collection and recovery – Assessee deemed in default – Stay – Rejection of stay application by a single line order stating petition rejected – Order set aside and directed the tax authorities to pass speaking order. [S. 220] 1778
AO passed an order of assessment under S. 143(3). Against said order, assessee preferred an appeal before Commissioner (Appeals). Assessee also filed a stay petition before Assessing Officer seeking to stay recovery of disputed tax demand till disposal of appeal before CIT(A). AO, however passed an order calling upon assessee to pay 15 percent of tax demand.
Thus, assessee preferred an application before revenue seeking for stay of demand of entire disputed tax. Revenue rejected said application by a single line order stating 'Petition rejected', Assessing Officer to collect eligible demand'. On writ, the Court held that since order of assessment did not reach its finality, assessee was entitled to file stay petition before Appellate Authority and canvas all points in support of their stay petition. Therefore, in view of fact that revenue rejected assessee's application by a single line order, without stating any reason or finding as to why application was liable to be rejected, impugned order was to be set aside with a direction to revenue to decide assessee's application on merit and in accordance with law. (AY. 2012-13)
Archit Khemka v. PCIT (2019) 261 Taxman 108 (Mad.)(HC)

S. 226 : Collection and recovery – Stay of demand – The CBDT's Circulars & Instructions are in the nature of guidelines & cannot substitute or override the basic tenets – The AO is required to assist a taxpayer in every reasonable way – Even if the assessee has not specifically invoked the three parameters for grant of stay, it is incumbent upon the AO to do so & pass a speaking order. [S. 220(3), 220(6)] 1779
The Court held that the 'trinity' of prima facie case, financial stringency & balance of convenience are basic tenets which are indispensable in consideration of a stay petition. The CBDT's Circulars & Instructions are in the nature of guidelines & cannot substitute or override the basic tenets. The AO is required to assist a taxpayer in every reasonable way. Even if the assessee has not specifically invoked the three parameters for grant of stay, it is incumbent upon the AO to do so & pass a speaking order. (WP. No. 3849 of 2019 and 4278 of 2019, dt. 13.02.2019) (AY. 2016-17, 2018-19)
Kannammal (Mrs.) v. ITO (2019) 413 ITR 390 / 263 Taxman 309 / 178 DTR 321 / 311 CTR 361 (Mad.)(HC), www.itatonline.org
Jayanthi Seeman v. PCIT (2019) 413 ITR 390 (Mad.)(HC), www.itatonline.org

S. 226 : Collection and recovery – Modes of recovery – Appeal pending before CIT(A) – Upon payment of ₹ 15 lakhs – Garnishee proceedings lifted. [S. 226(3)] 1780
Allowing the petition the Court held that when the liability itself was questioned and was the subject matter of appeals before the court and the appeals were reserved for

orders recovery of dues for the assessment years 2003-04 to 2007-08 was not justified, as the issue had to be finally decided by the court. For the assessment year 2008-09 the assessee had not obtained any stay from the first appellate authority and the balance due payable by the assessee was ₹ 83,16,190. The assessee was directed to pay a sum of ₹ 15 lakhs towards the assessment year 2008-09 for the purpose of lifting the garnishee orders and this was to be without prejudice to either parties in the appeal before the first appellate authority. On failure to make the payment within the stipulated time, the orders were to be restored automatically. (AY. 2003-04 to 2008-09)
R. Panneerselvam v. DGI (Inv.) (2019) 411 ITR 546 / 263 Taxman 195 (Mad.)(HC)

1781 **S. 226 : Collection and recovery – Stay – Pendency of appeal before Appellate Tribunal – Transfer pricing adjustments – Respondents were directed not to enforce the demand and also not to adjust the refund amounts due and payable during the pendency of appeal before the Tribunal – Tribunal is directed to complete the hearing as expeditiously as possible and under no circumstances beyond 31st March, 2019 [S. 220, 254(1), Art. 226]**
Allowing the petition for stay of recovery, the Court held that Respondents were directed not to enforce the demand and also not to adjust the refund amounts due and payable during the pendency of appeal before the Tribunal. Court also directed the Tribunal to complete the hearing as expeditiously as possible and under no circumstances beyond 31st March, 2019. (AY. 2013-14)
Sony India (P) Ltd. v. ITAT (2019) 306 CTR 305 / 173 DTR 321 (Delhi)(HC)
Sony Mobile Communications India (P) Ltd. v. ITAT (2019) 306 CTR 305 / 173 DTR 321 (Delhi)(HC)

1782 **S. 226 : Collection and recovery – Modes of recovery – illegal Recovery – Strictures against DCIT – Adjustment of refund – High Court was not justified in its remarks against the DCIT and in issuing directions that (i) 'deadwood' should be weeded out (ii) personal costs of ₹ 1.5 lakh should be imposed (iii) adverse entry should be made in the Annual Confidential Report (iv) Denial of promotion etc. The directions were wholly unnecessary to the lis before the Court & are expunged. [S. 234]**
Claim of the refund was rejected by the AO on the ground that the refund had been adjusted against the tax demand relating to subsequent assessment years. In view of the fact that notice of demand under S. 156 for subsequent years was never served on the assesse, order was set side with the direction to grant the refund and cost of ₹ 50 lakhs was levied which was to be recovered from the salaries of the Officer. Superiors were directed to take appropriate action. Revenue filed SLP before the Apex Court. Apex Court held that, High Court was not justified in its remarks against the DCIT and in issuing directions that (i) 'deadwood' should be weeded out (ii) personal costs of ₹ 1.5 lakh should be imposed (iii) adverse entry should be made in the Annual Confidential Report (iv) Denial of promotion etc. The directions were wholly unnecessary to the lis before the Court & are expunged. (SLP No. 48031/2018, dt. 01.03.2019)
Sanjay Jain v. Nu Tech Corporate Service Ltd. (SC), www.itatonline.org
Editorial: Nu-Tech Corporates Ltd. v. ITO (2018) 259 Taxman 183 (Bom.)(HC) www.itatonline.org

S. 226 : Collection and recovery – Stay – AO cannot direct the Assessee to pay 20% of tax in dispute without application of mind. [S. 225] 1783

Allowing the petition, the Court held that the AO has to apply his mind to the application for stay of demand and pass appropriate order having regard to the facts and circumstances of the case. Referred CBDT circular (F. No. 404/72/93-ITCC) dt. 29-02-2016 and (F. No. 404/72/93-ITCC)

(FTS : 284146) 31-07 2007 www.itatonline.org (WP No. 682/2019 dt. 22-1-2019 (AY. 2011-12)

Turner General Entertainment Networks India Pvt. Ltd. v. ITO (2019) 263 Taxman 89 (Delhi)(HC) www.itatonline.org

S. 234A : Interest – Default in furnishing return of income – Long term capital gains – Rejection of one's stand in a legal proceeding cannot be construed as an unavoidable circumstance – Interest cannot be waived. [S. 234B, 234C] 1784

The assessee filed his income voluntarily for the assessment year 1996-97 showing a sum as long-term capital gains. The claim of the assessee that it was long-term capital gains was rejected. The Assessing Officer determined the total income at ₹ 17,30,930 for the assessment year and demanded a sum of ₹ 5,46,742 as the total net tax payable. The Assessing Officer charged interest under S. 234A, 234B and 234C. An application for waiver of interest was rejected. On a writ petition against the order, the Court held that the assessee entertained a bona fide belief that the transaction entered into by him had yielded only long-term capital gains. But his stand was rejected by the assessing authority. The order passed by the assessing authority that the transaction yielded only short-term capital gains and not long-term capital gains had become final. The *bonafide* nature of the belief entertained by the assessee was wholly irrelevant. Rejection of one's stand in a legal proceeding cannot be construed as an "unavoidable circumstance". The case on hand clearly fell outside the scope of clause 2(e) of the notification dated May 23, 1996. The order was justified. (AY. 1996-97)

Tushin T. Mehta (Legal Heir of Late Tushaar Mehta) v. CIT (2019) 417 ITR 529 / 311 CTR 470 / 181 DTR 281 (Mad.)(HC)

S. 234B : Interest – Advance tax – Book profit – Failure to deposit advance tax in respect of tax payable under section 115JB, matter required an in-depth hearing and, therefore, appeal be listed as per its turn. [S. 115JB] 1785

High Court held that interest was not payable by assessee under S. 234B on failure to deposit advance tax in respect of tax payable under S. 115JB. Supreme Court held that question, i.e., interest payable under S. 234B was concerned, matter required an in-depth hearing. Accordingly the appeal to be listed as per its turn.(AY. 2008 09)

(***Note*** : Order of Tribunal in *Glenmark Pharmaceuticals Ltd. v. Add. CIT (2014) 43 taxmann.com 191 / 62 SOT 79 (URO) (Mum.)(Trib.)* is affirmed

CIT (LTU) v. Glenmark Pharmaceuticals Ltd. (2019) 265 Taxman 237 (SC)

Editorial : Order in CIT (LTU) v. Glenmark Pharmaceuticals Ltd. (2017) 398 ITR 439 / 85 taxmann.com 349 (Bom.)(HC)

1786 **S. 234B : Interest – Advance tax – Levy of interest is held to be justified – Except on income which arose from retrospective operation of any statute, decision, etc., because in those type of cases, assessee was unable to know and assess his income and pay advance tax. [S. 234C]**

High Court held that imposition of interest was justified under S. 234B and 234C, save and except on income which arose from retrospective operation of any statute, decision, etc., because in those type of cases, assessee was unable to know and assess his income and pay advance tax.

PCIT v. Haldia Petrochemicals Ltd. (2019) 107 taxmann.com 434 / 265 Taxman 434 (Cal.) (HC)

Editorial : SLP is granted the revenue, PCIT v. Haldia Petrochemicals Ltd. (2019) 265 Taxman 160 (SC)

1787 **S. 234B : Interest – Advance tax – Non-resident – Entire tax was to be deducted at source – Not liable to pay interest for failure to pay advance tax.**

High Court decided issue regarding interest payable under S. 234B in assessee's favour. Followed *CIT(IT) v. Shanghai Electric Group Co. Ltd.* In [ITA No. 409-410 of 2018, dt. 9-4-2018 and also *DIT v. Jacabs Civil Incorporated (2001) 330 ITR 578 (Delhi)(HC), DIT v. GE Packaged Power inc (2015) 373 ITR 65 (Delhi)(HC), CIT v. ZTE Corporation (2017) 392 ITR 80 (Delhi)(HC).*

CIT(IT) v. Shanghai Electric Group Co. Ltd. (2019) / 105 taxmann.com 311 / 263 Taxman 476 (Delhi) (HC)

Editorial : SLP is granted to the revenue, CIT (IT) v. Shanghai Electric Group Co. Ltd. (2019) 263 Taxman 475 (SC)

1788 **S. 234B : Interest – Advance tax – Sub-section (2A) to section 234B introduced by the Finance Act, 2015 is not retrospective and would be applicable to all proceedings in which orders are pending and/or in which orders under section 245D(4) are passed on or after 1-6-2015. [S. 234B(2A), 245D(4)]**

The Settlement Commission under S. 245D(4) settled the case and had directed for levy of interest on the enhanced amount under sub-section (2A) to S. 234B. The assessee filed the petition and contended that sub-section (2A) to section 234B introduced by the Finance Act, 2015 is not retrospective and would not be applicable as the petitioner had filed the application for settlement before sub-section (2A) to S. 234B was enacted and sub-section (2A) to S. 234B was inserted by the Finance Act, 2015 with effect from 1-6-2015. Dismissing the petition, the Court held that sub-section (2A) to S. 234B introduced by the Finance Act, 2015 is not retrospective and would be applicable to all proceedings in which orders are pending and/or in which orders under S. 245D(4) are passed on or after 1-6-2015. (WP No. 10313 of 2016, dt. 17.01.2019)

Orchid Infrastructure Developers (P.) Ltd. v. UOI (2019) 261 Taxman 389 / 178 DTR 145/ 308 CTR 817 (Delhi)(HC)

Ajay Kumar Gupta v. UOI (2019) 308 CTR 817 / 178 DTR 145 / 261 Taxman 389 (Delhi) (HC)

S. 234B : Interest – Advance tax – Notified person – Assets attached Assessing Officer is directed to recompute interest liability after reducing amount of tax deductible at source on source on income earned [S. 234C] 1789

Tribunal directed the AO to recompute interest liability after reducing amount of tax deductible at source on source on income earned. (AY. 2009-10)

Ashwin S. Mehta v. ACIT (2019) 70 ITR 234 (Mum.)(Trib.)

S. 234B : Interest – Advance tax – non-resident – liability on payer to deduct tax at source while making payment to non-resident – No liability on non-resident to pay advance tax – Interest is not chargeable. [S. 195] 1790

The assessee was a tax resident of Singapore and provided management advisory services. The assessee entered into an agreement with its Indian subsidiary to provide advisory services in the field of management, sales, marketing, finance and administrative, human resources and information technology. For such services to the Indian company, the assessee in the previous year relevant to the assessment year 2014-15 earned management fee of ₹ 32,23,41,117/-. The AO held that the management fee received by the assessee from the Indian entity was in the nature of fees for technical services under the Double Taxation Avoidance Agreement between India and Singapore taxable in India at 10 per cent. Accordingly, he proposed a draft assessment bringing to tax the management fee received by the assessee and also levied interest. DRP upheld the decision of the AO. On appeal, the Appellate Tribunal held that that the liability to pay advance tax was not on the non-resident as the liability was on the payer to deduct tax at source under S. 195 of the Income-tax Act, 1961 while making such payment. Therefore interest under S. 234B was not chargeable (AY. 2014-15)

Dimension Data Asia Pacific Pte. Ltd. v. Dy. CIT (2019) 73 ITR 213 (Mum.)(Trib.)

S. 234B : Interest – Advance tax – Reassessment – Unexplained investment – levy of interest is mandatory. [S. 147, 148, 234B(3)] 1791

Dismissing the appeal of the assessee the Tribunal held that since on account of reassessment order, assessee had became liable to pay advance tax, levy of interest is mandatory. (AY. 2000-01)

Satish Katoch v. ITO (2019) 174 ITD 337 (Chd.)(Trib.)

S. 234C : Interest – Deferment of advance tax – Waiver of interest Demerger of business – Advance tax payment made by demerged company after appointed date – Resulting company entitled to waiver of Interest. [S. 119] 1792

Allowing the petition, the Court held that any scheme of amalgamation, merger or demerger of companies would have to be approved by the jurisdictional High Court and the effective date may be the one provided by the High Court in its order. The appointed date may be one envisaged in the scheme or if any specification made in the order, that may be provided by the High Court. Therefore, any such scheme would be approved having retrospective effect. Till approval comes from the High Court, the scheme remains at the stage of proposal. Under such circumstances the Chief Commissioner was in error in refusing waiver based on a fallacious consideration that the instalments were paid by Grasim Industries Ltd and not Samruddhi Cement Ltd. The

order rejecting the waiver of interest was quashed. The Department should waive the interest payable by the assessee under S. 234C, in terms of the Board's Circular dated June 26, 2006 for the period in question. Consequently, if such interest had been already recovered, it was refundable. (AY. 2010-11)
Ultratech Cement Ltd. v. CCIT (2019) 416 ITR 449 / 311 CTR 7 / 182 DTR 113 (Bom.)(HC)

1793 **S. 234C : Interest – Deferment of advance tax – Demerger of the unit – Not justified in levying the interest for period before acquisition of cement business by assessee – Interest is directed to be waived. [S. 119(2), Art. 226]**
Assessee – company was a successor of company Samruddhi Cement Ltd. which was incorporated on 4-9-2009 as a subsidiary of Grasim Industries Ltd. Grasim Industries Ltd. demerged its cement unit which was taken over by Samruddhi Cement Ltd. Scheme of demerger was framed which envisaged 1-10-2009 as appointed date. Scheme was approved by High Court and effective date was fixed as 18-5-2010. Scheme provided that Grasim Industries Ltd. would carry on cement business from appointed date to effective date in trust and on behalf of SCL and; advance tax payment made by Grasim Industries Ltd in respect of profits of cement business would be deemed to be paid by Samruddhi Cement Ltd. and that scheme would have retrospective effect. Pursuant to such clause, Grasim Industries Ltd. paid advance tax on profits of cement business in two instalments falling due on 15-3-2012 and 15-9-2012. AO held that Samruddhi Cement Ltd. had not paid advance tax instalments falling due on 15-6-2009 and 15-9-2009 and, thus, interest under S. 234C was levied. Assessee claimed for waiver of interest under S. 234C which was denied. Court held that scheme itself provided that all taxes paid by Grasim Industries Ltd. on profit of cement business arising on and after 1-10-2010 would be deemed to be paid by Samruddhi Cement Ltd. and scheme was approved having a retrospective effect. Further, Samruddhi Cement Ltd. was incorporated only on 4-9-2009 and company was not in existence on 15-6-2009. Further, by time second instalment fell due on 15-9-2009, cement business from Grasim Industries Ltd. was not acquired by Samruddhi Cement Ltd. Accordingly the interest levied upon assessee under S. 234C was to be waived. (AY. 2010-11)
Ultratech Cement Ltd. v. CIT (2019) 266 Taxman 390 (Bom.)(HC)

1794 **S. 234D : Interest on excess refund – Reduction of refund – Interest on excess refund – Amendment is applicable for regular assessment – Rectification of assessment after 1-6-2003 – Not a regular assessment – Amendment is not applicable. [S. 154]**
S. 234D of the Income-tax Act, 1961, levies interest on the amount by which a refund is reduced. S. 234D was inserted by the Finance Act, 2003 with effect from June 1, 2003. Explanation 2 was inserted by the Finance Act, 2012 with retrospective effect from June 1, 2003 and declares that the provisions of S. 234D shall also apply to an assessment year commencing before June 1, 2003, if the proceedings in respect of such assessment year are completed after that date. Sub-section (2) of S. 234D of the Act would be attracted only, if reduction occurs and it cannot be made applicable when there is an increase. Explanation 2 cannot be read in isolation from sub-section (2) of S. 234D of the Act and the entire section should be read as a whole. If such a procedure is adopted, the correct legal position emanates because the charging provision is

sub-section (1) of S. 234D of the Act. In the sub-section, namely, sub-section (1), in three places, the expression "regular assessment" occurs, namely, in S. 234D(1)(a), S. 234D(1)(b) and the remaining portion of section 234D. An order passed under S. 154 cannot be taken to be the framing of a regular assessment for a year. Accordingly the Court held that the regular assessment was completed under S. 143(3) of the Act much prior to June 1, 2003, i. e., On March 30, 2001. Hence, no interest can be charged under S. 234D of the Act for the assessment year 1998-99. (AY. 1998-99)
Sundaram Finance Ltd. v. DCIT (2019) 417 ITR 679 (Mad.)(HC)

S. 234D : Interest on excess refund – Regular assessment was made after amendment of provision with effect from 1-06-2003 – Excess refund granted u/s. 143(1) – Applicable even though assessment period may be prior to said date of amendment. [S. 143(1)] 1795
Court held that provision of S. 234D is applicable for the assessment year 2003-04, if regular assessment of assessee was made after amendment of provision of S. 234D with effect from 1-06-2003 on excess refund granted u/s. 143(1) of the Act even though the assessment period may be prior to said date of amendment. (AY. 2003-04)
CIT v. TVS Electronics Ltd. (2019) 419 ITR 187 / 263 Taxman 164 (Mad.)(HC)

S. 234E : Fee – Default in furnishing the statements – The provisions of the Act imposing a fee for delayed filing of the statement of tax deducted at source are not ultra vires the provisions of the Constitution – Interpretation in favour of constitutionality of provision. [Art. 226] 1796
Dismissing the petition the Court held that, the provisions of the Act imposing a fee for delayed filing of the statement of tax deducted at source are not ultra vires the provisions of the Constitution. It is a well-known principle of interpretation that the court must lean towards constitutionality of a statutory provision and if two interpretations are possible, one for and one against the constitutionality of a legal provision, courts invariably choose the one upholding the constitutionality of the provisions.
Biswajit Das v. UOI (2019) 413 ITR 92 / 177 DTR 401 / 308 CTR 629 / 264 Taxman 41 (Delhi)(HC)

S. 234E : Fees under section 234E – Transaction where purchase of multiple flats is made through a single letter of allotment and separate TDS statement are filed – Not to be treated as single transaction – Levy of fees is held to be valid – Appeal against levy of fees under section 234E is maintainable before CIT(A). [S. 194IA, 200(3), 246A] 1797
The assessee entered into an agreement to purchase 96 flats. Upon receiving letter of allotment assessee paid consideration and deducted tax at source under S. 194-IA of the Act @ 1% and deposited the same. However, did not file TDS Statement within due date. AO imposed fee under S. 234E of the Act, as all the TDS statements were not filed within the time limit. On appeal, the CIT (Appeals) decided against the assessee on merits and also held that there was no provision for appeal against levy of fee under S. 234E. On appeal, the Tribunal held that once tax has been deducted at source, tax was to be deposited and TDS statements were to be filed within the due date. The provisions of S. 200(3) apply to all TDS provisions including S. 194-IA. Tribunal also

rejected the contention of the appellant that purchase of 96 flats constituted one single transaction and thus levy of fees under S. 234E shall be restricted to one TDS statement only and held that as the letter of allotment contains details of description of 96 flats and that the assessee filed separate TDS statements, the fees shall be levied on all TDS statements. The Tribunal reversed the findings of CIT(A) and held that an appeal against levy of fees under S. 234E is maintainable before the CIT(A). (AY. 2016-17)
Cornerview Construction & Developers (P.) Ltd. v. ACIT (2019) 56 CCH 391 / 180 DTR 161 / 178 ITD 478 / 202 TTJ 505 (Mum.)(Trib.)

1798 **S. 234E : Fee – Default in furnishing the statements – Return of tax deducted at source – Late Fee – Fee can be levied only in respect of return filed after 1-6-2015 – Irrespective of the period to which the quarterly return pertains, where the return is filed after June 1, 2015, the AO can levy fee under S. 234E – At the same time, for the period of delay falling prior to June 1, 2015, there could not be any levy of fees as the assumption of jurisdiction to levy such fees was prospective in nature. [S. 200A]**
Tribunal held that both the filing of the return by the assessee and processing thereof had happened much after June 1, 2015, i. e., the date of assumption of jurisdiction by the Assessing Officer to levy fees under S. 234E. The AO acquired the jurisdiction to levy the fees as on June 1, 2015 and therefore, any return filed and processed after June 1, 2015 would fall within this jurisdiction where on occurrence of any default on the part of the assessee, he could levy fee mandated under S. 234E. Therefore, irrespective of the period to which the quarterly return pertains, where the return is filed after June 1, 2015, the AO can levy fee under S. 234E. At the same time, for the period of delay falling prior to June 1, 2015, there could not be any levy of fees as the assumption of jurisdiction to levy such fees was prospective in nature. Where the delay continues beyond June 1, 2015, the AO is well within his jurisdiction to levy fees under S. 234E for the period starting June 1, 2015 to the date of actual filing of the return of tax deducted at source. In the instant case, the levy of fees under S. 234E was upheld for the period June 1, 2015 to the date of actual filing of the return of tax deducted at source which was July 22, 2015 and the balance fee so levied was deleted. (AY. 2015-16)
Uttam Chand Gangwal v. ACIT (CPC) (TDS) (2019) 70 ITR 188 (Jaipur)(Trib.)

1799 **S. 234E : Fee – Default in furnishing the statements – Deduction at source – Fee cannot be levied in statement processed under S. 200A up to 31-05-2015. [S. 200A]**
Tribunal held that, fee cannot be levied in statement processed under S. 200A up to 31-05-2015. (AY. 2013-14 to 2016-17)
Madhya Pradesh Power Transmission Ltd. v. CIT (2019) 69 ITR 322 (Indore)(Trib.)

1800 **S. 234E : Fee – Default in furnishing the statements – Amendment to S. 200A with effect from 1-6-2015 empowering AO levying fees under 234E is prospective – Processing TDS statements for period prior to 1-6-2015 fee cannot be charged. [S. 200A]**
Allowing the appeal of the assessee the Tribunal held that, amendment to provisions of S. 200A with effect from 1-6-2015 levying fees is prospective operation, therefore,

AO while processing TDS statements for period prior to 1-6-2015 cannot levy the fee. (AY. 2013-14)
Trimurty Buildcon (P.) Ltd. v. DCIT (2019) 174 ITD 252 (Jaipur)(Trib.)

S. 237 : Refund – Amounts of tax in dispute was collected when the appeal was pending – Appellate proceedings – tax demand was reduced – Application for remand was not acted upon – High Court directed the AO to refund the amount with interests witin period of four weeks [S. 254(1), Art. 226] 1801
AO completed assessment raising certain tax demand from assessee. In appellate proceedings tax demand was reduced substantially by Tribunal Since by that time amount of tax as determined by AO had already been collected, assessee became eligible for refund of excess amount paid. Assessee filed application seeking refund which was not considered by assessing authority. The Assessee file the Writ petition,High Court directed to AO to refund amount in question along with interest within a period of four weeks as sought by them. (AY. 1990-91)
Narayanan Chettiar Industries v. ITO (2019) 267 Taxman 426 (Mad.)(HC)

S. 237 : Refund – Tax deducted at source – Refund should not be withheld due to some reason of technical glitch, system fails, mismatch of TDS etc. – Concerned AO must manually should calculate the refund and release the refund – The computer system and auto generation or any difficulty in doing so in a particular case, cannot override the correct legal position. [Art. 226] 1802
The return filed by the assessee was scrutinized and the assessment order gave rise to refund of certain sum. Since the refund was not forthcoming, the petitioner wrote several letters to the department but with no avail. The petitioner pointed out that TDS mismatch of as small as Re. 1 (on account of rounding off of the figure) was cited as reason more than once for not releasing the refund. On writ, the Court held that when material facts are not disputable, there is no reason why the petitioner should not get the refund which flows from the order of assessment. The department does not dispute that the demands for other assessment years of the petitioner are presently not enforceable. That being the position, the refund of the petitioner, when facts are not disputable cannot be withheld, that too on the ground of technical difficulty of the system not accepting such a declaration of stay of the demands and giving effect to such position. The computer system and auto generation or any difficulty in doing so in a particular case, cannot override the correct legal position. In the present case, the correct legal position is that the petitioner must receive the refund. Whatever the technical difficulties in releasing the refund, the department must sort it out. If for some reason of technical glitch the system fails to permit the payment of refund, the concerned authorized officer must manually do so. Therefore, the respondent is directed to release the petitioner's refund amount with statutory interest. (WP No. 2436 of 2019 dt 4-10-2019)
Vodafone Idea Ltd. v. CIT (2019) 267 Taxman 405 (Bom.)(HC)

1803 **S. 237 : Refund – Tax deduction at source – Refund cannot be with held on account of computer glitch at Central Processing Center – Department was to be directed to release refund with statutory interest after manually computing same. – Court also observed that "We expect the department to address this larger issue so that similar disputes do not have to travel to the High Court for resolution." [Art. 226]**

Assessee suffered sizeable deduction of tax at source. In assessment, refund of ₹ 224.28 crores arose. Department raised issue that assessee had pending demands for other assessment years. Department stated that assessee's refund claim had not been released on account of computer glitch at Central Processing Center presumably for reason that system was not accepting stay of demands so far made for other years. On writ, the Court held that refund arose out of order of assessment could not be withheld on ground of technical difficulty of system. Accordingly the Department was to be directed to release refund with statutory interest after manually computing same. Court also observed that Per Court:

'Surely, before the department, there would be large number of cases of assessees where the refund claim out of an order of assessment or appellate order arises as against which the same assessee may have demands for other assessment years, recovery of which may have been suspended. In all such cases, similar difficulty may be faced by the department. We expect the department to address this larger issue so that similar disputes do not have to travel to the High Court for resolution.') (AY. 2014-15) WP No. 2435 of 2019 dt 4-10-2019)

Vodafone Idea Ltd. v. CIT (2019) 267 Taxman 408 (Bom.)(HC)

1804 **S. 237 : Refund – Mismatch – Department cannot withhold refund payable to assessee on the ground that the computer system could not rectify the error – Directed to release the refund.**

Assessee had deducted and deposited TDS on payment under old TAN as well as new TAN due to human error. It resulted in TDS mismatch. Computer system could not rectify said error as well as duplication of entry On writ, the Court held that the department could not withhold refund payable to assessee and directed the department to release refund amount payable to assessee. (AY. 2007-08 to 2010-11)

Vodafone Idea Ltd. v. Dy. CIT (2019) 263 Taxman 680 (Bom.)(HC)

1805 **S. 239 : Refund – Limitation – Condonation of delay – Delay in pronouncement of judgment by AAR – Return claiming the return filed belatedly – Revenue authorities were to be directed to condone delay in filing return subject to payment of cost and, thereupon, assessee's claim for refund would be decided in accordance with law.**

Assessee, a Singapore based company which is engaged in business of heavy lifting, erection and primarily carried out work relating to various refineries projects in several countries in Asia and in Gulf region. For relevant year, assessee filed an application before Authority for Advance Ruling (AAR) seeking a ruling as to whether its income in respect of three projects taken in India would be liable tax in India. AAR gave its ruling on 16-8-2016 whereas due date for filing return of income for relevant year was 30-11-2014. Assessee filed its return on 6-3-2017 claiming refund for assessment year in question. Assessee also filed an application for condonation of delay which was rejected. Assessee filed the petition wherein reason given for delay in filing return was that it

could not file said return before pronouncement of ruling by AAR and there was no dispute that AAR pronounced ruling only after due date on 30-11-2014. Allowing the petition the Court held that on facts, respondent was to be directed to condone delay in filing return subject to payment of cost and, thereupon, assessee's claim for refund would be decided in accordance with law. Matter remanded. (AY. 2014-15)
Tiong Woon Project & Contracting Pte. Ltd. v. CIT (IT) (2019) 266 Taxman 147 (Mad.)(HC)

S. 239 : Refund – Limitation – Due to inadvertent mistake of Chartered Accountant claim refund of TDS was not made with in limitation period – Delay was condoned – AO is directed to verify the claim and grant refund. [S. 119(2)(b)] 1806
In return of income due to inadvertent mistake of Chartered Accountant the claim for refund of TDS was not made. The assessee filed application for refund of TDS amount after period of seeking refund had expired and also applied to Chief Commissioner under S. 119(2)(b) for condonation of delay in filing refund application. Chief Commissioner rejected application on ground that plea of omission by auditor was not substantiated. Allowing the petition the Court held that the assessee had shown bona fide reasons why refund claim could not be made in time. Accordingly application for condonation of delay was condoned and AO is directed to verify the claim and grant refund. (AY. 2013-14)
G. V. Infosutions (P.) Ltd. v. Dy. CIT (2019) 261 Taxman 482 / 178 DTR 133 / 309 CTR 185 (Delhi)(HC)

S. 240 : Refund – Appeal – On assessment order is set aside – Refund is not automatic – Amount recovered is directed to be refunded with in four weeks from the date of the order passed by the Tribunal, in the event the appeal is decided in favour of the assessee. [S. 253(3)] 1807
On Writ by the assessee against the recovery the single Judge held that the AO is not entitled to recover the entire tax which was assessed by him immediately after the order passed by him is confirmed by the CIT(A) without waiting for appeal to the Tribunal, the period for which is statutorily provided under S. 253(3) of the IT Act. Accordingly single judge directed the AO to refund the amount recovered. On appeal reversing the Judgment of single Judge the division Bench held that on assessment order is set aside the refund is not automatic. Amount recovered is directed to be refunded with in four weeks from the date of the order passed by the Tribunal, in the event the appeal is decided in favour of the assessee. (AY. 2010-11 to 2013-14)
CIT v. Bidar Nirmiti Kendra and Another (2019) 417 ITR 491 / 310 CTR 185 (Karn.)(HC)
Editorial : Order of single judge in Bidar Nirmiti Kendra v. CIT (2019) 417 ITR 485/ 310 CTR 220 (Karn.)(HC) is partly set aside.

S. 241A : Refund – Withholding of refund in certain cases – Declaring the loss cannot be the ground to doubt the contents of the return or the loss suffered by the assessee – Directed to refund the amount with the interest with in the period of three weeks from the receipt of the order. [S. 143(ID), 197, Art. 226] 1808
AO passed the order withholding the refund of the assessee. The reason for withholding the refund was the assessee has shown huge loss in the return which requires

investigation. On writ the Court held that declaring the loss cannot be the ground to doubt the contents of the return or the loss suffered by the assessee. Accordingly the Court directed to refund the amount with the interest with in the period of three weeks from the receipt of the order. (WP No. 2145 & 2172 of 2019 dt. 11 / 14-10 2019) (AY. 2017-18)

Vodafone Idea Ltd. v. Dy. CIT (2019) 311 CTR 385 / 267 Taxman 603 / (2020) 421 ITR 253 (Bom.)(HC)

1809 **S. 241A : Refund – Withholding of refund in certain cases – Tax deduction at source – Merely because a notice was issued u/s. 143(2), it was not a sufficient ground to withhold refund – The order denying refund on this ground alone would be laconic. [S. 143(ID), 143(2), 197, Art. 226]**

The assessee filed application u/s. 197 of the Act to issue the certificate for lowed deduction of tax at source at 0.8%. ACIT allowed deduction of TDS @1% and issued a notice requesting assessee to produce evidence/documents in support of claims made in its return. In reply, assessee submitted its e-reply along with relevant documents. Since the, assessee had not received any hearing notice or assessment order in terms of S. 143(3) and the assessee was facing acute financial crunch on account of blockage of funds in form of excess TDS and delay in processing of tax refund, it filed an online complaint on portal of Centralized Public Grievance Redress And Monitoring System and requested DIT to expeditiously process pending income tax return. Meanwhile, DIT issued an intimation processing ITR filed by assessee wherein, tax liability of assessee was assessed and refund amount due to assessee was determined along with eligible interest u/s. 244A. The AO issued the notice u/s. 143(2) of the Act and with held the refund due to the assessee. On writ, the court held that Merely because a notice was issued u/s. 143(2), it was not a sufficient ground to withhold refund. Accordingly, the AO was directed to grant the refund as per the law. (AY. 2017-18, 2018-19)

Maple Logistics Pvt. Ltd. v. (2019) 184 DTR 408 / (2020) 312 CTR 141 / 420 ITR 258 / 268 Taxman 138 (Delhi)(HC)

1810 **S. 241A : Refund – Withholding of refund in certain cases – Loss return AO cannot withhold refund merely because in immediately preceding assessment year the assessee has declared a positive income. [S. 143(1), 143(ID)]**

Assessee filed the return of income declaring loss and claimed the refund of entire amount of tax deducted at source. AO determined the amount of refund while completing assessment u/s. 143(1), however, he withheld the refund as per provisions of S. 241A on grounds that in the return for immediately preceding assessment year, assesee had declared an income of huge amount which requires investigation. On writ, allowing the petition the Court held that, merely because in immediately preceding assessment year, assessee had declared a positive income as against substantial loss declared in relevant assessment year could not be a ground to doubt contents of return or claim of assessee with respect to loss suffered and withhold refund claimed by assessee. (AY. 2017-18) (WP No. 2145 of 2019 dt. 11 & 14-10-2019)

Vodafone Idea Ltd. (2019) 267 Taxman 603 / 183 DTR 177 (Bom.)(HC)

S. 241A : Refund – Withholding of refund in certain cases – AO cannot withhold refund without processing the return as well as revised return u/s. 143(1) – Show cause notice to withhold the refund was quashed – Withholding the refund is without authority of law and liable to be set aside. [S. 143(1)] 1811

Assessee filed its return seeking refund. Subsequently, return so filed was revised. Despite not having processed the return of income under section 143(1) a notice was issued by the Assessing Officer proposing to withhold the refund relatable to assessment year 2017-18, in view of section 241A.

On writ, the Court held that S. 241A could only be invoked, after the refund due was determined under section 143(1) and, thus, impugned notice deserved to be quashed. Court held that it is an undisputed position that neither the regular return of income nor the revised return of income for the subject assessment year has been processed under section 143(1) till date. Consequently, the occasion to withhold any refund under section 241A at this stage does not arise. Therefore, on the admitted facts the application/invocation of section 241A of the Act is premature. Accordingly, show-cause notice proposing to withhold refund due is quashed and set aside. (WP No. 1845 of 2019 dt. 16-09-2019) (AY. 2017-18) (Also refer WP No. 894 of 2019 dt. 8-07-2019 (AY. 2015-16)

Tata Communications Ltd. v. Dy. CIT (2019) 267 Taxman 423 / 182 DTR 249 / 311 CTR 1 (Bom.)(HC)

Tata Communications Ltd. v. Dy. CIT (2019) 181 DTR 9 / 310 CTR 805 (Bom.)(HC)

S. 244 : Refund – Interest on refund – Disabled retired Army Personnel – Tax deducted at source on disability pension – Delay in claim for refund not attributable to assessee – CBDT circular is not applicable – Department is liable to refund tax recovered at source with Interest – Suo motou contempt proceedings threatened against CIT & PCIT, if refund is not granted with in 30 days. [S. 119(2)(b), 237, Art. 226] 1812

Allowing the petition the Court held that, the delay in filing the application for refund of tax under S. 237 was to be condoned. It was not a case where the assessee was sleeping over his right, but where the assessee was fighting for his legitimate right of grant of disability pension, as he was a disabled army officer and his original application was allowed only on August 3, 2017 and the order was passed by the Ministry of Defence on November 17, 2017 granting him the disability pension with effect from January 1, 2006 and with promptitude he had submitted an application for the refund of tax. The Department was directed to process the claim of the assessee and to grant the refund to which he was legally entitled with interest on the entire amount from the years 2007-08 to 2015-16 as the statute did not debar an assessee, keeping in view the peculiar facts and circumstances of the case, for the grant of interest. The Board's circular would not apply for the grant of interest, as the assessee was not at fault in the matter. Circular No. 9 of 2015 dated June 9, 2015 (2015) 374 ITR 25(St.) is not applicable. Suo motou contempt proceedings threatened against CIT & PCIT, if refund is not granted with in 30 days. (AY. 2007-08 to 2015-16), (AY. 2008-09 to 2015-16)

Colonel Ashwani Kumar Ram Singh (Retd.) v. PCIT (2019) 419 ITR 269 (MP)(HC), www.itatonline.org

Colonel Madan Gopal Singh Nagi (Retd.) v. CIT (2019) 419 ITR 143 (MP)(HC), www.itatonline.org

1813 **S. 244A : Refund – Interest on refunds – Unauthorized retention of money by the Department – The Department is directed to pay interest as prescribed.**
Allowing the petition, the Court held that the interest on refund is compensation for unauthorized retention of money by the Department. When the collection is illegal & amount is refunded, it should carry interest in the matter of course. There is no reason to deny payment of interest to the deductor who had deducted tax at source and deposited the same with the Treasury. The Department is directed to pay interest as prescribed u/s. 244A at the earliest (*UOI v. Tata Chemicals Ltd. (2014) 363 ITR 658 (SC)* followed)
Universal Cable Ltd. v. CIT (2020) 420 ITR 111 / 312 CTR 1 / 185 DTR 33 (SC), www.itatonline.org
Editorial : Order in Universal Cable Ltd. v. CIT (2009) 26 DTR 98 / (2011) 237 CTR 157 (MP)(HC) is set aside.

1814 **S. 244A : Refund – Interest on refunds – Tax deducted at source – Quantification of interest – Interest would be payable from the respective assessment years – Starting point for computing the interest payable must be to the assessment year in which the tax was deducted at source. [S. 195(2), 199, 244A(1)(a)]**
The assessee had received the payment as a contractor on which the payer had deducted the tax at source. On refund the assessee claimed the interest on refunds. The revenue denied the interest on the ground that payments on which tax was deducted at source was returned by the assessee in the AY. 2005-06, hence the interest cannot be paid on the refund for any period prior to the said assessment year. The Tribunal directed the revenue to pay the interest for the AYs. 2003-04, 2004-05 and 2005-06. On appeal by the revenue, the Court held that, interest would be payable from the respective assessment years. Starting point for computing the interest payable must be to the assessment year in which the tax was deducted at source. Followed *UOI v. Tata Chemicals Ltd (2014) 363 ITR 658 (SC)* (AY. 2005-06)
PCIT v. Kumagai Sknska HCCITOCHU Group (2019) 311 CTR 838 (Bom.)(HC)

1815 **S. 244A : Refund – Interest on refunds – Claim was made first time before Tribunal – Claim was allowed in remand proceedings by CIT(A) – Refund order was not delayed for any period attributable to assessee, Tribunal is justified in allowing interest to assessee. [S. 244A(1)]**
Assessee had not claimed certain expenditure before Assessing Officer but eventually raised claim before Tribunal. In remand proceedings CIT(A) granted additional benefit claimed by assessee which resulted in refund. Tribunal held that delay could not be attributed to assessee and therefore, directed payment of interest. In appeal revenue contended that by virtue of S. 244A(2), since delay in proceedings resulting in refund was attributable to assessee, assessee would not be entitled to such interest. The Court held that there was no allegation or material on record to suggest that any proceedings were delayed on accounts of reasons attributable to assessee. Accordingly the order of Tribunal is affirmed.
CIT v. Melstar Information Technologies Ltd. (2019) 106 taxmann.com 142 / 265 Taxman 50 (Mag.) / 181 DTR 29 (Bom.)(HC)

S. 244A : Refund – Interest on refunds – Filing of Form 29B not essential for processing of return and granting of refund – Interest is payable from date of filing of revised return. [S. 154, Form No. 29B] 1816

Filing of Form 29B for computation of tax under MAT is not essential for processing of the return and issuing of refund. Where income was determined and refund calculated in accordance with Form 29B filed belatedly, interest on such refund could not be denied on the ground that the delay in grant of refund was attributable to the assessee since it had filed Form 29B belatedly. Interest on refund was payable to the assessee from the date of filing of the revised return of income. (AY. 2002-03)

HHA Tank Terminal (P) Ltd. v. ACIT (2019) 177 DTR 300 / 310 CTR 384 / (2020) 420 ITR 395 / 268 Taxman 181 (Ker.)(HC)

S. 244A : Refund – Interest on refunds – Amount seized – Shown as advance tax – Return accepted – Entitled to interest. [S. 132B(4)] 1817

Court held that the amount seized was shown as advance tax in the return and the return was accepted. The assessee is entitled to interest. (AY. 2015-16)

Agarwal Enterprises v. DCIT (2019) 415 ITR 225 / 307 CTR 322 / 175 DTR 437 (Bom.)(HC)

S. 244A : Refund – Interest on refunds – Appellate Tribunal directing Assessing Officer to calculate interest based on Supreme Court and High Court Decisions – Assessing Officer cannot traverse beyond scope of such order – Existence of alternative remedy is not bar to exercise of writ jurisdiction when the order passed is bad in law and when authority exceeds his jurisdiction. [Art. 226] 1818

The Tribunal gave certain directions to the AO to compute and pay such interest. The Assessing Officer, in his order passed pursuant to such directions of the Tribunal, did not agree with the contention of the assessee.

On writ the Court held that the Assessing Officer cannot traverse beyond scope of such order. Accordingly the order passed by the Assessing Officer was to be set aside. Court also held that existence of alternative remedy is not bar to exercise of writ jurisdiction when the order is passed is bad in law and when authority exceeds his jurisdiction. (AY. 1994-95)

Tata Communications Ltd. v. DCIT (2019) 415 ITR 344 / 180 DTR 121 / 265 Taxman 461 / 311 CTR 690 (Bom.)(HC)

S. 244A : Refund – Interest on refunds – Refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue – Entitled to interest however not entitled to interest on interest. [S. 243, 244] 1819

Assessee's claim for refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue. On writ the Court held that, since there was no stay granted by Appellate Authorities, assessee would be entitled to compensation by way of interest for such delay but assessee would not be entitled to interest on interest which was awarded as compensation. (AY. 2002-03)

Nirma Specific Family Trust v. ACIT (2018) 100 taxmann.com 262 (Guj.)(HC)

Editorial : SLP of assessee is for interest on interest is dismissed, Nirma Specific Family Trust v. ACIT (2019) 262 Taxman 304 (SC)

1820 **S. 244A : Refund – Interest on refunds – There was no reason attributable to assessee which delayed its refund claim – Interest on refund was payable from beginning of relevant assessment year.**

Dismissing the appeal of the revenue the Court held that; when there was no reason attributable to assessee which delayed its refund claim, interest on refund was payable from beginning of relevant assessment year. (AY. 2001-02) (ITA No. 1218 of 2016 dt. 4-1-2019)

PCIT v. State Bank of India (2019) 261 Taxman 409 / 174 DTR 277 / 306 CTR 616 (Bom.) (HC)

1821 **S. 244A : Refund – Interest on refunds – Project competition method – Tax deduction at source – Tax deducted earlier years on the basis of payment – Income was shown in the year of completion of project – Assessment resulting in refunds – Entitled to interest from the date of payment to Government. [S. 199]**

Dismissing the appeal of the revenue, the court held that since the revenue which has received the tax deducted at source from the payments to be made to the assessee and appropriate the same, would refund the same but the interest would be accounted much later when the return giving rise to the refund, is filed. Accordingly, the assessee following the project completion method is entitled to interest on refund which was deducted earlier and income is shown in latter year. Followed *Tata Chemicals Ltd. 363 ITR 658 (SC)* (ITA No. 1230 of 2016 dt. 29-1-2019) (From the judgment of the Tribunal in ITA No. 5306 / 2012 dt. 23-09-2015. (AY. 2003-04, 2004-05, 2005-06)

PCIT v. Kumagai Shanska HCCITOCHU Group (2019) 261 Taxman 469 / 180 DTR 126 / 311 CTR 838 (Bom.)(HC)

1822 **S. 244A : Refund – Interest on refunds – Amount refundable to assessee on account of interest subsidy being capital in nature – CIT(A)'s denial for grant of such interest – without giving opportunity of hearing – Matter remanded.**

Dismissing the revenue's appeal, the Tribunal held that; the denial of interest under S. 244A on amount refundable to assessee on account of treatment of interest subsidy received under TUFS, as capital in nature, without giving the assessee any opportunity of hearing, needs reconsideration; matter restored back to CIT(A) to consider the same afresh. (AY. 2002-03 to 2005-06)

Vardhman Textiles Ltd. v. DCIT (2019) 183 DTR 477 / 202 TTJ 750 (Chd.)(Trib.)

1823 **S. 245 : Refund – Set off of refunds against tax remaining payable – AO cannot deviate the mandate of the S.245 – Adjustment of refund is held to be bad in law – Department is directed refund the refund.**

Allowing the petition the Court held that, since no prior notice was issued to the Petitioner before adjusting the refund, there was a breach of the requirement under section 245. The letter dated 19 February 2018 cannot be made the basis of deviating from the mandate under S. 245. The sequitur is that the impugned communication adjusting the amount of ₹ 58,07,58,796/- must be quashed and set aside. So also the notice dated 31 July 2019 under S. 245 of the Act is set aside with liberty to the Deputy Commissioner of Income Tax to issue a fresh notice under S. 245 of the Act. (WP No. 1900 of 2019 dt. 27-9-2019) (AY. 2016-17)

Tata Communications Ltd. v. Dy.CIT (2019) 183 DTR 26 (Bom.)(HC)

S. 245 : Refund – Set off of refunds against tax remaining payable Refund cannot be adjusted without prior notice is issued – Order adjustment of refund is quashed. [Art. 226] 1824

The petitioner filed the return claiming the refund of tax paid along with the interest. The AO adjusted the refund without issuing an prior intimation to the assessee. On writ the Court held that refund cannot be adjusted without prior notice is issued. Accordingly the order adjustment of refund is quashed. (WP No. 1900 of 2019 dt. 27-9-2019 (AY 2016-17)

Tata Communications Ltd. v. Dy. CIT (2019) 311 CTR 407 (Bom.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Conditions – Pendency of the assessment – An assessment would be pending till such time as the assessment order is served upon the assessee – Rejection of petition is held to be not valid. [S. 245A(b), 245(C)(1), 245D(1)] 1825

Writ petition has been filed against the order of the Settlement Commission rejecting an application for settlement filed by the petitioner primarily on the ground that no proceedings were pending on the day.

Allowing the petition the Court held that, for purposes of making an application for settlement, a case i.e. an assessment would be pending till such time as the assessment order is served upon the assessee. The assessee is entitled to proceed on the basis that till the service of the assessment order, the case continues to be pending with the AO. Therefore, it was open to him to invoke the provisions of Chapter XIXA of the Act. *CIT v. ITSC (2015) 375 ITR 483 / 58 taxmann.com 264 (Bom.)(HC) & Yashovardhan Birla v. Dy.CIT (2016) 73 taxmann.com 5 / 289 CTR 482 (Bom.) (HC) followed, V.R.A. Cotton Mills (P) Ltd v. UOI (2013) 359 ITR 495 / 33 taxmann.com 675 (P&H) (HC) & Shlibhadra Developers v. Secretary 2016 10 TMI 778 (Guj.) (HC)* distinguished). The application for settlement is restored to the file of the Commission at the stage of S. 245D(1) of the Act. The period of 14 days as provided in S. 245D(1) of the Act,will run from the date this order is first communicated by either of the parties to the Commission". Consequently, order dated 4.02.2019 is set aside. Petition stands disposed of.

M3M India Holding Pvt. Ltd. v. ITSC (2019) 419 ITR 1 / 311 CTR 941 / 184 DTR 93 (P&H) (HC), www.itatonline.org

S. 245C : Settlement Commission – Settlement of cases – Further disclosure of undisclosed income during settlement proceedings – No full and true disclosure of undisclosed income – Not entitled to Settlement – Assessee was granted liberty to file an appeal within thirty days from the date of receipt of a copy of the judgment of the court in the writ appeal. [S. 245D] 1826

Allowing the petition of the revenue the Court held that this was not a case in which the assessee had merely accepted the additions suggested by the Commission, to settle the matter once and for all times. At the first stage, even before the assessee was directed to sit along with the Assessing Officer and the Officer of the Commission to reconcile the differences, which led to the suggestions on behalf of the Commission, a disclosure of further income was made, which was not available in the original application made under S. 245C. This led to a definite conclusion that there was no

full and true disclosure of the undisclosed income and the source from which it was derived in the application filed under S. 245C. The Settlement Commission ought not to have proceeded with the application when the assessee made a voluntary offer of additional income, when the application was pending, in addition to that disclosed in its application under S. 245C. Considering the long pendency of the matter before the Settlement Commission and before the court, the court permitted the assessee to file an appeal from the assessment order within thirty days from the date of receipt of a copy of the judgment of the court in the writ appeal. (WP.No. dt 11-2-2019)
CIT v. ITSC (I&W) (2019) 412 ITR 387 / 178 DTR 341 / 309 CTR 297 (Ker.)(HC)

1827 **S. 245C : Settlement Commission – Procedure – Opportunity of hearing – Commissioner (DR) could not be given an opportunity of hearing at time of consideration of application for settlement at the stage of admission. [S. 245D(1), 245D(2C)]**
Settlement Commission had first heard objections raised by Commissioner (DR) against admission of application for settlement based on material other than report of Principal Commissioner and thereafter, had afforded an opportunity of hearing to assessee to deal with objections raised by Commissioner (DR) and had, thereafter, proceeded to declare application invalid based on material pointed out by Commissioner (DR). On writ, allowing the petition the Court held that Settlement Commission had clearly violated provisions of S. 245D(2C) by providing an opportunity of hearing to Commissioner (DR) to object to admission of application instead of rendering a decision on basis of report of Principal Commissioner as contemplated under said sub-section. Court held that Commissioner (DR) could not be given an opportunity of hearing at time of consideration of application for settlement at the stage of admission. Accordingly the order of Settlement Commission was quashed.
Akshar Developers v. ITSC (2019) 261 Taxman 569 / 176 DTR 73 / 307 CTR 713 (Guj.) (HC)
Editorial : SLP of revenue is dismissed; ITSC v. Akshar Developers (2020) 269 Taxman 17 (SC)

1828 **S. 245C : Settlement Commission – Settlement of cases – Clubbing of shareholding held by different shareholders to make collective shareholding of 20 per cent is not permissible under law – Rejection of application is held to be justified. [S. 132]**
After search and seizure, petitioner company filed application for settlement of case in which it declared additional income of ₹ 30 lakh Individual share percentage of directors was 9.3 per cent, 11 per cent, 11 per cent, respectively. Petitioner company contended that collective stake of directors exceeded 20 percent in company. Thus, directors had substantial interest in petitioner company and therefore, petitioner company would qualify as a 'specified person' within meaning of Explanation (a) to S. 245(1) being covered under clause (v) of Explanation (a) to S. 245C and thus, settlement application could be filed. Settlement Commission rejected application on ground that clubbing of shareholding held by different shareholders to make collective shareholding of 20 per cent is not permissible under law and, thus, settlement application could not be

admitted. On writ the Court held that settlement application was rightly rejected by Settlement Commission. (AY. 2010-11 to 2017-18)
Bhatia Colonizers (P.) Ltd. v. Dy. CIT (2019) 417 ITR 143 / 261 Taxman 115 / 309 CTR 240 / 179 DTR 249 (Raj.)(HC)

S. 245D : Settlement Commission – Power – Settlement Commission does not have power to reduce or waive interest statutorily payable under S.234A, 234B and 234C of the Act – Matter remanded to Settlement Commission. [S. 154, 234A, 234B, 234C, 245D(4), 245D(6), 245F] 1829
Settlement Commission while passing the order u/s. 245D(4) made certain addition and also waived the interest levied u/s. 234A, 234B and 234C of the Act. On a rectification application filed by the revenue the Settlement Commission partly allowed the application. Being aggrieved by the order of Settlement Commission the assessee filed two writ petitions before the High Court. High Court set aside the rectification order passed by the Settlement Commission. Revenue aggrieved by the order of Settlement Commission filed two petitions before the High Court. High Court reversed the waiver of interest in terms of Settlement Commission 's direction contained in its order dt 11-10-2002. On appeal the Court held that, when Settlement Commission passed first order disposing of assessee's application, issue with regard to powers of Commission was not settled by any decision of Apex Court. Decisions in *CIT v. Anjum M.H. Ghaswala (1997) 252 ITR 1 (SC) and Brij Lal v. CIT (2010) 328 ITR 477 (SC),* were rendered after Settlement Commission passed order in present case. Therefore, Commission had no occasion to examine issue in question in the context of law laid down by this Court in those two decisions. High Court instead of going into merits of issue, should have set aside original order passed by Commission and remanded case to Commission for deciding issue relating to waiver of interest payable under S. 234A, 234B, and 234C afresh. High Court failed to see that order of Commission was already set aside by High Court itself in first round in light of law laid down by in case of Brijlal wherein, it was laid down that Commission had no power to pass orders u/s. 154. Order passed by Settlement Commission to extent it decided issue in relation to waiver of interest was set aside and case was remanded to Commission to decide issue afresh. Settlement Commission in exercise of its power under S. 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under S. 234A, 234B and 234C, except to the extent of granting relief under the circulars issued by the Board under S. 119 of the Act. Matter remanded to settlement Commission.
Kakadia Builders Pvt. Ltd. v. ITO (2019) 412 ITR 128 / 175 DTR 305 / 307 CTR 369 / 262 Taxman 268 (SC)
Editorial : Refer, Kakadia Builders Pvt. Ltd. v. ITO (2014) 362 ITR 342 (Guj.)(HC)

S. 245D : Settlement Commission – Failure to disclose a full and true disclosure – Order passed by consent – Settlement recorded by the Commission on consent of the parties – Dept cannot challenge the order which is passed by consent. [S.245D(4) Art. 226] 1830
Dismissing the petition of the revenue, the Court held that when the order is passed by the Commission on consent of the parties Department cannot challenge the order.

Relied on State of Maharashtra Versus. Ramdas Shrinivas Nayak and another, reported in (1982) 2 Supreme Court Cases 463, the Apex Court had observed in para-4 as under :- "4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation"
Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136]. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.
Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment." (WP No. 1004 of 2017 dt 21-06-2018)
PCIT v. ITSC (2019) 311 CTR 284 (Bom.)(HC)

1831 **S. 245D : Settlement Commission – Passing of order u/s. 245D(3) is the discretionary of the Settlement Commission – Revenue cannot insist that the Settlement Commission must pass the order before proceeding further under S.245D(4) of the Act. [S. 254D(2C), 245D(3), 245D(4)]**

Revenue challenged the order of Settlement Commission passed under S. 245D(2C) on ground that Settlement Commission did not pass an order under S. 245D(3) requiring a further enquiry into certain transactions of assessee which were admittedly bogus before passing said order under S. 245D(2C). Dismissing the petition of revenue the Court held that order u/s. 245D(3), it is a discretion of Settlement Commission after calling for and examination of records, to require Commissioner to make further enquiry/investigation, if Settlement Commission is of opinion that any further enquiry or investigation in the matter is necessary and it is not necessary for Settlement Commission to pass a formal order under S. 245D(3). Insistence of department, to Settlement Commission to pass a

formal order under S. 245D(3) before proceeding further to stage of S. 245D(4) was not valid. Since department had not set out grounds and reasons that why in facts of case, such enquiry or investigation as envisaged under S. 245D(3) was necessary and further, Settlement Commission adverted to material on record and came to conclusion that there was no failure of full and true disclosure. Order passed by Commission under S. 245D(2C) is justified and up held. (WP No. 1788 of 2018 dt 4-4-2019)(AY. 2008-09 to 2015-16)

PCIT(C) v. ITSC (2019) 263 Taxman 698 / 178 DTR 329 / 310 CTR 46 (Bom.)(HC)

S. 245D : Settlement Commission – Application – Settlement Commission can declare an application for settlement invalid, but such order has to be passed within prescribed time and under no circumstances, Settlement Commission can give retrospective effect to order invalidating settlement application of assessee – Settlement Commission has no jurisdiction to pre date its order. [S. 245C, 245D(2C), 245D(4)] 1832

The issue came up for consideration in relation to the order of the Settlement Commission, invalidating the settlement application by passing the order dated 31-5-2016 but relating it back to the original order of S. 245D(2C) dated 29-1-2015. Thus, the dispute had direct relation to the period of limitation available with the Assessing Officer for completing the assessment in such cases. If the effective date of such order was taken as 29-1-2015, the Assessing Officer would have left 6 days to complete the assessment after the Settlement Commission passed the impugned order. Since he had passed the orders of assessment on 14-7-2016, his action would be plainly barred by limitation. If, on the other hand, the effect of Settlement Commission's said order invalidating the settlement application of the assessee, was taken as 31-5-2016 i.e. the actual date of passing the order, the AO would have the benefit of exclusion from limitation, period from the date of filing the application till passing of the impugned order by the Settlement Commission. Court held that, once the Settlement Commission did pass an order, whether legally permissible to do so or not, the Settlement Commission simply did not have the authority or jurisdiction to predate such order. The Settlement Commission could have rejected the request of the revenue to go back to the stage of passing the order under S. 245D(2C) and proceed further to pass final order of settlement under section 245D(4), but under no circumstances, the Settlement Commission could have made a declaration of invalidity on 31-5-2016 giving it a retrospective effect of 29-1-2015. The Settlement Commission exceeded its jurisdiction in doing so. When the Settlement Commission had no jurisdiction to give retrospective effect to its order, whether the revenue requested for the same or the assessee, would be wholly inconsequential. In essence, the Settlement Commission could either have refused the request of the department or accepted it but under no circumstances could it have passed the order of invalidation with retrospective effect.

Under S. 245D(2C), thus the Settlement Commission can declare an application for settlement invalid, but such order has to be passed within prescribed time. In the present case, the Settlement Commission to overcome such time limit, passed an order giving it retrospective effect. If one recognizes the powers of the Settlement Commission to pass such retrospective orders, the time limits envisaged by the legislature at various stages of settlement proceedings would be destroyed.

In the present case, the order passed by the Settlement Commission left six days to the Assessing Office to complete the assessments. Be that as it may, it is held that the Settlement Commission, while giving retrospective effect to its order of invalidation, acted wholly without jurisdiction.

Another important aspect of the matter is, that the portion of the order of Settlement Commission giving retrospective effect to the declaration of invalidity of the settlement application is clearly severable from the main order of invalidity. While therefore, striking down this illegal, severable portion of the order, there is no need to disturb the principle declaration made by the Settlement Commission. Under the circumstances, it is held that the observation/direction of retrospective effect of the order is set aside and the order passed by the Settlement Commission on 31-5-2016 would take effect from such date. With these observations, the petitions is disposed of. (WP Nos. 2321 of 2017 dt. 28-2-2019)(AY. 2008-09 to 2013-14)

PCIT v. ITSC (2019) 418 ITR 339 / 263 Taxman 73 / 176 DTR 264 / 310 CTR 37 (Bom.) (HC)

1833 **S. 245D : Settlement Commission – Bogus share capital and share premium – Failure to make full and true disclosure with regard to undisclosed income by way of bogus share capital and share premium and also manner of earning such income – Settlement Commission is justified in rejecting settlement application on such ground even at stage of passing of final order under S. 245D(4) – Limitation – Proceedings were pending from 26-2-2015 till 4-8-2016, said period was to be excluded while calculating limitation period for issuing notice under section 143(3) read with section 153A and after excluding above period, notice issued under said section was not time barred. [S. 132, 153A, 153B, 245C, 245D(4), 245HA]**

A search under S. 132 was conducted upon assessee on 24-5-2012 and a notice was issued under S. 143(3) read with section 153A on 6-4-2017. Assessee had filed an application before Settlement Commission under section 245C where proceedings were pending from 26-2-2015 till 4-8-2016. Assessee filed an application before Settlement Commission under S. 245C admitting to receive certain amount in cash from his employer by way of bogus share capital and share premium Same was rejected on technical ground of non-payment of tax. Assessee preferred a second application. Settlement Commission passed a final order of settlement under S. 245D(4) again rejecting application of assessee on grounds that assessee had not made true and full disclosures and also manner of earning such income which was essential condition under S. 245C(1). Assessee contended that Settlement Commission could not at stage of passing of final order under S. 245D(4), reject a settlement application on technical ground of failure of applicant to make a full and true disclosure and manner in which undisclosed income was derived, thus, impugned order passed under S. 245D(4) was to be constructed as order passed under S. 245D(1). Rejecting the petition the Court held that the Settlement Commission can reject an application for failure of applicant to make a full and true disclosure even at stage of passing of final order under section 245D(4). As regards the limitation the court held that since assessee had filed an application before Settlement Commission under S. 245C where proceedings were pending from 26-2-2015 till 4-8-2016, said period was to be excluded while calculating limitation

period for issuing notice under S. 143(3) read with S. 153A and after excluding above period, notice issued under said section was not time barred. (AY. 2009-10 to 2011-12)
Rohit Kumar Gupta v. PCIT (2019) 266 Taxman 249 / 310 CTR 393 / 181 DTR 185 (Delhi) (HC)
RPG Consultants (P) Ltd v. PCIT (2019) 266 Taxman 249 / 310 CTR 393 / 181 DTR 185 (Delhi)(HC)

S. 245D : Settlement Commission – Validity of the order could not be challenged on the ground that assessee's paper book was not filed in advance as the Commission had not passed its order on the basis of such paper book – Petition of revenue is dismissed. [S. 245D(4)] 1834
Revenue challenged the validity of the order of the settlement commission by way of a writ on the ground that the assessee had filed a bulky paper book with the Commission and furnished a copy of the same to it only a day in advance, therefore, the department did not get sufficient opportunity to controvert the contents of the paper book. Held that the order of the Commission does not refer to any document in the paper book, therefore, the grievance of the department that it could not controvert the same is unfounded. Department has not otherwise challenged the merits of the order or the fact that the objections raised by it in its report were not considered by the Commission. Petition of revenue is dismissed. (WP No. 12320 of 2017 dt. 5-2-2019)
PCIT v. UOI (2019) 178 DTR 197 (Pat.)(HC)

S. 245D : Settlement Commission – Settlement of cases – Settlement Commission either reject the application or it could have directed Principal Commissioner or Commissioner to enquire and submit report so as to enable to Commission to take a decision – Settlement Commission could not relegate matter to Assessing Officer to dispose of assessee's case on merits. [S. 245(2C), 245D(1), 245D(4)] 1835
During the pendency of assessment proceedings, assessee filed application under S. 245C(1) for settlement. The application was admitted to be proceeded with by the settlement commission under S. 245D(1) and after considering the submissions of the department, the settlement commissioner proceeded ahead under S. 245(2C) with the application for settlement. Thereupon, the settlement commission passed an order under S. 245D(4) whereby assessee's case was relegated to the Assessing Officer. On writ, the Court held that the settlement commission had only two options, either to reject the application when true and correct disclosure was not made in the application or allow it to be further proceeded. However, the settlement commission could not have relegated the assessee to be dealt with by the Assessing Officer.
Samdariya Builders (P.) Ltd. v. ITSC (2019) 264 Taxman 176 / 311 CTR 500 / 183 DTR 209 (MP)(HC)

S. 245D : Settlement Commission – Application – Cross examination – Relying upon statements of witness without giving an opportunity of cross examination the application of the assessee was rejected by the Settlement Commission – High Court rejected the writ petition. [S. 245C] 1836
Search and survey was conducted at the premises of the assessee. The asseesse filed application before Settlement Commission. During settlement proceedings, it applied

for cross-examination of different witnesses whose statements were recorded behind its back. The settlement Commission has not allowed the opportunity for cross examination and rejected the application holding that the assessee had not made true and full disclosures. High Court also affirmed the order of Settlement Commission. (AY 2008-09 to 2014-15)

Amrapali Fincap Ltd. v. ITSC (2016) 73 taxmann.com 97 (Guj.)(HC)

Editorial : SLP is granted to the assessee, Amrapali Fincap Ltd. v. ITSC (2019) 264 Taxman 84 (SC)

1837 **S. 245D : Settlement Commission – Full and true disclosure – Surrender of income in the course of search – Retraction after two years – Application for settlement showing undisclosed income much lower figure – Report of revenue was not considered – Settlement Commission determining the income higher than the disclosed income – Order of Settlement Commission was quashed. [S. 132(4), 245C, 245D(4)]**

Allowing the petition of the revenue the Court held that the statement was made voluntarily on January 20, 2012, in the course of search proceedings. There is a presumptive value to such statement by virtue of S. 132(4) of the Act. Moreover, it is not merely the statement that is material in the present case; in fact ledgers and other books of account were seized. The approach of the Settlement Commission was flawed throughout. Apart from brushing aside the fact that the retraction took place close to two years after the statement was made, the Commission overlooked that nowhere did the assessees complain that the statement of the first respondent was recorded under coercion. The second and equally important reason to hold that the Settlement Commission gravely erred in its approach was because of utter disregard to the condition that the assessee always has the duty to make a full disclosure. After brushing aside the Revenue's objections with regard to the complete lack of explanation by the assessee with respect to credits claimed, the Settlement Commission proceeded to compute the amounts offered and observed that the difference between the net asset and the income declared was ₹ 5.55 crores and accepted the difference as their undisclosed income. Clearly, the decision of the Settlement Commission was untenable in law. Once the assessee approached it with a certain amount, representing that it constituted full and true disclosure (and had maintained that to be the correct amount till the date of hearing) the question of "offering" another higher amount as a "full" disclosure was impermissible. The amount offered in this case, clearly could not have been considered or accepted. The Settlement Commission, in this regard erred as there was no full and true disclosure by the assessees. Consequently, the order was to be set aside and quashed. (AY. 2006-07 to 2013-14)

CIT v. Om Prakash Jakhotia (2019) 414 ITR 176 / 179 DTR 1 / 309 CTR 499 / 265 Taxman 110 (Delhi)(HC)

Editorial : SLP of assessee is dismissed, Om Prakash Jakhotia v. PCT (2019) 418 TR 18 (St.)(SC)

S. 245D : Settlement Commission – Restoration of matter to Settlement Commission by High Court – Computation of period of 18 months – Period taken by assessee in pursuing remedy before Court and period during which order stayed to be excluded. [S. 245D(4A)] 1838

Allowing the petition the Court held that the period between February 2, 2018 to four weeks after February 4, 2019, when the applications stood disposed of, could not be taken into consideration for the purpose of computing the period of 18 months as contemplated under S. 245D(4A), for passing the order under S. 245D(4) by the Settlement Commission. The Settlement Commission was directed to pass orders as expeditiously as possible.

Akshar Builders v. PCIT (2019) 414 ITR 34 (Guj.)(HC)

S. 245D : Settlement Commission – Full and True disclosure of undisclosed income – Further disclosure of undisclosed income during settlement proceedings – Not entitled to Settlement of case – Granted permission to file an appeal from the assessment order with in 30 days from the date of receipt of a copy of the judgment. [S. 132, 158BC, 245C, 245D(4)] 1839

Allowing the appeal of the Revenue against the order of single judge,the Court held that, this was not a case in which the assessee had merely accepted the additions suggested by the Commission, to settle the matter once and for all times. At the first stage, even before the assessee was directed to sit along with the AO and the Officer of the Commission to reconcile the differences, which led to the suggestions on behalf of the Commission, a disclosure of further income was made, which was not available in the original application made under S. 245C. This led to a definite conclusion that there was no full and true disclosure of the undisclosed income and the source from which it was derived in the application filed under S. 245C. The Settlement Commission ought not to have proceeded with the application when the assessee made a voluntary offer of additional income, when the application was pending, in addition to that disclosed in its application under S. 245C. Court also held that Considering the long pendency of the matter before the Settlement Commission and before the court, the court permitted the assessee to file an appeal from the assessment order within thirty days from the date of receipt of a copy of the judgment of the court in the writ appeal. Decision of single judge was set aside. (WP No 858 of 2015 dt 11-2-2019)

CIT v. ITST (IT& WT) (2019) 412 ITR 387 / 178 DTR 341 / 309 CTR 297 (Ker.)(HC)

S. 245D : Settlement commission – where Commission had taken note of each of the objections raised by Commissioner in his report and after testing same against disclosure of income made by assessee in his application, proceeded to dispose of matter by impugned order, there being no perversity in order passed by Commission, petition was to be dismissed. [S. 245C, 245D(4)] 1840

Dismissing the petition of the revenue, the Court held that Chapter XIXA incorporates a special procedure for settlement on basis of full and true disclosure of income by an assessee. Commission had taken note of each of the objections raised by Commissioner in his report and after testing same against disclosure of income made by assessee in his application, proceeded to dispose of matter by impugned order, there being no perversity

in order passed by Commission, petition was to be dismissed. (AY. 2011-12 and 2012-13) (CAJC No 1345 of 2016 dt 8-8-2019)
ACIT v. ITSC / UOI (2019) 419 ITR 419 / 261 Taxman 72 / 179 DTR 152 / 309 CTR 307 (Patna)(HC)
Tirupati Homes Ltd. v. ITSC ((2019) 419 ITR 419 / 261 Taxman 72 / 179 DTR 152 / 309 CTR 307 (Patna)(HC)

1841 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Denial of liability – Not confined only to the liability to be assessed U/s. 143(3) of the Act – Liability to pay tax U/s. 115Q is also appealable order – Alternative remedy is available – Writ is not maintainable. [S. 15QA, 143(3), Art. 226]**
The expression "denies his liability to be assessed" in S. 246A takes within its fold every case where the assessee denies his liability to be assessed under the Act. It is not confined to the liability to be assessed U/s. 143(3) but applies also to the liability to pay tax u/s. 115QA. If there is adequate appellate remedy, a Writ Petition under Article 226 cannot be entertained.
Order of High Court is affirmed. (*CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) & CIT v. Chhabil Dass Agarwal (2013) 357 ITR 357 (SC) followed). (CA No. 8945 of 2019 @ SLP(C) No. 20728 of 2019, dt. 22-11-2019)* (AY. 2014-15)
Genpact India Pvt. Ltd. v. DCIT (2019) 419 ITR 440 / 311 CTR 737 / 184 DTR 17 / 111 taxmann.com 402 / (2020) 268 Taxman 299 (SC), www.itatonline.org
Editorial : Order in Genpact India Private Ltd. v. DCIT (2019) 419 ITR 370 / 181 DTR 361 / 310 CTR 505 / 108 taxann.com 340 (Delhi) (HC) is affirmed.

1842 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – levy of interest – Appeal is not maintainable unless tax liability is challenged.[S. 220(2)]**
S. 220(2) of the Act is not included in the category of "orders appealable" under S. 246A. Without making a challenge to the tax liability itself, the levy of interest independently cannot be challenged before the Commissioner (A). (AY. 1991-92)
S. Appaswamy v. DCIT (2019) 416 ITR 42 / 311 CTR 650 (Mad.)(HC)

1843 **S. 246A : Appeal – Commissioner (Appeals) – limitation for filing – condonation of delay – deduction of tax at source – failure to deduct – Government Organisation – "sufficient cause" – delay condoned – Matter remanded to CIT(A).**
The assessee was a Government body and an appeal was filed against the order passed by the Assessing Officer under S. 201(1) and 201(1A) of the Income-tax Act, 1961. The CIT(A) dismissed the appeal on the ground that there was a delay in filing the appeal without any reasonable cause. On appeal ITAT held, "Sufficient cause" for the purpose of condonation of delay should be interpreted with a view to even-handed justice on the merits in preference to an approach which scuttles a decision on the merits. Further the power to condone the delay is conferred with a view to enable the courts to do substantial justice to litigants by disposing of cases on the merits. Considering the totality of the facts and circumstances of the case, the delay was to be condoned and matter remanded to the CIT(A) for deciding on the merits after giving due opportunity of hearing to the assessee. (AY. 2010-11, 2014-15)
Divisional Railway Manager, Jaipur v. ACIT(TDS) (2019) 70 ITR 590 (Jaipur)(Trib.)

S. 246A : Appeal – Commissioner (Appeals) – Form of appeal and limitation – Amendment in making electronic filing of appeal mandatory – change in law introduced at about the same time and possibility that assessee may not be conversant with technical aspects – Opportunity to be given to assessee for filing of appeal in accordance with law. [S. 251, R.45] 1844

Tribunal held that the breach committed by the assessee was a technical nature. Accordingly Tribunal held that, opportunity to be given to the assessee for filing of the appeal in accordance with law and the assessee entitled to file an appeal electronically afresh (if not filed so far) within 30 days of service of this order for adjudication on the merits. (AY.2013-14)

Amigo Finstock P. Ltd. v. ITO (2019) 76 ITR 61 (SN) (Ahd.)(Trib.)

S. 249 : Appeal – Commissioner (Appeals) – Payment of admitted tax – Subsequently required amount of tax is paid – Appeal shall be admitted on making payment of tax and taken up for hearing on merits. [S. 246A, 249(4)(a)] 1845

Tribunal held that in terms of S. 249(4)(a), stipulation as to payment of tax ante filing of first appeal is only directory and not mandatory. Where appeal is filed without payment of tax but subsequently required amount of tax is paid, appeal shall be admitted on making payment of tax and taken up for hearing on merits.(AY. 2006-07)

Annapoorneshwari Investment v. DCIT 177 ITD 717 (Bang.)(Trib.)

S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and The power conferred upon the CIT(A) to condone the delay in filing of appeal is to alleviate genuine suffering of taxpayers – He has the power and corresponding duty to exercise the power when circumstances so warrant – u/s. 14 of the Limitation Act, delay caused due to proceeding in a wrong forum has to be condoned. [S. 249(3)] 1846

Allowing the appeal of the assessee the Tribunal held that the power conferred upon the CIT(A) to condone the delay in filing of appeal is to alleviate genuine suffering of taxpayers. He has the power and corresponding duty to exercise the power when circumstances so warrant. U/s. 14 of the Limitation Act, delay caused due to proceeding in a wrong forum has to be condoned. Article 2(1) of the India-UAE DTAA provides that the taxes covered shall include tax and surcharge thereon. Education cess is nothing but an additional surcharge & is also covered by the definition of taxes (ITA No.: 2043/ Hyd/18, dt. 29-3-2019) (AY. 2012-13)

R. A. K. Ceramics v. DCIT (2019) 176 DTR 345 / 199 TTJ 273 (Hyd.)(Trib.), www.itatonline.org

S. 249 : Appeal – Commissioner (Appeals) – Admitted tax as per return of income – Requirement of paying admitted tax before filing appeal is directory – When defect is removed, earlier defective appeal becomes valid. Accordingly the matter was remanded to CIT(A). [S. 249(4)] 1847

Tribunal held that payment of admitted tax as per return of income before filing of an appeal is directory, therefore, when defect in appeal, being non-payment of such tax, is removed, earlier defective appeal becomes valid. Accordingly the matter was remanded to CIT(A). (AY. 2013-14)

Sushila Devi Malu (Smt.) v. ITO (2019) 174 ITD 627 (Bang.)(Trib.)

1848 **S. 250 : Appeal – Commissioner (Appeals)–Duties – Must pass a speaking order on merits by expressing reasons and finding in support of the conclusion – Matter remanded to the CIT(A) for passing speaking order. [Art. 226]**
Assessee filed an appeal to CIT(A) against order of scrutiny assessment done by AO. CIT(A) disposed appeal holding that Assessing Officer's order was a self speaking order and did not require interference. On writ, the Court held that CIT(A) being a fact finding authority, had to consider assessment order on grounds raised in appeal and pass a speaking order on merits by expressing reasons and findings in support of conclusion. Accordingly, the order of CIT(A) was set aside and matter was to be remitted for passing fresh order, such order must be a speaking order with reasons and findings. (AY. 2016-17)
Ajji Basha v. CIT (2019) 267 Taxman 545 (Mad.)(HC)

1849 **S. 250 : Appeal – Commissioner (Appeals) – Procedure – It is statutorily imperative to give a personal hearing while disposing of an appeal – Ex-parte order passed by CIT(A) confirming the addition is set aside. [Art. 226]**
CIT(A) confirmed assessment order. However, while disposing of its appeal, opportunity of personal hearing was not granted. On writ, the Court held that it is statutorily imperative to give a personal hearing while disposing of an appeal. Since, in instant case notice of hearing sent to assessee had returned unserved, in interest of justice, it was appropriate to give another opportunity of personal hearing to assessee. Accordingly the matter remanded. (AY. 2008-09, 2009-10)
Gemini Film Circuit. v. CIT(A) (2019) 266 Taxman 216 / (2020) 186 DTR 366 (Mad.)(HC)

1850 **S. 250 : Appeal – Commissioner (Appeals) – Guidelines for disposal of appeals – Incentive to CIT(A)–Target of disposal – Enhancement and penalty – Impermissible and invalid – Portion of Central Action Plan prepared by CBDT which gives higher weightage for disposal of appeals by quality orders i.e where order passed by Commissioner (Appeals) is in favour of revenue was to be set aside. [S. 119, 250(6A)]**
Allowing the petition the Court held that, the CBDT is empowered to lay down broad guidelines for disposal of appeals by CIT(A). However, it cannot offer 'incentives' to CITT(A) for making enhancement and levying penalty. Such policy transgresses the exercise of quasi-judicial powers & is wholly impermissible and invalid U/s. 119. The 'Incentives' have the propensity to influence the CIT(A) and they will be tempted to pass an order in a particular manner so as to achieve a greater target of disposal. Portion of Central Action Plan prepared by CBDT which gives higher weightage for disposal of appeals by quality orders i.e where order passed by Commissioner (Appeals) is in favour of revenue was to be set aside. (WP No. 3343 of 2018, dt. 11-4-2019)
Chamber of Tax Consultants v. CBDT (2019) 416 ITR 21/ 263 Taxman 551 / 177 DTR 284 / 308 CTR 464 (Bom.)(HC), www.itatonline.org
Ace Legal v. UOI (2019) 416 ITR 21 / 308 CTR 464 / 177 DTR 284 (Bom.)(HC)

1851 **S. 250 : Appeal – Commissioner (Appeals) – Dismissal of appeal in limine – CIT(A) cannot dismiss appeal in limine for non – prosecution without deciding same on merits – Order of CIT(A) is set aside. [S. 246A, 249, 250(6), 251]**
The AO passed order by making certain additions / disallowances. The assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal by holding it non-

maintainable on the grounds that the impugned assessment order was not placed on record by the assessee and that the demand notice and challan for payment of appeal fee in compliance of section 249 had not been placed on record by the assessee. On appeal, the Tribunal held that, U/s. 250(6) the CIT(A) was obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which arose for consideration. Further, he is obliged to state the reasons for his decision on each such point which arose for determination. Thus, the CIT(A) was duty-bound to dispose of the appeal on merits. Accordingly, the Tribunal held that the assessee has e-filed documents and other attachments, as well as other information submitted by assessee at time of e-filing of appeal before CIT(A) must be treated as part of record of CIT(A) and he should pass order on merits stating points for determination, decision thereon, and reasons for decision. Followed *CIT v. Premkumar Arjundas Luthra (HUF) (2016) 240 taxman 133 / 297 CTR 614 (Bom.)(HC)* (AY. 2015-16) *Pawan Kumar Singhal v. ACIT (2019) 178 ITD 390 / 202 TTJ 221 / 183 DTR 161 (Delhi) (Trib.)*

S. 250 : Appeal – Commissioner (Appeals) – Additional evidence – Evidence cannot be admitted without affording an opportunity to AO to cross-examine. [S. 250, R. 46A] 1852
The AO must be afforded an opportunity to examine any document or evidence not produced before it and produced for the first time before the CIT(A). Matter remanded (AY. 2006-07)
Dy.CIT v. Roshan Lal Jindal (2019) 71 ITR 596 (Chd.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Ex parte order – Order passed without giving opportunity of being heard was in violation of principle of natural justice – Matter remanded. [S. 254(1), ITAT R. 28] 1853
Allowing the appeal of the assessee the Tribunal held that order passed without giving opportunity of being heard was in violation of principle of natural justice-Matter remanded. Followed *CIT v. B.N. Bhattacharjee (1979) 118 ITR 461 (SC)* and *Chemipol v. UOI (2010) 2 taxmann.com 523 (Bom.) (HC), Maneka Gandhi v. UOI AIR 1978 SC 597* (AY.2009-10)
Narendrakumar Kuvarjibhai Vadher v. ITO (2019) 175 ITD 329 (Surat)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Power of enhancement Powers cannot be restricted only to issues raised in appeal before him – Enhancement is held to be valid. 1854
The assessee was engaged in the business of civil contract. The AO made three additions. On the assessee's appeal, the CIT(A) enhanced income of appellant by ₹ 26.50 lakhs which included disallowances of ₹ 11.50 per cent being 50 per cent of wage expenses claimed in profit and loss account and ₹ 15 lakhs being 50 per cent of sundry creditors appearing in balance sheet. On second appeal, the Tribunal dismissed the appeal of the assessee.
On further appeal, the High Court set aside the order of both the CIT(A) and the Tribunal and restored the proceedings for consideration before the CIT(A). In compliance of the said order, the assessee filed an application along with relevant documents. The CIT(A) partly allowed the appeal of the assessee. However, the additions of ₹ 11.50 lakhs and

₹ 15.00 lakhs were confirmed. On appeal, the Tribunal confirmed the addition of amount of sundry creditors to extent of ₹ 15.00 lakhs, and disallowance on labour charges of ₹ 5.95 lakhs. On appeal the assessee contended that the AO had made three additions which were deleted by the CIT(A). However, addition of ₹ 11.50 lakhs and ₹ 15 lakhs towards labour expenses and sundry creditors were wrongly made by the CIT(A) as he did not have the jurisdiction to introduce a new source of income and the assessment was to be confined to those items of income which was subject matter of the appeal. The Court held that the argument raised by the assessee that the CIT(A) while exercising power of enhancement under S. 251 cannot consider new source of income which was not dealt by the Assessing Officer, in the instant case cannot be accepted as after the remand by the instant Court, the CIT(A) as well as the Tribunal in depth had recorded a finding that there was no new source of income on which the additions had been made and it was all on the records produced before the AO that the CIT(A) had made additions of labour charges as well as addition of sundry creditors to the extent of ₹ 15.00 lakhs. Court held that instant case is not of new source of income as the CIT(A) has relied upon the books of account submitted by the assessee along with his return and had claimed expenditure made by him in profit and loss account and claim of sundry creditors shown in balance-sheet. Court also held that The Apex Court while dealing with the power of the Appellate Assistant Commissioner under section 251 in case of *CIT v Nirbheram Deluram [1997] 91 Taxman 181/224 ITR 610 (SC)* and *Jute Corpn of India v. CIT [1990] 53 Taxman 85/ [1991] 187 ITR 688 (SC)* had held that power of the Appellate Assistant Commissioner is coterminous with that of Income Tax Officer and he can do what the Income Tax Officer can do and also direct him to do what he has failed to do.

As regards the issuance of fresh notice of enhancement by the CIT(A) is concerned, has no relevance, once the order of the Tribunal as well as CIT(A) was set aside by the instant Court restoring the appeal back to the CIT(A) for reconsideration and fixing last date for the appellant to file all required information and documentary material and to appear before the CIT(A) on scheduled date. The question of law raised by the assessee is of no consequence as he, thereafter, had filed the documents before the CIT(A) and had appeared, thus, the question of issuance of fresh notice for enhancement does not arise and the CIT(A) rightly decided the question so raised before it. Accordingly the appeal is dismissed. (AY. 2006-07)

S. D. Traders v. CIT (2019) 267 Taxman 631 (All.)(HC)

1855 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Stay – Order of CIT(A) rejecting the stay application is set aside. [Art. 226]**

Against order of Assessing Officer, assessee filed appeal before CIT(A) along with stay petition. CIT(A) rejected stay petition. On writ the Court held that order of CIT(A) was not only cryptic, but he had given a complete go by to parameters and determinants which had to be taken into account while disposal of stay petition. Accordingly the matter was sent back to the CIT(A) for disposal of stay petition afresh by adhering to order of Madras High Court made in case of *Kannammal (Mrs.) v. ITO (2019) 413 ITR 390 (Mad.)(HC)* (AY. 2012-13)

Rakesh P Sheth v. ITC (2019) 265 Taxman 200 (Mad.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Stay was granted by depositing 20% of tax in dispute – High Court reduced to 50 per cent of amount directed in order passed by Commissioner (Appeals) and time to make the payment. [S. 226] 1856

High Court High Court reduced to 50 per cent of amount directed in order passed by Commissioner (Appeals) and time to make the payment. (AY. 2016-17)

Popular Traders v. ACIT (2019) 106 taxmann.com 88 / 264 Taxman (Ker.)(HC)

Editorial : SLP is dismissed,since time to make payment of first instalment had expired further time of two weeks was granted to the assessee to make the payment. Popular Traders v. ACIT (2019) 264 Taxman 3 (SC)

S. 251 : Appeal – Commissioner (Appeals) – Power of enhancement Action plan – The CBDT should reconsider the direction in the Central Action Plan of offering incentives to Commissioner (Appeals) to enhance assessments and levy penalty – From the action plan, it is not clear as to the utility of the norms set which the Commissioner (Appeals) has to achieve – If the purpose of setting of norms is to evaluate the performance of the Commissioner (Appeals) there would be all the more reason why the above quoted portion of the action plan be reconsidered by the CBDT. [S. 119, 250] 1857

The petitioner challenged the Direction of the CBDT for disposal of certain number of Appeals of specified categories within specified time. According to the Petitioners, these time limits are artificially applied, are contrary to the statutory provisions and also have the effect of making hurried orders by the Appellate Commissioners. Secondly incentive for quality orders. The Court held that : The CBDT should reconsider the direction in the Central Action Plan of offering incentives to Commissioner (Appeals) to enhance assessments and levy penalty – From the action plan, it is not clear as to the utility of the norms set which the Commissioner (Appeals) has to achieve – If the purpose of setting of norms is to evaluate the performance of the C.I.T. (A) there would be all the more reason why the above quoted portion of the action plan be reconsidered by the CBDT. (WP No. 3343 of 2018, dt. 22-3-2019)

The Chamber of Tax Consultants v. CBDT (Bom.)(HC), www.itatonline.org

S. 251 : Appeal – Commissioner (Appeals) – Powers – Direction issued by the CIT(A) to initiate reassessment proceedings for assessment year 2011-12 is held to be non-est direction hence invalid. [S. 50C, 147, 148, 149(1)(b), 150(2)] 1858

For the assessment year the CIT(A)by order dt 3-5-2019 annulled assessment order passed by the AO and directed the jurisdictional AO to execute remedial action u/s. 50C of the Act. On appeal the Tribunal held that since in terms of S.149(1) (b) in instant case notice U/s. 148 could have been issued by end of assessment year 2018-19 and thus law did not permit initiation of proceedings U/s. 147 when the order was passed and direction was issued by CIT(A). As the order was not in accordance with law and was non est direction. (AY. 2011-12)

Anshuman Ghosh v. ITO (2019) 178 ITD 311 (Luck.)(Trib.)

1859 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Cash credits – Share application money – Deletion of addition accepting fresh evidence, without giving an opportunity to the AO – Violation of Rule 46A(3) – liable to be set aside [S. 68, 254(1), R.46A]**

Allowing the appeal of the revenue the Tribunal held that, CIT(A) deleted addition made under S. 68 by accepting fresh evidence submitted by assessee without providing Assessing Officer a reasonable opportunity of examining said evidence and rebutting it, there being violation of sub-rule (3) of Rule 46A of ITR 1962, order is set aside. (AY.2010-11)

DCIT v. Genex Industries Ltd. (2019) 178 ITD 855 (Chd.)(Trib.)

1860 **S. 251 : Appeal – Commissioner (Appeals) – Duties – CIT(A) has to pass a speaking order after appreciation of facts – Matter remanded. [S. 5]**

CIT(A) has to pass a speaking order after proper appreciation of facts and duty of appellate authority is to remove errors in order of lower authorities and remit issue with or without direction for reconsideration unless prohibited by law. (AY. 2014-15)

Fujitsu Consulting India (P.) Ltd. v. ACIT (2019) 179 ITD 278 (Delhi)(Trib.)

1861 **S. 251 : Appeal – Commissioner (Appeals) – Power of enhancement Not competent to enhance assessment by taking an income which income was not considered expressly or by necessary implication by AO [S. 45, 54F, 68, 147]**

The assessee disclosed capital gain on sale of a residential house property and claimed exemption u/s. 54F of the Act. The AO denied the exemption on the ground that two residential properties were sold by the assessee and the deduction under section 54F is only available if property other than a residential property is sold. The Assesseee made alternative claim in revised computation which was also denied. On appeal CIT(A) enhanced the assessment by making addition U/s. 68 of the Act. On appeal the Tribunal held that CIT(A) has exceeded his jurisdiction in enhancing the income of the assessee by considering the new sources of income not at all considered by the AO consequently the ground of the appeal of the assessee is allowed. (AY. 2014-15)

Hari Mohan Sharma v. ACIT (2019) 179 ITD 310 (Delhi)(Trib.)

1862 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Estimation of gross profit – Right of appeal was not properly exercised – Matter remanded to the CIT(A). [S. 254(1)]**

AO made addition to assessee's income on basis of estimation of gross profit rate. The assessee has not exercised his right of appeal properly. Matter remanded to CIT(A). (AY. 2010-11)

Jiwan Lal v. ITO (2019) 179 ITD 475 (Chd.)(Trib.)

1863 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Undisclosed investment in property – Non speaking order – Matter remanded to CIT(A) [S. 69B, 147, 148]**

AO stated that as per information, assessee made investment in immovable property in cash and had not filed his income-tax return making reason to believe that assessee's income had escaped assessment. CIT(A) upheld addition. Tribunal held that the order of CIT(A) is not speaking order without dealing with written submissions, affidavits, and other evidences on record, law and facts of case duly submitted in appellate

proceedings, by simply referring to some paras of order of AO and by copy paste of remand report. Accordingly the order of CIT(A) is set aside.(AY 2012-13)
Balwan Singh v. ITO (2019) 179 ITD 577 (Chd.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – New claim – Not raised in the return – CIT(A) can entertain any new claim for deduction even the said claim was not raised in return of income originally filed or by way of filing revised return. [S. 35(1)(iv), 139] 1864
Assessee is engaged in business of manufacturing, export and import of silk fabrics. It raised a claim for deduction under S. 35(1)(iv) of the Act, in respect of expenditure incurred on construction of laboratory building. AO rejected assessee's claim on ground that such claim was not raised by assessee either in return of income originally filed or by way of filing revised return. CIT(A) however, allowed assessee's claim and held that CIT(A) can entertain any new claim for deduction even the said claim was not raised in return of income originally filed or by way of filing revised return. On appeal by revenue the Appellate Tribunal affirmed the order of CIT(A). (AY. 2011-12)
ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22 / 184 DTR 406 (Kol.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Order passed with in month of conclusion of hearing, though dispatched after 3 months cannot be said to be null and void. 1865
The assessee relied on Instruction No. 20/2003, dated 23-12-2003 by which the CBDT desired that the CIT(A) should issue orders within 15 days of the last hearing and contended that Commissioner (Appeals) had antedated impugned order and its actual passing after 3 to 4 months from conclusion of hearing had rendered it null and void. Tribunal held that CIT(A) had reported in monthly D.O. letter sent to Chief Commissioner that the order was passed in the month of conclusion of final hearing itself, though dispatched after 3 months. (AY. 2009-10)
Anil Kisanlal Marda v. ITO (2019) 177 ITD 749 / 182 DTR 153 / 201 TTJ 100 (Pune)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Capital gains – New source of income – Commissioner not competent to enhance an assessment on point not all considered by AO or raised by assessee – CIT(A) is also not entitled to enhance assessment holding sale itself was bogus and treat income u/s. 68. [S. 54F, 68] 1866
The assessee is an individual deriving income from the house property. He disclosed capital gains on sale of property and claimed exemption U/s. 54F of the Act, for the property purchased. The AO denied claim. On appeal, the CIT(A) enhanced the income of the assessee and added the sum to the total income of the assessee u/s. 68 of the Act, on the allegations that no sale had taken place. On appeal by the Assessee before the Tribunal, the Tribunal held that the only issue that was considered and discussed by the AO was that if eligibility of claim u/s. 54F of the Act. The Tribunal further observed that, the AO was satisfied with the computation of capital gains and that the sales consideration received by the assessee was never disputed. Accordingly, the CIT(A) could not have never questioned the genuineness of sale consideration and concluded that no capital gains arose to the assessee at all and that the income of the assessee was taxable u/s. 68 of the Act. Accordingly, it was need that the action of Ld. CIT(A) fall within preview of the 147 and not u/s. 251(1)(a) of the Act. Therefore, it was held

that the CIT(A) was not competent to enhance the assessment taking in account of an income which was not considered by the AO at all. Since, the CIT(A) had exceeded his jurisdiction in enhancing the income of assessee by considering an altogether an new source of income the impugned additions u/s. 68 were deleted. (AY. 2014-15)
Hari Mohan Sharma & Madan Mohan Sharma v. ACIT (2018) 71 ITR 18 (Delhi)(Trib.)

1867 **S. 251 : Appeal – Commissioner (Appeals) – Powers – New source of income – Purchase of shares at ₹ 4 per share when the market price was ₹ 140 per share – AO made addition of ₹ 136 per share U/s. 69/69B of the Act – CIT(A) confirmed the addition U/s. 56(2)(vii)(c) of the Act – CIT(A) has not discovered a new source of income – Order of CIT(A) is affirmed. [S. 56(2) (vii)(c), 69, 69B, 246A]**
Tribunal held that the AO has made addition of difference between the market value of shares and purchase price of the shares. Therefore it cannot be said that the CIT(A) has discovered a new source of income. Addition confirmed by the CIT(A) by applying the provisions of S.56 (2)(vii) (c) of the Act is held to be valid. (ITA No. 2020/Del/2017, dt. 14.06.2019)(AY. 2009-10, 2010-11)
Radhika Roy v. DCIT (2019) 200 TTJ 665/ 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org
Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665/ 73 ITR 239/ 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

1868 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Deduction at source – TDS return – There is no power conferred on authority to declare a TDS return as non – est exposing assessee to consequences thereof. [S. 200(3), 234E]**
The assessee filed statement of tax deducted at source on 9-3-2017. There was a delay in filing the TDS statement. The AO by intimation under section 154, read with S. 200A, levied late fee of Rs. 6,900 under S. 234E. The CIT(A) cancelled the order of the AO holding that there would be no computation of fee for delayed filing of TDS return while processing TDS return under S. 234E could be made for the assessment years prior to 1-6-2015. However, the CIT(A), in exercise of his power of enhancement, held that TDS statement filed without payment of fee under s. 234E beyond the time prescribed under s. 200(3) was non-est in law. Tribunal held that there is no power conferred on authority to declare a TDS return as non-est exposing assessee to consequences thereof. Accordingly the order of the CIT(A) is quashed. (AY. 2013-14, 2014-15)
Manoj Kumar Jaiswal v. ACIT (2019) 176 ITD 301/ 200 TTJ 497 / 180 DTR 57 (Bang.)(Trib.)
Lalit Kumar Dosi v. ACIT (2019) 176 ITD 301/ 200 TTJ 497/ 180 DTR 57 (Bang.)(Trib.)
Pachisia Plastics (P) Ltd. v. ACIT 176 ITD 301 / (2019) 200 TTJ 497 / 180 DTR 57 (Bang.)(Trib.)

1869 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Unexplained expenditure – Opportunity of cross examination – powers of Commissioner (Appeals) are co-terminus with powers of Assessing Officer and if Assessing Officer failed to discharge its functions properly and conduct proper cross – examination and other enquiry, Commissioner (Appeals) ought to have allowed cross – examination of said parties Matter remanded back for fresh consideration. [S. 69C]**
Assessing Officer made additions to income of assessee with respect to alleged bogus purchases of mobile handsets. CIT(A) deleted addition. Tribunal held that, powers

of Commissioner (Appeals) are co-terminus with powers of Assessing Officer and if Assessing Officer failed to discharge its functions properly and conduct proper cross-examination and other enquiry, Commissioner (Appeals) ought to have allowed cross-examination of said parties Matter remanded back for fresh consideration. (AY. 2008-09, 2009-10, 2010-11, 2011-12)
Welspun India Ltd. v. Dy. CIT (2019) 69 ITR 617 (Mum.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – CIT(A) is not empowered to dismiss appeal for non-prosecution and is obliged to dispose of appeal on merits by passing a speaking order. [S. 250] 1870
Tribunal held that when an appeal is filed, Commissioner (Appeals) is duty bound to dispose of appeal through a speaking order on merits on all points which arose for determination in appellate proceedings, including on all grounds of appeal. Accordingly CIT(A) is not empowered to dismiss appeal for non-prosecution and is obliged to dispose of appeal on merits. Matter remanded. Followed *CIT v. Premkumar Arjundas Luthra (HUF) (2016) 240 taxman 133 (Bom.)(HC)* (AY. 2011-12)
Swati Pawa (Ms.) v. DCIT (2019) 175 ITD 622 (Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Once appeal is filed the said appeal cannot be withdrawn by the assessee – CIT(A) has to decide the appeal on merit – Delay of 116 days in filing the appeal before the Tribunal was condoned. [S. 246A, 250(4), 253, 254(1)] 1871
In the Course of hearing before CIT(A) the assessee filed an application for withdrawal. CIT(A) dismissed the appeal as withdrawn. The assessee filed an appeal before the Appellate Tribunal stating that the withdrawal was without knowing the merit of the case and consequences. It was also contended that the CIT(A) is incompetent to dismiss the appeal in limine without deciding on merits. Appellate Tribunal following the jurisdictional High Court in *CIT v. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom) (HC)* allowed the appeal of the assessee and set aside the matter to CIT(A) to decide on merit. Cases referred, *CIT v. Raj Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443(SC), M. Loganathan v. ITO (2013) 350 ITR 373 (Mad) (HC)*. Tribunal also condoned the delay of 116 days in filing the appeal before the Appellate Tribunal. (AY. 2009-10)
Deekay Gears v. ACIT (SMC) (2019) 175 DTR 257 / 198 TTJ 101 / (2020) 77 ITR 150 (Mum.)(Trib.) www.itatonline.org

S. 252 : Appellate Tribunal – Members – Qualification – Appointment – Process of selecting only few applicants for purposes of interview, while rejecting others without any intelligible differential being applied in classification was not discriminatory and violative of article 14 of Constitution [Income – Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963, R.4] 1872
Committee resolved to call for interview 24 most experienced applicants from profession i.e. practicing advocates and others (from list prepared in decreasing number of experience) belonging to unreserved category against 9 unreserved posts. Petitioner filed petition challenging selection process for post of Member of Tribunal on the ground that

process of selecting only few applicants for purposes of interview, while rejecting others without any intelligible differential being applied in classification was discriminatory and violative of article 14 of Constitution. Dismissing the petition the Court held that rule 4A of 1963 Rules empowers Selection Board to evolve its own procedure and aforesaid rule is not subject matter of challenge before Court. Therefore, decision of Committee to shortlist candidates was reasonable and not arbitrary.
Puneet Sharma v. UOI (2019) 265 Taxman 311 (Delhi)(HC)

1873 **S. 252 : Appellate Tribunal – Departmental promotion (DPC) – Assistant Registrar – The Dept is expected to follow up the proposals to fill up the posts of Assistant Registrars in such quota as well as for issuing promotions for the posts of Deputy Registrars so that all these pots to the extent possible can be filled up at the earliest.**
In a PIL filed before the Bombay High Court the Court held that,the work of important Tribunal like Income Tax Appellate Tribunal (ITAT) should not be allowed to suffer on account of shortage of administrative staff. There is no lethargy on the part of the Dept in filing up said posts. The Dept is expected to follow up the proposals to fill up the posts of Assistant Registrars in such quota as well as for issuing promotions for the posts of Deputy Registrars so that all these pots to the extent possible can be filled up at the earliest. (WP. No. 2873 of 2018, dt. 27.08.2019)
All India Federation of Tax Practitioner (AIFTP) v. UOI (Bom.)(HC), www.itatonline.org

1874 **S. 253 : Appellate Tribunal – Territorial jurisdiction – Assessee situated at Moga within jurisdiction of Amritsar Bench – Order passed by Appellate Tribunal at Chandigarh without territorial jurisdiction – Order is null and void – Matter to be sent to Amritsar Bench for disposal. [S. 254(1)]**
The assessee – society filed an appeal before the Chandigarh Bench of the Tribunal against the order of the Commissioner (E) rejecting grant of registration under section 12AA of the Income – tax Act, 1961. The Tribunal directed the Commissioner (E) to grant registration and registration was granted. At that point of time, it was found that since the assessee was situated at Moga and the territorial jurisdiction was that of the Amritsar Bench of the Tribunal instead of the Chandigarh Bench. The Department filed an application stating that the order passed by the Chandigarh Bench Tribunal was without jurisdiction as the case falls within the territorial jurisdiction of Amritsar Bench. The application was dismissed. On appeal the Court held that if the Tribunal lacked territorial jurisdiction, the order passed was a nullity being without jurisdiction. The decision being right or wrong would not affect the jurisdiction of the Tribunal. The orders passed by the Chandigarh Bench of the Tribunal was set aside and the matter was sent to the Amritsar Bench of the Tribunal to decide the appeal afresh. Followed *Pandurang and Ors v. State of Maharashtra AIR 1987 SC 535 / 1987 (I) RCR (Criminal 371 (SC)* where in the Court held that even a right decision by a wrong forum is no decision and non-existent in the eyes when the jurisdictional high Court had followed in *L. Murugappan v. State of Punjab (2009) (I) RCR (Criminal) 414 (P&H)(HC)* (AY. 2009-10)
CIT v. Baba Amarnath Educational Society (2019) 412 ITR 234 / 180 DTR 308 / 310 CTR 388 (P&H)(HC)

S. 253 : Appellate Tribunal – Powers – Delay of 571days – Mistake of counsel may be taken in to account in condonation of delay. [S. 253(1), 254(1), Limitation Act, 1963, S. 3, 5] 1875

The difference of opinion has arisen in the matter to relating to condoning the delay in filing of appeal by the assessee before the Tribunal. The appeal fed by the assessee was barred by limitation by 571 days. The question referred was " Whether, in the facts and circumstances of the case, the explanations furnished by the assssee for not filing the appeal with in the prescribed period of limitation would constitute sufficient cause or not and accordingly whether the delay in filing the appeal should be condoned or not " On reference, third member held that mistake of counsel may be taken into account in condoning delay. Claim that the delay was caused by Counsel not communicating the order has to be accepted unless it is shown that blame put on counsel is with malafide intentions in order to cover up mistake/lapse on the part of the assessee. As per human conduct and probabilities, a professional counsel cannot be expected to admit his lapses as it may affect his reputation. Also, if the appeal is adjudicated on merits, refusing to condone the delay is an error. Case laws referred;

Collector, Land Acquisition v. Mst. Katiji & Ors (1987) 167 ITR 471 (SC)

CIT v. West Bengal Infrastructure Development finance Corp. Ltd. (2011) 334 ITR 269 (SC)

Bhivchandra Shankar More v. Balu Gangaram More (2019) 6 SCC 387 (SC)

Elnet Technologies Ltd. v. DCIT (2018) 259 Taxman 593 (Mad.)(HC) taxmann.com 219) (Mad)(HC)

Sivalogam Steels (P) Ltd. v. CESTAT (2016) 70 taxmann.com 301) (Mad.)(HC)

E – Governance Society v. CIT (E) (2019) 261 taxman 289 (HP)(HC)

Lahoti Overseas Ltd. v. DCIT (ITNo. 3786/Mum/2012 dt 18-03-2016) (Mum.)(Trib.) www.itatonline.org

Vijayeswari Textiles Ltd. v. CIT (2002) 256 ITR 560 (Mad.)(HC)

(i) Esha Bhattachrjee v Managing Committee of Raghunathpur Nafar Acadey & Ors (CANOs. 8183-8184 of 2013 dt 13-09 2013 (SC))

G. Ramegowda Major and others v. Special Land Acquisition (1998) 2 SCC (2)142 /1988 AIR 897 (SC)

Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation (2010) 5 SCC 459

Improvement Trust Ludhiana v. Ujagar Singh and Ors (2010) 6 SCC 786

(m). State of Kerala v. Krishna Kurup Madava Kurup AIR 1971 Ker 211 (215). (ITA No.169/Asr/ 2015, dt. 29.10.2019) (AY. 2006-07)

Bhagwati Colonizer Pvt. Ltd. v. ITO (2020) 185 DTR 321 / 203 TTJ 390 (TM) (Asr.)(Trib); www.itatonline.org

S. 253 : Appellate Tribunal – Appeals – Monetary limits for appeals by department – Exceptions to be construed strictly. 1876

Tribunal held that the thrust in the exception in para 10(e) of the circular No. 3 of 2018 dated 11-7-2018 [1] and modification dated 20-8-2018 issued by CBDT was that additions should be based on information received from "external sources" and secondly these external sources should be in the nature of "law enforcement agencies". These two conditions were necessarily and mandatorily required to be fulfilled to be covered under

the exception. Since these exceptions took away the benefit granted by the Department to the taxpayers by way of withdrawal of pending appeals with low tax effect, the onus was on the Department to show that the taxpayer's case was covered by these exceptions and the taxpayer was not entitled to seek protection granted by the circular. These exceptions were penal in nature and were to be strictly construed.(AY 2007-08, 2008-09 & 2010-11)
ITO v. Amarchand P. Shah (Late) (2019) 73 ITR 588 / (2020) 185 DTR 171 (Mum.)(Trib.)

1877 **S. 253 : Appellate Tribunal – Delay of 107 days – No affidavit of Chartered Accountant was filed – Delay was not satisfactorily explained – Appeal was dismissed being barred by limitation. [S. 254(1)]**
Appeal was delayed by 107 days. The assessee had put fault upon the Chartered Account. Dismissing the appeal of the Tribunal held that the assessee has not filed the affidavit of the Chartered Account and explanation for delay was not satisfactory. (AY. 2010-11)
Krishna Developers v. DCIT (2019) 175 ITD 86 (Mum.)(Trib.)

1878 **S. 254(1) : Appellate Tribunal – Duties – Capital or revenue – Tribunal recording inconsistent findings – Matter remanded to Tribunal for decision afresh. [S. 37(1), 260A]**
Allowing the appeal of the revenue the Court held that the Appellate Tribunal has recorded inconsistent findings which was affirmed by High Court. Accordingly, the matter remanded to Tribunal for decision afresh. (AY. 1993-94)
PCIT v. Ballarpur Industries Ltd. (2019) 413 ITR 447 / 308 CTR 377 / 263 Taxman 443 / 177 DTR 161 (SC)
Editorial : Order in CIT v. Ballarpur Industries Ltd (2017) 85 taxmann.com 13 (Bom.) (HC) is setaside

1879 **S. 254(1) : Appellate Tribunal – Duties – The Tribunal should not make general observations that there are "contrary decisions" – Tribunal to be specific about the decisions and make a mention of the citation in the order and not make general observations.**
Court held that the Tribunal should not make general observations. This statement led us to direct counsel to examine the law and bring to our attention any decision contrary to the view taken by the Supreme Court in Mahalaxmi Sugar Mills 123 ITR 429 etc. We are now informed by Counsel that there are no contrary decisions. All this effort and time would have been saved, if the Tribunal had made specific reference to contrary decisions or not stated so in the absence of referring to the citations. We request the Tribunal to be specific about the decisions and make a mention of the citation in the order and not make general observations. (ITA No. 809 of 2017, dt. 27-8-2019) (AY. 2007-08)
PCIT v. M. J. Export Pvt. Ltd. (Bom.)(HC), www.itatonline.org

S. 254(1) : Appellate Tribunal – Duties – Non speaking orders – The CIT(A) allowed the claim of expenditure and depreciation after verification of merits – Tribunal was not right in law reversing the said conclusion without examination – Masterminded – Liberty is granted to the assessee to bring the issue of reassessment after disposal of appeal by the Appellate Tribunal. [S. 260A] 1880

Allowing the appeal of the assessee the Court held that, when the CIT(A) allowed the claim of expenditure and depreciation after verification of merits the Tribunal was not right in law reversing the said conclusion without examination – Masterminded. Liberty is granted to the assessee to bring the issue of reassessment after disposal of appeal by the Appellate Tribunal. (AY. 2006-07)

Shirpur Gold Refinery Ltd. v. Dy.CIT (2019) 262 Taxman 390 (Bom.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Duty of the Tribunal to arrive at proper finding of fact – When any concession is made by the Authorised representatives on behalf of the assessee the Tribunal should take an affidavit from asssessee and the counsel on behalf of assessee or atleast a written endorsement made on record of case duly signed by them – Court also stated that the order to be circulated to all the Members of the ITAT and also new Members to be appointed – Addition confirmed by the Tribunal U/s. 2 (22)(e) of the Act is remanded to the Assessing Officer. [S. 2(22)(e)] 1881

Court held that when any concession is made by the Authorised representatives on behalf of the assesse, the Tribunal should take an affidavit from asssessee and of counsel on behalf of assessee or atleast a written endorsement made on record of case duly signed by them. Copy of the order is sent to the President ITAT for circulation to all the Benches and also directed Secretary the Ministry of Law and Justice to bring to the notice of the all the new Members to be appointed. Addition confirmed by the Tribunal U/s. 2 (22)(e) of the Act is remanded to the Assessing Officer. (AY. 2006-07)

Ramesh, V. v. ACIT (2019) 177 DTR 105 / 104 taxmann.com 292 / 309 CTR 87 / (2020) 420 ITR 10 (Mad.)(HC)

Ramu, S. v. ACIT (2019) 177 DTR 105 / 309 CTR 87 / (2020) 420 ITR 10 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Alternative grounds – Direction issued by ITAT could not be construed to be restrictive in nature thereby preventing AO to consider all grounds and more particularly, when ITAT had not rendered any finding on applicability of S. 194C – Order passed by ITAT should be and shall be read as an open remand to AO to consider all issues that were pleaded by assessee before ITAT. [S. 194C] 1882

Assessee has preferred present appeal challenging order passed by ITAT. Assessee contended that ITAT had noted assessee's submission that they assailed application of s. 194C on IUC paid to other telecom operators but, did not discuss said issue nor rendered any finding and accordingly, set aside orders passed by Lower Authorities and remanded matter to AO. ITAT had not taken into consideration first submission made by assessee with regard to applicability of S. 194C on IUC paid to other telecom operators. ITAT had considered alternate submission of assessee and made an observation that argument of assessee was correct and it could not be considered as an assessee in default. However, ITAT further qualified this finding stating that assessee's liability for

interest would also be limited period ending on date, on which, deductees/payees had paid taxes. In any event, ITAT ought to have rendered a finding on grounds raised by assessee with regard to applicability of s. 194C on IUC paid to other telecom operators. Had ITAT considered and rendered a finding that it was not convinced with submissions made, then, it would have been well justified to proceed to consider alternate submissions. ITAT had not rendered any finding with regard to contentions advanced by assessee relating to applicability of S. 194C. ITAT added a rider after setting aside orders passed by Lower Authorities stating that a verification had to be done as to whether payees included amounts received from assessee in their return of income and paid due taxes thereon. Further direction issued by ITAT could not be construed to be restrictive in nature thereby preventing AO to consider all grounds and more particularly, when ITAT had not rendered any finding on applicability of S. 194C.Accordingly the order passed by ITAT should be and shall be read as an open remand to AO to consider all issues that were pleaded by assessee before ITAT. (AY. 2007-08)
Tata Teleservices Ltd. v. ITO (2019) 183 DTR 217 / 311 CTR 380 (Mad.)(HC)

1883 **S. 254(1) : Appellate Tribunal – Duties – When any concession is made by the Authorised representatives on behalf of the assessee the Tribunal should take an affidavit from asssessee and on counsel on behalf of assessee or atleast a written endorsement made on record of case duly signed by them – Court also stated that the order to be circulated to all the members of the ITAT and also new members to be appointed.**
Court held that when any concession is made by the Authorised representatives on behalf of the assessee the Tribunal should take an affidavit from asssessee and on counsel on behalf of assessee to atleast a written endorsement made on record of case duly signed by them. Copy of the order is sent to the President ITAT for circulation to all the Benches and also directed Secretary the Ministry of law and Justice to bring to the notice of the all the new members to be appointed Copy (AY. 2006-07)
Ramesh, V. v. ACIT (2019) 177 DTR 105/ 104 taxmann.com 292 (Mad.)(HC)
Ramu, S. v. ACIT (2019) 177 DTR 105 (Mad.)(HC)

1884 **S. 254(1) : Appellate Tribunal – Duties – Estimate of cost of construction – Income from undisclosed sources – Order passed confirming the addition without assigning the reasons is held to be not justified. [S. 69]**
Court held that the Tribunal ought to have assigned reasons why ₹ 70 lakhs was fixed as the construction cost of the hotel building of the assessee. It was not sufficient to have stated that it was fair and reasonable. Why such value was fair and reasonable should have been disclosed and it should have been manifest on the face of the order. Appeal of the assessee is allowed. (AY. 2004-05)
L. S. Bhikam Chand Jain v. ITO (2019) 414 ITR 738 (Mad.)(HC)

1885 **S. 254(1) : Appellate Tribunal – Duties – Tribunal denying Deduction without giving an opportunity to be heard – Matter remanded. [S. 80P(2), 80P(4)]**
The assessee had claimed special deduction under S. 80P(2) of the Act. The Tribunal shifted the case to S. 80P(4) without any basis. Court remanded the matter to the

Assessing Officer to reconsider the issue afresh, providing an opportunity to the assessee to put forth its case, as regards the applicability of section 80P(4) and the Explanation thereto. (AY. 2007-08 to 2009-10)
Bellad Bagewadi Krishi Seva Sahakari Bank Ltd. v. ITO (2019) 415 ITR 454 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Directions – ITAT should take appropriate steps and expedite hearing in old appeals. 1886
Petitioner approached the High Court for getting the direction to dispose the appeal which are pending for more than five years. Court held that, President/ Sr. VP of the ITAT should take appropriate steps and expedite hearing in old appeals. A tabular statement indicating the age of the old appeals as well as an action plan of the ITAT with respect to the likely time for their disposal, having regard to the priorities that ITAT may set in this regard, shall also be filed in court. (W.P.(C) 2477/2019, dt. 10.04.2019)
Nokia Solutions and Networks Italia Spa v. DDIT (2019) 184 DTR 385 (Delhi)(HC), www.itatonline.org

S. 254(1) : Appellate Tribunal – Duties – Ex-parte order – Even if the assessee could not appear, the Tribunal could have decided the appeal on merits – The Tribunal ought to have restored the appeal on miscellaneous application filed by the assessee – Court also directed to send the copy of the Judgment to the President of the Tribunal as well as Law Secretary in the Ministry of law and Justice so that the same may be brought to the notice of all the Members of the Tribunal. [S. 260A, ITAT R. 1963, R. 24] 1887
Allowing the appeal of the assesse, the Court held that, even if the assessee could not appear, the Tribunal could have decided the appeal on merits. When the miscellaneous application is filed by the assessee, the Tribunal ought to have restored the appeal. Tribunal is directed to decide the issue on merits. The Court also observed that the fact finding Tribunals should not shirk their responsibility to decide the case on merits because the view and reasons given by such Tribunals are important for the Constitutional Higher Courts to look into while deciding the substantial question of law under S. 260A of the Act arising from the Tribunal's orders. A legal and binding responsibility lies upon the Tribunal to decide the appeal on merits irrespective of the appearance of the assessee or his counsel before it or not. Court also directed to send the copy of the Judgment to the President of the Tribunal as well as Law Secretary in the Ministry of law and Justice so that the same may be brought to the notice of all the Members of the Tribunal and the new appointees in the Tribunal at the time of their recruitment itself. The Tribunal may also get it circulated to all the existing Members of the Tribunal so that, such orders resulting in serious miscarriage of justice should not be repeated by any Member of the Tribunal. Followed *Balaji Steel Re. Rolling Mills v. CCE&C (2014) 29GSTR 502 (SC) / (2015) AIRSCW 426.* (*Ratio in CIT v. S. Chenniappa Mudaliar (1969) 74 ITR 41 (SC))* (AY. 2010-11)
Ritha Sabapathy (Smt) v. Dy.CIT (2019) 416 ITR 191 / 308 CTR 417 / 263 Taxman 84 / 177 DTR 178 (Mad.)(HC)

1888 **S. 254(1) : Appellate Tribunal – Duties – Bogus purchases – Direction of CIT(A) was set aside by Tribunal – Recording of fact by Assessing Officer that supplier did not file return – Failure by Tribunal as final fact finding authority to consider facts – Matter remanded to Tribunal for fresh disposal [S. 37(1), 133(6), 251]**

Allowing the appeal of the revenue the Court held that the Tribunal as the last fact finding authority ought to have considered the materials on record, especially when it was on record that the party had not filed its return. The Department had also raised the issue of the addition on account of non-genuine purchases. The information regarding the non-filing of return by the supplier party which was vital for the verification of the purchases made by the assessee according to the direction given by the Commissioner (Appeals) and therefore the purchase of ₹ 3,38,72,852 being added, was provided to the assessee but no contrary material was brought by it to show that the supplier party had filed the return. The order of the Tribunal was unsustainable. Matter remanded. (AY. 2009-10)

CIT v. Meerut Roller Flour Mills (P.) Ltd. (2019) 412 ITR 155 / 263 Taxman 100 (All.)(HC)

1889 **S. 254(1) : Appellate Tribunal – Duties – Delay in filing of appeal – Rejection of appeal is held to be not justified – Delay was condoned and directed the Tribunal to decide o merits. [S. 10(23C(vi), 253]**

Appellant – society, a State instrumentality of Government of Himachal Pradesh, had filed application under section 10(23C)(vi). After rejection of said application, assessee sent documents to its counsel for filing appeal before Tribunal. However, assessee received show cause notice issued by Registry informing that assessee's appeal was time barred. Assessee came to know that counsel to whom documents were mailed had taken no steps to file appeal in time,while assessee was under a bona fide impression that appeal had been filed in time. Tribunal dismissed the appeal. Allowing the appeal of the assessee the Court held that though there was some negligence on part of assessee in not pursuing matter in respect of filing of appeal after instrument/documents were sent to its counsel, but negligence was not of such a degree that Tribunal could dismiss appeal being time barred by limitation.

E-Governance Society v. CIT (E) (2019) 261 Taxman 289 / 179 DTR 261 / 309 CTR 429 (HP)(HC)

1890 **S. 254(1) : Appellate Tribunal – Duties – Failure of Appellate Tribunal to consider the question of jurisdiction is miscarriage of justice – Tribunal is required to reassess material and thereafter come to a logical conclusion – Order of Tribunal is set aside. [S. 147]**

Allowing the appeal of the assessee the Court held that; failure of Appellate Tribunal to consider the question of jurisdiction is miscarriage of justice. Tribunal is required to reassess material and thereafter, come to a logical conclusion. Accordingly the order of Tribunal is set aside. (AY. 1999-2000, 2002-03 to 2004-05)

Prameela Krishna (Smt.) v. ITO (2019) 261 Taxman 37 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Bogus creditors – Gross profit – Reassessment – Business in iron and steel – Order passed without considering the material placed on record – Matter remanded to reconsideration. [S. 68, 147, 148] 1891

Allowing the appeal of the assessee the Court held that the Tribunal had not considered ground raised by assessee pertaining to jurisdiction of Assessing Officer for initiating reassessment proceedings under section 147. As a consequence of impugned additions made under section 68, gross profit ratio of assessee's business was raised to 58.29 per cent, which could not arise in type of business of assessee and also certain material placed on record by assessee were also not considered. Accordingly, order of Appellate Tribunal was set aside for reconsideration. (AY. 1998-99)

Madhu Solanki (Smt.) v. ITO (2019) 260 Taxman 5 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Failure consider the pleas raised by the assessee – Matter remanded. [S. 68] 1892

Allowing the appeal of the assessee the Court held that; the Tribunal in its order had failed to consider the contentions raised in respect of the deposit of ₹ 4,92,900 to the effect that the reasoning in the form of additional ground should not have been made on the basis without asking and raising a specific query and that the additions made included small deposits and that the additions should have been partial, and examine the matter in the light of the pleas that arose for consideration. Accordingly the matter was to be re – examined by the Tribunal in respect of the deposit of Rs. 4,92,900. Matter remanded. (AY. 2010-11)

Rajiv Jain v. ITO (2019) 410 ITR 179 / 308 CTR 393 / 177 DTR 27 (Delhi)(HC)

S. 254(1) : Appellate Tribunal – Powers – Jurisdictional issue – Reassessment – CIT(A) has not decided – Deemed to have been decided against – Rule 27 of the Income Tax Tribunal Rules would entitle a respondent who has neither preferred an appeal nor cross objections to relief on a point decided in favour of the appellant by the lower appellate authority – Order of Tribunal quashing of reassessment and also on merit is affirmed. [S. 80IA, 147, 148, R.27] 1893

Assessment which was completed U/s. 143(3) was reopened and disallowance was made in respect of claim U/s. 80IA of the Act. Before CIT(A) the appellant challenged the jurisdiction u/ s 147 as well as on merits. CIT(A) decided the issue on merits and held that as he is deciding on merits, it is not necessary to decide the issue on reassessment. Revenue filed an appeal before the Tribunal. The assessee neither filed an appeal nor filed any cross objection. The assessee filed application under Rule 27 and challenged the reassessment proceedings. The Tribunal held that when the CIT(A) has not decided the issue, it is presumed that the issue is decided against the assesse, hence the application under Rule 27 is held to be valid and accordingly, the Reassessment was quashed. The Tribunal also affirmed the order of the CIT(A) on merit. On appeal by the revenue, dismissing the appeal the Court held that Rule 27 of the Income Tax Tribunal Rules would entitle a respondent, who has neither preferred an appeal nor cross objections to relief on a point decided in favour of the appellant by the lower appellate authority. Court also held that the language employed in Rule 27 of the Rules is clear and it deals with cases where the respondent may support

the order on the grounds decided against him. Rule 27 of the Rules states that though the respondent may not have appealed, he may support the order appealed against on any of the grounds decided against him. As pointed out by us earlier, the CIT(A) has recorded that the validity of the reassessment proceedings was hotly debated before him. However, the CIT(A) proceeded to take up the issue relating to the relief, which the assessee would be entitled to under Section 80 – I of the Act and proceeded to grant the same on the close of its order and the CIT(A) would state that since the appeal has been allowed on merits under Section 80 – I of the Act, there is no necessity for him to give a finding on the issue of reopening of assessment under Section 147 of the Act. Thus, the CIT(A) did not adjudicate the correctness of the reassessment proceedings, which was challenged by the assessee. It is deemed that the said issue was decided against the assessee and that the assessee was entitled to canvass the said issue before the Tribunal without independently filing an appeal in the light of the Rule 27 of the Rules. Therefore, the Tribunal was right in permitting the assessee to argue on the issue relating to the validity of the reassessment proceedings. (AY. 1996-97)
CIT v. India Cements Ltd. (2019) 181 DTR 105 / (2020) 312 CTR 168 (Mad.)(HC)

1894 **S. 254(1) : Appellate Tribunal – Powers – Registration – Interpretation – Powers of Tribunal are co-extensive to that of Commissioner – Tribunal can direct the Commissioner to grant the registration without remanding matter to Commissioner. [S. 12A, 12AA]**

The Appellate Tribunal, while hearing an appeal in a matter where registration under S. 12AA has been denied by the Commissioner can itself pass an order directing the Commissioner to grant registration, if it disagrees with the satisfaction of the Commissioner on the basis of material already on record before the Commissioner. However, the power is not to be exercised as a matter of course and remand to the Commissioner is to be made where the Tribunal records a divergent view on the basis of material which has been filed before it for the first time. Remand for determination of the question regarding grant of registration to a trust would also be necessitated in cases where the registration application has been rejected by the Commissioner on technical grounds without recording his satisfaction as contemplated under S. 12AA of the Act, 1961 and such decision is overturned by the Tribunal. The powers of the Appellate Tribunal are co-extensive with the powers of the Commissioner under S. 12AA of the Act, 1961 subject to what has been indicated above. However an order for registration can be issued only after recording satisfaction with regard to the genuineness of activities of the trust as provided under S. 12AA. The words "as it thinks fit" used in relation to the powers of the Appellate Tribunal exercisable under S. 254(1) of the Income-tax Act, 1961 are of the widest amplitude. The expression confers wide jurisdiction enabling the appellate authority to take an entirely different view on the same set of facts. The powers given under S. 254 are to be read along with other provisions of the Act. Powers of Tribunal are co-extensive to that of Commissioner. Tribunal can direct the Commissioner to grant the registration without remanding matter to Commissioner.
CIT v. Reham Foundation (2019) 418 ITR 205 / 311 CTR 756 / 184 DTR 42 / (2020) 268 Taxman 372 (FB) (All.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Remand to CIT (E) is held to be proper. [S. 12A, 80G(5)] 1895

Dismissing the appeal of the assessee the Court held that Appellate Courts certainly have power of remand and sufficient reasons having been stated by Tribunal in support of its decision to remand case, it was to be held that Tribunal rightly remanded matter back to Commissioner (E) for fresh consideration.

People Cause Foundation v. ITAT (2019) 265 Taxman 356 (All.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Claim for deduction which is not made in return or revised return – Tribunal has power to allow deduction. [S. 139(1), 139(5)] 1896

Dismissing the appeal of the revenue, the Court held that since the time to file the revised return had lapsed, for claiming that the incentive subsidies be treated as capital receipts instead of revenue receipts as claimed in the return following the decision in *CIT v. Britannia Industries Ltd (2007) 386 ITR 677 (Cal)*, Tribunal is justified in allowing the claim though no revised return under S.139(5) was filed before the AO. (AY. 2010-11)

PCIT v. Ankit Metal and Power Ltd. (2019) 416 ITR 591 / 182 DTR 333 / 266 Taxman 237 / 311 CTR 369 (Cal.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Dismissal of appeal – Non appearance – Failure to appear on the appointed date, failure to make arrangement to represent her before Tribunal by an authorised representative and also failed to seek another date of hearing – Dismissal of appeal by the Tribunal is held to be justified. 1897

On date of hearing, assessee failed to appear before Tribunal due to reason that assessee was out of country. Tribunal dismissed appeal for non-prosecution. Tribunal held that, even if assessee was out of India assessee could have made arrangements to represent her before Tribunal by any authorised representative or she could have addressed a letter seeking for another date of hearing as she was out of country. On appeal the Court held that since assessee failed to make arrangement to represent her before Tribunal by an authorized representative and also failed to seek another date of hearing; impugned order passed by Tribunal dismissing appeal was justified. (AY. 2013-14)

Shobha Lakshman (Smt.) v. CIT (2019) 264 Taxman 198 / 311 CTR 496 / 183 DTR 213 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Ex prate order – Tribunal has statutory power to recall its order, if it is satisfied that respondent has failed to appear before it, for sufficient cause at time of hearing and to restore appeal. [ITAT R. 25] 1898

Allowing the appeal the Court held that the Appellate Tribunal has statutory power to recall its order, if it is satisfied that respondent has failed to appear before it for sufficient cause at time of hearing and to restore appeal. Iit cannot be said that Tribunal has no authority of law to consider application of assessee for recall of an order by which appeal was decided ex parte. (AY. 2005-06 and 2011-12)

Dr. Gopal Dass Agarwal v. CIT (2019) 261 Taxman 158 (All.)(HC)

1899 **S. 254(1) : Appellate Tribunal – Powers – Payments prohibited by law Reinsurance payments to non-Residents is not prohibited by law – The Tribunal has no power to exceed an order of remand by the High Court – Tribunal must decide issues raised in appeal – Tribunal has no power to declare Transaction illegal under different statute – Matter remanded to decide accordance with law. [S. 37(1), 40(a)(i), Insurance Act, 1938, S.2(16B), 101A, 114A]**

The Tribunal has no power to exceed an order of remand by the High Court. Tribunal must decide issues raised in appeal. Tribunal has no power to declare Transaction illegal under different statute. Reinsurance payments to non-Residents is not prohibited by law. Matter remanded to decide in accordance with law. The Tribunal had no jurisdiction to declare any provisions of the regulations to be inconsistent with the provisions of the Insurance Act. This was wholly outside the purview of the Tribunal. The Tribunal did not consider the correctness of the order passed by the Assessing Officer or that of the Commissioner (Appeals). Therefore, the Tribunal could not have held that the Assessing Officer rightly disallowed the reinsurance premium under section 40(a)(i). This finding was not supported with any reasons. (AY. 2009-10)

Note : Order in Dy CIT v. Cholamandalam Ms General Insurance Co. Ltd. (2018) 12 ITR (Trib.) – OL 540 (Chennai) (Trib.) is set aside and matter remanded.

Cholamandalam Ms. General Insurance Co. Ltd. v. DCIT (2019) 411 ITR 386 / 261 Taxman 396 / 176 DTR 397 / 309 CTR 252 (Mad.)(HC)

1900 **S. 254(1) : Appellate Tribunal – Duties – Additional evidence – Supporting the order of AO certain agreements which were produced by the assessee before the AO was produced by the revenue – Admission of additional evidence is held to be justified. [ITAT R. 29]**

Tribunal held that for supporting the order of AO certain agreements which were produced by the assessee before the AO was produced by the revenue. Accordingly admission of additional evidence is held to be justified. The Departmental representative is not making an altogether new argument but is supporting the argument of the *AO. Mahindra & Mahindra Ltd v. Dy. CIT (2009) 122 TTJ 577 (SB) (Mum.)(Trib.)* is distinguished. (ITA No. 2020/del/2017, dt. 14.06.2019)(AY. 2009-10, 2010-11)

Radhika Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

Dr. Prannoy Roy v. DCIT (2019) 200 TTJ 665 / 73 ITR 239 / 180 DTR 329 (Delhi)(Trib.), www.itatonline.org

1901 **S. 254(1) : Appellate Tribunal – Duties – Cross objection – Limitation – Delay of 1965 days condoned Order passed without following the mandate laid down U/s. 144C of the Act is quashed – Penalty levied was also quashed. [S. 92CA, 144C, 201(1) 201(IA), 253(1), 254 (1) ITAT, R. 11]**

Tribunal held that none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal. Delay due to improper legal advice should be condoned. A technical view of dismissing the appeal on the ground of delay should not be taken if the legal issue has to be decided for other years. Followed *Vijay Vishin Meghani v. DCIT (2017) 398 ITR 250 (Bom.)(HC)*. A draft

assessment order U/s. 144C issued with a notice of demand U/s. 156 and a S. 271(1)(c) penalty notice is null and void (*Eaton Fluid Power Ltd. v. DCIT (2018) 96 taxmann.com 512 (Pune) (Trib.)* followed, *BS Ltd v. ACIT (2018) 94 taxmann.com 346 (Hyd) (TRIB) distinguished) (ITA No. 649/PUN/2013 & 1726/PUN/2014,dt. 29-8-2019)(AY. 2008-09 & 2009-10)*
Atlas Copco (India) Ltd. v. DCIT (2019) 202 TTJ 395 / 184 DTR 73 (Pune)(Trib.), www.itatonline.org

S. 254(1) : Appellate Tribunal – Powers – None appeared for the assessee/appellant – Notice sent – Appeal not admitted – Liberty to the assessee to move application as per proviso to rule 24 [S. 253, ITAT Rules 19(2), 24] 1902
An appeal was preferred by the assessee. The Tribunal observed that a notice of hearing was sent to the assessee at the address mentioned in Form No. 36/CIT(A)'s order which has not yet been returned back by the Postal Authority. Therefore, it appears that the assessee is not interested to prosecute the matter. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well-known dictum, *"vigilantibuset non dormientibus jura sub veniunt'*. The appeal was treated as unadmitted. Tribunal gave liberty to the assessee to move application as per proviso to rule 24 of the ITAT Rules 1963. (AY. 2012-13)
Jai International v. Dy. CIT (2019) 177 DTR 236 / 199 TTJ 676 (Jodpur)(Trib.)

S. 254(1) : Appellate Tribunal – Powers – Additional evidence – Tribunal is empowered to admit additional evidences in the interest of substantial justice. [ITAT, R.29] 1903
Tribunal held that it is empowered to admit additional evidences in the interest of substantial justice. (AY. 2002-03)
Yum! Restaurants Marketing (P.) Ltd. v. ITO (2019) 179 ITD 480 (Delhi)(Trib.)

S. 254(1) : Appellate Tribunal – Remand Assessment – Order giving effect – AO must comply the direction of the Tribunal [S. 2(8), 143(3), 250] 1904
If the ITAT has passed an order remanding the matter to the file of the AO, then the AO is duty bound to pass a valid order in conformity with the directions given by the ITAT and the AO cannot pass any order in disregard of such directions.(AY. 2001-2002)
Dy. CIT v. Punjab Beverages (P) Ltd. (2019) 174 DTR 329 (Chd.)(Trib.)

S. 254(1) : Appellate Tribunal – Respondent can defend the grounds, though no appeal is filed – Search and seizure – Jurisdiction issue. [S.132, 153A, ITAT R. 27] 1905
Even though the assessee has not appealed against the order of a lower authority it may still defend such an order on the grounds decided against him, if the grounds are otherwise in his favour. (AY. 2011-2012, 2014-2015, 2015-2016)
Dy. CIT v. Pacific Industries Ltd. (2019) 72 ITR 634 (Jodh.)(Trib.)
Dy. CIT v. Pacific Leasing And Research Ltd. (2019) 72 ITR 634 (Jodh.)(Trib.)

1906 **S. 254(1) : Appellate Tribunal – Suggested to constitute a tax advisory cell – Suggestions on how to remove hindrances to India's goal to become a $5 Trillion economy. Cash credits – Cash sales – Vouchers of day to day was not examined – Matter remanded for verification. [S. 68, 115BBE]**

ITAT offers suggestions on how to remove hindrances to India's goal to become a $5 Trillion economy. Violations of tax laws by new assessees occur because of lack of proper advice. Instead of letting these sparks of economic change stifle and die due to fear of compliances, they should be assisted by the State. (i) Set up a Tax Advisory Cell consisting of public spirited Revenue officers with strong ethics, full awareness of tax laws and people skills (ii) Identify new successful businesses as the agents of economic change (e.g. Haldiram, Lijjat Papad) and assist them, (iii) Create a Tax Compliance Scheme specially for the benefits of these new ventures so as to address their past lack of compliance. Suggested to constitute a tax advisory cell. As regards addition as cash credits in respect of cash sales matter remanded to the A O for verification. (AY. 2014-15)

Asha Gandhi (Smt.) v. ITO (SMC) (2019) 182 DTR 173 / 75 ITR 36 / 201 TTJ 900 (Chd.)(Trib), www.itatonline.org

1907 **S. 254(1) : Appellate Tribunal – Delay of 420 days in filing appeal due to subsequent decision of the Supreme Court is a valid ground for condonation of delay – An order can be said to suffer from a "mistake apparent from the record" if it is contrary to a subsequent judgment of the Supreme Court. Courts do not make any new law; they only clarify the legal position which was earlier not correctly understood. Such legal position clarified by Courts has retrospective effect as the law was always the same. [S. 80HHC, 154]**

Tribunal held that delay of 420 days in filing appeal due to subsequent decision of the Supreme Court is a valid ground for condonation of delay. Tribunal also held that an order can be said to suffer from a "mistake apparent from the record" if it contrary to a subsequent judgment of the Supreme Court. Courts do not make any new law; they only clarify the legal position which was earlier not correctly understood. Such legal position clarified by Courts has retrospective effect as the law was always the same (ITA No. 4192/MUM/2012, dt. 20-8-2019)(AY. 2003-04)

Anandkumar Jain v. ITO (Mum.)(Trib.), www.itatonline.org

1908 **S. 254(1) : Appellate Tribunal – Low tax effect Appeals – Less than ₹ 50 lakhs – Applies to all pending appeals – 628 Departmental appeals are dismissed. [S. 253]**

Though CBDT Circular dated 8th August 2019, enhancing the monetary limits for Dept appeals, states that the "modifications shall come into effect from the date of issue of the Circular", it must be interpreted to mean that the enhanced limits apply not only to appeals to be filed in future but also to appeals pending for disposal as on now. It is an appreciable goodwill gesture by the Govt., for so many taxpayers, on the eve of this Independence Day and offering them freedom from the prolonged mental agony and uncertainty of litigation. (ITA No. (ITA No. 1398/Ahd/2004) and 627 other appeals and Cos, dt. 14-8-2019)(AY. 1998-99)

ITO v. Dinesh Madhavlal Patel (2019) 108 taxmann.com 211 / 181 DTR (Ahd.)(Trib.), www.itatonline.org

S. 254(1) : Appellate Tribunal – Powers – Stay – Valuation of unquoted equity shares – Huge difference – Prima facie – Based on method laid down in Rule 11UA – Stay is granted. [S. 56, R. 11UA] 1909

AO made addition to assessee's income on account of valuation of unquoted equity shares of various companies purchased by assessee after invoking provisions of section 56(2)(viia) of the Act. Tribunal held that there was a huge difference in valuation done by AO and working given by assessee, which prima facie appeared to be based on method laid down in Rule 11UA. Accordingly the stay is granted. (AY. 2015-16)

Raj Sheela Growth Fund (P.) Ltd. v. ITO (2019) 177 ITD 39 (Delhi)(Trib.)

S. 254(1) : Appellate Tribunal – Powers – Remand with Directions Consequential enhancement is held to be valid. [R.8D] 1910

The Tribunal after judiciously accepting the contentions of the assessee, had laid down a principle to apply R. 8D for calculating the disallowance, in consonance with law. This had been accepted by the assessee in earlier years as it had been beneficial to the assessee. The fact that direction resulted in enhancement of disallowance is only consequential and therefore, in consonance with the principles laid down. Appeal of assessee is dismissed. (AY. 2010-11)

Punjab State Co-Operative Milk Produce Federation Ltd. v. ACIT (2019) 197 TTJ 642 / 174 DTR 155 (Chd.)(Trib.)

S. 254(1) : Appellate Tribunal Powers – Stay – Penalty – Concealment Quantum appeal pending before tribunal – AO directed not to pass final penalty order – However, penalty proceedings not stayed. [S. 271(1)(c)] 1911

Assessee is a government institute who filed an application for stay of penalty proceedings initiated. Tribunal directed AO not to pass final penalty order U/s. 271(1)(c) till disposal of the quantum appeal. However, penalty proceedings not stayed by the tribunal. Tribunal relied on the decision of the Gujarat *HC in the case of ACIT v. GE India Industrial (P) Ltd. (2013) 358 ITR 410 (Guj)(HC)* (AY. 2013-14)

Punjab Institute of Medical Science v. Dy. CIT (2019) 176 DTR 391 / 199 TTJ 271 (Chd.)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Where the issue before the Tribunal was of allowability of deduction, it was incorrect to remand the matter with a direction to apply transfer price provisions – AO had already passed the order, pursuant to such remand, and deleted the addition – Accordingly the writ petition had become academic. [S. 36(1)(iii), S. 92C, 254(1), Art. 226] 1912

Writ petition was filed challenging the dismissal of rectification application of the appellant. Issue before the Tribunal was where the AO had disallowed part of interest expenditure under S. 36(1)(iii) on the ground that funds were utilised to give interest free advances to subsidiary company, which was not a business purpose, the Tribunal was wrong in remanding the matter to the AO to decide the issue by invoking Transfer Pricing provisions. However, as the AO had already passed the order, pursuant to such remand, and deleted the addition accordingly the writ petition had become academic. (AY. 2011-12)

Piramal Glass (P) Ltd. v. Dy. CIT (2019) 102 taxmann.com 176 / 176 DTR 134 (Bom.)(HC)

1913 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Grounds raised and not given up remains undecided – Tribunal to either adjudicate on or to direct the AO to consider the additional evidence – Judgment of the Tribunal gives rise to an error on the face of the record, which is rectifiable. [S. 254(1)]**
Where the assessee's application for additional evidence was admitted by the Tribunal, it was duty bound to either adjudicate on the basis of such additional evidence itself or direct the AO to consider the additions on the basis of such additional evidence. Not following either of these two routes amounts to a mistake apparent from record. Order of the Tribunal set aside. (AY. 2012-13)
Rolls Royce Marine India (P) Ltd. v. ITAT (2019) 178 DTR 358 / 107 taxmann.com 26 / 265 Taxman 6 (Mag.)(Bom.)(HC)

1914 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record– Concealment penalty – Quantum reduced to nil – Deletion of penalty by Tribunal – Tribunal recalled earlier order on rectification application of the revenue – Recalling of the order is held to be valid. [S. 271(1)(c)]**
Assessee filed return declaring loss of ₹ 3.67 crores. AO assessed assessee's income at ₹ 34.63 lakhs. Tribunal reduced the income to NIL. AO levied the penalty for concealment of income on basis of escaped income of ₹ 34.63 lakhs. Tribunal deleted penalty on grounds that it had in quantum appeal reduced income to NIL and assessee had suffered loss in earlier years. Revenue filed application for rectification before Tribunal. Tribunal by an order dt. 5-9-2018 recalled its earlier order. The assesee filed writ petition challenging the order of the Tribunal recalling the order. Dismissing the petition the Court held that, in *CIT v. Gold Coin Health Food (P) Ltd (2008) 304 ITR 308 (SC)* larger Bench overruled the decision in *Virtual Soft Systems Ltd. v. CIT (2007) 289 ITR 83 (SC)* and has held that penalty can be imposed even in the case of reduced loss. On the facts the Tribunal has deleted the penalty without examining the relevant issues. Accordingly the Writ petition of the assessee was dismissed. (AY. 2001-02)
Sheetal Diamonds Ltd. v. ITAT (2019) 306 CTR 339 / 173 DTR 353 / 102 taxmann.com 177 (Bom.)(HC)

1915 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Failure to deal with an argument does not constitute a 'mistake apparent from the record' does not apply to a case where a fundamental submission is omitted to be considered by the Appellate Tribunal – The omission is apparent from the record and should be rectified by the Appellate Tribunal – The Tribunal ought to have decided the issue of the character of distribution fees, whether royalty or not, as all the facts were available on record before it and the submissions also were made, rather than remanding the issue to the Transfer Pricing Officer. [S. 92C, 254(1)]**
Allowing the petition the Court held that, the law that failure to deal with an argument does not constitute a 'mistake apparent from the record' does not apply to a case where a fundamental submission is omitted to be considered by the ITAT. The omission is apparent from the record and should be rectified by the ITAT. The Tribunal ought to have decided the issue of the character of distribution fees, whether royalty or not, as all the facts were available on record before it and the submissions also were made, rather

than remanding the issue to the Transfer Pricing Officer. (Considered, *CIT v. Ramesh Electrical Co (1993) 203 ITR 497 (Bom.) (HC).* (AY. 2011-12)
Sony Pictures Networks India Pvt. Ltd. v. ITAT (2019) 411 ITR 447 / 306 CTR 593 / 174 DTR 89 (Bom.)(HC), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal considering matter and passing order – No Obvious error – Protective assessment – Order cannot be rectified – Writ petition was allowed. [S. 158BC, Art. 226] 1916

Tribunal deleted the addition made in the protective assessment of the company. Against the order of the Tribunal, revenue has filed an appeal before the High Court which was admitted by High Court. Revenue has filed miscellaneous application before the Tribunal for not deciding the question of remaining part of the profit whether to be taxed on substantive basis. Revenue's miscellaneous application was allowed. The assessee filed writ petition against the order of Tribunal recalling the order in miscellaneous application. Allowing the petition the Court held that the Tribunal was conscious about three aspects of the matter and gave findings on all three aspects and gave reasons for holding that the remaining amount could not be taxed in the hands of the company. Accordingly, whether these conclusions were correct or incorrect the High Court would decide in the Department's tax appeal which had been admitted. This was not a case where the Tribunal had failed to decide an important issue arising in the appeals or the consideration of the Tribunal suffered from an error apparent on the record. The order of the Tribunal was not valid. (followed *T. S. Balaram v. ITO (1971) 82 ITR 50 (SC), CCE v. RDC Concrete (India) Pvt Ltd (2001) 10 GSTR 387 (SC)(2011) 12 SCC 166)*
Ambica Realties Pvt. Ltd. v. Asst. Registrar (2019) 419 ITR 382 (Guj.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Unexplained money – Gifts – Admission by partner – Addition is held to be justified – Rejection of miscellaneous application is held to be justified. [S. 69A, 132(4), 158BB, 260A] 1917

A search was conducted at business place of assessee partnership firm. In course of statement recorded under S. 132(4) with regard to money receipt on account of NRI gift, a partner of the firm submitted that it was firm's own money routed back to accounts of other partners of firm who were his own family members through an alleged NRI and same was firm's own undisclosed income. AO made the addition which was affirmed by CIT(A) and Tribunal. Dismissing the appeal of the assessee the Court held that admission of partner of firm was best evidence and was sufficient to bring such amount to tax in hands of assessee. Rejection of miscellaneous application by the Tribunal is held to be justified. (AY. 1994-95)
Swathi Enterprises v. DCIT (2019) 265 Taxman 69 (Mag.) / 309 CTR 191 / 176 DTR 337 (2020) 421 ITR 128 (Mad.)(HC)

1918 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The order passed under S. 254(2) cannot be rectified nor amended by invoking sub – section (2) of section 254 once again – Repetitive applications under S. 254(2) of the Act are not permissible. [S. 254(1)]**

The Tribunal confirmed the addition. Thereafter, the assessee filed miscellaneous petition under S. 254(2) to rectify the mistake apparent on record. In said petition it was stated that addition of deposit had been made to assessee's income as well as income of husband of the assessee which amounted to double addition. The Tribunal finding that substantive addition being made to the husband of the assessee, the protective addition made to the assessee was an apparent mistake, rectified same under S. 254(2) and deleted the addition made to assessee's income. The revenue filed miscellaneous petition under S. 254(2) seeking to rectify the mistake apparent on record of the order. The Tribunal dismissed the said petition holding that the same was not maintainable under S. 254(2). On appeal the Court held that from a reading of sub-section (2) of S. 254, it would be clear that the Tribunal possesses the power to rectify any mistake apparent on the record in the order passed by it under sub-section (1). If the order under sub-section (2) of S. 254 is passed, the said order would not be available for rectification of mistake again under S. 254(2) of the Act. The order passed under S. 254(2) cannot be rectified nor amended by invoking sub-section (2) of S. 254 once again. Repetitive applications under S. 254(2) of the Act are not permissible. The Tribunal rightly dismissed miscellaneous petition filed by the revenue. There is no error or omission in the order passed by the Tribunal. (AY. 2007-08)

PCIT v. Alpana Bhartia (Smt.) (2019) 265 Taxman 18 (Mag.) / 182 DTR 245 / 311 CTR 732 (Karn.)(HC)

1919 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Substantial justice – High Court has the power to condone the delay in filing of miscellaneous petition – Matter remanded to Tribunal to decide on merit. [S. 254(1), 271(1)(c), Art. 226]**

The assessee filed the miscellaneous petition mainly on the ground that the assessee was under the impression that the appeal was partly allowed by the Appellate Tribunal; the assessee did not realise that substantial relief was not granted by the Tribunal and only a consequential order was passed following the order of the respondent. The assessee had realised that he was entitled to substantial relief in view of the dictum of the court in the case of *CIT v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karn) (HC))* to the effect that the notice under S. 274 should specifically state the grounds mentioned in S. 271(1)(c), i.e., whether it was for the concealment of income or furnishing of inaccurate particulars of income and mere notice sent in a printed form without mentioning the grounds would not satisfy the requirement of law. The assessee's case fell under the exceptional category for exercising power under Articles 226 and 227 of the Constitution of India to interfere with the order passed by the Tribunal dismissing the miscellaneous petition only on the ground of delay. The delay had to be condoned. (AY. 2007-08)

Muninaga Reddy v. ACIT (2019) 417 ITR 699 (Karn.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Duties – Dismissal of the appeal for non prosecution has resulted in failure of justice – Order requires to be rectified – Delay of 497 days in filing the miscellaneous application was condoned, though the Tribunal has no power to condone the delay beyond six months – Cost of ₹ 5000 is imposed on the assessee. [S. 254(1), Art. 226, 227] 1920

Allowing the petition the Court held, dismissal of the appeal for non prosecution has resulted in failure of justice accordingly the order requires to be rectified. Court condoned the delay of 497 days in filing the miscellaneous application, though the Tribunal has no power to condone the delay beyond six months. Cost of ₹ 5000 is imposed on the assessee. Order of Tribunal is set aside and restored to the file of the Tribunal. Followed *Practice Strategic Communications India (P) Ltd v. CST ILR 2016 Kar 4493.* (AY. 2011-12)

Karuturi Global Ltd. v. Dy. CIT (2019) 310 CTR 146 / 181 DTR 14 (Karn.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Exposed to the odium of forum shopping – Order of Appellate Tribunal is reversed and cost of ₹ 1.5 lakh is imposed on the assessee. [S. 68, 154] 1921

Allowing the petition of the revenue, the Court held that, the conduct of the assessee was speculative. It is not an uninformed litigant. it calculatedly chose not to question the rejection of its cross objection. Instead, waiting for the time till the two members who decided the first ITAT orders were not available and choosing to prefer the rectification application at a convenient time, the assessee no doubt technically was compliant, but stood exposed to the odium of forum shopping. Appellate Tribunal's MA order reversed with costs of ₹ 1.5 Lakh imposed on the assessee. (W.P. (C) 10846/2016, dt. 14-2-2019)

PCIT v. N. R. Portfolio (P) Ltd. (2019) 262 Taxman 31 / 176 DTR 250 / 308 CTR 167 (Delhi)(HC), www.itatonline.org

Editorial: SLP of assessee is dismissed N. R. Portfolio (P) Ltd v. PCIT (2019) 265 Taxman 559 (SC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Transfer of income without transfer of asset – Finding that arrangement was with intention to avoid incidence of tax in hands of owner Assessee – Income was taxed in hands of owner – No infirmity in Order of Tribunal. [S. 22, 60] 1922

Dismissing the petitions the Court held that, finding was recorded by the Tribunal that the arrangement was with intention to avoid incidence of tax in hands of owner Assessee. Income was taxed in hands of owner. The Tribunal has taken note of *CIT v. Podar Cement P. Ltd (1997) 226 ITR 625 (SC)*. Accordingly the order of Tribunal is affirmed. (AY. 2008-09)

Ambience Developers And Infrastructure Pvt. Ltd. v. CIT (2019) 410 ITR 289 / 307 CTR 516 (Delhi)(HC)

Ambience Hotels and Resorts P. Ltd v. CIT (2019) 410 ITR 289 / 307 CTR 516 (Delhi)(HC)

1923 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Accommodation entries – Addition was confirmed as cash credits – Opportunity of cross examination – Rejection of rectification was held to be justified. [S. 68]**
Dismissing the petition the Court held that; considering the overall circumstances of the case the Tribunal has dismissed the rectification appreciating the facts. Accordingly the order of Tribunal is up held.
R. L. Traders v. ITO (2018) 100 Taxmann.com 331 (2019) 260 Taxman 110 (Delhi)(HC)
Editorial : SLP of assessee is dismissed; R. L. Traders v. ITO (2019) 260 Taxman 109 (SC)

1924 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal can recall order and change its mind in even if draft copy is signed and order is dictated in open Court – Rectification application in the instant case is held to be not maintainable [S. 254(1), R. 46A]**
The assessee filed the miscellaneous application and contended that in course of appellate proceedings, Tribunal categorically accepted its plea that order of CIT(A) was to be set aside and matter was to be remanded back for disposal afresh after admitting additional evidence brought on record. However, when order of Tribunal was received, it was found that appeal of assessee had been dismissed on main ground of addition instead of setting aside case back to file of CIT(A). Dismissing the petition the Tribunal held that a Court can recall order and change its mind in extreme case even if draft copy is signed and order is dictated in open Court. However, in the instant case the Tribunal held that while passing the order, Tribunal had taken into account relevant material available on record and had discussed applicability of rule 46A. Accordingly rectification application was dismissed. (AY. 2009-10)
Kamaljit Singh v. ITO (2019) 177 ITD 246 (Asr.)(Trib.)

1925 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Failure to consider an argument advanced by either party to arrive conclusion is not an error apparent on record though it may be error of judgment. [S. 144]**
Assessment was completed to best of his judgment by adding certain amount to assessee's income. The CIT(A) decided the matter ex parte.
Assessee raised an additional ground before Tribunal questioning jurisdiction of TRO in completing the assessment. Tribunal remanded matter back to CIT(A) for fresh consideration. Assessee moved application under S. 254(2) contending that Tribunal erred in remanding matter to file of Commissioner (Appeals). Dismissing the petition the Tribunal held that failure to consider an argument advanced by either party to arrive conclusion is not an error apparent on record though it may be error of judgment. (AY. 2012-13)
Champalal Raj Kumar Textile (P.) Ltd. v. TRO (2019) 179 ITD 791 (Kol.)(Trib.)

1926 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Order of Tribunal affirmed by High Court – Coordinate bench of Tribunal, subsequent to decision of High court could not have entertained miscellaneous application of assessee and recalled order originally passed by Tribunal. [S. 260A]**
Assessee is carrying out business of advertisement, marketing and publicity for certain parties from whom it received money and against said receipts, expenses were made.

All receipts and expenses were shown in Profit and Loss account, however, surplus of income over expenditure was not offered to tax. CIT(A) and Tribunal held that amount received by assessee towards contribution for advertisement marketing and promotion expenditure was not tainted with mutuality, thus, income of assessee was chargeable to income tax. Assessee preferred a Miscellaneous Application before co-ordinate bench recalling original order of Tribunal claiming that income was not taxable on ground of issue of diversion of income by overriding title which had not been considered. However prior to this, in appeal preferred by assessee against order of Tribunal, High Court had upheld order of coordinate bench and Supreme Court granted leave to assessee against order of High Court. Tribunal held that when a particular issue has been decided by higher forum, then, lower forum should always refrain from deciding any aspect of that matter which can disturb finding of higher judicial forum. Accordingly coordinate bench, subsequent to decision of High court could not have entertained miscellaneous application of assessee and recalled order originally passed by Tribunal. (AY. 2001-02)
Yum! Restaurants Marketing (P.) Ltd. v. ITO (2019) 179 ITD 480 (Delhi)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Judges can change or alter their decision at any time until the judgment is signed & sealed – A miscellaneous application on the ground that the ITAT Members stated a particular decision during the hearing but did the opposite in the order is not maintainable. 1927

The Tribunal held that the fact that the judges indicate a decision during the hearing or even dictate a judgment in open court gives no right to the litigant. Judges can change or alter their decision at any time until the judgment is signed & sealed. A miscellaneous application on the ground that the ITAT Members stated a particular decision during the hearing but did the opposite in the order is not maintainable. Followed *Surendra Singh & Ors. v. State of U.P., AIR 1954 SC 194. The Apex Court in Master Construction Co. (P.) Ltd. v. State of Orissa (1966) 17 STC 360, CIT v. Karam Chand Thapar & Br. P. Ltd. (1989), 176 ITR 535(SC) Kamaljit Singh Prop. v. ITO, Ras Bihari Bansal v. CIT (2007) 293 ITR 365 (Delhi) (HC).(ITA No. 675(Asr)/2013, dt. 23-4-2019*). (AY. 2009-10)
Kamaljit Singh Prop. Dhanoa Brothers v. ITO (2019) 177 ITD 246 / 182 DTR 129 / 201 TTJ 365 (Asr.)(Trib.), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Appeal admitted before High Court – Rectification application is not maintainable. 1928

Dismissing the rectification application of the assessee the Tribunal held that If an appeal against the order of the ITAT has been filed in the High Court and the same has been admitted by the High Court, a Miscellaneous Application U/s. 254(2) seeking rectification and recall of the order is not maintainable. The Miscellaneous application is maintainable, only if the appeal is pending and has not been admitted (*RW Promotions v. ITAT (2015) 376 ITR 126 (Bom)(HC) distinguished) CIT v. Muni Seva Ashram (2013) 38 taxmann.com 110 (Guj.)(HC)* followed M.A. No. 97/PUN/2018 in ITA No. 204/PUN/2012 dt. 15-3-2019) (AY. 2008-09)
Ratanlal C. Bafna v. JCIT (Pune)(Trib.), www.itatonline.org

1929 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Penalty – Though the High Court observed that Tribunal's decision of reducing the penalty as a "way to bypass the minimum limit" and the Tribunal was in error in granting the relief, the same does not constitute a "mistake apparent from the record" so as to enable the Tribunal to revisit its decision. [S. 271(1)(c)]**

Dismissing the miscellaneous application of the Revenue the Tribunal held that though the High Court faulted the Tribunal's decision of reducing the penalty as a "way to bypass the minimum limit" and the Tribunal was in error in granting the relief, the same does not constitute a "mistake apparent from the record" so as to enable the Tribunal to revisit its decision. (MA No. 166/Ahd/18 Arising out of ITA No.: 210/Ahd/15, dt. 03.04.2019)(AY. 2010-11)

ITO v. Devendra J. Kothari (2019) 176 DTR 289 / 199 TTJ 1 (Ahd.)(Trib.), www.itatonline.org

1930 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Employees of statutory corporations cannot be regarded as employees of State or Central Government – Failure to deduct tax at source under *bona fide* belief – Held not liable to pay penalty – AO filed miscellaneous application – Held miscellaneous application is not maintainable – Tribunal cannot recall its previous order in an attempt to rewrite the same. [S. 10(10AA), 192, 201(1), 201(IA)]**

On appeal filed before the Tribunal, the assessee contended that the provisions of S. 201(1) and 201(1A) were not attracted because the non deduction of tax at source by KPTCL was under the *bona fide* belief that it was not obliged to deduct tax at source on payments in excess of ₹ 3 lakhs towards unutilized leave period as it believed that its employees were employees of State Government. The Tribunal held that the obligation of the assessee was only to make a bona fide estimate of the salary. In the facts and circumstance of the instant case, the assessee had made such an estimate. The assessee's obligation under S. 192 was, therefore, properly discharged and hence proceedings under S. 201(1) and 201(1A) were quashed. Revenue filed miscellaneous petition against the impugned order of the Tribunal quashing the orders under S. 201(1) and 201(1A). The Tribunal in its order referred to several decisions wherein it has been held that estimate of income under the salary, if it is *bona fide*, then the payer cannot be treated as an 'assessee-in-default'. Therefore, there is no merit in allegations in the miscellaneous petition. Besides the above, there is also an allegation that the revenue was prevented from assisting the Bench by differentiating the cases relied by the assessee on the contention of the assessee that it was a state. As already said, the Tribunal has already accepted the contention of the revenue that the assessee is not a State. The allegations that the revenue was prevented from arguing is, therefore, not correct for the reason the argument was accepted by the Tribunal. (Misc No 175 of 2018 dt 4-1-2019)) (AY. 2013-14)

ITO (OSD) (TDS) v. Karnataka Power Transmission Corpn. Ltd. (2019) 175 ITD 130 / 199 TTJ 362 / 177 DTR 241 (Bang.)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Strictures – The insinuation of the Dept. that ITAT passes order in a state of oblivion displays a totally irresponsible and cavalier approach on the cusp of contempt and deserving exemplary cost to purge the same. Referring in a deriding manner that the ITAT started with the grounds of appeal, displays the naiveté of revenue authority purporting to be critical examiner of ITAT verdict, which is uncalled for – I express deep anguish at this approach of the department and hope that revenue will disband this cavalier and naïve approach while insinuating about the functioning of the ITAT without verifying their record. [S. 147] 1931

Tribunal held that, the insinuation of the Dept that ITAT passes order in a state of oblivion displays a totally irresponsible and cavalier approach on the cusp of contempt and deserving exemplary cost to purge the same. Referring in a deriding manner that the ITAT started with the grounds of appeal, displays the naiveté of revenue authority purporting to be critical examiner of ITAT verdict, which is uncalled for. I express deep anguish at this approach of the department and hope that revenue will disband this cavalier and naïve approach while insinuating about the functioning of the ITAT without verifying their record. (M.A. Nos. 605 & 606/Mum/2018, dt. 22-2-2019)(AY. 2003-04 & 2004-05)

ITO v. Rayoman Carriers Pvt. Ltd. (2019) 167 DTR 393 / 199 TTJ 912 (SMC) (Mum.)(Trib.), www.itatonline.org

S. 254(2A) : Appellate Tribunal – Stay – Deposited 71 per cent of tax demand raised in reassessment proceedings – Tribunal is not justified in rejecting the stay – Balance amount of tax and interest was to be stayed till disposal of assessee appeal. [S. 226, 254(1)] 1932

Allowing the petition the Court held that, in this case assessment was re-opened on basis of investigation commenced in case of certain stock brokers. However, AO did not have any independent material for reopening of assessment in case of assessee. It was also undisputed that assessee had already deposited 71 per cent of tax demand raised in reassessment proceedings. Accordingly the Court held that on facts, interest of revenue was properly safe guarded by payments made by assessee and thus, balance tax and interest payable would remain stayed till disposal of assessee's appeal pending before Tribunal. (AY. 2012-13)

Neeta Suneel Shah (Smt.) v. ITO (2019) 266 Taxman 40 (Mad.)(HC)

S. 254(2A) : Appellate Tribunal – Stay – Order of Tribunal to pay entire outstanding demand in instalments were modified as the Tribunal did not record any finding that assessee had not made out a prima facie case and hardship. [S. 254(1), Art. 226] 1933

Assessee filed an application before Tribunal for stay of outstanding demand. Tribunal directed assessee to pay entire outstanding in instalments of ₹ 50 lakhs in every English calender month. On writ the High Court held that The Tribunal did not record any finding that assessee had not made out a prima facie case. So far as aspect of hardship was concerned, Tribunal itself was conscious of fact that on account of attachment of bank account, assessee was put to hardship. As regards third aspect namely balance of convenience, same had not been adverted to by Tribunal. High Court thus taking a

view that in case entire balance outstanding was directed to be paid, to deposit a sum of Rs. 3 crores out of total tax demand in three instalments. (AY. 2009-10 to 2015-16)
J. Dinakaran v. Registrar ITAT (2019) 267 Taxman 492 / 110 taxmann.com 523 (Mad.)(HC)
Editorial : Tribunal set aside the order of the AO and remanded to the AO, accordingly the SLP is withe J. Dinakaran v. Registrar ITAT (2019) 267 Taxman 491 (SC)

1934 **S. 254(2A) : Appellate Tribunal – Stay – Power – Tribunal has the power to modify the stay order – Dismissal of stay application is held to be not justified on the ground that the Tribunal has no power to modify the stay order as the order is not passed U/s. 254(1) – On facts only a part of interest amount is still remain unpaid rejection of application is held to be not justified. [S. 254(1), 254(2)]**
Assessee filed an application for stay of demand. The Tribunal directed the assessee to pay ₹ 7 crores per month. The assessee filed the petition to modify the order of stay and early hearing of appeal. The Tribunal dismissed the petition on the ground that there was no error pointed out in the order of the Tribunal and the stay order is not being passed under S.254(1) of the Act, the petition for modification / rectification U/s. 254(2) would not lie. After referring the judgment in *ITO v. M. K. Mohammed Kunhi (1969) 71 ITR 815 (SC)* the Court held that the Tribunal has the power to consider the relief sought by the assessee. However considering subsequent events in view of fact that demand of tax and interest was substantial and assessee had complied with direction issued by Tribunal in respect of payment of tax, stay application could not be dismissed merely on ground that a part of interest amount still remained unpaid. (AY. 2008-09 to 2014-15)
Royal Sundaram General Insurance Co. Ltd. v. DCIT (2019) 266 Taxman 298 (Mad.)(HC)

1935 **S. 254(2A) : Appellate Tribunal – Stay – Stay of demand would not stand vacated after expiry of a period of 365 days, if delay in disposal of appeal was not attributable to assessee. [S. 254(1)]**
Revenue raised the question as to whether Tribunal's order was to be treated as void-ab-initio in light of third proviso to section 254(2A) which provided that stay of demand would stand vacated after expiry of a period of 365 days, even if delay in disposal of appeal was not attributable to assessee. Following the order in *PCIT v. Carrier Air Conditioning and Refrigeration Ltd. [2016] 387 ITR 441 (P & H)(HC)* appeal of the revenue was dismissed.
PCIT v. BMW India (P.) Ltd. (2019) 105 taxmann.com 135 / 263 Taxman 340 (P&H)(HC)
Editorial : SLP of the revenue is dismissed as infructuous as the main appeal is disposed by the Appellate Tribunal, PCIT v. BMW India (P.) Ltd. (2019) 263 Taxman 339 (SC)

1936 **S. 254(2A) : Appellate Tribunal – Stay – In cases where there is stay of recovery of demand of tax, the Tribunal should deal with the appeals pending before it on a higher priority. The Tribunal should consider forming a separate list of such cases which should be heard on priority after arranging the cases on the basis of their seniority as well as the quantum involved in the stay. [S. 254(1)]**
Court held that,in cases where there is stay of recovery of demand of tax, the Tribunal should deal with the appeals pending before it on a higher priority. The Tribunal should

consider forming a separate list of such cases which should be heard on priority after arranging the cases on the basis of their seniority as well as the quantum involved in the stay. (ITA 916/2019, dt. 21.10.2019)
PCIT v. Nokia Solutions & Networks India Pvt. Ltd. (2019) 184 DTR 385 / (2020) 312 CTR 373 (Delhi)(HC), www.itatonline.org

S. 254(2A) : Appellate Tribunal – Stay – Appeal could not be decided by Tribunal due to pressure of pendency of cases and delay in disposal of appeal was not attributable to assessee in any manner – Interim protection of stay could continue beyond 365 days. [S. 254(1)] 1937
Dismissing the petition of the revenue the Court held that,wherever appeal could not be decided by Tribunal due to pressure of pendency of cases and delay in disposal of appeal was not attributable to assessee in any manner, interim protection of stay could continue beyond 365 days. (AY. 2011-12)
PCIT v. Comverse Network Systems India (P.) Ltd. (2019) 103 taxmann.com 313 / 262 Taxman 100 (P&H)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Comverse Network Systems India (P.) Ltd. (2019) 262 Taxman 99 (SC)

S. 254(2A) : Appellate Tribunal – Stay – Recovery of tax – Substantial payment of tax in dispute was paid – Stay was granted. [S. 220(6), 245] 1938
The assessee has filed the above stay application seeking stay of outstanding demand. The assessee has already made payment of substantial amount of outstanding demand. The Tribunal held that, (i) The term "recovery" is comprehensive and includes adjustment thereby reducing the demand; (ii) It will be specious & illogical for the Revenue to contend that if an issue is decided in favour of the assessee giving rise to a refund in an earlier year, that refund can be adjusted U/s. 245, on account of the demand on the same issue in a subsequent year (iii) The decisions of CIT(A) & Tribunal in favour of the assessee should not be ignored, (iv) Income – tax officials are officers of the State and the Law requires that they perform their duties with utmost objectivity and fairness, while keeping in mind the sanctity of the role and function assigned to them which at times requires tough steps (Maruti Suzuki Ltd 347 ITR 47 (Del) followed). Accordingly the stay was granted. (SP Nos. 267 to 270 & 272/Bang/2019, dt. 14.10.2019) (AY. 2010-11 to 2013-14)
Voivo Group India Pvt. Ltd. v. DCIT (Bang.)(Trib.), www.itatonline.org

S. 255 : Appellate Tribunal – Third member – Powers – Third member has to pass an order agreeing with the one of the views. [S. 254(1), 255(4)] 1939
The third member does not have the wide discretion to exercise power as is available to Members deciding the original appeal. Third member necessarily has to pass an order agreeing with one views available in accordance with the provisions of S.255(4) of the Act. (AY. 2006-07 to 2008-09)
Harvinder Singh v. ITO (2019) 200 TTJ 137 / 179 DTR 225 (TM) (Asr.)(Trib.)

1940 **S. 260A : Appeal – High Court – Monetary limits – Pendency of appeals – No cascading effect nor issue involved in group matters – Appeals of department is dismissed – Question is kept open. [S. 268A]**

The High Court held that where a substantial question of law is involved, the mere fact that a monetary limit had been prescribed for filing appeals by the Department would not be a bar to deciding the appeal, and that even otherwise, this was an exceptional case where the Department was justified in filing the appeal, and proceeded to decide the appeal on the merits, answering the questions of law in favour of the Department, on appeal to the Supreme Court. Allowing the appeal the Court held that instruction No 5 of 2008 dt 15-5-2008 is applicable to pending matters, subject to two caveats provided in *CIT v. Surya Herbal Ltd (2013) 350 ITR 300 (SC)*. Followed *DIT v. S.R.M. B. Dairy Farming (P) Ltd (2018) 400 ITR 9 (SC)* The judgment of the High Court was set aside and the Department's appeals before the High Court treated as dismissed because of low tax effect, leaving the questions of law open. (AY. 1991-92 to 2001-02)

S. C. Naregal v. CIT (2019) 418 ITR 455 / 267 Taxman 563 / 311 CTR 849 / 184 DTR 247 (SC)

Editorial : Decision in CIT v. S.C. Naregal (2010) 329 ITR 615 (Karn.)(HC) is set aside because of low tax effect, leaving the questions of law open.

1941 **S. 260A : Appeal – High Court – Condonation of delay – Reasonable Cause – Affidavit – Delay of 1754 days – No knowledge of passing of order which was stated in the affidavit – Contents of the affidavit was not disputed by the respondent – Delay was condoned – Matters are restored to the file of High Court to decide the appeals on merit in accordance with law. [S. 260A(2A)]**

The appeal of the assessee was delayed by 1754 days before the High Court against the order of the Appellate Tribunal. In the application for condonation of delay the assessee stated that they had no knowledge of passing the order dated 29-12-2003, until they were confronted with the auction notices in June 2008 issued by the competent authority fixing auction of the properties of the appellant. First time orders of the Tribunal was filed on 24-07-2008 by the revenue. Appellant has filed the appeal along with condonation delay on 24-10-2018. The application was supported by the affidavit. Condonation of delay was dismissed by the High Court. Allowing the appeal the Apex Court held that stand of the applicant in the affidavit that they had no knowledge about the passing of the order is not expressly refuted by the respondent, the question of disbelieving the stand of the applicant cannot arise. For this reason, indulgence should be shown to the applicant by condoning the delay. Accordingly the delay was condoned and the appeals were restored to the file of High Court to decide in accordance with law.(CA Nos. 6671-6676 of 2010, dt. 7-11-2019)

Senior Bhosale Estate (HUF) v. ACIT (2019) 419 ITR 732 / 311 CTR 754 / 184 DTR 34 (SC), www.itatonline.org

Editorial : CA No 7637 of 2008 dt 13-2-2009 (Nagpur Bench) Senior Bhosale Estate (HUF) v. ACIT (Bom.)(HC)

S. 260A : Appeal – High Court – High Court disposed of appeals against order of reassessment merely on basis of its decision on issue of registration under S. 12A and not on merits – Order was to be set aside and appeals were to be restored to file of High Court for disposal on merits. [S.12A, 147, 148] 1942

High Court disposed of appeals against order of reassessment merely on basis of its decision on issue of registration under S. 12A of the Act. As the matter was not decided on merits the order of High Court is set aside and appeals were to be restored to file of High Court for disposal on merits. Accordingly the order of ITAT Cochin Bench ITA Nos 37, 38, 39, 40 and 42 of 2012 dt 14-3-2012 restored to the file of the High Court for fresh disposal fresh (AY. 2001-02 to 2005-06)

Kerala Cricket Association v. ACIT (2019) 265 Taxman 17 / 181 DTR 153 / 310 CTR 273 (SC)

S. 260A : Appeal – High Court – Tribunal order passed after High Court remanded the matter – Remedy against that order is by filing an appeal under S. 260A and not by way of SLP to Supreme Court. [S. 10A(6), 260A, 261] 1943

The Tribunal held that assessee was not entitled to the benefits of section 10A(6) of the Act for three AYs. The High Court noted that assessee had not claimed any deduction in these years and remanded the matter to the Tribunal. Subsequently the tribunal passed final order. Remedy of the assessee lay in filing an appeal under S.260A of the Act to the High Court. Thus, Supreme Court held that it could not interfere with the order of the High Court. (SLP (C) No. 26334 of 2017 dt. 22-4-2019) (AY. 1993-94 to 1995-96)

CIT v. Phoenix Lamps Ltd. (2019) 179 DTR 121 / 263 Taxman 338 (SC)

S. 260A : Appeal – High Court – Delay in filing appeal on account of difference in opinion between two officers and the time taken in obtaining legal opinion was condoned on payment of cost. 1944

The Supreme Court condoned the delay in filing appeal which delay was on account of difference in opinion between two officers and the time taken in obtaining legal opinion. (CA No. 863 of 2019; dt. 14.01.2019)

CIT(E) v. Progressive Education Society (2019) 308 CTR 198 (SC)

S. 260A : Appeal – High Court – Question of law – Reassessment – Book profit Provisions – High Court was not justified in dismissing appeal on ground that appeal did not involve any substantial question of law and case was remanded to High Court for deciding revenue's appeal afresh on merits in accordance with law after framing substantial question of law in accordance with law. [S. 115JB, 147, 148] 1945

AO issued notice under S. 148 to assessee on ground that assessee made various provisions, namely, for gratuity, doubtful debts, warranty, and obsolescence which were in nature of unascertained liabilities and were not added to book profit resulting in under assessment of income and disallowed 20 per cent of said provision and made addition to closing stock. Tribunal held that the notice was issued on account of change of opinion hence bad in law. High Court dismissed revenue's appeal against Tribunal's order in limine holding that it did not involve any substantial question of law. Supreme Court held that High Court was not justified in dismissing appeal on ground that appeal did not involve any substantial question of law and case was remanded to High Court

for deciding revenue's appeal afresh on merits in accordance with law after framing substantial question of law in accordance with law. (AY. 1999-2000)
PCIT v. Nokia India (P.) Ltd. (2019) 263 Taxman 460 (SC)
Editorial : Order in (ITA No.854 of 2016 dt 21-4-2017) PCIT v. Nokia India (P.) Ltd (2019) 104 taxmann.com 467 / 263 Taxman 463 (Delhi) (HC) is set aside.

1946 **S. 260A : Appeal – High Court – Without admitting the appeal and framing any question of law and dismissing it is not in conformity with the mandatory procedure – High Court is directed to hear the appeal following the mandatory procedure. [S. 260A(2)(C), 260A(3)]**
Allowing the appeal of the assessee the court held that, High Court was not justified in dismissing the appeal without admitting the appeal and framing any question of law and dismissing it is not in conformity with the mandatory procedure. High Court is directed to hear the appeal following the mandatory procedure. (AY. 2005-06, 2006-07)
Ryatar Sahakari Sakkarre Karkhane Niyamit v. ACIT (2019) 308 CTR 507 / 264 Taxman 77 (SC)
Editorial: From the judgment, Ryatar Sahakari Sakkarre Karkhane Niyamit v. ACIT (2016) 383 ITR 562 / 287 CTR 649 / 137DTR 383 (Karn.)(HC)

1947 **S. 260A : Appeal – High Court – Where High Court does not dismiss appeal in limine but has dismissed it after hearing both parties, in such a situation, High Court should frame questions and answer them by assigning reasons accordingly one way or other – Matter remanded – Duty to record reasons. [S. 260A(4), 260A(5)]**
Allowing the appeal of the revenue the Court held that; where High Court does not dismiss appeal in limine but has dismissed it after hearing both parties, in such a situation, High Court should frame questions and answer them by assigning reasons accordingly one way or other by exercising powers under sub-sections (4) and (5) of section 260A of the Act. Accordingly the matter remanded. Every order or judgment which decides a lis between parties must contain the reasons or grounds for arriving at a particular conclusion. Indeed, what is decisive for deciding the case is not the conclusion alone but the reasons or grounds assigned in support of such conclusion, which results in reaching such conclusion. In order to decide whether or not an order is legally sustainable, the appellate court is entitled to know what impelled the court below to pass such order in favour of one party and against the aggrieved party. (AY. 1987-88 to 4-9-1997)
CIT v. Rashtradoot (HUF) (2019) 412 ITR 17 / 262 Taxman 360 / 175 DTR 265 / 307 CTR 375 (SC)
Editorial : Arising from the order of High Court in CIT v. Rashtradoot (HUF) (2019) 104 taxmann.com 3 (Raj.)(HC)

1948 **S. 260A : Appeal – High Court – Without admitting the appeal and framing any question of law and dismissing it is not in conformity with the mandatory procedure – High Court is directed to hear the appeal following the mandatory procedure. [S. 260A(2)(C), 260A(3)]**
Allowing the appeal of the revenue the Court held that, there is a distinction between questions proposed by the appellant for admission of the appeal (U/s. 260A(2)(c)) and

the questions framed by the Court (U/s. 260A(3)). The High Court has to formulate substantial question of law and only thereafter hear the appeal on merits. If the High Court is of the view that the appeal does not involve any substantial question of law, it should record a categorical finding to that effect & dismiss the appeal in limine. However, it cannot, without admitting the appeal and framing any question of law, issue notice to the respondent, hear both parties on the questions urged by the appellant and dismiss it. This is not in conformity with the mandatory procedure prescribed in S.260A of the Act. (CA No.3968 of 2019, dt. 16-4-2019) (AY. 2008-09)
PCIT v. A. A. Estate Pvt. Ltd (2019) 413 ITR 438 / 176 DTR 441 / 308 CTR 193 / 265 Taxman 78 (SC), www.itatonline.org

S. 260A : Appeal – High Court – Revision – Amortisation of preliminary expenses – Bank – Expenses in relation to initial public offer – Revision was quashed by appellate Tribunal and up held by High Court – Matter remanded to High Court to frame question of law and decide the matter. [S. 35D, 263] 1949
Allowing the appeal of the revenue the Court held that, that firstly, the High Court did not frame any substantial question of law as required under S. 260A of the Act though it heard the appeal bipartite. In other words, the High Court did not dismiss the appeal in limine on the ground that it did not involve any substantial question of law. Secondly, the High Court dismissed the appeal without deciding any issue arising in the case saying that it was not necessary. Thirdly, the main issue involved in this appeal with regard to the applicability of S. 35D of the Act to the assessee was not decided. The High Court should have framed the substantial question of law on the applicability of S. 35D of the Act in addition to other questions and then answered them in accordance with law. Since the issue with regard to applicability of S. 35D of the Act to the assessee was already pending consideration before the High Court in appeal, both the appeals should be decided together. (AY. 2007-08)
PCIT v. Yes Bank Ltd. (2019) 412 ITR 459 / 307 CTR 593 / 175 DTR 409 / 262 Taxman 446 (SC), www.itatonline.org
Editorial: Decision in CIT v. Yes Bank Ltd (ITA No. 599 of 2015 dt 1-8-2017 (Bom.) (HC) is set aside.

S. 260A : Appeal – High Court – Defunct companies – The fact that the assessee company stands dissolved as a defunct company U/s. 560(5) of the Companies Act, 1956 does not mean that income – tax proceedings & appeals become infructuous. The liability against such companies has to be dealt with in accordance with s. 506(5) proviso (a) of the Companies Act and Chapter XV of the Income Tax Act which deal with "liability in special cases" and "discontinuance of business or dissolution" [S.176, Companies Act, 1956 S. 560(5)] 1950
High Court dismissed the appeal of the revenue on the ground that since the respondent Company stands dissolved as a result of the order passed by the Registrar of the Companies under Section 560 (5) of the Companies Act, the appeal filed against such Company which stands dissolved does not survive for its consideration on merits.. Court held that, the fact that the assessee company stands dissolved as a defunct company U/s. 560(5) of the Companies Act, 1956 does not mean that income-tax proceedings &

appeals become infructuous. The liability against such companies has to be dealt with in accordance with s. 506(5) proviso (a) of the Companies Act and Chapter XV of the Income Tax Act which deal with "liability in special cases" and "discontinuance of business or dissolution". Order of High Court is set aside and directed to decide the appeal with in six months. (CA No. 2922 of 2019, dt. 12-3-2019)

CIT v. Gopal Shri Scrips Pvt. Ltd. (2019) 175 DTR 412 / 307 CTR 596 / 262 Taxman 356 (SC), www.itatonline.org

Editorial : Refer, CIT v. Gopal Shri Scrips Pvt. Ltd. (Raj.)(HC) (ITA No 53 of 2000 dt 9-8-2000)

1951 **S. 260A : Appeal – High Court – Delay of 362 days – Difference of opinion between two officers – Appeal was filed on the basis of legal opinion – Delay was condoned and remanded the matter to High Court to decide on merits – Cost of ₹ 1 lakh is awarded on department which is to be paid to the assessee.**

Allowing the appeal of the revenue the Court held that main cause of delay was a difference of opinion between two officers of the Department on whether an appeal was to be filed from the order of the Tribunal, and ultimately a legal opinion was taken and it was decided to file the appeal. In view of this and having regard to the importance of the matter, the High Court should hear the appeal on the merits. Delay of 362 days was condoned subject to payment of cost of ₹ one lakh by the Department to the assessee, and remitted the matter to the High Court for decision of the appeal on the merits. (Also CA no 863 of 2019 dt. 14-1-2019)

CIT(E) v. Progressive Education Society. (2019) 410 ITR 370 / 306 CTR 614 / 261 Taxman 456 / 174 DTR 281 / 262 Taxman 21 (SC)

CIT(E) v. Progressive Education Society (2019) 177 DTR 58 (SC)

Editorial : Order in CIT(E) v. Progressive Education Society (2019) 410 ITR 371 / 102 Taxman.com.401 (Bom.) (HC) is set aside. Nom No 52 of 2018 dt 9-3-2018 is set aside.

1952 **S. 260A : Appeal – High Court – Delay of 224 days – Ex-Chairman's health ailment was sufficient cause – Delay was condoned and High Court is directed to hear the appeal on merits.**

The assessee's appeal was delayed by 224 days and High Court refused to condone the delay. On appeal to Supreme Court the apex court held that Ex-Chairman's health ailment was sufficient cause. Accordingly the delay was condoned and High Court is directed to hear the appeal on merits.

Aakash Lavlesh Leisure (P.) Ltd. v. ITO (2019) 262 Taxman 2 / 177 DTR 57 / 308 CTR 200 (SC)

Editorial : Aakash Lavlesh Leisure (P.) Ltd. v. ITO (2019) 103 taxmann.com 247 / 262 Taxman 4 (Bom.)(HC)

1953 **S. 260A : Appeal – High Court – Review – Mistake apparent from the record – Reappreciation of evidence and rehearing of case without there being any error apparent on the face of the record is not permissible. [S. 22(3)(f), 220(2), 220(2A)]**

Dismissing the review petition the Court held that, the assesssee, in fact wants rehearing of the matter which is not permissible, there is no error apparent on the face of the

record warranting review order passed by the Principal Chief CIT can never be said to be a cryptic / non-speaking order, as stated in the grounds raised in the review petition – Legality and validity of the order as been looked into by this Court – Court has decided the case on merits Reappreciation of evidence and rehearing of case without there being any error apparent on the face of the record is not permissible. (Refer, *Mansukhlal Pitalia v. PCIT (2019) 264 Taxman 217/ 181 DTR 248 / 310 CTR 474 (MP) (HC)*)
Mansukhlal v. PCIT (2019) 181 DTR 241 / 310 CTR 467 (MP)(HC)

S. 260A : Appeal – High Court – Recalling of its earlier judgment on ground that it contained some factual inadvertent error and judgments relied on without giving an opportunity to the petitioner – Held to be valid. [S. 179] 1954
Assessee filed application under S.114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908(CPC) against the order dt 23-2-2017 under S. 179 whereby he in capacity as Director was called upon to pay tax dues. High Court dismissed the said petition. It was found that while disposing of the said petition, High Court had committed an inadvertent error by recording a finding that after assessee's tendering of resignation in September, 2005, no substantial business of company took place and also some of the decisions which have been mentioned in the judgment were never put the notice of the applicant and the applicant did not have a fare chance or opportunity to meet with the decisions. Assessee moved the application for recalling the said judgment. High Court recalled the order and directed to be heard fresh. (AY. 2006-07)
Ajay Surendra Patel v. Dy.CIT (2019) 107 taxmann.com 221 / 265 Taxman 87 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, DCIT v. Ajay Surendra Patel (2019) 265 Taxman 86 (SC)

S. 260A : Appeal – High Court – Dismissal of review petition is held to be valid – Order of Appellate Tribunal is affirmed in absence of demonstrated perversity in the order of Tribunal – Its finding. [S. 254(1)] 1955
Assessee filed a review petition. Dismissing the petition the Court held that Tribunal being a final fact finding authority, in absence of demonstrated perversity in its finding, interference therewith by High Court was not warranted. *Relied Vijay Kumar Talwar v. CIT (2011) 330 ITR 1 (SC).*
Mahaveer Yadav v. ITO (2019) 107 taxmann.com 379 / 265 Taxman 379 (Raj.)(HC)
Editorial : SLP of the assessee is dismissed, Mahaveer Yadav v. ITO (2019) 265 Taxman 162 (SC)

S. 260A : Appeal – High Court – Pendency of petition for rectification before Tribunal is not relevant to decide the maintainability of appeal before High Court. [S. 254(2)] 1956
Court held that while deciding the appeal under S. 260A of the Act wherein, the court on being prima facie satisfied that there were substantial questions of law to be decided, had admitted the appeal, by order dated December 21, 2018. In such circumstances, the pendency of a petition for rectification under S. 254(2) could have no impact on the appeal. The appeal was maintainable. (AY. 2010-11)
Daimler India Commercial Vehicles P. Ltd. v. DCIT (2019) 416 ITR 343 / 183 DTR 92 (Mad.)(HC)

1957 **S. 260A : Appeal – High Court – Open remand – Remanding matter to AO without recording any finding – No question of law. [S. 35D, 254(1)]**
Dismissing the appeal of the revenue the Court held that no finding had been arrived at by the Tribunal and it was only an "open remand". No prejudice was caused in any manner and it was possible for the Department to raise the relevant contentions and question of law before the Assessing Officer even with reference to S. 35D. That apart in so far as no finding had been rendered by the Tribunal as to the applicability of S. 35D the appeal did not involve any "substantial question of law" so as to call for interference of the court in exercise of power under section 260A. (AY. 1994-95)
CIT v. Apollo Tyres Ltd. (No. 1) (2019) 416 ITR 519 (Ker.)(HC)

1958 **S. 260A : Appeal – High Court – High Court cannot re-examine the same evidence and reach a different factual conclusion than the lower authorities. [S. 40A(3)]**
Account of a sister concern of the assessee showed that payments in excess of ₹ 20,000 were made to it in cash. The assessee subsequently filed a revised account showing that each of the payments was less than ₹ 20,000. This was coupled with an affidavit of the accountant stating that the earlier account was incorrect. The lower authorities held that the revised account was fraudulent and filed only to avoid the addition under S. 40A(3). Held that where the lower authorities had perused the revised account and reached a conclusion that they were fraudulent, High Court could not reappreciate such evidence and reach a contrary conclusion of fact. Appeal of assessee is dismissed. (AY. 2012-13)
Nangal Spun Pipe Co. (P) Ltd. v. CIT (2019) 177 DTR 393 / 108 taxmann.com 127 / 266 Taxman 8 (Mag.) / 308 CTR 751 (P&H)(HC)

1959 **S. 260A : Appeal – High Court – Jurisdiction – Original Assessment in Delhi – Centralised at Ghaziabad after Search action – Punjab and Haryana High Court has no territorial jurisdiction to hear appeal. [S. 143(3), 153A]**
The Deputy Commissioner, Ghaziabad passed an assessment order under S. 153A read with S. 143(3) and made similar additions as in the original assessment. The CIT(A) allowed the appeal filed by the assessee against this order. The Tribunal dismissed the appeal filed by the Department against the order of the CIT(A). On appeal by the revenue the Court held that the initial process of assessment was started in New Delhi and the final assessment was made by the AO at Ghaziabad. Therefore, the Punjab and Haryana High Court lacked territorial jurisdiction to adjudicate the matter. The Department was directed to file appeal before the competent court. (AY. 2008-09)
CIT v. ABC Papers Ltd. (2019) 414 ITR 668 (P&H)(HC)

1960 **S. 260A : Appeal – High Court – Merger of order – Composite order being questioned before the court was rejected earlier – Appeal is held to be not maintainable. [S. 32(2), 72, 254(2)]**
Court held that the revenue could not prosecute the present case as the order passed in the miscellaneous petition stood merged with the earlier order and the composite order being questioned before the court and the challenge at the instance of the Revenue having been rejected in *CIT v. S & S Power Switchgear Ltd. (2009) 318 ITR 187 (Mad.) (HC)*. (AY. 2000-01)
CIT v. S&S Power Switchgear Ltd. (2019) 415 ITR 376 (Mad.)(HC)

S. 260A : Appeal – Review – Transfer pricing – Arm's length price – Following the earlier year order review petition is allowed – The appeal is restored to original file of this Court and shall be heard on its merits. [S. 92C] 1961

Assessee was involved in IT enabled services which was broadly categorised into (a) Research and Information Services Division and (b) IT Support Services Division. In review petition it was urged that High Court had held that nature of services provided by assessee were specialized akin to that of KPO service while for previous year 2006-07, High Court had held that nature of assessee's services were back-office operations akin to a BPO. Accordingly review petition was allowed. The appeal is restored to original file of this Court and shall be heard on its merits. (AY. 2011-12)

Mckinsey Knowledge Centre India (P.) Ltd. v. CIT (2019) 106 taxmann.com 248 / 264 Taxman 24 (Mag.) (Delhi)(HC)

S.260A : Appeal – High Court – Limitation – Delay of 318 days – No reasonable explanation for delay – Delay was not condoned. 1962

Period of limitation should not come as a hindrance to do substantial justice between parties; however, at same time, a party cannot sleep over its right ignoring statute of limitation and without giving sufficient and reasonable explanation for delay. Officers of revenue should be well aware of statutory provisions and period of limitation and should pursue its remedies diligently.

CIT v. Lata Mangeshkar Medical Foundation (2019) 410 ITR 347 / 254 Taxman 347 (Bom.) (HC)

Editorial: SLP of revenue is dismissed (SLP No.42811 of 2018) (2019) 414 ITR 1(St.) (SC)

S. 260A : Appeal – High Court – Substantial question of law on jurisdictional issue is framed at the time of final hearing of appeal and the order of Assessing Officer is quashed for not issuing the mandatory notice U/s. 143(2) of the Act. [S. 158BB, 158C, Code of Civil Procedure, 1908 (5 of 1908)] 1963

Tribunal decided the quantum addition in favour of the assessee. In the cross objection the assessee raised the issue of non servicing the issue of notice U/s. 143(2) of the Act, though the ITAT has not given a finding against the assessee on the issue of notice U/s. 143(2) of the Act. Substantial question of law is raised at the time of final hearing of the appeal though it was not raised at the time of admission of appeal. Substantial question of law is admitted on following question of law "Whether non – issuance of notice under S. 143(2) of the Income Tax Act, 1961 vitiates that assessment proceedings under Section 158 BC of the Income Tax Act in view of the Judgment of the Hon'ble Supreme Court in *ACIT v. Hotel Blue Moon 2010 3SCC 259*?"

Following the ratio of Apex Court in *ACIT v. Hotel Blue Moon*, the Court held that the omission on the part of the Assessing Authority to issue notice under S. 143(2)cannot be regarded as a procedural irregularity and the same is not curable and such requirement cannot be dispensed with. Hon'ble Apex Court has held that even for the purpose of Chapter XIV-B of the Income Tax Act for determining of undisclosed income for block assessment in proceedings under S. 158BC, provisions of Section 142, 143(2) and 143(3) are applicable and no assessment can be made without issuing notice under S. 142 of

the said Act. Accordingly the order is held to be bad in law.(TA No. 75 of 2008 /Misc A No. 179 of 2016 dt 13-9-2019)
CIT v. Fomento Fianance & Investment (P) Ltd. (2019) 183 DTR 340 / (2020) 312 CTR 88 / 421 ITR 146 (Bom.)(HC)

1964 **S. 260A : Appeal – High Court – Jurisdiction – Bombay High Court does not have jurisdiction to entertain appeals in respect of order passed by the Bangalore Bench of the Tribunal, notwithstanding the fact that an order was passed under S.127 transferring the assessee's case from AO at Bangalore to AO at Pune. [S. 116, 124, 127]**
High Court held that, since Tribunals and High Courts are not listed under S.116 of the Act S. 124 and 127 will have no bearing in deciding the jurisdiction of the High Courts which will have jurisdiction over the orders of Tribunal. Jurisdiction of the Court to which the appeal would lie under the Act would be decided by the seat of the Tribunal (ie in which State it is), hence Bombay High Court does not have jurisdiction to entertain appeals under S. 260A in respect of order passed by the Bangalore Bench of the Tribunal, notwithstanding the fact that an order was passed under S.127 transferring the assessee's case from AO at Bangalore to AO at Pune (ITA No. 1142 of 2016 dt. 26-2-2019) (AY. 2008-09)
PCIT v. Sungard Solutions (I) (P) Ltd. (2019) 308 CTR 22 / 176 DTR 57 (Bom.)(HC)

1965 **S. 260A : Appeal – High Court – Sale of shares – Income earned from sale of shares held for more than one year – Held as long – term capital gain – Applicability Explanation to S. 73 cannot be raised for first time in proceedings pending before High Court. [S. 45, 73]**
Assessee earned income from sale of shares. AO assessed entire gain as business income. Tribunal held that shares which were sold after period of one year would give rise to long – term gain. In appeal the revenue raised the question framed related to applicability of Explanation to S. 73 of the Act. Dismissing the appeal the Court held that applicability Explanation to S. 73 cannot be raised for first time in proceedings pending before High Court.
PCIT v. Envision Investment & Finance (P.) Ltd. (2019) 264 Taxman 242 (Bom.)(HC)

1966 **S. 260A : Appeal – High Court – Restoration of appeal – Delay of 2386 days – Appeal not to be dismissed only on the ground of failure to get numbered / registered – Delay being technical in nature condoned and appeal restored. [Bombay High Court (Original side) Rules 986, Customs Act]**
Prothonotary and senior Master dismissed the appeal for failure to remove office objections and getting appeal numbered / registered. Revenue filed the Notice of Motion and prayed for condonation of delay. Allowing the notice of motion and condonation of delay of 2386 days the Court held that the appeal not to be dismissed only on the ground of failure to get numbered / registered. Delay being technical in nature condoned and appeal restored. Court also observed that a conditional order made in Notice of Motion 2017 stipulating removal of objection and getting it appeal numbered /registered cannot expect from the appellant to do something which is not in his control. Job of

getting matter numbered is of the Registry and not of party/appellant. (NM No 731 of 2018 CA (LDG) 53 of 2019 dt. 22-4-2019)
CC (Prevention) v. Advance Technology Devices (2019) 26 G.S.T.L. 18 (Bom.)(HC)

S. 260A : Appeal – High Court – Jurisdiction – Appeal against order of Appellate Tribunal, Bangalore could only be filed before Karnataka High Court and not at Bombay High Court – Seat of Assessing Officer would not decide jurisdiction of High Court at time of appeal. [S. 269] 1967
Dismissing the appeal of the revenue the Court held that Appeal against order of Appellate Tribunal, Bangalore could only be filed before Karnataka High Court and not at Bombay High Court. Seat of Assessing Officer would not decide jurisdiction of High Court at time of appeal Whether appeal from order of Tribunal is to be filed to High Court which exercises jurisdiction over seat of Tribunal. (AY. 2008 09)
PCIT v. Sungard Solutions (I) (P.) Ltd. (2019) 415 ITR 294 / 263 Taxman 277 / 176 DTR 57 (Bom.)(HC)

S. 260A : Appeal – High Court – Delay of 507 days – Part time employee – Ex employee not filed the affidavit – Delay was not condoned. 1968
Dismissing the application for condonation of delay of 507 days the Court held that the assessee has not filed affidavit of ex – employee who has left the service. Further, there are inconsistencies in the declaration made by and on behalf of the applicant. Accordingly notice of motion for condonation of delay was dismissed.
Vama Apparels (India) (P.) Ltd. v. ACIT (2019) 261 Taxman 496 / 307 CTR 469 / 175 DTR 168 (Bom.)(HC)

S. 260A : Appeal – High Court – Question regarding limitation can be raised for first time Before High Court–Revision was held to be bad in law. [S. 80IB, 153A, 251, 260A, 263] 1969
Allowing the appeal of the assessee the Court held that, Question regarding limitation can be raised for first time Before High Court. Accordingly the revision order is held to be bad in law. (AY. 2001-02, 2003-04, 2005-06, 2006-07)
Skyline Builders v. CIT (2019) 412 ITR 182 / 179 DTR 165 / 309 CTR 415 / 265 Taxman 38 (Mag) (Ker.)(HC)

S. 260A : Appeal – High Court – Monetary limit – The matter neither had any cascading tax effect nor did it involve any issues of common principles in a group of matters or a large number of matters – The withdrawal of the appeal could be permitted in accordance with the CBDT Circular dated July 11, 2018. [S. 119] 1970
Dismissing the appeal of the revenue the Court held that, the matter neither had any cascading tax effect nor did it involve any issues of common principles in a group of matters or a large number of matters. The withdrawal of the appeal could be permitted in accordance with the CBDT Circular dated July 11, 2018 (2018) 405 ITR 29 (St.), Circular dated 9-2-2011 (2011) 332 ITR 1 (St.) Referred, *CIT v. Surya Herbal Ltd. (2013) 350 ITR 300 (SC)*
CIT v. P. C. Naidu (2019) 412 ITR 378 (Karn.)(HC)

1971 **S. 261 : Appeal – Supreme Court – Monetary limits – Tax effect of Less than of ₹ 1 crore – Appeal is allowed to be with drawn, leaving all the questions of law open. [S. 80HHC]**

Tax effect is less than ₹ 1 crore. Appeal is allowed to be withdrawn, leaving all the questions of law open. Circular No. 3 of 2018 dated 11-8-2018, (2018) 405 ITR 29 (St) / amended circular dt 20-8-2008, (2008) 407 ITR 7 (St) From *CIT v. Mereena Creations (2009) 32 DTR 97 / (2011) 330 ITR 199 (Delhi) (HC)* (AY. 2001-02)

CIT v. Mereena Creations (2019) 414 ITR 332 / (2020) 312 CTR 471 / 185 DTR 407 (SC)

1972 **S. 261 : Appeal – Supreme Court – Binding precedent – Merger – Interpretation – Review – Special leave petition was dismissed against High Court order in limine without giving any reasons, review petition filed by appellant, in High Court would be maintainable. [Art. 136, 141]**

Allowing the appeal the Court held that, in case of an order refusing special leave to appeal, either a non-speaking order or a speaking one, order of High Court, Tribunal or Authority below could not be said to be merged in order of Supreme Court rejecting special leave petition. Therefore, special leave petition was dismissed against a High Court order in limine without giving any reasons, review petition filed by appellant in High Court would be maintainable. However on an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court, jurisdiction of High Court to entertain a review petition is lost as provided by sub – rule (1) of rule 1 of order 47 CPC. (CA No. 2432 of 2019, dt. 1-3-2019)

Khoday Distilleries Ltd. v. Sri Mahadeshware Sahakara Sakkare Kharkhane Ltd. (LB) (2019) 262 Taxman 279 / 176 DTR 273 / 308 CTR 1 104 (SC), www.itatonline.org

1973 **S. 261 : Appeal – Supreme Court – Adjournment – An adjournment cannot be sought on the ground that Counsel is out of station – Opportunity was given to the counsel to argue the matter, however he could not argue the matter – The appeal was dismissed for non – prosecution – Court also observed that under no circumstances, application for restoration shall be entertained.**

The learned counsel for the appellants is not present in the Court today and it is stated that he is out of station. Court held that, this is no ground to seek an adjournment. Accordingly, the honourable court rejected the request for an adjournment and asked the learned counsel to argue the matter. However he submitted that he does not know anything about the case. In these circumstances, the honourable court dismissed the appeals for non-prosecution. Court also made it clear that since they have not found it to be a good ground for adjournment, under no circumstances, application for restoration shall be entertained. (CA Nos. 9142-9144 of 2010, dt. 7-2-2019)

Ram Siromani Tripathi v. State of U.P. (SC), www.itatonline.org

1974 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital or revenue – Expenditure incurred on CDs – Allowed as revenue expenditure – Plausible view – Revision is held to be not valid – Order of Tribunal is affirmed. [S. 37(1)]**

AO allowed assessee's claim for deduction of expenditure incurred on CDs CIT revised the order of the AO on the ground that AO had not carried out any enquiries as to nature of expenditure being capital or not. Tribunal allowed assessee's appeal holding

that AO had carried out detailed enquiries and taken a view which was a plausible view. Accordingly, Tribunal set aside revisional order passed by Commissioner. On appeal High Court upheld order passed by Tribunal. (AY. 2010-11)
PCIT v. Sumatichand Tolamal Gouti (2019) 267 Taxman 495 / 111 taxmann.com 286 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Sumatichand Tolamal Gouti (2019) 267 Taxman 494 (SC)/ 417 ITR 62 (St.)(SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest on NPA – AO passed the order after due consideration of the submission – Revision is held to be not justified. [S. 145] 1975
Dismissing the appeal of the revenue the Court held that the AO passed the order allowing the interest on NPAs after due consideration of the submission. Revision is held to be not justified. (Arising from ITA No. 1955/PN/ 2014 dt 20-5-2016) (ITA No. 683 of 2017 dt 26-8-2019 (AY.2010-11).
Janalaxmi Co-Op. Bank Ltd. v. PCIT (2019) BCAJ – Dec. P.40 (Bom.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital asset – Surrender of right, title and interest in plot allotted by MIDC in favour of third party – Not assessable as business income. [S. 2(14), 28(i) 45] 1976
Assessee entered into a joint venture agreement for acquisition of a plot from Maharashtra Industrial Development Corporation (MIDC). Allotment of plot was made by MIDC in February, 2006. Assessee relinquished its right, title and interest in said plot in favour of other company and shown the receipt as capital receipt. AO accepted the claim on the basis that the assessee did not carry on any business activity during relevant year or earlier years. Commissioner passed a revisional order setting aside assessment on ground that income earned by assessee was in nature of business income. Tribunal held that the that Assessing Officer had thoroughly examined issue during course of scrutiny assessment proceedings and had given a very categorical finding that any property whether connected with business or not other than stock-in-trade was a capital asset. Accordingly set aside the order of the revisional order of CIT. High Court upheld Tribunal's order. (AY. 2008-09)
PCIT v. Well Wisher Construction (P.) Ltd. (2019) 106 taxmann.com 259 / 264 Taxman 86 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Well Wisher Construction (P.) Ltd. (2019) 264 Taxman 85 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Commissioner has no jurisdiction to consider matters considered by CIT(A) in Appeal. [S. 2(15), 10(20), 11, 251] 1977
Dismissing the appeal of the revenue the Court held that the Commissioner in exercise of the revisional powers under S. 263 could not initiate a fresh inquiry about the same claim made by the assessee on the ground that one of the aspects of such a claim was not considered by the Assessing Officer. Once the claim of the assessee for exemption under S. 11 was before the CIT(A), he had the powers and jurisdiction to examine all the aspects of such claim. If the Department was of the opinion that the assessment

order could not have been sustained as the assessee did not fall within the ambit of S.10(20) the ground on which the Assessing Officer had rejected the claim and the other legal ground of S. 2(15), it should have contended before the CIT(A) to reject the assessee's claim on such legal ground. The Tribunal did not commit any error in setting aside the revision order. (AY. 2009-10)
CIT v. Slum Rehabilitation Authority (2019) 412 ITR 521 / 178 DTR 434 / 265 Taxman 10 (Mag.) (Bom.)(HC)

1978 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order passed by the AO under direction of dispute Resolution Panel can be set aside – Alternative remedy – Writ to quash the notice U/s. 263 is held to be not maintainable. [S. 144C, Art. 226]**
Dismissing the petition the Court held that, order passed by the AO under direction of dispute Resolution Panel can be set aside. Writ against notice U/s. 263 is held to be not maintainable as the alternative remedy of appeal is available. (AY. 2009-10)
Devas Multimedia Pvt. Ltd. v. CIT (2019) 419 ITR 391 / 311 CTR 313 / (2020) 268 Taxman 150 / 183 DTR 33 (Karn.)(HC)

1979 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Record – Pendency of appeal before CIT(A) – Order passed after considering all details – Revision is held to be not valid. [S. 40A(3), 250, 263, Expln.1(C)]**
Dismissing the appeal of the revenue the Court held that the Commissioner had wrongly exercised his jurisdiction under S. 263 by remanding the matter to the assessing authority, while the appeal was pending before the CIT(A). Thus, the order passed by the Tribunal did not suffer from any irregularity and needed no interference. The Tribunal had recorded a specific finding that the assessing authority had examined each and every aspect of the case on which the revision order hinged, and the revision order was not sustainable. The Department had failed to make out any case for interference with the order of the Tribunal, as the Commissioner had proceeded to remand the matter to the assessing authority while the appeal of the assessee was pending before the CIT(A) under section 250. The exercise of power under section 263 was barred by clause (c) of Explanation 1 to the section.(AY. 2008-09)
CIT v. Vam Resorts and Hotels P. Ltd. (2019) 418 ITR 723 / (2020) 186 DTR 205 (All.)(HC)

1980 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loan – Unclaimed money – Detailed enquiries were made in the assessment proceedings – Revision is held to be not valid. [S. 68, 143(3)]**
In the course of assessment proceedings detailed enquiries were made by the AO as regards genuineness of loans. After considering the evidences the AO accepted the loans as genuine. CIT revised the order and directed the AO to examine, call for requisite details, confirmations, examine them properly and relegated the matter back to AO. Tribunal confirmed the order of the CIT. On appeal the Court held that the Commissioner has not brought any evidence showing that the order of AO was erroneous, as same was passed without application of mind or AO had made an incorrect assessment of fact or incorrect application of law, revisional order passed

by CIT is held to be not valid. Accordingly the revision order was set aside. (AY. 2007-08)
Meerut Roller Flour Mills (P.) Ltd. v. CIT (2019) 311 CTR 336 / 182 DTR 168 / (2020) 420 ITR 216 (All.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Payments made to charitable institutions and expenditure towards execution of property – Rightly allowed as deduction by the AO – Revision is held to be not valid. [S. 45, 48, 143(3)] 1981
Property belonging to assessee's deceased father was sold as per his father's Will and an amount of sale consideration was paid to assessee. While computing amount of capital gain, assessee excluded certain payment made to a charitable institution and certain expenditure incurred for execution of sale of property such as professional fee, commission, etc. from total sale consideration. AO accepted the income shown by the assessee. CIT invoked revision jurisdiction and directed the AO to disallow payments and re-compute total income. On appeal the Tribunal held that the assessee had submitted details including Will and testament executed by his father from which, it was seen that there was a specific direction to pay specific sum of money to charitable institutions, clear property tax arrears, payment of professional fee to Will executor, meet stamp duty expenses and remaining amount would be paid to assessee, thus, impugned payments were made as per Will of his father. Accordingly the AO was justified in accepting sale consideration declared by assessee and revision order was set aside.(AY. 2012-13)
Kumar Rajaram v. ITO (IT) (2019) 267 Taxman 65 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Addition to fixed assets – Disallowance U/s. 14A of the Act – Enquiries done by the AO in the original assessment proceedings – Revision is held to be bad in law. [S. 14A, R. 8D] 1982
Dismissing the appeal of the revenue the Court held that where the Tribunal quashed the revision proceedings under S. 263 on the ground that adequate enquiries were carried out by the AO in the original assessment proceedings, such view of the Tribunal being a reasonable view, does not call for an interference from the High Court.
PCIT v. Kesoram Industries Ltd. (2019) 181 DTR 236 / 109 taxmann.com 390 / 310 CTR 599 (Cal.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Block assessment – Cash payments exceeding prescribed limits – Even in case of block assessment it is mandatory to apply provisions of S. 40A(3) of the Act. [S. 40A(3), 158B] 1983
Allowing the appeal of the revenue the Court held that, even in case of block assessment it is mandatory to apply provisions of S. 40A(3) of the Act, therefore, where AO allowed all unverified expenditure of undisclosed sales without considering applicability of S. 40A(3), order of AO was to be held erroneous and prejudicial to interest of revenue. (BP. 1-4-1996 to 25-9-2002)
CIT v. Mohanlal Agarwal (2019) 88 taxamnn.com 508 (Cal.)(HC)
Editorial : SLP is granted to the assessee Mohanlal Agarwal v. CIT (2019) 267 Taxman 92 (SC)

1984 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Introduction of capital – Loan from brother – NRI for two years – after detailed enquiries the AO has accepted the capital and loan as genuine – Revision is held to be not justified. [S. 69A]**
During such proceedings the AO found that there was introduction of amount in capital account and loan from brother. In the course of original assessment proceedings the AO accepted the explanation of the assessee and no made any addition. CIT revised the order and directed the AO to make further enquiries. Tribunal set aside the order of the CIT. On appeal by the revenue the Court affirmed the order of the Tribunal by making observation that as regards introduction of capital, assessee had pointed out that he was an NRI for over two years and he had made foreign remittances over a period of time. As regards unsecured loan received from his brother, assessee pointed out that his brother was running a successful business and he was man of standing and means. (BP 1-4-1996 to 25-7-2002)
CIT v. Kamal Galani (2018) 95 taxmnn.com 261 (Guj.)(HC)
Editorial: SLP of revenue is dismissed; CIT v. Kamal Galani (2019) 267 taxman 114 (SC)

1985 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision by CIT on the ground of over – valuation of shares of assessee for buy – back purposes – Directing the assessee to file necessary objections to the show – cause and such reply shall be considered by meeting out each and every objections raised, on merits and in accordance with law. [S. 92CA]**
The High Court held that in view of the elaborate orders passed in *Cognizant (Mauritius) Ltd. v. DCIT (2019) 181 DTR 154 / 310 CTR 321 (Mad.)(HC)*, touching all the issues, this writ petition stands dismissed, directing the assessee to file necessary objections to the show – cause notice within a period of 15 days and on such receipt, the same shall be considered by meeting out each and every objections raised, on merits and in accordance with law. (AY. 2014-15)
Cognizant Technology Solutions India (P) Ltd. v. CIT (2019) 310 CTR 348 / 181 DTR 181 (Mad.)(HC)

1986 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Orders shall be passed without being influenced by any of the observation made or finding rendered by the Single Judge.**
On Writ filed, the High Court held that Assessee is permitted to make suitable reply to the impugned show-cause notice and respondent shall pass orders without being influenced by any of the observation(s) made or finding(s) rendered by the Single Judge, on its own merits and in accordance with law. (WP. No. 2081 of 2019 dt. 5-7-2019)(AY. 2014-15)
Cognizant Technology Solutions India (P) Ltd. v. CIT (2019) 310 CTR 350 / 181 DTR 183 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Rejection of books of account and estimate of net profit – Estimate was reduced by CIT(A) and Tribunal – Revision order to verify unsecured loans and creditors – Issue which was not subject matter of appeal can be revised by the Commissioner – Revision order is held to be justified. [S. 69A, 145, 263(c)] 1987

AO rejected books of account and estimated net profit of assessee at rate of 7 per cent CIT(A) reduced rate of profit to 5 per cent and said order was confirmed by Tribunal. Commissioner passed a revisional order directing the AO to examine tax liability bearing in mind unsecured loans/creditors. Revision order was up held by the Tribunal. On appeal the Court held that provisions of S. 263(c) empower Commissioner to pass revisional order, even if any appeal is pending but with a caveat, that order passed under S. 263 shall govern only such matters which were neither subject matter nor decided in appeal. On facts since, it was undisputed that issue on which remand order was passed in purported exercise of powers vested in Commissioner under S. 263 i.e. unsecured loans/creditors, was not a subject matter of appeal and, thus, same could not have been decided by statutory authority. Accordingly the order of Tribunal is up held. (AY. 2008-09)

Munni Rai v. CIT (2019) 266 Taxman 355 (Patna)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – AO had taken a broad view by accepting cost of fixed assets as recorded in books of account which were also supported by valuation report, then order of Assessing Officer could not be held to be erroneous on ground of lack of enquiry – Estimated cost of valuation for availing bank loan cannot constitute actual cost – It was not mandatory for Assessing Officer to refer valuation to DVO once he was satisfied with cost of construction and cost of fixed assets as recorded in books of account – Revision is held to be not valid. [S. 142A] 1988

AO after making detailed enquiry regarding cost of construction of hotel building had taken a broad view by accepting cost of fixed assets as recorded in books of account which were also supported by valuation report, then order of Assessing Officer could not be held to be erroneous on ground of lack of enquiry. Estimated cost of valuation for availing bank loan cannot constitute actual cost. It was not mandatory for AO to refer valuation to DVO once he was satisfied with cost of construction and cost of fixed assets as recorded in books of account. Order of Tribunal quashing the revision proceeding is up held (AY. 2013-14)

PCIT v. Om Rudra Priya Holiday Resort (P.) Ltd. (2019) 266 Taxman 97 / 311 CTR 935 / 184 DTR 378 (Raj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – CIT has to record his prima facie opinion in the show – cause notice, that the assessment order is erroneous and prejudicial to the interest of the revenue. 1989

The Court held that CIT has to record his prima facie opinion in the show – cause notice, that the assessment order is erroneous and prejudicial to the interest of the revenue. Such prima facie view can be rebutted by the assessee in its reply to show

cause notice. Accordingly, matter was set aside to the CIT to deal with the contentions of the assessee uninfluenced by any order of the Court. (AY. 2015-16)(SA No. 4 of 2019 dt. 7-1-2019)
Nordic Maritime Pte Ltd. v. CIT (2019) 308 CTR 855 / 178 DTR 110 (Uttarakhand)(HC)

1990 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – AO examined the claim in original assessment proceedings – Rule of consistency is applied – Revision is held to be not valid. [S. 143(3), 80HHC]**
Court held that AO examined the claim in original assessment proceedings. Similar claim was allowed in earlier assessment years. Rule of consistency is applied and revision is held to be not valid. (AY. 1999-2000 to 2001-02)
CIT v. Kohinoor Foods Ltd. (2019) 414 ITR 249 / 180 DTR 41 (Delhi)(HC)

1991 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Investment in two flats – Combined in to one residential unit – Possible view – Revision is held to be not valid. [S. 45, 54F, 133A]**
Dismissing the appeal of the revenue, the Court held that the AO not only had the benefit of examining the survey report, but also all other connected documents, particularly, the materials provided by the housing society. The documents convincingly pointed to the fact that the two flats were conjoined into one single residential unit. The issues raised on the facts had been finally decided. A "possible view" had been arrived at stating that there was only one single residential unit. The order of revision was not valid. (AY. 2008-09, 2009-10) (Decision of the single judge in *Abhijit Bhandari v. PCIT (2017) 396 ITR 499 (Mad.)(HC)* is affirmed)
PCIT v. Abhijit Bhandari (2019) 414 ITR 485 / 178 DTR 201 / 265 Taxman 323 / (2020) 312 CTR 326 (Mad.)(HC)

1992 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Lack of application of mind to return and documents filed by assessee and failure to conduct enquiry – Revision is held to be valid.**
Dismissing the appeal, it was held that the Commissioner and the Tribunal had recorded a finding that the Assessing Officer had not applied his mind or conducted an enquiry into the matter rendering his order erroneous and prejudicial to the interests of the Revenue. No question of law arose. (AY. 2010-11)
Nagal Garment Industries Pvt. Ltd. v. CIT (2019) 415 ITR 134 (MP)(HC)
Editorial : SLP is granted to the assessee Nagal Garment Industries Pvt. Ltd. v. CIT (2019) 414 ITR 11 (St)

1993 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Initial assessment year – Claim was accepted without proper enquiry – Reassessment is valid. [S. 80IC, 143(3)]**
Dismissing the petition the Court held that the Claim was accepted without proper enquiry hence the reassessment is valid. (AY. 2011-12)
Arun Trehan v. CIT (2019) 415 ITR 175 (P&H)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash credits – Sale of goods – Produced statement of bank account, copies of bills issued to purchasers as also books of account showing entries of deposits made in bank – Revision is held to be not valid. [S. 68] 1994

In course of assessment, AO made enquiries about source of deposit which was explained. CIT held that cash deposits not being satisfactorily explained, passed a revisional order setting aside assessment. Tribunal set aside the revisional order. High Court affirmed the order of Tribunal and held that AO had recorded a categorical finding that entries in bank account were verifiable from cash book and also bills produced by assessee. Revision is held to be not valid. (AY.2009 10)

PCIT v. Dilip Kumar Swami (2019) 264 Taxman 33 (Raj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – On money – Order passed by the AO after detailed enquiries – Revision is held to be bad in law. [S. 69] 1995

AO passed the order by making certain addition. CIT passed a revisional order under on ground that AO had failed to carry out proper inquiries with respect to assessee's on money receipt. Tribunal set aside the order of the CIT. High Court upheld Tribunal's order. (AY. 2010-11)

PCIT v. Shree Gayatri Associates (2019) 263 Taxman 673 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Shree Gayatri Associates (2019) 263 Taxman 672 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Limitation – Merger of assessment order in appellate order – Revision is bad in law – Order of assessment in 2005 – Revision in 2009 – Barred by limitation – Question regarding limitation can be raised for first time before High Court. [S. 80IB, 153A, 251, 260A] 1996

The assessee when filing the return pursuant to the notice under S. 153A, enhanced the claim under S. 80IB to ₹ 11,88,622, in addition to that claimed under the revised return filed at the stage of S. 143(3) proceedings. The Commissioner, acting under S.263, by order dated March 25, 2009, sought to revise the entire claim of ₹ 11,88,622, which included ₹ 70,651 as allowed. The Tribunal affirmed the order passed by the Commissioner. On appeal, the Court held that the Commissioner making the order under S. 263 never raised the contention of a claim, in excess of that originally made being not permissible in a proceeding under S. 153A. If such a ground had resulted in the order being revised, the issue would have been viewed in a totally different perspective. The ground for invoking S. 263 was failure to comply with the conditions under S. 80IB of the Act, namely, that the separate accounts were not maintained, the accounts were not audited and the report of audit had not been filed. These were fundamental aspects in allowing the claim under S. 80IB, which applied to the claim made in the revised return of ₹ 70,651 and that claimed in excess in the return filed under S. 153A. These grounds applicable to the claim in the revised return, stood allowed and at the point when revision was attempted, had attained finality. Without revising the earlier order, it would not be possible to disallow the claim further made under the return filed pursuant to notice issued under S. 153A. The limitation in so far as interfering with the claim under S. 80-IB for the assessment year 2001-02 commenced from the first order

which was dated August 31, 2005. The order under S. 263 had been passed long after the limitation expired and hence was barred. For the assessment years 2005-06 and 2006 – 07, it was clear from the first appellate orders that there was a direction issued to the Assessing Officer to grant the claim. The order of assessment was not available for revision under S. 263 because it had merged with the first appellate order. (AY 2001-02, 2003-04 2005-06, 2006-07)

Skyline Builders v. CIT (2019) 412 ITR 182 / 179 DTR 165 / 309 CTR 415 / 265 Taxman 38 (Mag.)(Ker.)(HC)

1997 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Survey – Admission of additional income – Assessment order was passed without enquiry – Revision is held to be valid – Central Board of Direct Taxes is directed to issue necessary instructions to all the Assessing Officers in cases of search and seizure or where survey operations have been carried out by the Department and surrender made or concealed income detected, to ensure proper scrutiny of such cases and discuss reasons for rejecting or accepting the books of account of the assessee and not to merely record in slipshod or cursory manner that "the books of account produced and test checked" as done by the AO [S. 119, 132, 133A]**

Allowing the appeal of the revenue the Court held that, that the assessment order did not show that the Assessing Officer applied her mind to the correctness of the books of account produced before her except to note that the books of account were produced and test checked. The Assessing Officer was required to have carefully dealt with the case especially where the assessee had surrendered ₹ 2,15,00,000 during survey where huge amount of ₹ 1,31,00,000 was surrendered on account of undisclosed investment in construction of building and ₹ 70,00,000 on account of unexplained investment in stock. It was clear that the assessee had attempted to offset the surrender made by him by claiming loss in the business for otherwise the taxable income could not have been ₹ 1,35,52,050 against a surrender of ₹ 2,15,00,000 made by it. In such circumstances, the assessment order passed under S. 143(3) of the Act was erroneous and prejudicial to the interests of the Revenue and the Tribunal erred in setting aside the order passed by the Commissioner under S. 263 of the Act. The Court also directed the Registry to forward a copy of this order to the Central Board of Direct Taxes to issue necessary instructions to all the AOs in cases of search and seizure or where survey operations have been carried out by the Department and surrender made or concealed income detected, to ensure proper scrutiny of such cases and discuss reasons for rejecting or accepting the books of account of the assessee and not to merely record in slipshod or cursory manner that "the books of account produced and test checked" as done by the Assessing Officer. (AY. 2008-09)

CIT v. Venus Woollen Mills (2019) 412 ITR 188 / 179 DTR 288 / 310 CTR 117 (P&H)(HC)

1998 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessment after detailed enquiry – Income from house property – Income from other sources – Notice of Revision is not valid. [S. 143(3)]**

The AO after scrutiny passed the order of assessment accepting the assessee's declaration of rental income as well as computation of income from other sources. The

Commissioner issued a notice of revision on the grounds that the rental income was too low and there had been excess deduction of expenses. On a writ petition to quash the notice, Court held that, the opinion that the rental income was low was based on comparison. The comparison was wholly erroneous. Firstly, the Commissioner merely proceeded to record that both the immovable properties, namely, the mall managed by the assessee-company and one managed by G, were situated in the nearby locality, without giving the distance between the two properties and without even prima facie ascertaining their respective locations. The Commissioner also merely adopted the respective municipal taxes of the two properties as the basis for considering commercial rental value of these properties. Regarding the expenditure the Assessing Officer had carried out detailed inquiry during the course of assessment proceedings. Merely because the Commissioner held a different belief that would not permit him to take the order in revision. Clearly a case of full inquiry had been made by the Assessing Officer before he made up his mind. This was not a case where there were no inquiries or no germane inquiries having been made. The notice of revision was not valid. (AY. 2013-14)
Aryan Arcade Ltd. v. CIT (2019) 412 ITR 277 (Guj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Bogus purchases – Appeal regarding particular issue was pending before CIT(A) and decided when the reply to show cause notice was pending – Commissioner cannot revise order with regard to that issue. [S. 251] 1999

AO made percentage of gross profit addition in respect of alleged bogus purchases. Assessee filed an appeal before the CIT(A) which was pending Meantime the Commissioner issued show cause notice U/s. 263 stating that the Assessing Officer should have made entire purchases as addition. Against the show cause notice writ petition was filed. Allowing the petition the Court held that, On the facts of the case when the issue was pending before the Appellate Commissioner, the Principal Commissioner issued a notice seeking to take the order of assessment in suo motu revision. His sole ground was that the Assessing Officer having held that the entire purchase of ₹ 4.33 crores from T being bogus, had erred in limiting the addition to ₹ 9.57 lakhs on the basis of the gross profit ratio. While this notice was pending and the assessee had yet to file reply to the notice, the Appellate Commissioner heard and decided the assessee's appeal against the order of assessment on January 5, 2018. In this order, he held that the Assessing Officer could not have made the addition of ₹ 9.57 lakhs on gross profit basis. Court also held that, since there had been an appeal regarding the matter the Commissioner had no jurisdiction to revise the order. Clause (c) of Explanation 1 to S. 263(1) of the Income-tax Act, 1961, is to circumscribe revisional powers in cases where the order passed by the AO has been the subject matter of any appeal and such subject matter has been considered and decided in such appeal. This provision, thus statutorily recognizes the principle of merger and avoids any conflict of opinion between two quasi-judicial authorities of the same rank. Followed *CIT v. Nirma Chemicals Works P. Ltd (2009) 309 ITR 67 (Guj) (HC)*. (AY. 2011-12)
Haryana Paper Distributors Pvt. Ltd. v. CIT (2019) 412 ITR 515 (Guj.)(HC)

2000 **S. 263 : Commissioner – Revision of orders prejudicial to revenue Receipts on account of non-competition fee and assignment of trademark was held to be not taxable by the Assessing Officer – Taking a plausible view – Revision is held to be not valid. [S. 55(2)(a)]**
Dismissing the appeal of the revenue the Court held that both the receipts, i.e. the non-compete fee and the payment received towards assignment of trademark were disclosed by the assessee in his return for the assessment year in question 1995-96. With the trademark being "self-generated" and not acquired for consideration, the cost of acquisition of the trademarks could not be substituted as the market value as on April 1, 1981 so as to attract tax on "capital gains". The view taken by the Assessing Officer on the nature of the non-compete fee and the consideration for assignment of trademark was a plausible one. The Commissioner ought not to have exercised his jurisdiction under S. 263.(AY. 1995-96)
CIT v. Sunil Lamba (2019) 412 ITR 480 / 177 DTR 465 / 311 CTR 581 (Delhi)(HC)

2001 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share capital at high premium – Directions and guidelines to Assessing Officer to inquire in regard to infusion of share capital at high premium – Revision order is valid – Application for adjournment of hearing was submitted two days after scheduled date of hearing – Principles of natural justice is not violated. [S. 68, 119, Code of Civil Procedure 1908 O.IX R. 13]**
Dismissing the appeal the Court held that; the mere reference to the adjournment petition received by the Commissioner after the date of hearing did not render the order passed by the Commissioner U/s. 263 invalid on the ground of violation of the principles of natural justice. There was no material to show that the prayer for adjournment was made on December 10, 2013 or any other date prior thereto. The prayer for adjournment was not before the Commissioner on the day the hearing took place. Because on the date scheduled for hearing the assessee had not applied for adjournment, it could not take advantage of a post hearing prayer for adjournment, even though the Commissioner had referred to such prayer in his order. That the Commissioner had not outlined the manner in which the enquiry was to be conducted. The Assessing Officer had been directed to pass a speaking order after providing reasonable opportunity to the assessee and upon verifying the source of share capital including the share premium of all the subscribers and rotation of money through various hands so as to ascertain the true nature of the transactions which would bring to the fore, the reality of the transactions. His order gave a guideline on how the Assessing Officer should proceed with the enquiry and did not give any mandate in which manner he should pass the order. Such a direction did not attract the prohibitory provisions of S. 119. The provision did not relate to the power and jurisdiction of the Commissioner. (AY. 2010-11)
AIM Fincon Pvt. Ltd. v. CIT (2019) 412 ITR 539 (Cal.)(HC)

2002 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Doctrine of merger – Where 80-IC deduction was originally denied by the AO on one ground which was subject matter of CIT(A) and the disallowance was deleted by CIT(A) – CIT could not invoke revision jurisdiction to deny the deduction on another ground. [S. 80IC]**
In the return of income, the assessee claimed deduction U/s. 80-IC in respect of income from oil wells by describing itself as a mineral based industry. The deduction

was denied by the AO on the ground that each well did not constitute a separate 'undertaking'. The order of the AO was reversed by the CIT(A) and deduction was granted. Subsequently, the assessment order was sought to be revised by the Commissioner on the ground that the AO had not examined whether the assessee was a mineral based industry or not. Held that so far as the issue of deduction U/s. 80-IC was concerned, the order of the AO had merged with the order of the CIT(A) in terms of clause (c) of Explanation 1 to S. 263(1) as the AO and the CIT(A) had already adjudicated on the eligibility of the assessee to such deduction. The AO had proceeded on the basis of the information that the assessee was a mineral based industry. Furthermore, since the AO had already denied the deduction, there was no financial prejudice to the Revenue. Therefore, the proceedings U/s. 263 were wrongly initiated. (AY. 2005-06, 2006-07)

Oil India Ltd. v. PCIT (2019) 175 DTR 185 / 307 CTR 403 / 103 taxmann.com 339 (Gau.) (HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Bogus purchases and depreciation – Revision is held to be not valid [S. 32, 69C] 2003

Dismissing the appeal of the revenue the court held that the Tribunal has given finding that the assessee has produced copies of invoices and challans, proof of payments, bank statements, transportation payments, vouchers for movement of goods etc., accordingly revision was held to be not valid.

CIT v. Century Plyboards (I) Ltd. (2019) 103 taxmann.com 178 / 262 Taxman 14 (Cal.) (HC)

Editorial : SLP of revenue is dismissed,CIT v. Century Plyboards (I) Ltd. (2019) 262 Taxman 13 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Land held as stock in trade – Revision is held to be not valid 2004

Commissioner passed the revision order on the ground that the AO has passed the order without verification. Tribunal held that the AO has passed the order after examining the details and the financial statements had accepted the business profit declared by the assessee and had adopted a view that the order passed by the AO was not prejudicial to the interests of the Revenue and that the Principal Commissioner was not justified to replace the Assessing Officer's view. High Court up held the order of the Appellate Tribunal. (AY. 2011-12)

CIT v. Sunil Sankhla (2019) 411 ITR 437 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, (2018) 407 ITR 25 (St.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Doctrine of merger – Relief granted by CIT(A) – Revision to consider eligibility of exemption is held to be not valid. [S. 10A(2)(ii), 10A(2)(iii)] 2005

Dismissing the appeal of the revenue the Court held that, The Tribunal was right in holding that the revisional authority had exceeded his jurisdiction in invoking the provisions of S. 263 when the assessment order with regard to the claim of deduction under S. 10A had merged with the order passed by the CIT(A). The Contention of the

revenue that the doctrine of merger was not applicable because the assessment order and the appellate order of the CIT(A) had dealt with only the restriction in the quantum of deduction under S. 10A allowable and not with the eligibility of the assessee for deduction under S. 10A in the light of the conditions under S. 10(A)(2)(ii) and (iii) of the Act, was not tenable. (AY. 2002-03)
CIT v. S. R. A. Systems Ltd. (2019) 410 ITR 392 (Mad.)(HC)

2006 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Clearing and forwarding – Estimate of income – Renting of godown as integral part of business – Plausible view – Revision is held to be not valid. [S. 145]**
Dismissing the appeal of the revenue the Court held that; while determining assessee's income in respect of godown receipts on estimate basis, AO had adopted a plausible view and, thus, revisional order passed by Commissioner on said issue was not sustainable. (AY. 2006-07, 2007-08)
PCIT v. V. Dhana Reddy & Co. (2018) 100 taxmann.com 357 (2019) 260 Taxman 112 (AP&T)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. V. Dhana Reddy & Co. (2019) 260 Taxman 111 (SC)

2007 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – CIT to himself conduct enquiries – AO has carried out detailed inquiry and verification of the documents and is satisfied with the net profit shown by the eligible unit as well as the nature of expenses incurred by eligible and non eligible units, then without there being any discrepancy or defect, such assessment order cannot be set aside. [S. 80IC]**
Where the CIT comes to a conclusion that the AO had not conducted enquiries or conducted inadequate enquiries in the original assessment proceedings, it is incumbent on the CIT to conduct the necessary enquiries himself and reach at least a prima facie conclusion that the order is erroneous in so far as it is prejudicial to the interests of the Revenue. Once AO has carried out detailed inquiry and verification of the documents and is satisfied with the net profit shown by the eligible unit as well as the nature of expenses incurred by eligible and non eligible units, then without there being found any discrepancy or defect, such assessment order cannot be set aside. (AY. 2013-14)
Bagrrys India Ltd. v. PCIT (2019) 179 DTR 114 / 199 TTJ 512 (Delhi)(Trib.)

2008 **S. 263 : Revision of orders prejudicial to revenue – Payments liable to deduction of tax at source – Assessee crediting interest to unsecured loan accounts of parties before close of year – Decision of high court that tax not required to be deducted in case where assessee paid interest during year – AO rightly not making disallowance – Order neither erroneous nor prejudicial to interests of revenue – Revision order passed by Commissioner invalid. [S. 40(a)(ia)]**
Tribunal held that the jurisdictional court had held that tax was required to be deducted only on the amounts payable and the assessee was not required to deduct tax on the amounts paid during the year. Since the assessee had followed the mercantile system of accounting, the entries of interest credited by him to the payees' accounts were entries of accrual in the absence of cash transactions, which amounted to payment and,

therefore, the AO had rightly not made the disallowance according to the judgment of the jurisdictional court and in terms of the Board's Circular, which was binding on him. Hence, the order passed by the AO was neither erroneous nor prejudicial to the interests of the Revenue, as the AO had rightly not made the disallowance and the order passed by the Commissioner under section 263 was to be quashed. (AY. 2012-13)
Ravindra Khemka v. PCIT (2019) 76 ITR 330 (Luck.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Amalgamation of Companies – Department knowing about dissolution of assessee – PCIT to take notice of amalgamation and substitute successor while passing revision Order after hearing the amalgamated company – Commissioner passing revision order against non-existent company – Order ab-initio void. 2009

The AO was directed by the PCIT to do a de novo assessment by carrying out proper examination of the books of accounts of the assessee and its investors. The AO on October 28, 2016 framed the assessment order by verifying that all transactions were duly reflected in the bank statement and no adverse inference was to be drawn against the assessee. Subsequently by order of the National Company Law Tribunal dated December 21, 2018, the assessee was amalgamated with N and ceased to exist separately. The same was notified to the Assessing Officer on January 31, 2019. However, the Principal Commissioner of Income Tax issued a show cause notice under S.263 of the Act dated December 31, 2018 in the name of the erstwhile assessee following which an order dated March 12, 2019 was passed.

On appeal it was held that when the Department was aware about the dissolution of the assessee, the erstwhile entity should be substituted by the successor company when the Principal Commissioner passes an order after giving adequate opportunity of being heard as envisaged under S. 263 of the Income-tax Act, 1961. Thus, the order of the Principal Commissioner being one passed against non-existent entities is void ab initio. *PCIT v. Maruti Suzuki India Ltd. (2019)416 ITR 613 (SC)* and *CIT v. Sspice Enfotainment Ltd. [2018] 12 ITR OI134 (SC)* applied. *SkyLight Hospitality LLP v. ACIT (2018) 405 ITR 296 (Delhi)(HC)* is distinguished.

Further held that notice to the assessee is not a condition precedent for invoking jurisdiction under S. 263 however, an opportunity to the assessee is a necessity under S. 263 and failure to do so is a violation of natural justice and therefore illegal. (AY. 2012-13)
Durja Vinimay Pvt. Ltd. v. PCIT (2019) 76 ITR 402 (Kol.)(Trib.)
Gyan Mandir Tradecom Pvt. Ltd. v. PCIT (2019) 76 ITR 402 (Kol.)(Trib.)
Paramtma Vinimay Pvt. Ltd. v. PCIT (2019) 76 ITR 402 (Kol.)(Trib.)
Aditi Vintrade Pvt. Ltd. v. PCIT (2019) 76 ITR 402 (Kol.)(Trib.)
Light House Merchants Pvt. Ltd. v. PCIT (2019) 76 ITR 402 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to the revenue – Commissioner required to decide the issue before determining the assessment order as erroneous and unsustainable in law – Order of Commissioner set aside [S. 143(3)] 2010

Commissioner invoked revisionary jurisdiction under S. 263 of the Act setting aside the assessment and directed AO to make a fresh assessment as he did not make an

enquiry about the AIR information received regarding cash deposits made in the bank account of the assessee. Tribunal found that Commissioner had not concluded on the issue of inadequacy of cash in hand but required the AO to do so. Tribunal held that Commissioner required to decide the aspect one way or the other before he could determine that the assessment order was erroneous. The initiation of proceedings under S. 263 of the Act were inconsistent with the requirement of S.263(1) of the Act and therefore set aside by the Tribunal. (AY. 2009-10)
Adishwar K. Jain v. CIT (2019) 201 TTJ 77 / 52 CCH 606 / 181 DTR 29 (Mum.)(Trib.)

2011 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Commissioner should make independent enquiries to reach a conclusion that the assessment order was erroneous and prejudicial to the interests of the revenue – In absence of independent enquiry, CIT(E) order set aside. [S. 11, 12, 28(iii), 143(3)]**
Assessee a non profit organization and its object is to drive of technology of services market by being a strategic advisor to IT industry. Assessee though registered under S. 12A did not claim exemption under S. 11 of the Act but claimed part of its income as exempt on the principal of mutuality. AO denied the benefit of mutuality. CIT(E) observed that assessee had not incurred any Global Trade Development (GTD) expenses in accordance with its objects and set aside the order under S. 263. Tribunal held that CIT(E) did not make any independent enquiry with respect to admissibility of GTD expenses and did not undertake the exercise of required to reach a conclusion that the assessment order was erroneous. Hence, impugned order was quashed. (AY. 2010-11)
National Association of Software and Services Companies ('Nasscom') v. CIT(E) (2019) 201 TTJ 39 / 56 CCH 532 / 181 DTR 73 (Delhi)(Trib.)

2012 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – limitation for revision should not be counted from the date of original assessment order – MAT credit of the amalgamating company can be claimed by amalgamated company – Revision is held to be valid.**
Held that:
The limitation for passing the revisional order under S. 263 of the Act has to be counted from the date of order passed pursuant to the directions of CIT(A) (for allowing MAT credit) and cannot be counted from the date of the original assessment order.
Order giving effect to CIT(A)'s order for allowing MAT credit as per law, cannot be considered to be merely an order following directions and hence initiation of revisional proceedings under S. 263 of the Act cannot be vitiated on this ground.
There being no restriction with regard to allowance of MAT credit of an amalgamating company at the hands of amalgamated company (assessee), the CIT was not justified in exercising his revisional power under S. 263. (AY. 2007-08)
Ambuja Cements Ltd. v. DCIT (2019) 182 DTR 327 / 202 TTJ 1077 / 179 ITD 436 (Mum.) (Trib.)

S. 263 : Commissioner – Revision of Orders prejudicial to revenue – Agricultural land claimed to have been purchased by the assessee which is prohibited under Land Reforms Act of State of Rajasthan, not eligible for deduction under S. 54B – AO did not consider the crucial basis before allowing deduction – Revision rightly invoked by PCIT. [S. 54B] 2013

Held that, when the transfer of agricultural land itself is prohibited under State laws, the alleged agreement would not bring the case in the category of transfer of ownership without any formal deed of title. Hence, the crucial aspect and the very basis of allowability of deduction under S. 54B was not considered by the AO and consequently the revision made by PCIT is valid. (AY. 2011-12)

Ram Charan Meena v. PCIT (2019) 182 DTR 268 / 201 TTJ 1004 / 73 ITR 568 (Jaipur) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – PCIT cannot look into issue which the AO himself was barred from looking into in original assessment. [S. 143(1)] 2014

The assessee purchased a property for ₹ 41,50,000 against the stamp duty value of the property being ₹ 77,19,000. The case was selected for limited scrutiny in order to verify the source of funds used for purchase of property. The assessee explained the source of funds to the tune of ₹ 41,50,000. However, the AO made an addition of ₹ 3,00,000 disbelieving the receipt of gift received from brother and accepted the explanation for the balance sources of money for purchase of immovable property. The PCIT later found that the AO had not enquired into the applicability of S.50C and issued notice under S. 263 of the Act. On appeal the Tribunal held that it is beyond the power of the AO to look into any other issue when the case itself was selected for limited scrutiny. Hence the PCIT also could not look into any other issue other then the limited issue on which matter was selected for scrutiny and the order U/s. 263 could not be sustained in the eyes of law. (AY. 2014-15)

Padmavathi (Smt.) v. ITO (2019) 76 ITR 55 (SN) (Chennai)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Co-operative societies – Interest income derived by co-operative society from investments held with co-operative bank entitled for deduction under S. 80P(2)(d) of the Act – AO had taken a possible view and hence reassessment proceeding is quashed. [S. 2(19), 80P(2)(d)] 2015

Assessee is a cooperative society and had filed its return of income declaring its total income as Nil. The assessment under S. 143(3) was framed by the AO and the returned income of the assessee was accepted.

Subsequently, PCIT made revision on the ground that the assessee had during the year shown interest income from FDs with Co-operative Banks, against which it had claimed deduction under S. 80P(2)(d) of the Act which was allowed in the assessment proceedings. Observing, that as co-operative banks were commercial banks and not a co-operative society, PCIT was of the view that the assessee was not eligible for claim of deduction under S. 80P(2)(d) of the Act.

On appeal, Tribunal held that though the co-operative banks pursuant to the insertion of subsection (4) to S. 80P would no more be entitled for claim of deduction under

S. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under S. 80P(2)(d) of the Act.
With regard to validity of revisionary proceedings, Tribunal held that while framing the assessment, AO had taken a possible view, and then allowed the deduction. Further, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of *Land and Cooperative Housing Society Ltd. v. ITO (2017) 46 CCH 52 (Mum.)(Trib.)*. Accordingly, Tribunal quashed the revisionary proceedings. (AY. 2014-15)
Solitaire CHS Ltd. v. PCIT (2019) 76 ITR 59 (SN) (Mum.)(Trib.)

2016 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision based on proposal from AO impermissible – Without Application of mind – Revision not erroneous or prejudicial to revenue. [S. 143(3)]**
Assessees filed return of income and thereafter assesses case was selected for scrutiny and assessment was completed under S. 143(3) of the Act. PCIT noticed that in course of assessment proceedings, certain additions and disallowances were not examined by the AO properly hence treated order erroneous as well as prejudicial to interest of revenue and directed AO to make fresh assessment.
On Assessee's appeal to Tribunal, it was noted by the Tribunal that on perusal of PCIT's order it was clear that PCIT had exercised jurisdiction under S. 263 based on proposal received from AO. It was held that PCIT was using mind of AO to revise order which was not the scheme of S. 263 of the Act. PCIT ought to apply his own mind to examine whether order passed by AO is erroneous and prejudicial to interest of revenue i.e. examine assessment records and assessment order made by AO to find out error. PCIT cannot take guidance from AO to revise the assessment order which is the revisional jurisdiction vested as per scheme of the Act. It was finally concluded by Tribunal that Revisional jurisdiction exercised by PCIT was not in accordance with law hence quashed order passed by PCIT allowing Assesses appeal. (AY. 2015-16)
Manish Chirania v. PCIT (2019) 76 ITR 7 (SN) (Kol.)(Trib.)

2017 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessment completed by AO under S. 143(3) of the Act – CIT sought revision – Tribunal held that AO had duly applied his mind by accepting the valuation method of assessee and hence quashed revision proceedings. [S. 143(3)]**
Assessee an individual was a builder/developer whose assessment was completed by AO under S. 143(3) of the Act. Later, assessment was sought to be revised by PCIT on the ground that AO failed to conduct appropriate enquiries and had not examined valuation of closing stock of properties with respect to the cost incurred by the assessee thereon. The CIT issued show-cause notice for which Assessee replied that he had submitted closing stock valuation and also pointed out that it follows percentage completion method in respect of its real estate projects which has been consistently followed year after year and pleaded that there cannot be any prejudice that could be caused to the interests of the revenue.

However, PCIT held that AO did not conduct necessary enquiry with respect to closing stock and cost incurred thereon and accordingly made revision under S. 263 of the Act. On assessee's appeal, Tribunal held that from scrutiny assessment order framed in assessee's own case in earlier year, similar valuation method was adopted which was accepted by AO and no addition was made, which is exactly what the AO has done i.e. merely adopted the same valuation method accepted by his predecessor. AO had rightly applied the valuation method adopted by the Assessee. Hence, Tribunal quashed the revision proceedings ruling in favour of the Assessee.
Mohammed Salim Yusuf v. PCIT (2019) 76 ITR 70 (SN) (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reopening found bad in law – No revision is possible [S. 147, 148, 254(1)] 2018

The A.O. reopened the assessment under S. 148 of the Act. The A.O. after considering the evidences and material on record made the addition of ₹ 20 lakhs in respect of four corporate entities under section 68 of the Act. The Ld. Pr. CIT held the aforesaid reassessment order to be erroneous and prejudicial to the interests of the Revenue because the A.O. has not examined the seized material and has failed to tax the correct amount as unexplained credit in the books of account of the assessee. The assessee requested for cross examination of the statement of the alleged entry provider, therefore the re-assessment order without proper verification and enquiries, and set aside and the A.O. was directed to pass the order afresh as per law. The Tribunal held that there is no other material available on record except the information received from the Investigation Wing. The A.O. on the basis of the information and material received from Investigation Wing has recorded reasons for reopening of the assessment which was ultimately found to be incorrect and non-existent. It is well settled law that when no new material other than examined by the A.O originally found on record for the purpose of initiating the re-assessment proceedings, the proceedings under S. 148 of the Act would be invalid and bad in law. Since re-assessment order was invalid and bad in law, therefore, same cannot be revised under S. 263 of Act, also no cross-examination have been allowed to the statement of the alleged entry provider, therefore, re-assessment order is bad in law and cannot be reviewed. (AY. 2007-08)
SPJ Hotels (P) Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi)(Trib.)
Supersonic Technologies (P) Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi)(Trib.)
Shiv Sai Infrastructure (P) Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi)(Trib.)
Super Build well (P) Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Delay of more than 9 months in service of the order passed is beyond time limit allowed under the Act, hence, unsustainable – Department failed to produce evidence to show that order passed and dispatched within reasonable time – Order is held to be barred by limitation. 2019

Tribunal held that, department had failed to produce any evidence to show that the order had been passed and dispatched to the assessee as well as the AO within

reasonable time. Delay of more than 9 months in service of the order passed is beyond time limit allowed under the Act, hence, unsustainable. (AY. 2007-08)
Chebolu Lakshmi (Smt.) v. ITO (2019) 76 ITR 4 (SN.) (Vishakha)(Trib.)

2020 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation – Block of assets – Scientific research – Capital expenditure – User of asset is not relevant – Once expenditure is incurred – Deduction is allowable. Method of accounting – Valuation – Consistent method – Revision is held to be not justified – MAT credit – Revision is held to be valid. [S. 2(11), S.35(1)(iv), 35(2), 50, 145A]**
Against the order U/s. 263, the Tribunal held that, where an asset was part of block of asset which were used for business purposes and depreciation was granted on that block during previous year, depreciation could not be denied on ground that one of the assets was not used by assessee in the year under consideration. Tribunal held that for purpose of claiming deduction of capital expenditure under S 35(1)(iv) read with S. 35(2) of the Act, once the expenditure is incurred is sufficient compliance, it is not necessary that such asset must be used during previous year. AO made adjustment under S. 145A in respect of value of closing stock of assessee in earlier years, based on said working, income of assessee was required to be reduced during the year under consideration. Accordingly, assessee claimed deduction of certain amount and the same was allowed by AO. CIT invoked jurisdiction under section 263 holding that claim of deduction had not been properly examined by AO. Tribunal held that the adjustment under S. 145A was carried out in accordance with practice consistently followed by Income tax department during earlier years and not by assessee. Accordingly the revision is held to be not valid. MAT credit, revision is held to be valid. (AY. 2009-10)
Navin Fluorine International Ltd. v. CIT (2019) 178 ITD 201 (Mum.)(Trib.)

2021 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Method of accounting – Forward contracts – In terms of AS-11, both gains or loss on account of exchange rate fluctuations on reporting date are to be accounted for while computing income chargeable to tax – Revision is held to be valid. [S. 145, AS-11]**
Assessee-company was engaged in providing information technology services. While computing taxable income, assessee did not include unrealised mark to market gain on open forward contracts in foreign exchange. AO accepted income declared by assessee. Commissioner, however, took a view that assessee should have offered for taxation income from mark to market gain or loss on open forward contracts in foreign exchange on balance sheet date in year in which same had accrued. He passed a revisional order setting aside assessment. On appeal the Tribunal held that in terms of AS-11, both gains or loss on account of exchange rate fluctuations on reporting date are to be accounted for while computing income chargeable to tax. Accordingly the revision order is up held. (AY. 2011-12)
Tata Consultancy Services Ltd. v. CIT (2019) 178 ITD 51 / 178 ITD 151 / 199 TTJ 716 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Bad debt – Provision for bad debt in books and debit to profit and loss account – Entitle to deduction – Revision is held to be not valid [S.36(1)(vii), 36(2)(v)] 2022

The assessee bank made provision for bad debts and claimed same to be allowed as deduction under S. 36(1)(vii) of the Act. PCIT held that the assessee was allowed excess deduction for the reason that deduction under S. 36(1)(vii) was allowed to the assessee without appreciating the requirement of provisions of S. 36(2)(v) together with first proviso to S. 36(1)(vii) accordingly the order was set aside. On appeal the Tribunal held that,the power to exercise suo motu revision in terms of S. 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein, viz. (1) the order is erroneous and (2) by virtue of the order being erroneous, prejudice has been caused to the interest of revenue, exists. Thus, an order of assessment passed by an ITO should not be interfered with only because another view is possible. Similarly, if in given facts and circumstances of the case, two views are possible and one view has been adopted by the AO then that view alone would not be sufficient to exercise powers under S. 263 by the Commissioner. Accordingly in the present case, two views are possible and one view has been adopted by the AO That view alone would not be sufficient to exercise powers under S. 263 by the Commissioner hence the order passed by the CIT is set aside. (AY. 1997-98, 1998-99)

State Bank of India v. PCIT (2019) 179 ITD 764 / (2020) 185 DTR 17 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share capital – share premium – AO conducted detailed inquiry – Revision is held to be not valid. [S. 68, 133(6)] 2023

Assessee company entered into a transaction to issue share capital at a huge premium and received shares (instead of money) held by the subscribers as investments in other companies. These shares (investments) were clearly shown in the balance sheets as investments and return filings of the subscribing companies in the earlier years. The AO decided to peruse the transaction in detail to decide as to whether addition needs to be made under S. 68. In the assessment proceedings under S.147 the AO raised various queries and also issued notices to subscribing companies under S. 133(6). The AO was satisfied with the responses but sent a proposal to the PCIT to take action under S. 263 on various reasons recorded by the AO. The PCIT without applying any independent mind of his own took action to re – peruse the above transaction as the subscribing companies did not have revenues justifying the amount of investments held by them. The Tribunal held that the AO had conducted detailed inquiries from the parties directly and there was no need to exercise revisionary jurisdiction under S. 263. The PCIT did not conduct any prima facie enquiry by himself so as to reach a conclusion that the inquiry conducted by the AO was deficient or lacking. Accordingly the impugned revisionary order was quashed. (AY. 2010-11)

Conton Textiles Mills Pvt. Ltd. v. PCIT (2019) 55 CCH 600 / 72 ITR 85 (Delhi)(Trib.)

2024 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Method of accounting construction contract – Completion method – Allocation of expenses – Accounting standard AS-7 – Revision is held to be not justified.**

Assessee returned loss which was allowed by AO. CIT held that change in accounting policy resulted in declaration of loss from Projects and he directed AO to examine issues and pass de novo assessment in accordance with law. Tribunal held that construction of assets was required to be completed in accordance with time-line given in contracts, i.e., 22 months and 24 months respectively and work undertaken by assessee was convergence of various technological designs and functions for purposes of main battle tank training and construction of simulator was high end technical asset for purposes of training on battle tank and would definitely fall within definition of 'construction of an asset' and, thus, Accounting Standard 7 would be applicable to such an activity. Accordingly on facts, there was no fault in shifting of accounting policy by assesse and accordingly the revision order is held to be not valid. (AY. 2008-09)

CAE India (P.) Ltd. v. CIT (2019) 177 ITD 780 (Bang.)(Trib.)

2025 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Furnishing of Form 3CEB report electronically is mandatory as per Rule 12(2) – Revision order is held to be valid – For failure to deduct tax at source in respect of freight charges paid – Revision is held to be not valid. [S. 92E, 172, 194C, 195, R.12, form 3CEB]**

The AO completed assessment under S. 143(3) accepting total loss declared in return of income. PCIT held that during the year under consideration, the assessee had made export sales to its US based related entity. On verification, it was found that the assessee had not filed Form 3CEB report electronically in respect of the international transactions entered into by it. Therefore, held that the assessment order passed by the AO is erroneous in as much as it is prejudicial in the interest of the revenue by reason of failure by the AO to make proper inquiry/verification regarding the levy of penalty under S. 271BA and also reference to TPO under section 92C. It was contended that it had filed Form 3CEB report manually, therefore, it could not be said that assessee had not furnished a report as required under S. 92E of the Act. Tribunal held that issue was not examined by the AO as the assessee has also not brought on record that why the aforesaid report in 3CEB was not filed electronically. To this extent, PCIT was justified in invoking the provision of S. 263 holding that the order passed by the AO as erroneous and prejudicial to the interest of revenue to the extent of non – filing of Form 3CEB report. The assessee may submit corresponding reasons for not filing the Form 3CEB electronically before the CIT(A) at the time of appellate proceedings. In the light of the above facts and circumstances, no anomalies were to be found in the decision of the Commissioner for revision to the extent of default in filing Form 3CEB report in electronic mode as prescribed. Tribunal also held that as regards freight charges paid by the assessee to shipping agent of non-resident shipping companies provisions of S.172 gets attracted and not S. 194C or S. 195. Hence PCIT is not justified in exercising revision for non deduction of tax at source. (AY. 2013-14)

Summit India Water Treatment & Services Ltd. v. PCIT (2019) 177 ITD 770 / 182 DTR 185 (Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Purchase of a land prior to date of transfer of agricultural land – Revision is held to be justified. [S. 45, 54B] 2026

Tribunal held that purchase of a land prior to date of transfer of his agricultural land Commissioner was justified in disallowing exemption under S.54B of the Act. Revision is held to be justified. (AY. 2012-13)

Paras Chinubhai Jani v. PCIT (2019) 177 ITD 591 (Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interests of fixed deposits – If an amount is not chargeable to tax just because the payer has deducted the tax at source, the said amount cannot be brought to tax. [S. 4] 2027

As per the direction of the Court the amounts collected as sales consideration and deposited in the designated account and to make FDs out of same. AO held that FDs with Indian Bank made by Ferani did not belong to assessee and as such interest on FDs made did not constitute its income. CIT issued the show cause notice to revise the order. On receipt of the show cause notice under S. 263, the assessee filed an application under Right to Information Act 2005 with Indian Bank and in response to the application, the Bank admitted that the account was opened by an existing account holder and admittedly appeared as 'Ferani Hotels Pvt. Ltd. – Account NN Wadia Share' and therefore there was no need for introducer. The assessee maintained that the Estate of EFD never maintained any Bank account with Indian Bank, whereas Ferani always maintains it's account with Indian Bank. This fact clearly proves that account belonged to Ferani which was an existing account holder of Indian Bank. The Bank also admitted that in order to comply with KYC requirements, account holder had provided PAN Cards & Ration Cards of 'GLR' through 'SNA', who have no connection with Estate of EFD. The Bank informed that as per its record account was authorized to be operated by 'GLR', 'SGR' or 'DSR'. None of the said 3 persons were related with the affairs of estate of EFD. The bank further admitted that it never had in its possession any account opening or account operating documents which bore signature of 'NNW' even though the cause title of the a/c contained his name. As regards making of the fixed deposits the Bank admitted that the FDs were created or made on the basis of instruction letters issued by Ferani addressed to the Bandra Branch and not because of any instruction issued by the Administrator of EFD and TDS from interest was reported against PAN AAEPD 8394A belonging to Estate of EFD as per the instruction given by Ferani and based on such instructions only the TDS was reported by the bank in the name of estate of EFD. The AO had conducted enquiry before completion of assessment. The AO had issued notices under S. 133(6) to Ferani as well as Indian Bank and obtained required information. The AO had also examined the judgment of the Bombay High Court dated 19-7-2012 and interpreted in her own way the directions. The directions of the Bombay High Court were of course open for interpretation in more than one manner. Accordingly, by interpreting the directions in her own way the AO had come to conclusion that the amounts collected by Ferani from Flat purchasers constituted assessee's income liable to be taxed in assessment year 2013-14. On facts the CIT sought to interpret the directions of the Bombay High court in a manner different from the Assessing Officer and has directed the Assessing Officer to assess even the interest on FD as assessee's

income. Quashing the order of the CIT, the Tribunal held that the order passed by the AO is not erroneous. Tribunal also held that if an amount is not chargeable to tax just because the payer has deducted the tax at source, the said amount cannot be brought to tax. (AY. 2013-14)

Administrator of Estate of Lt. Edulji Framroze Dinshaw v. CIT (2019) 177 ITD 341 / 177 DTR 48 / 199 TTJ 885 (Mum.)(Trib.)

2028 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loan from group companies – Assessing Officer had taken a conscious decision regarding non – applicability of section 2(22)(e) to loan amount in question while passing the original assessment order – Revision is held to be not valid. [S. 2(22)(e), 143(3), 153A]**

Allowing the appeal of the assessee the Tribunal held that Assessing Officer had taken a conscious decision regarding non-applicability of S. 2(22)(e) to loan amount in question while passing the original assessment order. Accordingly the revision is held to be not valid. (AY. 2008-09, 2011-12)

Mantri Tea Company (P.) Ltd. v. PCIT (2019) 177 ITD 192 (Kol.)(Trib.)

2029 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Stamp valuation – Accepting the claim as per agreement – Provision of S.50C is applicable – Revision is held to be valid. [S. 45, 50C]**

Dismissing the appeal of the assessee the Tribunal held that accepting the claim of considering sale consideration as per agreement, instead of jantri value on which stamp duty was collected as sale consideration under S. 50C for computation of capital gains, which was clearly unsustainable. Revision is held to be justified. (AY. 2012-13)

Babulal S. Solanki v. ITO (2019) 176 ITD 642 / 181 DTR 25 (Ahd.)(Trib.)

2030 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reassessment – Invalid reassessment order cannot be revised – Revision U/s. 263 cannot be made if reassessment U/s. 147 was invalid, as reassessment was made without issue of notice U/s. 143(2) [S. 143(2), 147]**

Original return of Income was filed on 20-10-2007 at NIL income. The notice under section 148 of the Income Tax Act, was issued on 25-3-2014 after recording the reasons and taking prior approval from the competent authorities. The assessee in response to the statutory notice vide letter dated 10-4-2014 submitting therein that the original return filed may please be treated as return filed in response to the notice under section 148 of the I.T. Act and also requested to provide reasons recorded, which were duly provided to it. The assessee also filled its objections which were disposed off. The A.O. issued statutory notice which were complied by the assessee and filed details as called for. The A.O. after discussing the case with the assessee, accepted the returned income and completed the re – assessment order under section 147/143(3) of the I.T. Act, 1961, on Dated 30.06.2014. The Ld. Pr. CIT also noted that as there is no statutory notice under S. 143(2) prescribed in the Act and only non-statutory notice is prescribed, the purpose of which is to intimate the assessee that the case has been selected for scrutiny and the notices issued on dated 11-6-2014 and 19-6-2014 clearly proves that the case of the assessee has been selected for scrutiny, such show cause notices are nothing but notice under S. 143(2). of the I.T. Act. It is also noted by the PCIT that even though no

formal notice under S. 143(2) was issued by the AO in the letters dated 11.06.2014 and 19-6-2014 it was specifically mentioned that in the absence of the requisite details the assessment would be completed under S. 144 of the I.T. Act. The A.O. has not examined this issue in the light of seized material. Therefore, re – assessment order was found to be erroneous in so far as prejudicial to the interests of the Revenue because AO failed to look into the seized material. The Order was set aside and restored to the file of AO with a direction to examine the seized material and confront the same to the assessee and pass the order in accordance with law. On appeal the Tribunal held that, as notice under S. 143(2) was not issued, the reassessment order is invalid, bad in law and non-est and an invalid reassessment order cannot be revised under S. 263 of the Act. (AY. 2007-08, 2009-10)

Supersonic Technologies Pvt. Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi)(Trib.)

Superior Buildwell P. Ltd. v. PCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reassessment – Merger – Since the second round of reassessment proceedings were on the same set of facts as the first round, the same were dropped by the AO and thus the first reassessment order stood merged with the second – Thus, the said order cannot be revised under S. 263 of the Act since only the valid reassessment order can be revised. [S. 143(1), 147, 148] 2031

Assessee filed return of income and was processed under S. 143(1) of the Act. Subsequently the case was reopened under S. 147 on the allegation of accommodation entry taken. The AO after due enquiry accepted the returned income vide reassessment order. The assessee's case was again reopened under S. 147 based on the same reasons for reopening as issued during first reassessment proceedings. Subsequently, the AO issued order dropping the said reassessment proceedings. The P CIT initiated revision proceedings under S. 263. The Tribunal held that the since the second round of reassessment proceedings were on the same set of facts as the first round, the same were dropped by the AO and thus the first reassessment order stood merged with the second. Thus, the said order cannot be revised under S. 263 of the Act since only the valid reassessment order can be revised. (AY. 2009-10)

Sri Balaji Forgings (P) Ltd. v. PCIT (2019) 175 DTR 57 / 197 TTJ 915 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Unsold flats held as stock in trade – Notional value – In view of contrary decisions of High Court, issue as to whether notional income on unsold flat held by assessee-builder as stock-in-trade in its books of account should be assessed as income from house property is a debatable issue, and hence order of Assessing Officer for not bringing unsold flats to tax at notional letting value under head 'income from other sources' which was one of possible views – Revision is not valid. [S.22, 23, 28(i)] 2032

Allowing the appeal of the assessee the Tribunal held that in view of contrary decisions of High Court, issue as to whether notional income on unsold flat held by assessee-builder as stock-in-trade in its books of account should be assessed as income from

house property is a debatable issue, and hence order of Assessing Officer for not bringing unsold flats to tax at notional letting value under head 'income from other sources' which was one of possible views – Revision is not valid. *CIT v. Ansal Housing Finance & Leasing Co. Ltd. (2013) 354 ITR 180 (Delhi)(HC). Neha Builders (P.) Ltd. (2007) 164 Taxman 342 (Guj)(HC).* (AY 2013-14)
S.D. Corporation (P.) Ltd. v. PCIT (2019) 175 ITD 164 (Mum.)(Trib.)

2033 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Income from other sources – Order passed by the AO following the decision of Appellate Tribunal cannot be said to be erroneous – Amount received by a member of HUF from HUF is not taxable as income from other sources – Amount received is not a gift without consideration because the member has a pre-existing right in the property hence capital receipt – Revision is not valid. [S. 4, 10(2), 56(2)(vii)]**
The AO passed the order accepted the contention of the assessee that gift received from HUF is not taxable. He relied on the decision in *Vieneet Kumar Raghavjbhai Bholodia v. ITO (ITA no 583/ Rjk/ 2007dt 17-6-2015 (SMC) 2011] 11 taxmann.com 384 / 12 ITR(T) 616 / 46 SOT 97 140 TTJ 58 (Rajkot) (Trib)* and *Mr. Biravelli Bhaskar v. ITO (ITA No. 398/Hyd/2015 dt 17-6-2015 (AY 2008-09) (2015) 44 CCH 234 (Hyd.)(Trib.)* where in the Tribunal held that HUF being a group of relatives hence the gift by the HUF to an individual is exempt U/s. 56(2) (vii) of the Act. PCIT revised the order under S 263 of the Act holding that gift received from HUF is assessable as income from other sources. On appeal the Tribunal held that the decisions of the Tribunal is binding on the AO and hence, the decision of the AO cannot be held to be erroneous. Tribunal also held that in case of an 'HUF', since there is not any determined share of any member in the family property, any amount received by a member of a 'HUF" from property of HUF cannot be said to be his share in the property, rather, the same is given to the member by the karta in the normal course of management of family affairs. All the ancestral property belong to the family and once the income of the family is assessed or subjected to tax as per the Act, then, the distribution/ payment out of the joint family property to any member cannot be said to be income of such a member. Thus, the amount received by the assessee from the 'HUF', being its member, is a capital receipt in his hands and is not exigible to income tax.
Pankil Garg v. PCIT (2019) 181 DTR 305 (Chd.)(Trib.)

2034 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Ex-servicemen Corporation – Registered under Companies Act as any other company – Not entitled to exemption – Revision is held to be valid – On merit also it was held not entitled to the exemption U/s. 10(26BBB]. [S.10(26BBB)]**
The assessee claimed to be engaged in of doing welfare of ex-servicemen by providing them and their family members with employment. It furnished return of income claiming exemption under S. 10(26BBB). AO allowed the claim. The C.I.T. passed a revisional order holding that since assessee was not 'established by a Central, State or Provincial Act', it stood disqualified at the threshold itself for exemption under S. 10(26BBB) of the Act. Dismissing the appeal of the assessee the Tribunal held that,since the assessee failed to satisfy the conditions of S. 10(26BBB) and Assessing Officer did not examine this issue at all, therefore, the Commissioner was justified in setting aside

the assessment order and to enhance the income of assessee by holding that assessee is not entitled for exemption under the provisions of S. 10(26BBB). Assessee-corporation was merely registered under Companies Act as any other company hence not entitle to exemption as corporation. (AY. 2010-11)
Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. ACIT (2019) 175 ITD 107 / 177 DTR 433 / 199 TTJ 649 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Valuation – Reference to valuation Officer – Discretionary power of the AO – Possible view – Revision is held to be not valid. [S.45, 55A] 2035
AO completed assessment under U/s. 143(3) accepting the capital gains. PCIT passed the revision order holding that the AO should have referred the matter to DVO U/s. 55A of the Act. On appeal the Tribunal held that on facts of the case AO was satisfied with valuation of property and he did not refer the matter to DVO, it could be concluded that view taken by AO was one of possible views. Accordingly the revision order was set aside. (AY. 2013-14)
Jitindar Singh Chadha v. PCIT (2019) 175 ITD 32 / 200 TTJ 98 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Book profit – Exempt income – two views possible – Revision is held to be bad in law. [S. 14A, 115JB, R.8D] 2036
The AO enhanced the suo motu disallowance made by the assesee. The Commissioner revised the order holding that the failure to include the sum in computing the book profit under the provisions of S. 115JB rendered the assessment order erroneous in so far it was prejudicial to the interests of the Revenue. Allowing the appeal of the assessee the Tribunal held that in *ACIT v. Vireet Investments (P.) Ltd. (2017) 165 ITD 27 / 154 DTR 241 / 188 TTJ 1 (SB) (Delhi)(Trib.)* held that the view beneficial to the assessee was to be taken while deciding the issue in terms of the decision in *CIT v. Vegetable Products Ltd. (1973) 88 ITR 192(SC)*. Therefore, the Assessing Officer had considered the issue during the original assessment proceedings and formed a view permissible under law that no disallowance relatable to exempt income could be made under S. 14A read with rule 8D while computing the book profits under S. 115JB. The revision proceedings were quashed as the assessment order was neither erroneous nor prejudicial to the interests of the Revenue (AY. 2012-13)
Tata Sons Ltd v. ACIT (2019) 69 ITR 46 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Transfer pricing officer – Transfer pricing risk parameter, fell under para 3.2 of circular dated 10-3-2016 which required reference to TPO by Assessing Officer mandatorily – Revision is held to be justified [S.92CA] 2037
Dismissing the appeal of the assessee the Tribunal held that, Transfer pricing risk parameter, fell under para 3.2 of circular dated 10-3-2016 which required reference to TPO by Assessing Officer mandatorily. Accordingly revision is held to be justified. (AY. 2015-16)
Varian Medical Systems International India (P.) Ltd. v. PCIT (2019) 174 ITD 721 / 199 TTJ 118 / 177 DTR 162 (Mum.)(Trib.)

2038 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation on tenancy rights – Allowed in original assessment – Legally permissible view – Revision and disallowance by PCIT – Mere change in opinion – Revision is bad in law. [S. 32(1)(ii)]**

Allowing the appeal of the assessee the Tribunal held that the AO has applied his mind at the time of passing the assessment order allowing the depreciation claim. The AO's view was a legally permissible view. Hence, the original order cannot be liable to be visited with a revisionary order by the PCIT, having a different opinion. Accordingly the revision order was quashed. (*Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC), State Bank of India v. Asst. CIT (WP No. 271 2018 dt 15-6-2018) (ITAT No. 3495/Mum/2018 AY 2013-14*)

Marie Gold Realtors Pvt. Ltd v. PCIT (Mum.)(Trib.)(UR)

2039 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Debenture redemption reserve – Original Assessment U/s. 143(3) dt. 30-12-2011 – Reassessment U/s. 143(3) r.w.s 147 dt 28-12-2016 – Revision order dt. 26-3-2018 – Revision is barred by limitation. [S.115JB]**

Allowing the appeal of the assessee the Tribunal held that the grounds of revision, were not the subject matter of the reopening done under S. 143(3) r.w.s 147. Hence, the revision order passed by the PCIT, was barred by limitation. Followed *Ashoka Buildcon Ltd v. ACIT (2010) 325 ITR 574 (Bom.)(HC), CIT v. ICICI Bank Ltd (2012) 343 ITR 74 Bom.)(HC).*

Revision also quashed on change of opinion and merit. (ITA No. 3530/Mum/2018 /3531 dt 10-1-2019 (AY. 2009-10, 2010-11)

Housing Development and Infrastructure Ltd v. PCIT (Mum.)(Trib.)(UR)

2040 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Business expenditure – Advertisement and publicity – Payment to cricketer – AO allowed the expenditure after considering the explanation – Revision is not to be not justified [S. 37(1)]**

Allowing the appeal of the assessee the Tribunal held that in the course of original assessment proceedings, the AO has examined the allowability of payment to cricketer under the head advertisement and publicity expenses and allowed. Revision is held to be not justified. S. 263 does not visualize a case of substitution of judgment of Commissioner for that of the A.O. unless decision is held to be erroneous. Accordingly the revision order was quashed. (AY. 2008-09)

Sanspareils Greenlands (P.) Ltd. v. CIT (2019) 174 ITD 274 / 197 TTJ 55 (UO) (Delhi)(Trib.)

2041 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – AO is bound to make prima facie enquiry – Revision is held to be valid – Capital or revenue – On merit foreign exchange loss for acquiring capital asset is held to be allowable as revenue expenditure [S. 43(1), 143(1)]**

Tribunal held that even in a case of limited scrutiny assessment, the AO is duty bound to make a prima facie enquiry as to whether there is any other item which requires examination. Revision is held to be valid. As regards foreign exchange flautuation loss

is concerned there was no potential escapement of income on the issue relating to allowability of foreign exchange loan taken for the construction of new building and additional equipment hence allowable as revenue expenditure. (AY. 2014-15)
Baby Memorial Hospital Ltd. v. ACIT (2019) 184 DTR 361 / 202 TTJ 913 / (2020) 77 ITR 484 (Cochin)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Commissioner could not take cognizance of an issue which had already attained finality in regular assessment – Where no enquiry was made to as regards gift, revision is held to be valid. [S.56(2), 147] 2042
Tribunal held that Commissioner could not take cognizance of an issue which had already attained finality in regular assessment. However as regards where no enquiry was made to as regards gift, revision is held to be valid. (AY. 2011-12)
Dev Raj Garg v. PCIT (2019) 76 ITR 9 / 202 TTJ 1138 / (2020) 185 DTR 130 (Chd.)(Trib.)

S. 264 : Commissioner – Revision of other orders – Revised return filed beyond limitation period rectifying the mistake – Rejection of application is held to be not valid – Matter is remitted back to the CIT for considering the claim of the petitioner and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order – No tax shall be collected except by authority of law. [S. 139(1), 139(5), 154, Art. 226, Art.265] 2043
The Assessee filed the petition dated 22-1-2018 under S. 264 of the IT act, to process the rectified return and to correct the mistake in the assessed income. The Assessee has filed the revised return claiming certain inadvertent errors that had crept in the original return and the processing of the same had resulted in a demand, that the assessee felt was flawed. The revised return of income filed on 9-1-2016 was not taken up for processing, since the revised return was filed beyond the due date provided under S. 139 of the IT Act. CIT dismissed the petition on the ground that as the claim was made after the limitation prescribed U/s. 139(5) of the Act.
On writ the Court held that the powers conferred on the Commissioner under S. 264 of the IT Act, is not only wider in its scope and also intended for the purpose of preventing miscarriage of justice and for providing relief to an Assessee, which he is otherwise entitled to, but for the order under challenge in revision. Court observed that it appears that the Revenue by making such contention, is sought to justify the collection of excess tax over and above the tax payable by the assessee, even though they admit that only due to inadvertent mistake, a wrong entry was made by the assessee with lessor figure of the relevant expenses than the actual expenses met out. Court held that the Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law. Therefore, both the levy and collection must be done with the authority of law, and if any levy and collection, later are found to be wrong and without authority of law, certainly, such levy and collection cannot withstand the scrutiny of the above constitutional provision and thus, such levy and collection would amount in violation of Article 265 of the Constitution of India. Accordingly, on the facts and circumstances of the present case, that a mere typographical error committed by the assessee cannot cost them payment of excess tax as collected by the Revenue. Certainly, the denial for repayment of such excess

collection would amount to great injustice to the assessee. Court also observed that, even though the Statute prescribes a time limit for getting the relief before the assessing Officer by way of filing a revised return, it here is no embargo on the Commissioner to exercise his power and grant the relief under Section 264 of the IT Act. In other words, for granting the relief to an assessee, which the Commissioner finds that the assessee is entitled to otherwise, no time restriction is provided under S. 264 of the IT Act, if such revisional jurisdiction is invoked by the assessee by making an application U/s. 264 of the IT Act. However, the Commissioner is not entitled to revise any order under S. 264 on his own motion, if the order has been made more than an year previously. Thus, it is manifest that only suo-motu power of the Commissioner under S. 264 of the IT Act, is restricted against an order passed within one year, whereas no such restriction is imposed on the Commissioner to exercise his power in respect of an order, which has been passed more than one year, if such revisional power is sought to be invoked at the instance of the assessee by making an application U/s. 264 of the IT Act. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for considering the claim of the petitioner and pass appropriate orders in within a period of six weeks from the date of receipt of a copy of this order. Court also observed that Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law. Therefore, both the levy and collection must be with the authority of law, and if any levy or collection, later is found to be wrong or without authority of law, certainly, such levy or collection cannot withstand the scrutiny of the Constitutional provision and would be in violation of article 265 of the Constitution of India. (AY. 2013-14)
Sharp Tools v. PCIT (2019) 311 CTR 505 / 183 DTR 289 / (2020) 421 ITR 90 (Mad.)(HC)

2044 **S. 264 : Commissioner – Revision of other orders–Rejection revised return and rectification application – Delay in filing revision application – Directed to condone the delay – CIT is directed to decide on merit. [S. 139(5), 143(1), 154, Art. 264]**
Court held that the revised return was rejected under S. 139(5) on a technical ground. The assessee filed a rectification application, on which no orders were passed. Without passing orders on the application for rectification, a demand notice was issued triggering a second application for rectification from the assessee which came to be dismissed. A demand was made on January 31, 2018, the second rectification request was filed by the assessee on February 25, 2018, the second rectification having been dismissed on July 2, 2018, the assessee ultimately filed a petition under S. 264. Therefore, this was not a case where the assessee had not acted in time. The rejection of the application for revision solely on the ground of delay was not justified. CIT is directed to decide on merits. (AY. 2009-10)
Ramupillai Kuppuraj v. ITO (2019) 418 ITR 458 / 311 CTR 873 / 184 DTR 257 (Mad.)(HC)

2045 **S. 264 : Commissioner – Revision of other orders – Revision petition seeking rectification of return accepted by department in respect of which intimation is sent under section 143(1) is maintainable – DTAA-India-Spain [S. 9(1)(i), 143(1), 154, Art. 12, 13]**
The petitioner earned service fees for providing management related services to a foreign company EIPL and submitted that income being in the nature of Fees For Technical Services (FTS) was taxable at rate of 20 percent under article 13 of the DTAA between

India and Spain. The Assessing Officer by an intimation under S. 143(1) processed the return of income. Thereafter, the assessee realised that while referring to article 13 of the DTAA, it had failed to refer to clause 7 of the Protocol appended to the DTAA in terms of which, if a further concessional rate of tax was charged in terms of the agreement between India and another member of the OECD, by India after 1-1-1990, wherein India limits its taxation at source on FTS to a rate lower than that provided in article 13 of the DTAA, then the said rate shall apply under the DTAA to the petitioner as well. Consequently, the petitioner filed the revision petition under S. 264 before the Commissioner seeking to revise the order under S. 143(1) claiming it to be prejudicial to the petitioner's interest. The Commissioner (IT) held that no amount was payable by the assessee in terms of the intimation under S. 143(1) and, therefore, no prejudice was caused to the assessee in terms thereof and that if the assessee was of the view that its income was chargeable to tax at 10 per cent 'it should have mentioned the same in its return of income or should have subsequently filed revised return'. It was held that section 264 cannot be invoked to rectify the assessee's mistake, if any.

It was contended that for the purposes of S. 264, a revision petition seeking rectification of the return accepted by the department in respect of which intimation is sent under S. 143(1) is maintainable. Court held that the intimation under S. 143(1) was prejudicial to the interest of the assessee. It must be noted here that although the tax calculated as payable in the return filed and accepted by the department by sending intimation under S. 143(1) is nil, it cannot be said that no prejudice is caused to the assessee. The assessee has voluntarily paid tax at the rate of 10 per cent in terms of the Indo-Spain DTAA as tax on FTS and, therefore, there was no further tax to be paid at the time of filing of the return. However, it is not even denied by the department that the assessee committed a mistake and should have paid tax at 10 per cent, even though, this extra 10 per cent paid by the assessee was of its own volition, it was indeed prejudicial to the assessee. Consequently, all the ingredients of S. 264 stand attracted. Accordingly, a revision petition under S. 264 by the assessee before the Commissioner against the intimation under S. 143(1) is maintainable. (AY. 2014-15)

EPCOS Electronic Components S.A. v. UOI (2019) 266 Taxman 23 (Delhi)(HC)

S. 264 : Commissioner – Revision of other orders – Application for condonation of delay cannot be dismissed for technical reasons – Principle of substantial justice – Matter remanded. [S. 80P] 2046

Allowing the petition the Court held that the Commissioner while passing the order ought not to have rejected the application for condonation of delay as well as the revision petition. It was not in dispute that the Commissioner himself had granted exemption in subsequent years to the assessee and the Central Board of Direct Taxes' Instruction No. 13 of 2006, dated December 22, 2006, clearly laid down that up to six years' application for refund can be entertained, but in the present case it was only two years. The order was not justified. Court also observed that, it is well-settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. Matter remanded to the Commissioner. (AY. 2008-09, 2012-13, 2013-14)

Kammavari Credit Co-Operative Society Ltd. v. ACIT (2019) 416 ITR 180 (Karn.)(HC)

2047 **S. 264 : Commissioner – Revision of other orders – Amount mistakenly paid as tax – Revision is not maintainable – Duty of the revenue to refund the amount – Substantial justice should prevail over technical considerations. [S. 119]**

The assessee, a bank, paid fringe benefits tax in respect of contribution to an approved pension fund. The Tribunal had held for assessment year 2006-07 that fringe benefits tax was not payable on such contribution. The assessee thereupon filed an application for revision under S. 264. The application was rejected on the ground of delay. On a writ the Court held that S. 264 was not applicable. But S. 119 could have been invoked. The authority ought to have posed only one question to himself, i.e., whether the assessee was liable to pay the tax in question or not. If he was not liable to pay the tax in question, the Department had no business to retain it, even if it was wrongly paid. It is well-settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. The Income-tax Department represents the sovereign power of the State in matters of taxation. Whether the Department had illegally collected the tax from the citizen or whether the assessee mistakenly paid the tax to the Department, the consequence is one and the same. If the assessee had mistakenly paid, it is a case of illegal retention by the Department It is a well-settled principle of administrative law that if the authority otherwise had the jurisdiction, mere non-quoting or misquoting of the provision will not vitiate the proceedings. The respondent, the Principal Commissioner was directed to pass orders afresh under section 119 of the Act. (AY. 2007-08)

Karur Vysya Bank Ltd. v. CIT (2019) 416 ITR 166 / 311 CTR 824 / 184 DTR 8 (Mad.)(HC)

2048 **S. 264 : Commissioner – Revision of other orders – Husband's ill health – Transactions in immoveable properties – Unexplained money – Matter remanded for re-adjudication. [S. 69A, 143(3), Art. 226]**

Assessee did not file return believing that she had no taxable income. AO issued notices which were not responded. AO passed an ex-parte order holding that assessee had purchased two immovable properties and source of fund was not disclosed. He made addition of said fund to income of assessee. The assessee filed revision application before the Commissioner. Commissioner rejected the application on the ground of non-appearance before AO though the assessee pointed out that earlier notices were issued at her old address which she had changed and later notices could not be responded as her husband, who was looking after her financial matter, became bed ridden due to hip surgery. She further pointed out that, she purchased one property only and sold another, that too jointly with her husband. On writ the court held that the Commissioner should examine revision petition on merits as necessary materials in support of assessee's contention could not be verified. Accordingly, the matter remanded to the Commissioner to readjudicate on merits. (AY. 2010-11)

Daxa Bipin Dedhia (Mrs.) v. PCIT (2019) 267 Taxman 62 (Bom.)(HC)

S. 264 : Commissioner – Revision of other orders – Non grant of refund – Not an appellable order – Subject to revision – Alternative remedy is available – Writ is not maintainable. [S. 197, 246A, Art. 226] 2049

Court held that though an order refusing to issue refund is not an appeallable order U/s. 246A, it is subject to revision U/s. 264. As the alternate remedy of revision is available, the Writ is not maintainable (*Larsen & Toubro Ltd. v. ACIT (2010) 326 ITR 514 (Bom.) (HC)* referred).(WP No. 2484 of 2019, dt. 3-10-2019) (AY. 2005-06)

Aditya Marine Ltd. v. DCIT (2019) 183 DTR 89 / 311 CTR 311 (Bom.)(HC), www.itatonline.org

S. 264 : Commissioner – Revision of other orders – Hosing projects – Failure to claim deduction in return – Commissioner cannot grant the deduction in revisional jurisdiction by virtue of S.80A(5) of the Act. [S. 80A(5), 80IB(10)] 2050

The assessee did not claim deduction under S. 80-IB(10) of the Act on its income earned from housing development projects. Assessment was completed u/s 143(3) of the Act. The revision petition was filed after the stipulated period of limitation. The Commissioner refused to condone the delay. The assessee filed writ petitions against such order. The court ordered the condonation of delay and directed the Commissioner to decide the revision applications on its merits. The Commissioner rejected the revision application on the ground that the assessee had not made a claim under S. 80-IB(10) in the return of income and that by virtue of S. 80A(5), the claim could not be granted. In a writ petition the assessee contended that the restriction imposed by S. 80A(5) applied only to the powers of the Assessing Officer and not to the Commissioner in exercise of revisional powers. Dismissing the petition the Court held that sub-section (5) of S. 80A mandated that, if the assessee failed to make a claim in his return of income for any deduction under the provisions specified therein, it would not be granted to the assessee. This condition or restriction was not relatable to the AO or the Income – tax authority. The provision contained in sub-section (5) of S. 80A was a statutory interdiction which would prevent the Commissioner from granting a fresh claim in exercise of his revisional jurisdiction under S. 264. The width of the powers of the Commissioner under S. 264 would not permit him to ignore the requirement of S. 80A(5) or allow the claim of an assessee in breach of the condition contained therein. The assessee having given up the challenge to the Constitutionality of the retrospectivity of S. 80A(5), could not bring in the concept of reading down of the provision in order to save it from being unconstitutional. The provision contained in sub-section (5) of S. 80A was to be enforced as it stood in the statute book. (AY. 2008-09)

EBR Enterprises v. UOI (2019) 415 ITR 139 / 180 DTR 73 / 266 Taxman 15 / 311 CTR 698 (Bom.)(HC)

S. 264 : Commissioner – Revision of other orders – Delay of seven years – Return accepted u/s 143(1) – Rejection of revision application is held to be justified. [S. 143(1)] 2051

Dismissing the petition the Court held that; if assessee wanted to dispute his own declaration in return, he had to take appropriate steps before Commissioner within one year of acceptance of return of return. The assessee could not take shelter of non-communication of intimation of acceptance of return under S. 143(1) for filing revision application with a delay of seven years. (AY. 2007-08)

Sham Anand Salunkhe v. PCIT (2019) 263 Taxman 190 (Bom.)(HC)

2052 **S. 264 : Commissioner – Revision of other orders – Subsidy – Settlement proceedings – Assessee had not raised any dispute regarding subsidy received by it during entire Settlement proceedings till settlement order was passed by Commission, it could not urge Commissioner to examine said issue in exercise of revisional powers. [S. 4, 245D(4), 245F]**

Dismissing the petition the Court held that; assessee had not raised any dispute regarding subsidy received by it during entire Settlement proceedings till settlement order was passed by Commission, it could not urge Commissioner to examine said issue in exercise of revisional powers. (AY. 2006-07 to 2013-14)

Mandhana Industries Ltd. v. PCIT (2019) 262 Taxman 137 / 178 DTR 57 / 309 CTR 1 (Bom.)(HC)

2053 **S. 264 : Commissioner – Revision of other orders – Tax consultant was indisposed about 7 months due to serious back injury – Delay was condoned – Matter remanded back for disposal on merits. [S. 153A]**

Allowing the petition the Court held that; delay in filing the petition was due to Tax consultant was indisposed about 7 months due to serious back injury. Due to erroneous advice the assessee has offered interest income under misconception of law. Accordingly delay was condoned and the matter was remanded back for disposal on merits.

Karanjia Terminal & Logistics (P) Ltd. v. Dy. CIT (2019) 260 Taxman 320 (Bom.)(HC)

2054 **S. 264 : Commissioner – Revision of other orders – Claim was not made in the return – Employees' contribution of Provident Fund were made before due date of filing of return – Dismissal of the revision petition by the Commissioner is held to be not justified – Commissioner is directed to decide the petition in accordance with law. [S. 36(1)(va), 139, 143(1)]**

Allowing the petition the court held that though the claim was not made in the return. The Employees' contribution of Provident Fund were made before due date of filing of return. Accordingly the dismissal of the revision petition by the Commissioner is held to be not justified. Commissioner is directed to decide the petition in accordance with law, guided by the High Court decision in *CIT v. Ghatge Patil Transports Ltd. (2014) 368 ITR 749 (Bom.)(HC)* (AY. 2015-16)

Geekay Security Services (P) Ltd. v. Dy. CIT (2019) 306 CTR 277 / 173 DTR 164 / 261 Taxman 152 (Bom.)(HC)

2055 **S. 264 : Commissioner – Revision of other orders – Filed after expiry period of limitation – justified in dismissing the petition. [S. 143(3), 147]**

Dismissing the petition the Court held that in revision petition it was admitted that not only notices were received, even reassessment order was received but assessee did not care to appeal against it. Revision application was also filed beyond limitation period. Accordingly the commissioner is justified in dismissing the petition.(AY. 2008-09)

Jindal Metal Co. v. PCIT (2019) 260 Taxman 220 / 176 DTR 299 / 308 CTR 180 (Delhi) (HC)

S. 268A : Appeal – Monitory limit – Tax effect is less than one crore – Appeal is not maintainable. [S. 260A] 2056

Dismissing the appeal of the revenue, where tax effect in appeal filed by revenue was less than ₹ one crore, in terms of Circular No. 17/2019 dated 8-8-2019, same was to be dismissed as withdrawn – Circulars and Notifications: Circular No. 3/2018 dated 11-7-2018 and Circular No. 17/2019 dated 8-8-2019.

PCIT v. Crisil Risk & Infrastructure Solution Ltd. (2019) 267 Taxman 215 (Bom.)(HC)

S. 268A : Appeal – Instructions – Tax effect below ₹ 50 lakhs – Mandate issued by CBDT in circular No. 3, dated 11-7-2018 – Binding on revenue – Appeal was dismissed on ground of low tax effect. [S. 260A] 2057

Court held that where tax effect by virtue of order passed by Tribunal was below ₹ 50 lakhs in view of mandate issued by CBDT in circular No. 3 dated 11-7-2018, appeal filed by revenue was to be dismissed on ground of low tax effect.

PCIT v. Hotel Leela venture Ltd. (2019) 106 taxmann.com 242 / 264 Taxman 27 (Bom.) (HC)

S. 268A : Appeal – Monetary limit – Appeal dismissed as withdrawn. [S. 260A] 2058

Appeal of the revenue is dismissed as withdrawn in view of fact that tax effect in said appeal was lower than threshold limit fixed by Circular No 17/2009 dt 8-8-2019 (2019) 416 ITR 106 (St) (AY. 2012-13)

PCIT v. India Pistons Ltd. (2019) 267 Taxman 79 (Mad.)(HC)

S. 268A : Appeal – Monetary limit – Audit objection – Reassessment. Assessment which was reopened on basis of audit objection – Revenue's appeal would be covered by exception mentioned in Circular No. 3/2018 dated 11-7-2018 (2018) 405 ITR 29 (St) – Dismissal of appeal on ground of low tax effect is held to be not justified. [S. 40A(3), 148, 254(1)] 2059

Revenue authorities filed appeal before Tribunal challenging disallowance deleted by appellate authority under S. 40A(3) in respect of payment of legal fee. Tribunal relying upon Circular No 21 of 2015 dated 10-12-2015 (2015) 379 ITR 107 (St), dismissed the appeal on ground of low tax effect. Revenue filed instant appeal contending that case had been reopened on basis of revenue's audit objection and, in such circumstances, same would be covered under exception mentioned in Circular,No. 3/2018 dated 11-7-2018 (2018) 405 ITR 29 (St). Allowing the appeal the Court held that Tribunal should have decided issue on merits rather than dismissing appeal on ground of low tax effect. Matter was remanded back to Tribunal for disposal afresh. (AY. 2010-11)

PCIT v. Kunj Infrastructure (P.) Ltd. (2019) 266 Taxman 296 (Guj.)(HC)

S. 268A : Appeal – Low tax effect – Entire tax effect being less than a sum of ₹ 2 lakhs, appeal filed by revenue was dismissed. [S. 260A] 2060

Entire tax effect being less than a sum of ₹ 2 lakhs, appeal filed by revenue was to be dismissed on ground of low tax effect.

CIT v. Dinakar Ullal (2019) 265 Taxman 81 (Mag.)(Karn.)(HC)

2061 **S. 268A : Appeal – Instructions – Low tax effect – Instruction No 3 dt. 9-2-2011 – Neither binding on Tribunal nor Tribunal – Board cannot direct the Court or Tribunal to compel litigants to withdraw appeal due to low tax effect. [S. 254(1)]**

Assessee had substantial interest in a company. Company sold a flat to assessee of which a major portion of price remained unpaid by him at end of previous year. AO assessed the said amount as an advance to director and assessed as deemed dividend. CIT(A) deleted the addition, however the Tribunal upheld the order of AO. On appeal High Court also up held the order of Tribunal. Before the Tribunal the appellant contended that as the tax in dispute is below the prescribed limit of ₹ 10 lakhs, the appeal of the revenue is not maintainable. As the revenue has not withdrawn the appeal, the Tribunal decided the appeal on merit against the assessee. On appeal the High Court held that Instruction No. 3, dated 9-2-2011, is neither binding on Court or Tribunal, nor Board can direct concerned Court or Tribunal to compel litigant to withdraw appeal due to low tax effect. (AY 2007-08)

Bhagavathy Velan v. DCIT (2019) 264 Taxman 146 (Mad.)(HC)

2062 **S. 268A : Appeal – Monetary Limits for filing an appeal – Appeal dismissed for low tax effect – Penalty – limitation – The order passed by the AO is beyond the period of six months, thus barred by limitation. [S. 271(1)(c), 275(1)(a)]**

The Central Board of Direct Tax by circular no 17 of 2019 dated 8-8-2019, issued a direction that no appeal shall be filed before the Tribunal in case the tax effect does not exceed ₹ 50 Lakhs. The appeal of the revenue did not exceed ₹ 50 lakhs and ought to be dismissed for low tax effect. Circular grants liberty to the parties to move the Tribunal, if the case falls with the exceptions and to reinstate the matter.

The revenue received merit order of the Tribunal on 24-9-2014. The AO had levied the penalty U/s. 271(1)(c) on 27-1-2016. S. 275(1)(a) provides penalty order to be passed within six months from the end of the month in which either party receives the order of the Tribunal. The order passed by the AO is beyond the period of six months, thus barred by limitation. (AY. 2006-07 2008-09)

ITO(E) v. A. P. S. Academy (2019) 75 ITR 563 (Luck.)(Trib.)

2063 **S. 268A : Appeal – Monetary limit – Revised/enhanced minimum threshold limit of tax effect of ₹ 50 lakhs vide CBDT Circular No. 17/2019 dated 8-8-2019 is applicable not only for appeals to be filed by revenue in future but also for appeals already filed by revenue. [S. 253]**

Dismissing the appeal of the revenue the Tribunal held that revised/enhanced minimum threshold limit of tax effect of ₹ 50 lakhs vide CBDT Circular No. 17/2019 dated 8-8 -2019 is applicable not only for appeals to be filed by revenue in future but also for appeals already filed by revenue. (AY. 2007-08)

ACIT v. Bulland Buildtech (P.) Ltd. (2019) 178 ITD 790 (Delhi)(Trib.)

S. 268A : Appeal – Monetary limits – CBDT Circular No. 17/2019, dated 8-8-2019 revising/enhancing minimum threshold limit to tax effect of ₹ 50 lakhs would also be applicable to pending appeals before Tribunal. [S. 253] 2064

CBDT Circular No. 17/2019, dated 8-8-2019 revising/enhancing minimum threshold limit to tax effect of ₹ 50 lakhs would also be applicable to pending appeals before Tribunal. (AY. 2002-03, 2009-10 to 2013-14, 2015-16)

ACIT v. Samsung Data Systems India (P.) Ltd. (2019) 179 ITD 229 (Delhi)(Trib.)

S. 268A : Appeal – Revised monetary limits – Applicable to pending appeals and also appeals to be filed. [S. 253] 2065

Dismissing the appeal of the revenue the Tribunal held that the revised/enhanced minimum threshold limit of tax effect of ₹ 50 lakhs vide CBDT Circular No. 17/2019, dated 8-8-2019 is applicable not only for appeals to be filed by revenue in future but also for appeals already filed by revenue in Tribunal. (AY. 2009-10, 2010-11)

ITO v. Aditya Buildwell (P.) Ltd. (2019) 179 ITD 549 (Delhi)(Trib.)

S. 268A : Appeal – Tax in dispute less than 20 lakhs – Appeal of revenue is dismissed. [S. 253] 2066

Referring the Circular No 3, dated 11-7-2018, (2018) 405 ITR 29 (St) appeal filed by revenue was to be dismissed being non-maintainable. (AY. 2009-10, 20010-11)

DCIT v. Shashiben Rajendra Makhijani (2019) 174 ITD 581 (Ahd.)(Trib.)

S. 269K : Acquisition of immoveable property – Deposit – Compensation – Acquisition by and vesting of property in Income – Tax Department In 1978 – Deposit of compensation in Court – Petitioners' right to property ousted in civil suits – Additional District judge finding petitioners had no title to property and not entitled to compensation – Source of compensation payment/deposit irrelevant. Writ is held to be not maintainable – Cost of ₹ 25000 was imposed. [S. 269(F(6), 269-I, Art. 226] 2067

Dismissing the petition the Court held that the property having been acquired under section 269F(6) from MCK in the year 1978, the Additional District Judge had correctly held in the order that it would only be the legal heir of MCK, who would be entitled to payment of compensation, upon their filing any application before that court. Though the petitioners' claim was that they had purchased half of the property in question for a consideration in 1991 from the original owner thereof, even so, such owner having lost any right to the property in 1978 itself (and finally in 1981 and again in 1983 with the dismissal of his petitions before the court), he had ceased to be its owner, with no right to sell that property to the petitioners, it having vested in the Union of India for about 13 years as on the date the sale deed was executed in 1991. The suit earlier filed by the petitioners seeking a declaration that they were the owners in possession of the suit property had been dismissed. Hence, if the petitioners were still in occupation of the suit property, such occupation was illegal, with the property vesting in the respondents and an order for taking possession having been passed in the year 1989. Court held that whether it was one Department of the Union of India or the other that had deposited the compensation, would be immaterial, the property having vested in the Union of India. Even though according to the letter addressed on May 1, 1978 by the Inspecting

Assistant Commissioner to the Executive Engineer, Central Public Works Department, it was that Department that was only to arrange for the compensation, which was not the concern of the person receiving the compensation, but only the concern of the Income – tax Department, as to from which source it is to be paid. Court also held that the order acquiring the property having attained finality on October 5, 1981, and in any case the petitioners having finally "lost their suit" 10 years ago, the judgment in *Mathew M. Thomas v. CIT (1999) 236 ITR 691 (SC)* was not applicable, acquisition proceedings having become final even before this court much before September 30, 1986.
The petitioners themselves having continuously litigated for the acquired property for the third round after having lost the two earlier rounds and also being fully aware of the fact that, earlier, two rounds of litigation by the original owners had been "lost", a cost of ₹ 25,000 was imposed upon them.
Ravi Kapoor v. UOI (2019) 419 ITR 84 (P&H)(HC)

2068 **S. 269SS : Penalty – Mode of receipt of loan and deposits – Not offering reasonable cause – Levy of penalty is held to be justified. [S.271D, 273B]**
Dismissing the appeals the Court held that the assessees did not bring on record their financial position, the details of any time bound purchase orders that were required to be executed and did not correlate the purchases made from the cash loans in question. The assessees had all along relied on the oral assertions of urgent requirement of funds without producing any material to establish such assertion. Order passed by the Tribunal affirming the levy of penalty is held to be justified. (AY. 2008-09)
Nitin Mohan Wadikar v. ACIT (2019) 414 ITR 647 (Bom.)(HC)
Manisha Nitin Wadikar v. ACIT (2019) 414 ITR 647 (Bom.)(HC)

2069 **S. 269SS : Penalty – Acceptance of loan in cash in excess of specified limit – assessee's business inoperative for past years – assessee borrowing from bank and private money lenders for past years – assessee borrowing money from unorganised financial sector in cash for repaying financial liabilities – assessee declaring loss in return – reasonable cause – Imposition of penalty not warranted. [S. 273B]**
Assessee's business was closed and inoperative for last 7 years and had borrowed money from private lenders and banks for last 10 years, to meet business liabilities he had raised cash loans from the unorganised sector. AO opined that there was violation of S. 269SS in respect of cash loan in respect of assessee, a penalty for the same loan amount was imposed by the AO and further enhanced by the CIT(A). In Appeal held, that the assessee had specifically submitted to the AO that his business was inoperative for years and had taken loans for several years to meet financial requirements as lenders were pressing hard. Assessee even had ₹ 50 crore mortgaged against assets worth ₹ 5 crore only. When this fact was seen in the light of return filed by the assessee declaring loss of ₹ 4.35 lakhs, it clearly emerged that the loans were taken by the assessee in cash in violation of the provisions of S. 269SS to meet the financial liabilities. This constituted a reasonable cause warranting non-imposition of penalty under S. 271D in terms of S. 273B. Therefore, the penalty of ₹ 88,18,000 was deleted. (ITA No. 914/Pun/14 dated 15-1-2019) (AY. 1999-2000)
P. R. Associates v. ACIT (2019) 70 ITR 469 (Pune)(Trib.)

S. 269T : Repayment of loans and deposits – Otherwise than by account payee cheque or account payee bank draft – Provision is applicable in case of adjustment of loan towards sale of flats – Payment of interest in cash – Provision is not applicable. [S. 271E] 2070

Tribunal held that provision is applicable in case of adjustment of loan towards sale of flats. However payment of interest in cash provision is not applicable. (AY. 2012-13, 2014-15)

Golla Narayana Rao v. ACIT (2019) 174 ITD 67 / 176 DTR 201 / 198 TTJ 407 (Vishakha) (Trib.)

S. 269UC : Purchase by Central Government of immoveable properties – Restrictions on transfer – Chapter XX – C of Income-tax Act – Litigation between owner and department – Writ petitions by original assessees withdrawn in 2016 – Income-Tax Department had not taken any steps to take possession of land from 1994 to 2017 – High Court directing Income-Tax Authorities to take conciliatory action under S. 119(2) of the Act. [S. 119(2), S. 269UD, 269UG, Art. 226] 2071

On a writ petition by the housing society against the order the Court held that, the building was constructed on a piece of land, title to which had vested in the Central Government in the year 1994. The original owner, therefore, had no authority to deal with the land in question. He had fraudulently executed another development agreement with the developers. The assessee – society or its members did not have any legal title to the land in question. The erstwhile owner upon being divested of title, could not have passed on any valid title to the developer and in turn, the developer could not have passed valid title to the assessee – society. The society had no locus standi to file the writ petition. However it was an agreed position that after the passing the order under section 269UG of the Act, the Department took no further steps to safeguard its interest in the land. Taking into account the inaction on the part of the Income-tax Department in safeguarding its rights in the property by having the appropriate entries made in the property records, some conciliation had to be found. The Central Board of Direct Taxes should sympathetically examine these facts and take appropriate decision in terms of its powers under S. 119(2). That respondent No. 9 was a legal heir of one of the original purchasers. The proceedings qua the deceased had abated. In any case, no grievance could be examined at his instance in this petition. However on equitable grounds the original purchasers or their heirs must receive a sum of ₹ 14 lakhs they had paid to the owner in July, 1994.

New White Rose CHS Ltd. v. Appropriate Authority (2019) 417 ITR 122 / 310 CTR 781 / 182 DTR 25 (Bom.)(HC)

S. 269UD : Purchase by Central Government of immoveable properties – Auction process is conducted bona fide and in public interest – Appellant given several opportunities to bid in fresh auction conducted but not doing so – Sale Confirmed in favour of fresh buyer – No arbitrariness. 2072

Dismissing the appeal the Court held that, several auctions were conducted from the year 1994, including an auction as recent as March 27, 2017 which failed to elicit a response from any buyer. Ultimately, the auction with the reserve price of ₹ 30 crores,

on which the appellant's bid was ₹ 30.21 crores, was kept in abeyance because in a report dated September 26, 2017, it was pointed out that this figure was considerably lower than the figure offered by the appellant itself at ₹ 32.11 crores and that, therefore, a fresh auction be held. This reason was not, in any manner, arbitrary. After all, it was in public interest to see that the highest possible price be fetched for such properties. Further, at every stage valuation reports were submitted by reputed valuers, first from Mumbai, and then from Chennai, and there was no reason to doubt what had been stated to be the fair market value in any of these reports. Though the appellant was given several opportunities to bid in the fresh auction conducted, ultimately, for reasons best known to it, it chose to refrain from participating therein. So long as the auction process was conducted bona fide and in public interest, a judicial hands-off was mandated. Ordinarily, reasons must inform all Governmental decisions including administrative decisions of the Government so that both the administration as well as challenges made to such orders, could be said to be fair and not arbitrary. The reasons disclosed both in the report dated September 26, 2017 and the letter dated April 6, 2018 from the Government of India, Ministry of Finance, to the Chief Commissioner of Income-tax, made it clear that there was no arbitrariness discernible in the entire auction process.

Court also held that respondent No. 4 to the offer made to the court. From the figure of ₹ 35 crores, which was to be paid within a period of 12 weeks directly to the Union treasury, a sum equivalent to interest of 9 per cent on the amount of ₹ 7.78 crores, lying with the Union, calculated from the date on which it was deposited with the Union till date shall be subtracted, and the net figure handed over.

Sankalp Recreation Pvt. Ltd v. UOI (2019) 418 ITR 673 / 267 Taxman 13 (SC)

Editorial: Order in Sankalp Recreation Pvt. Ltd. v. UOI (2019) 411 ITR 671 / 258 Taxman 341 (Bom.) (HC) is affirmed

2073 **S. 271(1)(b) : Penalty – Failure to comply with notices – Penalty is upheld based on assessee's conduct and failure to comply with statutory notices but deleted the penalty for five years in the interest of justice [S. 132, 142(1)]**

The assessee is a trust in whose case search and seizure was conducted under S. 132 of the Act. As the assessee failed to comply with multiple notices issued under S. 142(1) of the Act from time to time and also with the final opportunity which were not replied by assessee, therefore, the AO levied penalty of ₹ 60,000/ – under S. 271(1)(b) of the Act for Assessment Years 2007-08 to 2013-14. The Tribunal held that considering the conduct of the assessee, the case was fit for penalty under S. 271(1)(b) of the Act as the assessee had failed to comply with statutory notices issued from time to time. Further, considering all the facts on record and in the interest of justice and also that the notices for all the assessment years were sent to assessee on the same date, the Tribunal held that penalty shall be levied for Assessment Year 2007-08 only i.e. the first assessment year and the penalty for all the other years shall be deleted. (AY. 2007-08 to 2013-14)

Commitment Mortality Vision Education Society v. ACIT (2019) 74 ITR 62 (SN) (Delhi) (Trib.)

S. 271(1)(b) : Penalty – Failure to comply with notices – Alleged bank account not belong to assessee – No failure on part of assessee – No penalty can be levied. [S. 142(1)] 2074

On information received by department from ADIT (Inv.) it was alleged that the assessee held bank account in HSBC Bank, Geneva, Switzerland. The Assessing Officer has issued notice under S. 142(1) of the Act requiring assessee to furnish requisite information in respect of alleged bank account or submitting consent letter for obtaining account statement from the Bank. As the assessee had not submitted the consent letter, the AO has invoked penalty under S. 271(1)(b). The Tribunal held that penalty should not be levied as assessee has a reasonable and *bona fide* belief in terms of Section 273B that there had been no violation of notice under S. 142(1) for non-compliance on part of assessee. The Tribunal observed that the details of bank accounts which the assessee possessed outside India has already been disclosed by the assessee and thus there was no non-compliance under S. 142(1) of the Act and thus, no penalty can be levied under S. 271(1) (b) of the Act. (AY. 2006-07 to 2012-13)

Charu Modi Bhartia v. DCIT (2019) 177 DTR 1 / 104 taxmann.com 390 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Search – There was no addition to the declared income in any of the years – Deletion of penalty is held to be justified [S.132, 153C] 2075

Dismissing the appeal of the revenue the Court held that , the three returns had been filed even before issuance of notice u/s. 153C and in other two cases as accepted by the AO the Assessee had no taxable income. There was no addition to the declared income in any of the years, penalty was correctly deleted, Explanation 5A r.w.s. 271 of the Act not applicable in searched person case. (ITA No. 897 of 2016, dt.08/01/2019) (AY. 2005-06, 2006-07)

PCIT v. Rajkumar Gulab Badgujar (2019) 111 taxmann.com 256 (Bom.)(HC)

Editorial: SLP of revenue is dismissed (SLP No.17514 of 2019 dt. 08/07/2019)(2019) 416 ITR 134 (St.)(SC)/ (2019) 267 Taxman 488 (SC)

S. 271(1)(c) : Penalty – Concealment – Depreciation – Claim was withdrawn in the course of search proceedings – Deletion of penalty by the Tribunal is held to be justified. [S.32, 132(4), 153A] 2076

Assessee filed its return claiming depreciation on its intellectual property rights. During the course of search proceedings as per the statement u/s 132(4) director of the company reduced the claim depreciation. AO imposed penalty under S. 271(1)(c) for raising a false claim. On appeal the Tribunal held claim of depreciation being a plausible claim, mere fact that same was withdrawn during subsequent search proceedings, would not give rise to penalty. Followed *CIT v. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC)* (AY. 2004-05)

PCIT v. Financial Technologies India Ltd. (2019) 112 taxmann.com 398 / (2020) 269 Taxman 33 (Bom.)(HC)

Editorial: SLP of revenue is dismissed; PCIT v. Financial Technologies India Ltd. (2020) 269 Taxman 32 (SC)

2077 **S. 271(1)(c) : Penalty – Concealment – Method of accounting – Project completion method – Year of allowability of expenses – Mere making the claim which is not sustainable in law will not amount to furnishing in accurate particulars of income – Penalty cannot be levied. [S. 145]**

Dismissing the appeal of the revenue the Court held that, the difference between the assessee and the revenue is merely on account of difference in the year of allowability of claim and in the absence of any doubt with regard to genuineness of the expenses claimed, penal provision cannot be attracted. Accordingly the order of Tribunal is affirmed. (Arising from ITA No. 4403/M/ 2013 dt. 29-4-2016) (ITA No. 992 of 2017 dt 17-9-2019 (AY. 2007-08)

CIT v. Lokhandwala Construction Industries Pvt. Ltd. (2019) BCAJ-December-P. 41 (Bom) (HC)

2078 **S. 271(1)(c) : Penalty – Concealment – Search and seizure – Return filed after search action – Income returned was accepted – In the absence of addition no penalty can be levied. [S. 132, 153C, 271C]**

A search and seizure was carried out in case of Suyojit Group of Nashik on 1 7-9-2010. In course of which certain incriminating documents pertaining to assessee were seized. The assessee filed the return before issue of notice U/s. 153C of the Act. For two assessment years the assesee filed the return of income after receipt of notice U/s. 153C of the Act. The AO completed assessment under S. 153C wherein no addition was made over and above declared income. He, however, passed a penalty order under S. 271(1)(c) of the Act. Tribunal held that since there was no addition to returned income of assessee, penalty could not have been imposed. On appeal High Court upheld the Tribunal's order. (AY. 2006-07, 2008-09 to 2010-11)

PCIT v. Rajkumar Gulab Badgujar (2019) 111 taxmann.com 256 / 267 Taxman 489 (Bom.) (HC)

Editorial : SLP of revenue is dismissed PCIT v. Rajkumar Gulab Badgujar (2019) 267 Taxman 488 (SC)

2079 **S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction – In applicable portions are not struck off – Levy of penalty is held to be not valid.**

Dismissing the appeal of the revenue the Court held that Levy of penalty U/s. 271(1)(c) is not valid, if (i) there is no record of satisfaction by the AO that there was any concealment of income or that any inaccurate particulars were furnished by the assessee or (ii) If the notice is issued in the printed form and the inapplicable portions are not struck off. Followed *CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom)(HC) & PCIT v. New Era Sova Mine (ITA Nos. 70 of 2018 dt 18-6-2019)* Link ? [2019 SCC OnLine Bom 1032(Bom.) (HC)]. Distinguished, *Mak Data v. CIT (2013) 358 ITR 593 (SC) (TA No. 24 of 2019, dt. 11-11-2019)*

PCIT v. Goa Coastal Resosts & Recreation Pvt. Ltd. (Bom.)(HC), www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – Explanation 5A – Disclosure of additional income in the statements and in return filed U/s. 153A – Notwithstanding that the income declared in the return filed for the period under consideration is accepted – Liable to penalty. [S. 153A] 2080

Dismissing the appeal of assessee, Court held that by virtue of Explanation 5A to S.271(1)(c) of the Act, where any income based on any entry in books, documents, transactions, statements recorded, etc is found and it represents assessee's income as claimed by him, then, penalty is leviable in view of Expln. 5A of S. 271(1)(c) of the Act, notwithstanding that no further additional income has been assessed in the assessment under S. 153A of the Act. (ITA Nos. 1081, 1090, 1092, 1292 of 2016 dt. 9-1-2019) (AY. 2005-06 to 2008-09)

Dr. Nitin Laxmikant Lad v. ACIT (2019) 307 CTR 213 / 174 DTR 341 (Bom.)(HC)

S. 271(1)(c) : Penalty – Concealment – Quantum deleted – Levy of penalty was quashed. 2081

Dismissing the appeal of the revenue the Court held that even if the order of the Court raises arguable questions, levy of penalty is not justified. (AY. 2000-01 to 2003-04)

CIT v. Ajanta Pharma Ltd. (2019) 105 taxmann.com 160 / 263 Taxman 353 (Bom.)(HC)

Editorial : Appeal of revenue is dismissed on the ground of delay as well as on low tax effect. CIT v. Ajanta Pharma Ltd. (2019) 263 Taxman 352 (SC)

S. 271(1)(c) : Penalty – Concealment – Tax paid claimed as deduction – Mistake of chartered accountant – Neither the affidavit nor evidence was produced – Levy of penalty is held to be justified [S. 37(1), 40(ii)] 2082

Assessee claimed deduction in respect of tax paid which was disallowed by the AO. In penalty proceedings the assessee contended that the deduction was claimed on basis of advice given by Chartered Accountant which was rejected and the penalty was levied. Penalty was confirmed by the Tribunal. Dismissing the appeal of the assessee the Court held that there was no material in support of assessee's claim either in form of evidence of assessee or affidavit of Chartered Accountant. Accordingly the order of Tribunal was affirmed.

Jivanlal and Sons v. ACIT (2019) 103 taxmann.com 207 / 262 Taxman 24 (Bom.)(HC)

Editorial : SLP of assessee is dismissed, Jivanlal and Sons v. ACIT (2019) 262 Taxman 23 (SC)

S. 271(1)(c) : Penalty – Concealment – Debatable issue – Merely because the addition is confirmed levy of penalty is not justified – Deletion of penalty on the sole ground that the High Court has admitted the Appeal and framed substantial questions of law, it cannot be said that the entire issue is debatable one and under no circumstances, penalty could be imposed. 2083

Dispute between the assessee and the Department is with regard to payment for purchase of flat whether deduction U/s. 54F is available. The assessee had made bonafide claim. Neither any income nor any particulars of income were concealed. The Tribunal deleted the penalty on the sole ground that quantum appeal is admitted by the High Court. Dismissing the appeal of the revenue the Court held that, merely because the addition is confirmed levy of penalty is not justified. Relied on *CIT v.*

Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC). Court also observed that Merely because the High Court has admitted the Appeal and framed substantial questions of law, it cannot be said that the entire issue is debatable one and under no circumstances, penalty could be imposed. Referred, *CIT v. Dharamshi B. Shah (2014) 366 ITR 140 (Guj.) (HC)(ITA No. 169 of 2017, dt. 19.03.2019)* (AY. 2006-07)
PCIT v. Rasiklal M. Parikh (Bom.)(HC), www.itatonline.org

2084 **S. 271(1)(c) : Penalty – Concealment – Gift received by minor son – Addition confirmed on the ground of human probabilities – Levy of penalty is held to be not valid. [S. 153A]**
The AO has doubted the gift on the ground of human probabilities. The addition made by the AO is confirmed by the CIT(A) and Tribunal. In appeal penalty appeal the Tribunal deleted the penalty levied by the AO. On appeal by the revenue the Court held that,the Tribunal had recorded the finding regarding the identity of creditors, their creditworthiness and genuineness of the transactions however the addition was confirmed on the ground of human probabilities. Accordingly the Court held that it was not a case of either concealment of income or of furnishing in accurate particulars and neither the AO nor the first appellate authority recorded any finding to such effect that the details furnished by the assessee to be incorrect erroneous or false. Accordingly the order of Tribunal the deleting the penalty is affirmed. (ITA No. 276 /277/197 to 200 of 2015 dt. 26-8-2019)
PCIT v. Dinesh Chandra Jain (2019) CTCJ – October – P. 81 (All.)(HC)

2085 **S. 271(1)(c) : Penalty – Concealment – Build – Operate – Transfer (BOT) – Depreciation is disallowed – Appeal not filed – Deletion of penalty is held to be valid. [S. 32]**
Dismissing the appeal of the revenue just because the assessee has not filed an appeal against the disallowance of depreciation on contract for broadening of National Highway on Build – Operate – Transfer (BOT) basis. Tribunal rightly held that the assessee could not be held guilty of furnishing inaccurate particulars of income.
PCIT v. Himalayan Expressway Ltd. (2019) 267 Taxman 364 (P&H)(HC)

2086 **S. 271(1)(c) : Penalty – Concealment – Revised return filed prior to issuance of notice U/s. 153C – No satisfaction was recorded – Deletion of penalty is held to be valid. [S. 153C]**
Dismissing the appeal of the revenue the Court held that, revised return file prior to issuance of notice U/s. 153C and no satisfaction was recorded, deletion of penalty is held to be valid. *Mak Data Pvt. Ltd. v. CIT (2013) 358 ITR 593 (SC)* (AY. 2010-11)
PCIT v. Prabhjot Kaur Chhabra (Smt.) (2019) 419 ITR 94 (MP)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Prabhjot Kaur Chhabra (Smt.) (2019) 416 ITR 78 (St)

2087 **S. 271(1)(c) : Penalty – Concealment – Survey – Amount disclosed in the survey was included in return – Return was accepted – Levy of penalty is held to be not valid. [S. 133A]**
Dismissing the appeal of the revenue the Court held that amount disclosed in the survey was included in return. Return was accepted. Accordingly levy of penalty is held to be not valid. (AY. 2012-13)
CIT v. Shree Sai Developers (2019) 418 ITR 306 / (2020) 186 DTR 105 (Guj.)(HC)

S. 271(1)(c) : Penalty – Concealment – Constitutional validity – Provision cannot be regarded as ultra vires of Constitution – Convention for Avoidance of Double Taxation between Union of India and other Sovereign Countries – DTAA-India-Japan. [S. 90, Art. 23 Art. 226] 2088

Dismissing the petition the Court held that unless specific provision is made in Double Taxation Avoidance Agreement in as much as penalty is concerned, provision of S.271(1)(c) shall continue to apply. Accordingly, S.271(1)(c) cannot be regarded as ultra vires of Constitution in so far as imposing of penalty on amounts determined pursuant to Convention for Avoidance of Double Taxation between Union of India and other Sovereign Countries which is enforced in Indian territory by S.90 and Rules made there under. (AY. 2005-06, 2006-07)

Toyota Kirloskar Motor (P) Ltd. v. UOI (2019) 266 Taxman 328 / 311 CTR 770 / 184 DTR 65 (Karn.)(HC)

S. 271(1)(c) : Penalty – Concealment – Quantum became final – Jewellery disclosed in the course of search – Matter remanded to the Tribunal to give an opportunity of reconciling quantum of jewellery [S. 132, 254(1)] 2089

Allowing the appeals the Court held that, one more opportunity was to be granted to the assessee to reconcile by offering an explanation. The Tribunal was wrong in dismissing the applications merely because the quantum assessment had attained finality and that the assessee had not challenged such assessment. The quantum assessment and penalty proceedings were independent of each other. The assessee's specific case was that the jewellery, recovered during the search operations under S. 132, had been declared in the Scheme of 1997 and the assessee had explained that the balance amounts were inherited by her, some of which were stridhana, etc. The Tribunal had considered a similar issue in the case of another assessee of the same group in proceedings arising out of the same search and permitted reconciliation. There was no reason why such an indulgence should not be granted to the assessee considering the plea raised by her in the affidavit filed in support of the miscellaneous petition. The explanation offered by the assessee should be tested for its correctness and only, if it was found to be palpably false or not acceptable, would the question of imposing penalty arise. The rights of the assessee could not be foreclosed. (AY. 2012-13)

R. Revathy v. DCIT (2019) 417 ITR 704 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Notice – Not specifying the charge – Defects could be rectified – Notice is not invalid – Writ to quash the notice is held to be not maintainable. [S. 292B, Art. 226] 2090

The assessee challenged by way of writ against a show – cause notice for imposition of penalty under S. 271(1)(c) on the ground that the notice did not specify whether there had been concealment of income or furnishing of inaccurate particulars of income. Dismissing the petition the court held that as the show-cause notice was in a template, the error was secretarial in nature and was also owing to inadvertence. The notice qualified as a notice within the meaning of S. 292B. If that be so, it could not be held to be invalid merely by reason of mistake or defect, i.e., mistake or defect of issuing it in a template and not scoring out the relevant ground and leaving out the applicable ground. The court directed that the show-cause notice dated December 23, 2016 shall be kept in abeyance

for a period of three weeks from the date of receipt of a copy of this order within which time, the second respondent shall issue a corrigendum/addendum/errata to the show-cause notice clearly setting out the ground/s on which the show-cause notice was issued, whether it had been issued on the ground that particulars had been concealed or on the ground that inaccurate particulars of income had been furnished or both. (AY. 2013-14)
Amtex Software Solutions Pvt. Ltd. v. ACIT (2019) 418 ITR 99 / (2020) 186 DTR 20 (Mad.)(HC)

2091 **S. 271(1)(c) : Penalty – Concealment – Land shown as agricultural – Undertaken work to develop housing plots on land – Furnishing inaccurate particulars – Levy of penalty is held to be justified.**
Dismissing the appeal the Court held that that the finding of fact recorded by the Assessing Officer would clearly show that as early as June 29, 2000 there was an agreement with third parties for converting the land into housing plots by filling sand, levelling, forming roads, carrying out other developmental activities. Therefore, when the penalty proceedings were initiated, the Assessing Officer was fully justified in holding that the assessee was consciously aware of the real position and knowingly furnished inaccurate particulars of income in the revised return. The assessee was not an individual, but a company, which was an association of persons consisting of other corporate giants. Therefore the levy of penalty was justified. (AY. 2001-02 2002-03)
Chemmancherry Estates Company v. CIT (2019) 417 ITR 314 / (2020) 268 Taxman 29 (Mad.)(HC)

2092 **S. 271(1)(c) : Penalty – Concealment – Legal representative – After initiation of penalty proceedings – Death of the assessee – Penalty proceedings cannot be continued against his legal representatives. [S. 159]**
Dismissing the appeal of the revenue the Court held that, since the provisions of S. 271(1)(c) of the Income-tax Act, 1961 depend upon the guilty animus or mens rea on the part of the assessee, the legal representative cannot be held liable to defend those penalty proceedings or be held guilty of any mens rea. Therefore, unless the penalty proceedings are concluded against a living assessee, the legal heirs cannot be held liable to face those proceedings or pay any sum determined as penalty payable under S. 271(1)(c).
CIT v. S. Gowri (Smt) (2019) 417 ITR 45 (Mad.)(HC)
Editorial : SLP of revenue is dismissed CIT v. S. Gowri (Smt) (2019) 417 ITR 45 (SC)

2093 **S. 271(1)(c) : Penalty – Concealment – Sale of good will and Trade mark of firm is held to be taxable as capital gain – Deletion of penalty is held to be justified. [S. 28(i), 45]**
Assessee was a partner in firm. During relevant year, partnership firm sold its trademark and goodwill and assessee's share was credited in its books of account. During relevant year, assessee filed its return wherein income from sale of goodwill was declared as capital gain. AO held that said receipt is taxable as business income. AO also levied the concealment penalty. Tribunal deleted the penalty which was affirmed by High Court.
PCIT v. Prakashchandra S. Soni, HUF (2019) 107 taxmann.com 86 / 265 Taxman 16 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Prakashchandra S Soni, HUF (2019) 265 Taxman 15 (SC)

S. 271(1)(c) : Penalty – Concealment – Explanation 5 – Disclosed undisclosed income in the course of the statements under section 132(4), specifying the manner of earning it from real estate business and paid tax with interest for which no time frame is fixed in Explanation 5(2) – Levy of penalty is held to be not justified. [S. 132(4), 158BC] 2094

Court held that, clause (2) of Explanation 5 appended to S. 271(1)(c) of the Act has not changed with the amendment of law with effect from June 1, 2003 changing the procedure of assessment in the case of search under S. 132. The filing of the returns after the notice is issued to the assessee after search under S. 158BC of the Act does not, for the purpose of clause (2) of Explanation 5 to S. 271(1)(c) of the Act, mandate the assessee to pay such tax admitted by him to be payable with interest on the undisclosed income admitted by him in the course of search in the statements under S. 132(4) of the Act. The only change brought about with effect from June 1, 2003 is in the procedure in the filing of returns and in the assessment for each year independently rather than in the assessment for a block of period as was the position prior to June 1, 2003. Accordingly the assessee satisfied all the three conditions, namely (a) disclosure of undisclosed income in the course of the statements under S. 132(4) of the Act ; (b) specifying the manner of earning it from real estate business; and (c) payment of tax with interest for which no time frame is fixed in Explanation 5(2). The assessee was entitled to the immunity from penalty under S. 271(1)(c). As regards the agricultural income the same being question of fact hence deletion of penalty by Tribunal is held to be justified. (AY. 2002-03 to 2008-09)

Duraipandi and S. Thalavaipandian (AOP) v. ACIT (2019) 415 ITR 437 / 178 DTR 233 / 310 CTR 98 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Advance tax shown as expenses – Appropriation of profits shown as loss – Levy of penalty is held to be justified for concealment of income and furnishing of inaccurate particulars of income. 2095

Court held that the levy of concealment penalty is held to be justified as the assessee has shown Advance tax as expenses and appropriation of profits shown as loss. (AY. 2007-08)

Hamirpur District Co-Operative Bank Ltd. v. CIT (2019) 415 ITR 184 / 182 DTR 160 / 311 CTR 50 / 103 taxmann.com 350 (All.)(HC)

Editorial : SLP of assessee is dismissed; Hamirpur District Co-Operative Bank Ltd. v. CIT (2020) 269 Taxman 201 (SC)

S. 271(1)(c) : Penalty – Concealment – Claim for 100 Per Cent Deduction – Bonafide claim – Deletion of penalty is held to be justified. [S. 80IC] 2096

Dismissing the appeal of the revenue the Court held that; there was no error or illegality in the findings recorded by the Tribunal that the claim of deduction at the rate of 100 per cent by the assessee for the eighth assessment year on expansion of its unit was on account of its bona fide belief and that this was not a case of furnishing of any inaccurate particulars or concealment of income which warranted penalty. (AY. 2011-12)

CIT v. Virgo Industries (2019) 412 ITR 146 / 178 DTR 300 (P&H)(HC)

2097 **S. 271(1)(c) : Penalty – Concealment – Excess stock – Deletion of penalty and also quantum addition is held to be valid. [S. 145]**

AO made addition on account of alleged excess stock and also levied the penalty. Tribunal held that excess stock existed only on account of wrong entries in books of account and in any case higher stock declared as closing stock in a particular year would be taken as opening stock at beginning of next year and therefore, tax effect of such alleged excess stock was 'NIL'. Accordingly, set aside addition made by AO and also deleted the penalty High Court affirmed the order of the Tribunal. (ITA No. 501/502 of 2017 dt 21-6-2018) (AY. 2008-09, 2009-10)

PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 105 taxmann.com 277 / 263 Taxman 449 (Karn.)(HC)

PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 105 taxmann.com 137 / 263 Taxman 342 (Karn.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 263 Taxman 448 (SC) / PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 263 Taxman 341 (SC)

2098 **S. 271(1)(c) : Penalty – Concealment – Depreciation – Voluntary withdrawal of claim during the course of assessment proceedings – Does not mean that assessee accepted guilt or giving wrong or false explanation – Levy of penalty is not justified. [S. 32]**

Allowing the appeal the Court held that giving up the claim of depreciation under S. 32 would not automatically entail penalty under S. 271(1)(c). The imposition of penalty was neither automatic nor was expected to be imposed even if the bona fide explanation of the assessee was not accepted by the statutory authorities. There was no concealment on the part of the assessee. The purchase of the three pay loaders in question on the last day of the previous year was supported by the production of purchase invoices before the assessing authority. Even if the assessee was confused during the course of the assessment proceedings about the place of delivery, whether at T or P, it could not be said that the assessee's statement was false because there was no rebuttal of the fact that the pay loaders were available ready for use at Chennai port before the last day was over on March 31, 2000. The assessee produced the relevant evidence before the assessing authority as well as the CIT(A). For reasons best known to the assesse, he gave up the claim for depreciation but that did not mean that the assessee admitted the guilt of giving a wrong explanation or a false explanation or having concealed his income or filing inaccurate particulars. There was absence of mens rea or guilty animus on the part of the assessee. No material brought on record by the assessing authority indicated or proved guilty animus on the part of the assessee. The order of the Tribunal restoring the penalty imposed by the AO was set aside. (AY. 2000-01)

B. Loganathan. (2019) v. ITO (2019) 412 ITR 642 / 180 DTR 272 / 311 CTR 107 (Mad.) (HC)

2099 **S. 271(1)(c) : Penalty – Concealment – Excess stock – Wrong entries in books of account – Deletion of penalty is held to be justified. [S. 145]**

Dismissing the appeal of the revenue, the Court held that, addition on account of excess stock was only on account of wrong entries in books of account and in any case higher

stock-in-trade declared as closing stock in a particular year would be taken as opening stock at beginning of next year and, therefore, tax effect of such alleged excess stock was 'NIL'. Accordingly order of Tribunal deleting the penalty was upheld. (AY. 2007-08 to 2010-11)

PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 104 taxmann.com 110 / 262 Taxman 259 / 104 taxmann.com 306 / 262 Taxman 306 / 308 CTR 858 (Karn.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Deccan Mining Syndicate (P.) Ltd. (2019) 262 Taxman 358 / 262 Taxman 305 (SC)

S. 271(1)(c) : Penalty – Concealment – Disallowance of expenses – Full details are disclosed – Levy of penalty is held to be not justified. 2100

Allowing the appeal of the asessee the Court held that full details with regard to expenses claimed under selling, administrative and another expense was disclosed. Accordingly the assessee should not be burdened with penalty for concealment of income. (AY. 2010-11, 2011-12, 2012-13)

Granite Gate Properties Pvt. Ltd. v. CIT (2019) 414 ITR 130 / 175 DTR 415 / 307 CTR 599 (Delhi)(HC)

S. 271(1)(c) : Penalty – Concealment – Quantum deleted – SLP is pending – Deletion of penalty is held to be valid. [S. 11, 12AA] 2101

Dismissing the appeal of the revenue the Court held that; it was not a case where a totally unsustainable and fictitious claim was put forth. Accordingly the deletion of penalty is held to be justified.

CIT(E) v. Ahmedabad Urban Development Authority (2019) 103 taxmann.com. 81 (Guj.) (HC)

Editorial : SLP of revenue is dismissed, CIT(E) v. Ahmedabad Urban Development Authority (2019) 261 Taxman 552 (SC)

S. 271(1)(c) : Penalty – concealment – capital gain exemption claimed – Quantum addition is confirmed – Full disclosure was made – No mala fide intention – Deletion of penalty is held to be justified. 2102

Dismissing the appeal of the revenue the Court held that, though quantum additions were confirmed up to stage of Tribunal. The assessee had made full disclosures were made by assessee and issue was not free from doubt and on the basis of legal advice.

PCIT v. Samir Suryakant Sheth (2019) 103 taxmann.com 197 / 262 Taxman 28 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Samir Suryakant Sheth (2019) 262 Taxman 27 (SC)

S. 271(1)(c) : Penalty – Concealment – Loss of equipment – Forfeiture of security deposit – Revenue or capital expenditure – Debatable issue – Full disclosure during the assessment proceedings – Levy of penalty is held to be not valid. 2103

The assessee wrote off security deposit under the head "administrative and other expenses" in the profit and loss account. During assessment proceeding, AO made adjustments on various issues, including write off security deposit. The assessee submitted that there was a loss of equipment taken on lease from a vendor, thus revenue

account. The AO held payment were for acquisition of the capital asset, and it will be a capital loss. Subsequently, AO levied penalty for the claim of security deposit. CIT(A) upheld the penalty mainly on the ground that it had failed to make full disclosure of the transaction in the tax audit report.
The Tribunal noted that assessee during the assessment proceedings had explained the claim of security deposit. It filed the relevant documents, and explanation has not found to be false by the AO. Whether loss of security deposit is revenue or capital expenditure, is a debatable issue not free from doubt. All material in connection with the computation of income cannot be disclosed in the return of income as it does not have the relevant columns as held by the CIT(A). (AY. 2005-06)
Nortel Networks India Pvt. Ltd. v. DCIT (2019) 75 ITR 48 (Delhi)(Trib.)

2104 **S. 271(1)(c) : Penalty – Concealment – Notice – No specific charge and limb under which penalty proposed – Concealment of income or inaccurate particulars of income – Notice void ab intio. [S. 274]**
It is crystal clear that charge for which penalty proposed U/s. 271(1)(c), whether for concealment of income or furnishing inaccurate particular of income should be mentioned explicitly in the show-cause notice. The law mandates that authority, who is proposing to impose the penalty, shall be certain as to the basis on which penalty is levied. The notice must reflect that specific reasons, so that assessee to whom such notice is given can prepare his defense to support his case. Show-cause notice not specifying the charge and limb under which the penalty imposed is bad in law. (AY. 2014-15)
Rajendra Kumar and Co. v. DCIT (2019) 75 ITR 73 (Luck.)(Trib.)

2105 **S. 271(1)(c) : Penalty – Concealment – Where income was offered in the return and tax paid thereon, penalty could not be levied. [S. 153A, 271AAA]**
Where the assessee had offered certain income in the return and paid tax thereon, penalty under S. 271(1)(c) or 271AAA could not be levied, even if the particulars of such income are not given as there is no tax which is sought to be evaded. Where no incriminating material is found in the course of the search, no addition can be made and no penalty can be levied. (AY. 2008-09 to 2012-13)
Kulwant Singh & Ors. v. Dy. CIT (2019) 180 DTR 177 / 104 taxmann.com 340 / 199 TTJ 545 (Chd.)(Trib.)

2106 **S. 271(1)(c) : Penalty – Concealment – In the absence of evidence to suggest concealment of income or furnishing of inaccurate particulars, penalty cannot be levied.**
In an order passed pursuant to search, the AO observed that the quantity of sale of milk declared in the books was higher than that based on the vouchers and other documents found in the search would suggest. The AO held that the assessee was actually selling milk products but reflecting the same as sale of milk to suppress profits. The AO estimated the allegedly correct profits by applying the higher GP rate of milk products sale to milk sale. Penalty was also levied subsequently. Held that simply because the quantum additions were upheld by the appellate authorities would not mean that

penalty could be sustained. Additions were made on preponderance of probability by estimating profits by treating sale of milk as sale of milk products and applying a higher GP rate. There was no clinching evidence on record to suggest that the sale of milk was bogus. These circumstances may be sufficient to reject the books under S. 145(3) and to estimate profits, but are insufficient to levy penalty. (AY. 2006-07 and 2007-08)
Punjab Sind Dairy Product (P) Ltd. v. ACIT (2019) 180 DTR 203 / 199 TTJ 929 (Mum.) (Trib.)

S. 271(1)(c) : Penalty – Concealment – Mere claim – Furnishing inaccurate particulars of income – Levy of penalty is not justified – Delay of 229 days condoned due to health ground. [S. 10(13A), 254(1)] 2107
The assessee is an individual that earned income from "Salary". During the assessment proceeding, the AO disallowed the claim of House Rent Allowance U/s. 10(13A) as there is a failure to produce evidence in support of his claim. Further, the A.O. made other disallowance, i.e. account of depreciation, bank charges, repairs etc. The assessee did not challenge the assessment order in appeal. The AO applied penalty U/s. 271(1)(c) for furnishing inaccurate particulars of income, which was upheld by the CIT(A). Aggrieved by the decision, the assessee filed belayed appeal (delay of 229 days) before the Tribunal. The Tribunal condoned the delay, as the assessee was diagnosed with cancer which provides for reasonable cause for failing to file an appeal in time. On the penalty, the Tribunal concluded that the AO had taken contrary stands in the assessment order and penalty proceedings. In the assessment order, it mentioned that the assessee failed to file any details, while penalty proceedings it mentioned furnished inaccurate particulars of income. The mere disallowance of claim does not entitle levy of penalty. (AY. 2013-14).
Pradipta Kumar Das v. ACIT (2019) 75 ITR 85 (Chennai)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Penalty Notice bad in law – If limb under which penalty has been initiated not specified. [S. 274] 2108
AO had issued notice S. 271(1)(c) read with S. 274 of the Act for concealment of income or furnishing inaccurate particulars of income without specifying specific limb of S. 271(1)(c) of the Act. CIT(A) confirmed the penalty levied. On Assessees appeal, Tribunal held that penalty notice issued was bad in law, as it did not specify which limb i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars, which was not sustainable in the eyes of law. The Tribunal after placing reliance on the decision in its own case and various other judicial pronouncements deleted the penalty levied by AO. (AY. 2005-06, 2006-07, 2008-09 to 2010-11)
Manjeet Kaur Sran (Mrs.) v. Dy. CIT (2019) 76 ITR 57 (SN) (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment Amount of deduction hardly makes any difference on tax liability – then penalty levied on wrongful claim of the same needs to be deleted – as it was claimed on account of human error – no mala-fide intention of the assessee. [S. 35D] 2109
The assessee claimed deduction U/s. 35D amounting to ₹ 4.9 lakhs which was disallowed by the AO and penalty proceedings U/s. 271(1)(c) were also initiated. The

Tribunal held that when the assessee has declared an income of 12.54 crores, there could not be any mala-fide intention at the end of the assessee to make an erroneous claim of such a small amount against such huge amount of reported income and the incorrect claim must have been made under some human error. As assessee has disclosed all the facts and also assessee did not challenge the addition after the decision of CIT(A). Thus, considering the above penalty cannot be levied under Section 271(1)(c) of the Act. (AY. 2013-14)
Omni Lens P. Ltd. v. DCIT (2019) 76 ITR 28 (SN) (Ahd.)(Trib.)

2110 **S. 271(1)(c) : Penalty – Concealment – Long term capital loss – Bona fide clerical mistake on part of assesse – same has been explained before AO – Return of income accepted and there was no loss to revenue – No concealment of income or no furnishing inaccurate particulars of income – Levy of penalty is held to be not valid. [S.45]**
The Tribunal held that the return of income accepted by the AO and there was no loss to the Revenue. Only long-term capital loss had been reduced because of the lesser share of the assessee in the property. Hence it was not a furnishing of inaccurate particulars of income or concealment of particulars of income. No penalty was leviable. (AY. 2014-15)
Anil Gupta v. ACIT (2019) 76 ITR 22 (SN) (Delhi)(Trib.)

2111 **S. 271(1)(c) : Penalty – Concealment – Difference of opinion between assessee's and AO's view for claim of exemption U/s. 47(xiv) on conversion of proprietary concern in to public limited company – Levy of penalty is held to be not valid. [S. 47(xiv)]**
The Assessee converted proprietary concern into a Public Limited Company. On succession of business, assessee transferred all assets including self – generated goodwill and liabilities of proprietary concern and in consideration for the said transfer received 33,59,064 fully paid equity shares of the public limite company. The AO denied exemption U/s. 47(xiv) in respect of part of goodwill transferred by taking a view that said goodwill was never mentioned in books of proprietary concern and further opined that goodwill which was transferred was not covered by exemption U/s. 47(xiv). CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that the assessee had a bona fide belief that since there was no value for self-generated goodwill in terms of S..55(2), allotment of shares for same pursuant to conversion of proprietary concern into public limited company would not be considered as transfer within meaning of S. 2(47). There was a genuine difference of opinion between assessee and AO in not allowing claim of exemption U/s. 47(xiv) and therefore explanation furnished by the assessee was not found to be false by the AO, hence deletion of penalty by the CIT(A) is held to be justified. (AY. 2009-2010)
ITO v. Kantilal G. Kotecha (2019) 178 ITD 1 / 202 TTJ 517 / 183 DTR 489 (Mum.)(Trib.)

2112 **S. 271(1)(c) : Penalty – Concealment – Surrender of income voluntarily – Penalty cannot be levied.**
Penalty can be levied only if there is concealment of income or inaccurate particulars of income have been furnished. The onus is on the Assessing officer during penalty proceedings to prove that the assessee has either concealed its income or furnished

inaccurate particulars of income. If the assessee has made an incorrect claim in the return that would not mean that the assessee has concealed income or furnished inaccurate particulars of income. If surrender is voluntary then penalty proceedings cannot be initiated against the assessee. (AY. 2013-2014)
Dy. CIT v. Shehla Ahmad (Smt.) (2019) 74 ITR 523 (Luck.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Interest on fixed deposit receipts – Messing commission – Shown as exempt income – Levy of penalty is held to be not valid. [S.148] 2113
Tribunal held that the said issue was debatable and assessee was unaware of the decision of Apex Court on the said issue while filing return of income pursuant to notice under S. 148 of the Act. However, assessee accepted the addition and payed taxes as well as interest on the same pursuant to decision of Apex Court. Thus, it does not amount to concealment of particulars of income and furnishing inaccurate particulars when all necessary details were already furnished by assessee at the time of filing original return. At the most assessee has put forth a wrong claim at the time of filing return pursuant to reopening under S. 148 of the Act and has never concealed the particulars of income or furnished inaccurate. Thus, Tribunal relying on previous year's decision in assessee's own case deleted penalty. (AY. 2006-07)
Dehradun Club Ltd. v. Dy. CIT (2019) 69 ITR 30 (SN) (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Explanation given by the assessee is not proved to be false – Levy of penalty is held to be not valid. [S. 69A, 271AAA] 2114
A search and seizure operation was carried out by the department at the business premises of the aforesaid Group as well as residential premises of the promoters and directors of the company but no incriminating material was found during the search action. During the assessment proceedings, the AO had asked about the sources of the aforesaid income offered/declared by the assessee regarding which the common explanation given by the assessees that the same was from speculation in the sale/purchase of the agricultural land, and since, no records were being maintained by the assessee in this regard, the income was offered under S. 69A 'subject to no explanation'. As the assessees could not satisfactorily explain the sources of income, the AO therefore, invoked the Explanation 1 to S. 271(1)(c) and initiated penalty proceedings and levied the penalty under S. 271(1)(c). There was no material on record to indicate that the particulars furnished by the assessee were factually incorrect. Under the circumstances, even otherwise, on merits, the penalty under S. 271(1)(c) is not attracted in this case. (AY. 2008-09 to 2012-13)
Dy. CIT v. Kulwant Singh (2019) 180 DTR 177 / 199 TTJ 545 / 104 taxmann.com 340 (Chd.)(Trib.)

S. 271(1)(c) : Concealment – AO not referring to seized material – Concealed income should be represented by some incriminating material during course of search – Difference in computation of cost of acquisition not concealment of income. [S. 153A] 2115
Assessee filed ROI after notice U/s. 153A disclosing STCG which was the same as filed previously U/s. 139(1). The AO scaled down cost of acquisition and initiated penalty proceedings U/s. 271(1)(c). In Appeal, held that nowhere had the AO made reference

to any seized material thus the assumption of concealed income was misplaced. If in response to a notice under S. 153A the assessee furnishes a return disclosing higher income, it could be considered as concealed income, only if some incriminating material representing that higher income was found during the course of search. Therefore the penalty was to be deleted. Nothing had been pointed out on how the reduced cost of acquisition had been determined. No incriminating material was found during the course of search. The assessee had returned the same income as was filed under S. 139(1). The Assessing Officer had imposed penalty for concealing particulars of income but there was no such concealment. Only difference was in computation of cost of acquisition. Thus, Assessee did not deserve penalty for this year. (sAY. 2008-09, 2010-11)
Nitinbhai Tulsidas Chottani v. Dy. CIT (2019) 70 ITR 496 (Ahd.)(Trib.)

2116 **S. 271(1)(c) : Penalty – Concealment – Additional ground – Failure by Assessing officer to delete inappropriate words and parts in relevant paragraph of notice – Notice issued not specifying concealment of income or furnishing of inaccurate particulars of income – Levy of penalty is not valid. [S. 274]**
Tribunal has admitted the additional ground of the assessee in respect of jurisdictional issue for levy of penalty and held that a notice issued under S. 274 read with S. 271 of the Act without specifying whether the notice was issued for concealment of particulars of income or furnishing of inaccurate particulars of income was invalid and the consequential penalty proceedings or order were also not valid. Hence, the notice issued by the AO U/s. 274 was invalid since the inappropriate words and parts had not been deleted in the relevant paragraph of the notice,it was not clear as to which default had been committed by the assessee and it was also not clear as to whether the penalty U/s. 271(1)(c) was to be imposed for furnishing of inaccurate particulars of income or concealing particulars of income. Accordingly, the penalty levied under S. 271(1)(c) of the Act was to be deleted. (AY. 2012-13)
Simran K. Sayyed (Ms.) v. ITO (2019) 70 ITR 472 (Bang.)(Trib.)

2117 **S. 271(1)(c) : Penalty – Concealment – CIT(A) confirmed the penalty only in respect of 1/ 3 rd addition – Matter remanded to CIT(A). [S. 153A]**
On appeal, the Tribunal held that in the assessment order, the entire undisclosed investment was considered as income in the hands of the assessee which was also accepted by the Assessee. It is admitted that other two persons did not make any payment towards purchase of the immovable property. Hence, the Tribunal held that the CIT(A) erred in confirming only 1/3rd of the penalty amount instead of the entire penalty amount levied by the Ld. AO. Accordingly, the matter was remitted to the file of the Ld. CIT(A) for fresh consideration. (AY. 2008-09)
ACIT v. St. Antony Timber Depot and vice versa (2019) 71 ITR 1 (Cochin)(Trib.)

2118 **S. 271(1)(c) : Penalty – Concealment – Long term capital gains – Surrender and disclosure U/s. 132(4) – In absence of any incriminating material found during search and seizure action no conclusion can be drawn that assessee has concealed particulars of income or furnishing inaccurate particulars of income. [S. 10(38) 45, 132(4) 153A]**
The assessee, an individual, filed his return of income declaring total income of ₹ 64.87

lakhs and claimed exemption of long – term capital gain on sale of shares amounting to ₹ 2.77 crores U/s. 10(38) of the Act. A search and seizure action was carried out in the case of a company with which assessee was associated. As per the statement recorded U/s. 132(4) of the Act, assessee declared and surrendered the above – mentioned long – term capital gain of ₹ 2.77 crores on sale of shares as undisclosed income and offered the same for taxation. The assessment was completed U/s. 143(3) r.w.s. 153A of the Act on the total income of ₹ 3.44 crores which included the income of ₹ 2.77 crores admitted by the assessee and surrendered to tax as undisclosed income during the search and seizure action. AO initiated the penalty proceedings U/s. 271(1)(c) of the Act in respect of the income surrendered by the assessee and levied the penalty. CIT(A) deleted the penalty on the ground that the additional income surrendered by the assessee was based on statements recorded during the search and not based on any seized material or any finding in the assessment and therefore cannot be treated as concealed income. On appeal by the revenue the Tribunal relied on the decision of Rajasthan High Court in the case of *Jai Steel (India) v. ACIT (2013) 259 ITR 281 (Raj) (HC)* which held that the addition made in absence of incriminating material in the proceedings U/s. 153A of the Act where the assessment was not pending on the date of search is not sustainable. Thus, upholding the order of Ld. CIT(A), Tribunal held that once the assessee has raised all these contentions and explained during the penalty proceedings that the transactions of purchase and sale of shares and consequential long term capital gain are genuine based on the documentary evidence and further all these were part of the books of account and disclosed in the return of income filed U/s. 139 of the Act, it would certainly lead to the conclusion that the penalty was not leviable U/s. 271(1)(c) of the Act. (AY. 2013-14)

DCIT v. Rajendra Agarwal (2019) 71 ITR 518 (Jaipur)(Tirb.)

S. 271(1)(c) : Penalty – Concealment – Notice U/s. 274 issued without striking off the irrelevant words show non – application of mind by the AO. [S. 274] 2119

The Assessing Officer had issued notice U/s. 274 to levy penalty S. 271(1)(c) for concealment of income or furnishing inaccurate particulars to levy penalty for disallowance of interest and certain other business expenses, without striking off any of the aforesaid limbs. The Tribunal following the decisions in *Dilip N. Shroff v. JCIT (2007) 291 ITR 519 (SC)* and the dismissal of the Special Leave Petition in SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC)/ 366 ITR 13 (SC) (St) held that as the AO did not strike off the irrelevant words, the penalty proceedings were without application of mind and thus unsustainable. (AY. 2010-11)

BSM Developers Pvt. Ltd. v. ITO (2019) 179 DTR 193 / 73 ITR 69 / 200 TTJ 388 (Delhi) (Trib.)

S. 271(1)(c) : Penalty – Concealment – In order to levy penalty, it should be proved that assessee has consciously concealed income or furnished inaccurate particulars and penalty proceedings were vitiated if AO did not mention the limb under which penalty is levied under S. 271(1)(c) in the notice. [S. 274] 2120

In the proceedings under S. 143(3), AO had made addition on two grounds i.e. disallowance and carried forward of loss at the time of splitting the society and carry

forward to new society and disallowance of excess depreciation i.e. full depreciation claimed even on assets put to use for less than 180 days. Further, AO levied penalty on both these grounds. CIT(A) confirmed the disallowances as well as penalty levied by the AO. Aggrieved, assessee filed an appeal before Tribunal. Tribunal held that the parent co-operative society had suffered losses in the earlier year and on splitting of parent society, assessee was created and took over the liability including the brought forward losses of the earlier years. The genuineness of the claim of assessee had not been doubted by the Authorities and assessee had disclosed all material facts in return as well as to the authorities. Tribunal further held that in the notice of penalty, AO did not mention under which limb of S. 271(1)(c) penalty was to be imposed. Accordingly, Tribunal held that penalty proceedings were vitiated and deleted the penalty. (AY. 2006-07)
Ballabgarh Co-Operative Milk Producers Union Ltd. v. ACIT (2019) 73 ITR 434 (Delhi) (Trib.)

2121 **S. 271(1)(c) : Penalty – Concealment – Recording the satisfaction as regards concealment of particulars of income – Imposition of penalty for furnishing inaccurate particulars of income – Levy of penalty is held to be not valid. [S. 274]**
Third member held that when the AO has recorded the satisfaction as regards concealment of particulars of income while initiating the penalty proceedings and imposed penalty for furnishing inaccurate particulars of income, the levy of penalty is not sustainable. (AY. 2006-07, 2008-09)
Harvinder Singh v. ITO (2019) 200 TTJ 137 / 179 DTR 225 (TM) (Amritsar)(Trib.)

2122 **S. 271(1)(c) : Penalty – Concealment – Notice not specifying the charge whether concealing particulars of income or furnishing inaccurate particulars of income – Failure to strike inapplicable words – Levy of penalty is held to be not valid. [S. 274]**
Tribunal held that the show cause notices issued did not specify the charge against assessee as to whether it was for concealing particulars of income or furnishing inaccurate particulars of income and the AO did not struck out the inapplicable words. Accordingly imposition of penalty is held to be not valid. (AY. 2008-09)
Rajesh Enterprises v. ITO (2019) 74 ITR 12 (SN) (Bang.)(Trib)

2123 **S. 271(1)(c) : Penalty – Concealment – Failure to show the interest income due to inadvertent mistake of accountant – Levy of penalty is not justified.**
Tribunal held that Failure to show the interest income due to inadvertent mistake of accountant. Levy of penalty is not justified. (AY. 2012-13)
V. K. C. Jayamohan v. ACIT (2019) 70 ITR 328 (Chennai)(Trib.)

2124 **S. 271(1)(c) : Penalty – Concealment – Share capital with premium – Detection by investigation wing – Survey – Filing of revised return after survey is not with *bona fide* intention – Levy of penalty is held to be justified.**
Tribunal held that disclosure made in the revised return after survey to purchase peace and to avoid litigation was not a voluntary disclosure but an attempt to avoid the situation created by the Investigation Wing during the survey more particularly since the assessee had been confronted with the incriminating materials found therein. The

intention of the assessee in disclosing the amount in the revised return did not prove his bona fides nor was the surrender of income voluntary. If the conduct of the assessee came under the purview of Explanation 1 to S. 271(1)(c) the income disclosed by him represented income in respect of which particulars had been concealed. The voluntary disclosure did not release the assessee from the mischief of penalty proceedings. The assessee failed to prove the genuineness or creditworthiness and identity of the persons who had given share capital and premium. Had it been the intention of the assessee to disclose the income voluntarily the assessee would have disclosed the income by filing the revised return before the survey. Explanation 1A to S. 271(1)(c), therefore, was fully satisfied accordingly the levy of penalty is held to be justified. (AY. 2009-10)
Soni Ashokkumar Maganlal v. ACIT (2019) 70 ITR 409 (Ahd.)(Trib.)
Soni Hiralal Mangal v. ACIT (2019) 70 ITR 409 (Ahd.)(Trib.)
Soni Kamlesh Mangal v. ACIT (2019) 70 ITR 409 (Ahd.)(Trib.)

S. 271(1)(c) : Penalty – Concealment of Income – Revised return – Reimbursement of expenses – Information with respect to the impugned transaction was duly disclosed in notes to computation annexed along with original return of income and the assesse had offered a part of income in revised return of income to tax, penalty could not levied. 2125

On appeal before the Tribunal, the Tribunal, held that, penalty provisions U/s. 271(1)(c) of the Act were not attracted since the Assessee had bona fide belief that reimbursement are not taxable based on the existing judicial decisions. It was further held that, the income was offered to tax in the revised return of income, before any enquiry / discussion by the AO. Order of CIT(A) deleting the penalty is affirmed. (AY. 2004-05, 2007-08)
Adidas Sourcing Ltd. v. DCIT (2019) 175 DTR 245 / 198 TTJ 130 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Charge is not specified – Inaccurate particulars of income – Levy of penalty on concealing particulars of income – Levy of penalty is held to be void ab initio – Explanation 5A. [S. 153C, 274] 2126

Allowing the appeal of the assesse the Tribunal held that initiation of penalty on one ground and levy of penalty on another ground is impermissible in law. The AO had issued a notice U/s. 271(1)(c) on the grounds of 'furnishing inaccurate particulars of income'. The penalty order passed by the AO was on the grounds of 'concealing particulars of income'. This was impermissible in law. Followed *CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom.)(HC), Tata Communications Ltd. v. DCIT in ITA. No. 3108/M/2016 dt 21/02/2018. (Mum.)(Trib.)* (ITA. No. 515/Mum/2016/514 & 513 dt 19.12.2018)
Kesar Realty Pvt. Ltd. v. DCIT (Mum.)(Trib.)(UR)
Kesar Housing and Development Co. v. DCIT (Mum.)(Trib.)(UR)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Statement U/s. 132(4) – Partner specifying the manner in which the disclosed income was earned – Entitled to claim immunity. [S.132(4)] 2127

Dismissing the appeal of the revenue, the Court held that, during the process of recording a statement of the assessee under S. 132(4), in reply to a query to a partner

of the assessee-firm to elaborate on the details of the undisclosed income and how it was earned by him and the group, the partner had stated that the undisclosed income of ₹ 35 crores declared by him and his group was earned out of a land-related transaction which was not recorded in the books of account. He had further stated that the break-up of such income person-wise and firm-wise would be submitted after opening the bank locker and that such disclosure was made with the consent of the family members and all the partners. The answer of the partner thus, in addition to confirming the disclosure of the undisclosed income, further stated that the income was earned by the group out of a land-related transaction which was not previously recorded in the books. This was, thus, specifically in compliance with the requirement of establishing the manner in which the income was earned. Although at that stage, he could not give the break up of such income person-wise or firm-wise citing the reason of sealing of the bank locker that would not be of much relevance. The answer was in sufficient compliance with the requirement of the disclosing the manner of earning the income.
PCIT v. Sun Corporation (2019) 419 ITR 414 (Guj.)(HC)

2128 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Notice issued U/s. 271AAA and subsequent corrigendum issued stating that notice was U/s. 271AAB – Notice and subsequent levy of penalty is held to be valid. [S. 132, 271AAB]**
Dismissing the appeal, the Court held that there was no substantial difference between S. 271AAA and S. 271AAB of the Act, except that S. 271AAA would apply in cases where search has been initiated under S. 132 on or after the first day of June 2007 but before the first day of July 2012, whereas S. 271AAB would apply in cases where search has been initiated under S. 132 on or after the first day of July 2012. The notice and the order of penalty were valid.
Ramgopal Ochhavlal Maheshwari v. DCIT (2019) 417 ITR 710 (Guj.)(HC)

2129 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Immunity from penalty – Explaining manner in which undisclosed income derived – Paying tax and interest – Deletion of penalty is held to be valid. [S. 132(4)]**
Dismissing the appeal of the revenue the Court held that the assessee explained the manner in which undisclosed income derived and paid the tax and interest. Deletion of penalty is held to be valid. (AY. 2011-12)
PCIT v. Ravani Developers (2019) 415 ITR 91 (Guj.)(HC)

2130 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Manner of earning of earning of undisclosed income was substantiated – Deletion of penalty is held to be justified. [S. 132(4)]**
Dismissing the appeal of the revenue the Court held that ; during course of assessment proceedings the assessee had submitted several documents/communications to substantiate manner in which undisclosed income was derived, hence the Tribunal is justified in deleting the penalty levied by the AO. (AY. 2012-13)
PCIT v. Bhavi Chand Jindal (2019) 105 taxann.com 77 / 263 Taxman 242 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Bhavi Chand Jindal (2019) 263 Taxman 241 (SC)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Manner of earning the undisclosed income to be given in the statement under S. 132(4) only, if a question is asked to that effect – Deletion of penalty is held to be justified. [S. 132(4)] 2131

As per sub-section (2) of S. 271AAA, no penalty is leviable under sub-section (1) if the assessee in his statement recorded under S. 132(4) admits the undisclosed income, specifies the manner in which such income has been earned and satisfies certain other conditions. Held that where the assessee had admitted the undisclosed income but not specified the manner in which such income was earned in his statement under S. 132(4), penalty under the section was still not leviable, since the Officer had not asked a question requiring the assessee to specify the manner in which such income was earned. Appeal of revenue is dismissed.

PCIT v. Phoenix Mills Ltd. (2019) 175 DTR 433 / 307 CTR 700 (Bom.)(HC)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – AO must establish there was undisclosed income – Estimated income not undisclosed income – No specific finding in respect of any specific seized material or undisclosed income detected as a result of search – Penalty is not leviable. [S. 132] 2132

The AO levied a penalty of ₹ 76,42,611/– under S. 271AAA of the Income – tax Act, 1961 at 10 per cent after computation of an undisclosed income of ₹ 7,64,26,117/–. The penalty order did not provide for any specific finding in respect of any specific seized material or undisclosed income detected as in the course of search. The CIT(A) deleted the penalty on the grounds that the Assessing Officer had not examined the matter properly under S. 271AAA and assessed the income mechanically either on an estimated basis or on account of the assesse's inability to produce audited accounts for certain entities. The CIT(A) had specifically noted in the quantum proceedings that the principles of natural justice were not followed. On appeal, it was held that that the burden of proof in the penalty proceedings is independent and greater than in the assessment proceedings and the assessment proceedings and penalty proceedings are different. While levying the penalty, the AO had nowhere mentioned specifically any undisclosed income within the meaning of undisclosed income given under S. 271AAA. The penalty order was devoid of any specific finding in respect of any specific seized material or undisclosed income detected as a result of search. It was incumbent upon the Assessing Officer to first establish that there was undisclosed income within the meaning of S. 271AAA before any penalty under the section could be levied. (AY. 2012-13)

Dy. CIT v. Himanshu Verma (2019) 76 ITR 698 (Delhi)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Retraction of statement – Filing return admitting the additional income after retraction the assessee is not entitle to exemption – No requirement of recording satisfaction for imposing penalty – Immunity from penalty – Both conditions need to be satisfied. [S. 132(4)] 2133

Tribunal held that though the asessee admitted the undisclosed income in statement U/s. 132(4) but later retracted the same from the statement, therefore the original admission came to be effected. The assessee thereafter filing the return offering the income disclosed U/s. 132(4) in the return of income will not get the immunity as per S.

271AAA(2)(i) of the Act. Levy of penalty is held to be justified. Tribunal held that there is no requirement of recording satisfaction before imposing penalty, unlike S. 271(1)(c) of the Act. Tribunal also held that for satisfying the immunity from penalty, conditions to be satisfied cumulatively i.e. surrender undisclosed income and to specify manner in which such income derived and pay taxes with interest in respect of undisclosed income along with return and the CIT(A) has the power to enhance the penalty. (AY. 2009-10)
Sanjay Dattatray Kakade v. ACIT (2019) 175 DTR 1 / 70 ITR 519 / 198 TTJ 50 (Pune) (Trib.)

2134 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Common appeal filed – Wrong advice – Delay was condoned – Matter remanded. [S. 246A, 271(1)(c)]**
Assessee had received orders imposing penalty U/s. 271(1)(c) as well as U/s. 271AAA for relevant year. As per the advice of his CA, assessee had filed a common appeal against both these orders. On realizing that a separate appeal was to be submitted by assessee against order imposing penalty U/s. 271AAA, assessee filed appeal seeking condonation of delay in filing said appeal. The CIT(A) dismissed appeal holding that ignorance of law cannot be a justifiable reason. Tribunal held that, C.A. had advised assessee to file one common appeal, since assessee could not be penalized for no fault of its own, thus the order was remitted back to the CIT(A) to verify facts whether assessee had challenged penalty imposed U/s. 271(1)(c) and 271AAA by filing a single appeal and if said pleading was found to be correct, said mistake being a technical mistake. Accordingly the delay was condoned and matter was remanded to CIT(A) to decide on merit. (AY. 2011-12)
Vijay Kumar Sood v. DCIT (2019) 178 ITD 251 (Chd.)(Trib.)

2135 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Retraction of statement – Filing the return admitting the additional income after retraction the assessee is not entitle to exemption – No requirement of recording satisfaction before imposing penalty – Immunity from penalty – Conditions to be satisfied cumulatively ie. surrender undisclosed income and to specify manner in which such income derived and pay taxes with interest in respect of undisclosed income along with return. CIT(A) has the power to enhance the penalty. [S. 132(4), 251, 271AAA(2)]**
Tribunal held that though the asessee admitted the undisclosed income in statement U/s. 132(4) but later retracted from the statement, original admission came to be effected. The assessee thereafter filing the return offering the income disclosed U/s. 132(4) in the return of income will not get the immunity as per S. 271AAA(2)(i) of the Act. Levy of penalty is held to be justified. Tribunal held that there is no requirement of recording satisfaction before imposing penalty, unlike S. 271(1)(c) of the Act. Tribunal also held that for satisfying the immunity from penalty,conditions to be satisfied cumulatively ie. surrender undisclosed income and to specify manner in which such income derived and pay taxes with interest in respect of undisclosed income along with return and the CIT(A) has the power to enhance the penalty.(AY. 2009-10)
Sanjay Dattatray Kakade v. ACIT (2019) 70 ITR 19 (Pune)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Failure to specify and substantiate manner in which undisclosed income was derived rather embarked upon mercy plea that he was making surrender to buy peace of mind and avoid litigation – levy of penalty is held to be justified [S. 153A] 2136

Pursuant to notice under S. 153A, assessee filed its return wherein certain income was surrendered on account of unexplained investment in construction of a project and difference in stock. AO levied the penalty for failure to specify and substantiate manner in which undisclosed income was arrived. CIT(A) confirmed the order of AO. On appeal the Tribunal held that failure to specify and substantiate manner in which undisclosed income was derived rather embarked upon mercy plea that he was making surrender to buy peace of mind and avoid litigation – levy of penalty is held to be justified. (AY. 2009-10)

Narsi Iron & Steel (P.) Ltd. DCIT (2019) 175 ITD 213 / 177 DTR 420 / 199 TTJ 656 (Delhi) (Trib.)

S. 271AAB : Penalty – in search case – Assessee not person subjected to search – Penalty proceedings against assessee not sustainable. [S. 132(4)] 2137

It has been held by the Appellate Tribunal that the applicability of S 271AAB is integrally connected to search under S. 132 of the Act. In the absence of search under S.132 the assessee has no occasion to avail of the concessional treatment by way of admission under S. 132(4) of the Act. The penalty in the case of the assessee could not be sustained as the assessee was not the person who was subjected to search and consequently the provisions of S. 271AAB could not be invoked in his case. (AY. 2007-08 to 2012-13)

Suresh H. Kerudi v. ITO (2019) 76 ITR 44 (Bang.)(Trib.)

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Entries in the books of account – No penalty can be levied. [S. 2(12A)] 2138

If the assessee has made the necessary entries in the books of account and also indicated the income in its audit report then no penalty can be levied. (AY. 2013-14)

Dy. CIT v. Rajgaria Timbers P. Ltd. (2019) 74 ITR 36 (SN) (Kol.)(Trib.)

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Amount surrendered – No reasonable opportunity was given Matter remanded to the AO. [S. 132, 274] 2139

During course of search proceedings the assessee surrendered certain additional income. AO added said amount to assessee's taxable income and also levied the penalty. CIT(A) confirmed the penalty. On appeal before the Tribunal, the assessee contended that surrender was made on understanding that no penalty would be visited upon him. No such discretion was vested upon revenue authorities and any such belief entertained by assessee has no legal sanction. However, the Tribunal held that in view of fact that an effective opportunity of being heard had not been exercised by assessee on account of misconception entertained and mistaken belief, impugned penalty order was to be set aside and, matter was to be remanded back for disposal afresh. (AY. 2013-14, 2014-15)

Genex Industries Ltd. v. DCIT (2019) 179 ITD 16 (Chd.)(Trib.)

2140 **S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Undisclosed income – Additional amount declared – Penalty levied at 60 % on the amount surrendered is not valid – Penalty can be levied only at 10 % of surrendered income – Additions made in respect of debatable issue levy of penalty is not justified. [S. 132(4), 271AAB(1)(a), 271AAB(c), 274]**

Assessee disclosed additional income in the course of search proceedings to coverup any disallowances/ additions / stock etc. The amount disclosed was included in the return of income for the purpose of taxation. The AO has also made other additions. The AO levied the penalty in respect of amount surrendered and also in respect of other additions applying the provisions of S. 271AAB(1) (c) at the rate of 60% of the undisclosed income. Penalty was confirmed by CIT(A). Allowing the appeal of the assessee the Tribunal held that in respect of other additions such as disallowances U/s. 14A and 36(1)(v) being debatable issue the levy of penalty is not justified. As regards the surrender of income in respect of stock which was not disclosed by the assessee which was surrendered in the course of search proceedings and has substantiated the manner of earning of income hence penalty is leviable @ 10% of the amount sundered U/s. 271AAB(1)(a) of the Act and not @ 60% under S. 271AAB(1)(c) of the Act. (ITA No. 695/ CHD/ 2018 dt 18-4-2019 AY. 2014-15)

SEL Textiles Ltd. v. DCIT (2019) 181 DTR 217 (Chd.)(Trib.)

2141 **S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Undisclosed income – Surrender of long term capital gain – income – Would not ipso facto be regarded as undisclosed income unless and until it is tested as per definition provided in Explanation to S. 271AAB of the Act – Order of penalty is quashed. [S. 45, 132(4), 153A, 275]**

In course of search proceedings, statement of assessee was recorded under S. 132(4) wherein he surrendered long-term capital gain arising from sale of shares. AO levied the penalty in respect of surrender of income. Tribunal held that all transactions of purchase and sale and LTCG arising from sale of equity shares of listed companies were duly recorded in books of account, primary condition for treating such income as undisclosed income in terms of S. 271 AAB was not satisfied, accordingly the penalty was quashed. (AY. 2016-17)

Aparna Agrawal (Smt.) v. DCIT (2019) 176 ITD 753 (Jaipur)(Trib.)

2142 **S. 271AAB : Penalty – Search initiated on or after 1st July, 2012 – Levy of penalty is not mandatory – Merely on the basis of surrender the levy of penalty is not justified. As regards cash found in the Cause of search which was not disclosed in the books of account, levy of penalty was confirmed.**

Levy of penalty under S. 271AAB is not based on addition made and investigation/ enquiry conducted during the course of assessment proceedings, rather it is based on search conducted on the assessee. Even if it is assumed that primary charge of undisclosed income has to be read along with ancillary conditions, where the AO has not stated the specified charge at the time of initiation of penalty proceedings, such uncertain charge at the stage of initiation of penalty proceedings can be made good with a clear cut charge in the penalty order. Merely on the basis of surrender the levy

of penalty is not justified. As regards cash found in the Cause of search which was not disclosed in the books of account, levy of penalty was confirmed. (AY. 2014-15)
Rambhajo's v. ACIT (2019) 198 TTJ 142 / 175 DTR 161 (Jaipur)(Trib.)

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Disclosure of undisclosed income – Disclosed manner of earning of income and paid tax along with interest – Liable to pay penalty at 10% and not at 30%. [S. 132(4)] 2143
Tribunal held that, when the assessee suo motu admitted undisclosed income and substantiated manner in which such undisclosed income was earned and had also paid tax together with interest, assessee is liable to pay penalty at rate of 10 per cent in terms of clause (a) of S. 271AAB(1) but not under clause (c) at rate of 30 per cent of S. 271AAB(1). (AY. 2013-14)
ACIT v. Vishal Agarwal (2019) 174 ITD 125 / 175 DTR 127 / 195 TTJ 180 (Kol.)(Trib.)
ACIT v. Shailaja Park (P) Ltd. (2019) 175 DTR 127 / 195 TTJ (Kol.)(Trib.)
ACIT v. Vikash Agarwal (2019) 175 DTR 127 / 195 TTJ 180 (Kol.)(Trib.)

S. 271B : Penalty – Failure to get accounts audited – Audit report was available with AO on date of completion of assessment – Reasonable cause – Penalty not warranted. [S. 273B] 2144
Allowing the appeal the Court held that the explanation offered by the assessee could be taken as reasonable cause for his failure to file the audit report within time. The reasons assigned by the assessee for the delay in filing the audit report were not found to be false or with any mala fide intention. It was a technical breach. The audit report was very much available with the Assessing Officer on March 29, 2015, the date of completion of the assessment under S. 143(3). This was not a fit case for imposing penalty under S. 271B. (AY. 2012-13)
P. Senthil Kumar v. CIT (2019) 416 ITR 336 (Mad.)(HC)

S. 271B : Penalty – Failure to file audit report within time – reasonable cause for delay – Audit report filed before assessment proceedings – Penalty is not warranted. 2145
Tribunal held that, assessee suffered from neurological problems since, 2014 and was compelled to take the assistance of his manager and accountant, to look after his business activities. However, they failed to co-ordinate with the auditor's office and the audit could not be completed within the stipulated time and there was a delay in filing the audit report. The assessee had a reasonable cause for delay in filing the audit report. Hence penalty U/s. 271B is not warranted. (AY. 2016-17)
K. Borra Reddy v. ITO (2019) 76 ITR 78 (SN) (Hyd.)(Trib.)

S. 271B : Penalty – Failure to get accounts audited – Audit report is made available before completion of assessment – No loss to revenue – Levy of penalty is held to be not valid. [S. 44AB] 2146
Tribunal held that the assessee got its books of accounts audited on March 28, 2014 and they were made available to the Assessing Officer and no prejudice had been caused to the Revenue. The assessee had only committed a technical or venial breach which did not create any loss to the exchequer as the audit report was available to the Assessing

Officer before the completion of the assessment proceedings. Levy of penalty is held to be not justified. (AY. 2013-14)
Johns Biwheelers v. ACIT (2019) 70 ITR 325 (Cochin)(Trib.)

2147 **S. 271B : Penalty – Failure to get accounts audited – Illness of Director cannot be the reasonable cause for long delay in complying audit obligation – Levy of penalty is held o be justified. [S. 44AB, 273B]**
Dismissing the appeal of the assessee the Tribunal held that, illness of Director cannot be the reasonable cause for long delay in complying audit obligation. Levy of penalty is held to be justified. (AY. 2012-13, 2013-14)
Haldar Foods (P.) Ltd. v. ITO (2019) 176 ITD 496 / 200 TTJ 896 / DTR 257 (Asr.)(Trib.)

2148 **S. 271B : Penalty – Failure to get accounts audited – Assessee bona fide in treating commission income as turnover along with other turnover which was below limit for audit – Department treating unaccounted turnover as part of total turnover holding assessee liable for penalty for failure to get accounts audited – Penalty liable to be deleted. [S. 44AB]**
The assessee was in the business cloth trading. The assessee was asked to explain the source of certain cash deposits in his bank account. The assessee submitted that the amount was collected from 'feriwalas' (peddlers) against cloth supplied to them and commission at 1% was earned on purchased cloth. Income from commission had been duly offered to tax. The total turnover of the assessee including the commission income was below the limit for tax audit provided under S. 44AB of the Income-tax Act, 1961. The AO rejected the assessee's explanation and computed the net profit of the wholesale business at 9.1% on the undisclosed turnover and made further additions. He initiated penalty proceedings under S. 271B for failure to get the accounts audited under S. 44AB, since the declared turnover of the assessee was increased by the turnover of cash deposit in the bank account. The Commissioner (Appeals) confirmed the levy of penalty. On appeal, the Tribunal held that the assessee had bona fide treated the commission income as turnover along with other turnover accounted in his books of account during the year 2012-13 which was below the limit under S. 44AB. The AO was not right in treating the unaccounted turnover as part of the total turnover and hold the assessee liable for penalty under S. 271B for not getting his books of account audited. The penalty was liable to be deleted. (AY. 2011-12)
Vinay Agrawal v. ITO (2019) 76 ITR 16 (SN) (Indore)(Trib.)

2149 **S. 271B : Penalty – Failure to get accounts audited – Accommodation entries – Gross amount received to be considered for computing monetary limits of ₹ 40 lakhs and not the commission earned by him – levy off penalty is held to be justified. [S.44AB]**
Dismissing the appeal of the assessee the Tribunal held that assessee, engaged in providing accommodation entries to entry seekers on commission basis, gross amount received had to be taken into consideration for computing monetary limit of ₹ 40 lakhs as specified under S. 44AB and not commission income earned by him. Accordingly the levy of penalty is held to be justified. (AY. 2002-03, 2006-07, 2007-08)
Mukesh Choksi v. ACIT (OSD) (2019) 175 ITD 394 (Mum.)(Trib.)

S. 271C : Penalty – Failure to deduct at source – Pendency of appeal before Appellate Tribunal – Revenue authorities should be restrained from passing any order imposing penalty. [S. 201, 206AA] 2150

On account of assessee's failure to deduct tax at source, AO raised demand under S. 201 and during pendency of appellate proceedings, he initiated penalty proceedings under S. 271C of the Act. On writ the Court has directed that so long as appeal was pending before Tribunal, revenue authorities should be restrained from passing any order imposing penalty on assessee under S. 271C and 206AA of the Act. (AY. 2018-19)

Uber India Systems (P.) Ltd. v. JCIT (2019) 262 Taxman 133 (Bom.)(HC)

S. 271C : Penalty – Failure to deduct at source – Regular delays on part of assessee in depositing tax deducted at source – Levy of penalty is held to be justified. [S. 273B] 2151

AO held that the tax deducted at source was deposited belatedly by assessee to Central Government's account. Accordingly the penalty was levied U/s. 271C of the Act. Tribunal set aside the order levying the penalty.

On appeal by the revenue the Court held that from years 2009-10 onwards there had been delay in making payments as was borne out from records and the only explanation offered by assessee was that there was failure of clerk who failed to discharge her duties properly. High Court confirmed the levy of penalty. (AY. 2010-11, 2012-13)

CIT v. Eurotech Maritime Academy (P.) Ltd. (TDS) (2019) 415 ITR 463 / 106 taxmann.com 86 / 264 Taxman 22 (Ker.)(HC)

Editorial : SLP is granted to the assessee, Eurotech Maritime Academy (P.) Ltd. v. CIT (TDS) (2019) 264 Taxman 21 / 411 ITR 37 (St.)(SC)

S. 271C : Penalty – Failure to deduct at source – Delay in paying whole or part of tax deducted at source – Reasonable cause – Penalty can be waived or reduced – Interpretation – When there is ambiguity interpretation in favour of assessee is to be adopted. [S. 194C, 276C(1), 273B] 2152

Question before the Full Bench was whether for delay in paying whole or part of tax deducted at source, penalty can be waived or reduced. Court held that, S. 271C (1) of the Income-tax Act, 1961 deals with penalty in cases of deduction of tax at source. Under the first clause, i.e., clause (a), penalty is for failure to deduct tax at source, as required by or under the provisions of Chapter XVII – B and under no other circumstances. Under the second clause, i.e. clause (b), penalty is for failure to pay the whole or any part of the tax, as further clarified by the words which follow the said stipulation, i.e. "as required by or under, (i) sub – section (2) of section 115 – O; or (ii) second proviso to S. 194B." Except for the failure with respect to the above two instances, no other instance is mentioned under clause (b) to attract payment of penalty. Section 115-O is part of Chapter XII-D and it does not come within the purview of any deduction under Chapter XVII-B envisaged under clause (a) of S. 271C(1). S. 194B, on the other hand, definitely comes under Chapter XVII-B. The Chapter contains various instances of deduction of tax at source. In so far as the law makers have taken a conscious decision to identify only S. 194B of Chapter XVII-B of the Act (leaving the payment of tax deducted in respect of other instances in the very same Chapter) to be liable to penalty, the instances covered by clause (a) of S. 271C(1) cannot be read into

clause (b) of S. 271C(1). In other words, it is not for the court to rewrite the law or question the legislative wisdom of the law makers in this regard. However, a doubt may arise as to whether there was any intent on the part of the law makers to let the defaulters go scot free, if penalty cannot be levied upon them for non-payment even after deduction of tax, which is a more serious lapse than the failure to deduct tax. The situation has been taken care of by Parliament, in section 276B of the Act, providing for prosecution in specific circumstances. Even in a case where there is some delay in effecting payment of tax, if proper and sufficient reasons are shown for the delay involved, the mitigating circumstances can very well be considered by the competent authority, who can waive the penalty (wherever penalty can be legally imposed) or reduce it to an appropriate extent. This is the mandate of S. 273B. Once the burden is discharged by the person or assessee as to the existence of good and sufficient reason for not complying with the stipulation under S. 271C, it is for the authorities to consider with proper application of mind, whether the penalty is to be waived or reduced, based on the facts and circumstances. S. 271C of the Income-tax Act is quite categorical. Its scope and extent of application is discernible from the provision itself, in unambiguous terms.

Circular No. 551 dt. 23-1-1990 (1990) 183 ITR 7 (St)deals with the circumstances under which S. 271C was introduced in the statute book, for levy of penalty. On deduction of tax, if there is delay in remitting the amount to the Revenue, it has to be satisfied with interest as payable under S. 201(1A) of the Act, besides the liability to face the prosecution proceedings, if launched in appropriate cases, in terms of section 276B of the Act. This alone has been sought to be explained in the Circular issued by the CBDT. Even according to the CBDT, no penalty is envisaged under S. 271C of the Act for non – payment of the tax deducted at source. Court also observed that, it is settled law that, if the interpretation of a fiscal enactment is in doubt, the construction most beneficial to the subject or assessee should be adopted, even if it results in obtaining an advantage to the subject or assessee.

Note : *U. S. Technologies International Pvt. Ltd. v. CIT (2010) KHC 6118* and *Classic Concepts Home India Pvt. Ltd. v. CIT (2016) 383 ITR 626 (Ker.)(HC)* is overruled.

Lakshadweep Development Corporation Ltd. v. ACIT (TDS) (2019) 411 ITR 213 / 307 CTR 500 / 175 DTR 369 (FB) (Ker.)(HC)

2153 **S. 271C : Penalty – Failure to deduct at source – *bona fide* belief – Whether payee is in the category of government or local authority No penalty is leviable.**

An appeal has been filed by the assessee against impugned order passed by CIT(A). Tribunal held that in relation to the penalty proceedings U/s. 271C it is evident that the payments have been made by the assessee to HUDA which is an authority of Haryana Government created by enactment of Legislature for carrying out developmental activities in the state of Haryana. Such Authorities admittedly are not in the category of local authority or Government. Further, prior to issue of CBDT Circular dated 23-12-2017, there was no clarity as regard the deduction of tax on these payments. Therefore, the assessee was under a *bona fide* belief that no tax is required to be deducted at source on such payments. In case, even if tax was required to be deducted on such payment but not deducted under a *bona fide* belief then no penalty shall be leviable under S. 271C of the Act as there was no contumacious conduct by the assessee. (AY. 2017-18)

Shiv Sai Infrastructure (P) Ltd. v. PrCIT (2019) 175 DTR 30 / 69 ITR 585 / 197 TTJ 889 (Delhi)(Trib.)

S. 271C : Penalty – Failure to deduct at source – Leave travel allowance – Bona fide belief – levy of penalty is held to be not justified. [S. 192, 201(1), 201(1)(A)] 2154

Assessee Bank paid Leave travel allowance (LTA) to its employees without deducting tax at source. AO held that when travel was outside India irrespective of fact that ultimate destination was India, tax ought to have been deducted at source. Assessee was held to be an assessee in default under S. 200(1) and S. 201(1A) of the Act. AO levied the penalty. The Tribunal held that assessee was under a bona fide belief that, if employee's final destination was in India, irrespective of fact that en-route journey was out of India, Leave travel allowance (LTA) was exempt. Accordingly the penalty levied was deleted. (AY. 2011-12 to 2013-14)

Syndicate Bank v. ACIT (2019) 179 ITD 178 (Bang.)(Trib.)

S. 271C : Penalty – Failure to deduct at source – It is necessary to establish that there was contumacious conduct on the part of the assessee – Penalty levied was deleted. [S. 273B] 2155

The Assessee is a university engaged in the field of education and runs various educational and professional courses. Assessee entered in to an MOU with AD education & research. During the year assessee paid certain amounts to AD education & research for the services provided for the procurement of students. AO treated such payment as commission on which TDS was liable to be deducted U/s. 194H of the Act. He noted that there was failure on the part of assessee for non-deducting TDS on commission paid. AO further levied penalty U/s. 271C. CIT(A) sustained the penalty. Aggrieved by the same, assessee filed an appeal before ITAT challenging the levy of penalty U/s. 271C. The Tribunal observed that assessee had agreed to share fees as high as 50% of association fees and 20% of course fees with the service provider, and held that the said payment seems to be more in the nature of revenue sharing rather than payment of commission for services rendered by the service provider. Therefore, it cannot be held conclusively that such payments would surely fall in the definition of commission so defined in S. 194H of the Act. Further it was a debatable issue and thus levy of penalty for non-deduction of TDS cannot be justified. The explanation of the assessee that it was under a *bona fide* belief that such payments doesn't call for TDS cannot be disputed. The Tribunal further noted that subsequent to TDS verification by the Department when such matter was pointed out to the assessee, the latter has complied with the same by depositing appropriate TDS along with interest. The Tribunal held that for levy of penalty U/s. 271C what is necessary is to establish that there was contumacious conduct on the part of the assessee which is not present in the case of the assessee. In light of above discussions and keeping in view the provisions of S. 273B of the Act, the penalty so levied U/s. 271C was deleted. (AY. 2012-13)

Jaipur National University v. Jt. CIT (2019) 175 DTR 337 (Japur.)(Trib.)

S. 271C : Penalty – Failure to deduct at source – Leave travel concession – Foreign travel – Bona fide belief that there was no bar on travel to a foreign destination during course of travel to a place in India – Levy of penalty is held to be not justified. [S. 10(5), 192, 273B] 2156

Allowing the appeal of the assessee, the Tribunal held that the Bank has not deducted the tax at source in respect of leave travel concession granted to employees in respect

of foreign travel under the *bona fide* belief that there was no bar on travel to foreign destination. There being a reasonable cause in terms of S.273B for not deducting tax at source, penalty levied was deleted. (AY. 2012-13)
State Bank of India v. ACIT (2019) 174 ITD 551 / 197 TTJ 989 (Jaipur)(Trib.)

2157 **S. 271D : Penalty – Takes or accepts any loan or deposit – Burden is on assessee to prove reasonable cause – Burden is not discharged – Levy of penalty is held to be justified. [S. 269SS, 273B]**
Dismissing the appeal, the Court held that none of the facts contended or proved by the assessee would constitute a valid explanation or reasonable cause coming within the purview of S. 273B. The mere proof that the loans were repaid through cheques drawn in the name of the lenders or that there was no attempt to induct black money into the business, itself could not be considered as a reasonable cause or as a compelling circumstance under which the mandate of S. 269SS could be violated. It could not be termed as a reasonable cause contemplated under S. 273B to condone the violation. Accordingly the order imposing the penalty was confirmed.
Listin Stephen v. DCIT (2019) 418 ITR 524 (Ker.)(HC)

2158 **S. 271D : Penalty – Takes or accepts any loan or deposit – Otherwise than by account payee cheque or account payee bank draft – Journal entries – Transaction *bona fide* – Not liable penalty [S. 269SS, 269T]**
Dismissing the appeal of the revenue the Court held that; even though liability recorded in books of account by way of journal entries i.e. crediting amount of party to whom monies payable and debiting account of a party from whom monies were receivable in books of account was in contravention of provisions of S. 269T, yet in that case penalty was not leviable for reason that transaction was bona fide and was not to evade taxes.
PCIT v. Shakti Foundation (2019) 107 taxmann.com 459 / 265 Taxman 243 (Raj.)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Shakti Foundation. (2019) 265 Taxman 242 (SC)

2159 **S. 271D : Penalty – Takes or accepts any loan or deposit – Sum initially advanced as loan by father to son, but later treated as gift transaction cannot be subject to S. 269SS – levy of penalty is not justified. [S. 269S]**
The assessee, an individual, was engaged in the business of share trading. In AY 2008-09 he received a sum of ₹ 2.54 lakhs in cash on different dates from his father. Assessee contended that the amount so received in cash is gift. In support of same, assessee submitted gift deed prepared on 17-5-2011. The Assessing Officer observed that the gift was received in financial year 2007-08 whereas the gift deed was made on May 17, 2011, prepared on stamp paper purchased on May 16, 2011. AO held that the cash accepted was contravention of the provisions of S. 269SS of the Income-tax Act, 1961 and he levied penalty U/s. 271D. The CIT(A) affirmed the penalty. Aggrieved, assessee filed an appeal before the ITAT. The Tribunal observed that the AO had not doubted the genuineness of the transaction as no addition was made U/s. 68. The provision of S. 269SS was brought under the statue to discourage the assessee to justify their unaccounted money. However, in the case on hand, there is no allegation that the

assessee has introduced unaccounted money in his business. Relying on the decision of *G. D. Subraya Sheregar v. ITO (10 SOT 378)*, observed that the expression "any other person" appearing in S. 269SS has been interpreted by the two Benches of the Tribunal in two different ways. One view is that the said expression excludes all those persons who are closely connected with the assessee and the other view is to the opposite effect. Both views are possible views. It is well-settled that there are two possible views, the view favourable to the assessee needs to be accepted. The Tribunal held that such cash transaction, between father and son, which are genuine cannot be brought under the net of tax under the provision of S. 269SS of the Act. The Tribunal went further to hold that, even if it was given as loan at that relevant time and later on the parties agreed to treat as gift, then the matter ends here as the transaction was between son and father which was substantiated with gift deed and confirmation. S. 271D applies on accepting loans & deposits. There is the basic difference between the gift and loan/Deposit. A gift is never paid back/returned to the donor while it is not so in the case of the loan. The Tribunal observed that there was nothing on record to shows that money was paid back to the father by the assessee directly or indirectly. Penalty levied U/s. 271D was thus deleted. (AY. 2008-09)

Hareshkumar Becharbhai Patel v. JCIT (2019) 69 ITR 73 (SN) (Ahd.)(Trib.)

S. 271D : Penalty – Takes or accepts any loan or deposit – Business of civil construction – Adjustment of loan towards sale of flat – Provision is held to be applicable – levy of penalty is held to be justified. [S. 269SS, 269T] 2160

Tribunal rejected the contention of the assessee that cash was towards capital contribution of various projects was not supported by any evidence. Tribunal held that provision is held to be applicable in respect of adjustment of loan towards sale of flats. Accordingly the levy of penalty is held to be justified. (AY. 2012-13, 2014-15)

Golla Narayana Rao v. ACIT (2019) 174 ITD 67 / 176 DTR 201 / 198 TTJ 407 (Visakha)(Trib.)

S. 271E : Penalty – Repayment of loan or deposit – No commercial exigency is shown – Levy of penalty is held to be justified. [S. 2(31), 269SS, 271D, 273B] 2161

Dismissing the appeal the Court held that, the Tribunal found that it had been admitted that cash had been deposited into the bank account of the assessee, but why the funds were withdrawn in cash for repayment to the director and subsequently to the financier remained unexplained. Further the Tribunal had found that the assessment order of the financier showed unaccounted cash and had concluded that the assessee had been used as custodian of the unaccounted cash of the financier. The assessee was not able to give any explanation to substantiate with evidence for repayment of the deposits to the financier. Thus after considering all the factual aspects, the Tribunal had rightly confirmed the levy of penalty under S. 271E. (AY. 2012-13 to 2015-16)

Vasan Healthcare P. Ltd. v. Add. CIT (2019) 411 ITR 499 / 261 Taxman 594 / 177 DTR 9 / 308 CTR 346 (Mad.)(HC)

Editorial : Order of Tribunal in Vasan Healthcare Pvt. Ltd. v. Add. CIT (2019) 69 ITR 189 (Chennai)(Trib), Vasan Medical Centre (I) P. Ltd. v. Add. CIT (2019) 69 ITR 189 (Chennai)(Trib.) is affirmed.

2162 **S. 272A : Penalty – Delay in filing quarterly TDS returns – Tax deducted was deposited in time – Filing of TDS return was delayed in initial years of switch over from manual system to e-filing of quarterly TDS returns due to several technical glitches in working of revenue's server – Levy of penalty is held to be not justified. [S. 272A(2), (K), 273B]**
Allowing the appeal of the assessee the Tribunal held that income tax deducted at source were deposited in time and only filing of the TDS return was delayed in the initial years of switch-over from manual system to e-filing of quarterly TDS returns. As the assessee has shown a reasonable cause falling within parameters of S. 273B of the Act, levy of penalty is held to be not justified. (AY. 2011-12)
Board of Control for Cricket In India v. ACIT (2019) 174 ITD 355 (Mum.)(Trib.)

2163 **S. 272A : Penalty – Failure to file return with in prescribed time period – Penalty provision will attract automatically irrespective income determined in the course of assessment. [S. 139(4A), 272(2)(e), 275(1)]**
Failure to file return with in prescribed time period, penalty provision will attract automatically irrespective income determined in the course of assessment. Penalty proceedings is a separate proceedings from assessment. (AY. 2010-11)
Himalayan Educational Trust v. DCIT (E) (2019) 174 ITD 493 (Chennai)(Trib.)

2164 **S. 275 : Penalty – Bar of limitation – Repayment of deposits or Loans – Issuance of notice on 27-11-2014 – Passing of final order on 21-9-2016 – Barred by limitation. [S. 154, 269T, 271E]**
Allowing the petition the Court held that, the entire proceedings initiated for imposition of penalty under S. 271E for the alleged violation of S. 269T was barred by limitation as prescribed under S. 275(1)(c). Between the issuance of the show-cause notice on November 27, 2014 and the date of passing of the final orders on September 21, 2016, the limitation period prescribed under S. 275(1)(c) had expired. The final order under S. 271E was passed on September 21, 2016 much beyond the period of six months, since the order on rectification under S. 154 was passed on November 26, 2015, though the law did not give any condonation for a pending rectification application filed. The order was quashed and set aside. (AY. 2009-10 to 2011-12)
Karnail Singh v. UOI (2019) 412 ITR 305 / 309 CTR 425 / 180 DTR 37 (Pat.)(HC)

2165 **S. 275 : Penalty – Bar of limitation – Concealment of income – With effect from 1-6-2003 – Limitation of six months from end of month in which order of Tribunal is received – Order received on 31-1-2008 – penalty order was passed on 31-7-2008 – Not barred by limitation [S. 271(1)(c)]**
Court held that S. 271(1)(c) not only speaks of concealment of particulars of income but also furnishing inaccurate particulars of such income. The additions made, to the extent confirmed by the court, led to a finding of inaccurate particulars having been furnished which would enable invocation of s. 271(1)(c). Court also held that, the order of the Tribunal was received on January 31, 2008. The limitation under clause (a) of S. 275(1) was six months from the end of the month in which the order of the Tribunal is received. The penalty order having been passed on July 31, 2008, it was within the

limitation period, though on the last day of the period as provided in clause (a). (AY 1998-99 to 2004-05)
Parisons Roller Flour Mills P. Ltd. v. CIT (2019) 411 ITR 553 / 176 DTR 377 / 307 CTR 825 / 265 Taxman 35 (Mag.)(Ker.)(HC)

S. 275 : Penalty – Concealment – Limitation – Appeal effect order having been passed by AO on 22nd May, 2017 – The six month period of limitation will begin to run from that date – Penalty order passed by AO on 26th April, 2018, passed beyond six months, was barred by limitation. [S. 271(1)(c), 275 (1)(a)] 2166
Allowing the Writ, the High Court held that, the appeal effect order having been passed by AO on 22nd May, 2017, the six-month period of limitation under S. 275(1)(a) of the Act will begin to run from that date (not from the date of 31st Oct., 2017 as claimed to have been received by ITO, (Judicial-II), hence penalty order passed by AO on 26th April, 2018, passed beyond six months, was barred by limitation under S. 275(1)(a). (AY. 2002-03 to 2006-07)
GE Energy Parts Inc. v. DCIT (2019) 310 CTR 729 / 181 DTR 337 (Delhi)(HC)
GE Engine Services Distribution LLC v. DCIT (2019) 310 CTR 729 / 181 DTR 337 (Delhi) (HC)
GE Japan Ltd. v. CIT (2019) 310 CTR 729 / 181 DTR 337 (Delhi)(HC)
Nuovo Pignone v. DCIT (2019) 310 CTR 729 / 181 DTR 337 (Delhi)(HC)

S. 275 : Penalty – Bar of limitation – Initiation of penalty starts from issue of show cause notice and not from date of order U/s. 201(1) – Penalty order was within time and not barred by limitation. [S. 201(1), 201(IA), 271C] 2167
TDS verification proceedings was carried out at the assessee's premises and during the course of such verification, it was found the assessee had not deducted TDS while making payment to M/s AD Education & Research Allahabad. Thereafter, during the course of proceedings U/s. 201(1) r.w.s. 201(1A) of the IT Act, the Assessing Officer held that certain amount paid by the assessee was commission for services provided in procurement of students which was liable for TDS U/s. 194H of the Act wherein TDS @ 10% should have been deducted by the assessee. Since no TDS was deducted, demand of ₹ 99,850/– towards short fall in TDS and interest U/s. 201(1A) amounting to ₹ 11,781/– was raised on the assessee vide order dated 31-10-2012. Thereafter penalty was levied U/s. 271C. On appeal, CIT(A) confirmed the penalty. Before the Tribunal, the assessee contended that the penalty order passed by the Id. JCIT, TDS was barred by limitation. It was submitted that in the instant case, ld. DCIT, TDS while passing the order U/s. 201(1) r.w.s 201(1A) of the Act dated 31-10-2012 has initiated the penalty proceeding and therefore, the penalty order should be passed latest by 30-4-2013 whereas the order has been actually passed on 29-8-2013. Alternatively, it was submitted that JCIT(TDS) issued the show-cause on 11-1-2013 and based on the same, the penalty order can be passed latest by 31-7-2013. It was accordingly, submitted that the order so passed U/s. 271C of the Act is barred by limitation and deserves to be quashed. The Tribunal observed that from the order passed U/s. 201(1) r.w.s. 201(1A) dated 31-10-2012, it is clear that a reference was being made to the JCIT (TDS) for initiation of penalty proceeding U/s. 271C of the Act and the said reference was actually

made vide AO's letter dated 22-1-2013 to JCIT(TDS). Thereafter, the JCIT (TDS) initiated the penalty proceedings U/s. 271C by way of issuance of notice dated 11-2-2013 to the assessee and the penalty order U/s. 271C was, thereafter passed on 29-8-2013 which is well within the limitation period prescribed U/s. 275(1)(c) of the Act. The Tribunal held that the contention that the AO while passing the order U/s. 201(1) r.w.s. 201(1A) has initiated the penalty proceedings was not factually correct as there is no notice which has been issued by the AO to the assessee. Secondly, the contention of the ld AR that the initiation of the penalty proceedings should be reckoned from the date when the reference was made by the AO to JCIT (TDS) cannot be accepted as the initiation of such proceedings have to be by way of issuance of a notice to the assessee and not by mere reference from the AO to JCIT (TDS). The Tribunal thus held that penalty order was within time and not barred by limitation. (AY 2012-13)

Jaipur National University v. JCIT (2019) 175 DTR 337 / 198 TTJ 457 (Jaipur)(Trib.)

2168 **S. 276 : Offences and prosecutions – Deposit of self assessment tax belatedly – No inference can be drawn that there was wilful attempt to evade on part of assessee to evade payment of tax – Prosecution was quashed [S. 132, 140A, 276CC]**

The assessee is a co-operative society. The premises of the assessee was subjected to search and seizure under S. 132. Consequent to search, the AO issued a notice under S. 153A to file its return of income for the assessment years 2006-07 to 2011-12. Since there was no compliance of the aforesaid notice, the AO issued a show-cause notice calling upon the assessee as to why prosecution for the offence punishable under S. 276CC should not be initiated.

In response to the said show-cause notice, the assessee filed returns of income for the assessment years 2010-11 and 2011-12 and declared the total income of certain amount and the total tax payable at certain amount. But the assessee failed to pay the self-assessment tax along with the return of income under S. 140A. Thereafter, the assessee sent a cheque of certain amount towards self-assessment tax due. On the back of the said cheque, it was instructed that 'cheque to be presented at the time of registration of the property'. In view of this instruction, department did not encash the said cheque. The revenue contended that the assessee had willfully and deliberately made an attempt to create circumstances to enable them to evade payment of tax, a compliant was lodged before the court for economic offences, seeking prosecution of the assessee for the offence punishable under S. 276C(2) of the Act. Respondent-department has pointed out that all the payments were made by the petitioners subsequent to the lodging of the compliant and therefore, the said payment do not absolve the petitioner from the rigors of S. 276C(2). Even the cheque was issued with a rider not to encash the same. These circumstances, clearly disclose mens rea on the part of the petitioners to evade tax and hence there is no reason to quash the proceedings. The gist of the offence under S. 276C(2) is the wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act. What is made punishable under this section is an 'attempt to evade tax penalty or interest' and not the actual evasion of tax. 'Attempt' is nowhere defined in the Act or in the Indian Penal Code. In legal echelons 'attempt' is understood as a 'movement towards the commission of the intended crime'. It is doing 'something in the direction of commission of offence'. Viewed in that sense, in order to render the

accused guilty of 'attempt to evade tax' it must be shown that he has done some positive act with an intention to evade tax. In the instant case, the only circumstance relied on by the respondent in support of the charge levelled against the petitioners is that, even though accused filed the returns, yet, it failed to pay the self – assessment tax along with the returns. This circumstances even if accepted as true, the same does not constitute the offence under S. 276C(2). The act of filing the returns by itself cannot be construed as an attempt to evade tax, rather the submission of the returns would suggest that petitioner No. 1 had voluntarily declared his intention to pay tax. The act of submitting returns is not connected with the evasion of tax. It is only an act which is closely connected with the intended crime, that can be construed as an act in attempt of the intended offence. A positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under S. 276C(2).

In the case on hand, conduct of the assessee making payments in terms of the returns filed by him, though delayed and made after coercive steps were taken by the department do not lead to the inference that the said payments were made in an attempt to evade tax declared in the returns filed by him. Delayed payments, under the provisions of the Act, may call for imposition of penalty or interest, but by no stretch of imagination, the delay in payment could be construed as an attempt to evade tax so as to entail prosecution of the petitioners for the alleged offence under S. 276C(2). In that view of the matter, the prosecution initiated against the petitioners, is illegal and tantamount to abuse of process of Court and is liable to be quashed. For the aforesaid reasons, petitions are allowed. The proceedings initiated against the petitioners are quashed. It is made clear that this order shall not come in the way of the department taking necessary steps for recovery of tax, if any, due and payable by the petitioners in accordance with law. (AY. 2006-07 to 2011-12)

Vyalikaval House Building Co operative Society Ltd. v. DCIT (2019) 267 Taxman 81 (Karn.) (HC)

S. 276B : Offences and prosecutions – Failure to pay to the credit tax deducted at source – No reasonable cause was shown for delay Launching of prosecution is held to be valid. [S. 201, 278AA, 279] 2169

The prosecution was launched against the petitioner for alleged offences punishable U/s. 276B read with S. 278B of the Act based on the survey conducted on the assessee. The assessee moved the petition to quash the proceedings. Dismissing the petition the Court held that, the material placed on record prima facie disclosed that the assessee had deducted tax at source but failed to credit it to the account of the Central Government within the prescribed time. The amount was credited subsequent to an Income-tax survey. The prosecution under S. 276B read with S. 278B was valid. (AY. 2011-12, 2012-13)

Golden Gate Properties Ltd. v. Income-Tax Department DCIT (TDS) (2019) 416 ITR 399 / 265 Taxman 213 (Karn.)(HC)

2170 **S. 276B : Offences and prosecutions – Failure to pay to the credit tax deducted at source – Mere delay in depositing TDS within the time limit prescribed in S. 200 & Rule 30 is an offence sufficient to attract S. 276B. The fact that the TDS has been deposited subsequently does not absolve the offence. The fact that penalty U/s. 221 has not been levied is not relevant because there is an admitted delay in depositing TDS. [S. 200, 221, R. 30]**

Company had deducted tax at source for the Financial Years 2010-11 and 2011-12, but had failed to remit the same to the Central Government account as per the provisions of Chapter XVII-B of the Act. Considerable delay of more than one year, that too, in consequence of survey conducted by the Department and repeated reminders. Since, the explanation given by the accused for delay in remittance of TDS was not acceptable, the Commissioner of Income Tax (TDS) after giving sufficient opportunity to the accused, passed an order under S. 279 of the Act authorizing the complainant. Assessee moved the petition to quash the proceedings. Dismissing the petition the Court held that, mere delay in depositing TDS within the time limit prescribed in S. 200 & Rule 30 is an offence sufficient to attract S. 276B. The fact that the TDS has been deposited subsequently does not absolve the offence. The fact that penalty U/s. 221 has not been levied is not relevant because there is an admitted delay in depositing TDS. (FY. 2010-11 & 2011-12) (CR68/2014, dt. 26-4-2019)

Golden Gate Properties Ltd. v. DCIT (2019) 179 DTR 241 / 310 CTR 351 (Karn.)(HC), www.itatonline.org

2171 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Concealment penalty is deleted – Quashing of prosecution is automatic – The High Court can exercise its inherent jurisdiction to quash the prosecution and not indulge in the empty formality of directing the assessee to approach the Trial Magistrate. [S. 271(1)(C), 277, 278, Art. 226, 227]**

Allowing the petition to quash the Criminal proceedings for wilful attempt to evade tax the Court held that,if the assessee's appeal against levy of penalty U/s. 271(1)(c) for concealment of income is allowed by the Appellate Tribunal and has become final, the quashing of prosecution is automatic. The High Court can exercise its inherent jurisdiction to quash the prosecution and not indulge in the empty formality of directing the assessee to approach the Trial Magistrate. Accordingly the prosecution proceedings against the firm and partners are quashed. Followed *K. C. Builder v. ACIT (2004) 265 ITR 562 (SC)(CRMP No. 2075 of 2018, dt. 26-6-2019)* (AY. 1990-91)

System India Casting v. PCIT (2019) 310 CTR 26 / 180 DTR 317 (Chhattisgarh)(HC), www.itatonline.org

2172 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax None of the authorities gave clear finding about evading tax wilfully – Minor lapse on the part of the assessee of not mentioning stock, undisclosed income in the facts of this case do not attract launch of prosecution – Prosecution proceedings were quashed. [S.277, 278B]**

Allowing the petition to quash the prosecution proceedings the Court held that,none of the authorities gave clear finding about evading tax wilfully. Minor lapse on the part of

the assessee of not mentioning some stock in the facts of this case do not attract launch of prosecution under S.276C and 277 read with S. 278B of the Act.
Accordingly, application is allowed by quashing and setting aside the impugned criminal proceedings launched by respondent and Rule is made absolute.
N. R. Agrwal Industries Ltd. v. JCIT (2019) 173 DTR 145 (Guj.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Stay petition dismissed by Tribunal – Quantum appeal is pending Launching of prosecution is held to be not justified – Prosecution was quashed and the assesee was discharged from the prosecution [S. 276(2), Cr.PC S. 498, Economic Offences (Inapplicability of Limitation) Act, 1974] 2173

Tribunal dismissed the stay application of the assesseee. Assessing Officer lunched the prosecution under S. 276C(2) for non-payment of determined tax. Assessee's application for discharge was dismissed by Trial Court. On Criminal revision petition, allowing the petition, the Court held when department was aware of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974. Court also observed that even otherwise, since it could not be concluded that assessee was willfully evading payment of tax, impugned order passed by Trial Court was to be set aside and, assessee was to be discharged from prosecution. 276C) (AY. 1998-99)
Sayarmull Surana v. ITO (2019) 260 Taxman 397 / 173 DTR 338 / 306 CTR 354 (Mad.) (HC); www.itatonline.org

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Penalty appeal is admitted by High Court – When the Appeal is admitted on substantial questions of law, there is no justification for the DCIT to threaten the assessee with prosecution – Even if such prosecution is launched, the same shall not proceed till the pendency of the appeal. [S. 260A, 271(1)(c)] 2174

Allowing the notice of motion the Court held that; once appeal is admitted on substantial questions of law, there is no justification for the Dy. CIT to threaten the appellant/applicant with any prosecution. Even if such prosecution is launched, the same shall not proceed till the pendency of this Appeal. The Notice of Motion is made absolute in terms of prayer clause (a).(ITA No. 785 of 2017, dt. 21-8-2017)
Deepak Fertilizer and Petrochemicals Corporation Ltd v. ACIT (Bom.)(HC), www.itatonline.org
Editorial : Also refer Suresh Company Pvt. Ltd. v. PCIT (ITA No 738 of 2016, Notice of motion 84 of 2019 dt 25-1-2019) (Bom.)(HC)

S. 276CC : Offences and prosecutions – Failure to furnish return of income – Quantum appeal is pending – Petition to quash the proceedings before the magistrate court is dismissed. [S. 139(1), Art. 226 & 227] 2175

Petitioner filed a petition to stay the proceedings before the magistrate court in respect of the prosecution launched against the company and directors for failure to furnish

return of income with in stipulated time as the quantum appeal is pending before the appellate Authorities.
Dismissing the petition the Court held that, the prosecution is launched for failure to file the return as per S.139(1) of the Act, and quantum appeal is not relevant for deciding the issue. Accordingly the petition is dismissed. Followed, *Sasi Enterprises v. ACIT (2014) 5 SCC 139*
Good Home Pvt. Ltd. v. Dy.CIT (2019) 184 DTR 362 (2020) 312 CTR 102 (Ker.)(HC)

2176 **S. 277 : Offences and prosecutions – False statement – Verification Search – Additions made in block assessment based on discrepancy in stocks – Prosecution is not valid. [S. 132, 136, 158BC, 276C (1),278B, CRPC, 1973, S. 482, IPC 193]**
The assessee had filed returns for the assessment years 1993-94, 1994-95, 1995-96 and 1996-97 which were accepted. There was a search action in December, 1995. Proceedings were initiated under S. 158BC. Additions were made on the basis of excess stock discovered. Complaints were filed under S. 276C(1) and 277 read with S 278B. On a writ the Court held that the order of block assessment referred to difference in stock found during the course of search. The assessee had an explanation for it which was rejected. On the facts of this case, it could not be said that with mala fide intention and to evade tax, stock in the stock book was not shown by the assessee. Accordingly the criminal complaint was quashed. (AY. 1993-94 to 1996-97)
N. R. Agarwal Industries Ltd. v. JCIT (2019) 416 ITR 578 / 306 CTR 153 (Guj.)(HC)

2177 **S. 279 : Offences and prosecutions – Sanction – Chief Commissioner Wilful attempt to evade tax – Non technical offence – False statement in verification – Reduction of penalty by CIT(A) – Prosecution cannot proceed – Compounding of offences – Application for compounding to be considered by committee specified in circular – DGIT has no jurisdiction to reject the application. [S. 119, 120, 276C(1), 273B, 277, 279(IA), 279(2), Art. 141]**
The assessee was alleged to have concealed the declaration of endowment in a foreign country in his return of income filed for the assessment year 2002-03 and thereby wilfully attempted to evade tax, penalty and interest and prosecution was launched against him for offences under S. 276C(1) and 277. The assessee filed an application for compounding of the offences. Meanwhile the penalty imposed on him was reduced by the Commissioner (Appeals) and this was confirmed by the Tribunal. The application for compounding was rejected by the Director General of Income-tax. On a writ petition to quash the order, the Court held that even if the Director General of Income-tax was of the view that the application was required to be rejected in the preliminary stage itself, there was a duty cast on him to forward such a compounding application to the committee, who was vested with the jurisdiction to handle the application and not assume such powers on himself. Likewise, when one among the two offences, namely, S. 276C(1) had been classified as a non-technical offence, for the compounding of which powers were vested with the committee, the Director General of Income-tax would have no powers to go into the merits of the compounding application. The Director General of Income-tax had exceeded his jurisdiction in taking up the assessee's compounding application. Just because the order reducing the penalty had been put under challenge

in appeals, it could not be said that the order reducing the penalty itself had been kept under abeyance. In this background, it could only be said that the assessee would be entitled to the benefit of S.279(1A) of the Act and the mere challenge to the order reducing the penalty may not suffice to deny such a benefit. The rejection of the application for compounding was not justified. (Followed *Prem Dass v. ITO (1999) 236 ITR 683 (SC)* / *(1999) 5 SCC 241* (Order of single judge dt 28-8-2019) (AY. 2002-03)
K. M. Mammen v. DIT (2019) 418 ITR 157 / *(2020) 186 DTR 78 (Mad.)(HC)*

S. 281 : Certain transfers to be void – Attachment of property to recover the tax – Direction of TRO to hand over possession of property is stayed – Assessee directed to appear before TRO and adduce necessary evidence for discharging the liability. [Art. 226] 2178

Despite of notice of attachment the property was sold by the owner in favour of the petitioner. The Tax Recovery Officer issued on the assessee a notice dated 27-3-2019 and directed him to handover vacant and peaceful possession of the property to the department. The assessee filed a writ petition challenging the notice dated 27-3-2019. He stated that he was the bona fide purchaser of the property for value without notice. He had no idea about any such notice being issued by the department to Shri Aziz Ahmed Shaikh and he had also no idea that the property was already attached by the department. He placed reliance on the provisions of section 281. The assessee on being asked by the Court pointed out that he has not so far responded in any manner to the notice dated 27-3-2019. If the assessee is seeking to rely upon the proviso (i) to S 281, he needs to point out to the authority concerned that the purchase of the attached property was for adequate consideration and without notice of the pendency of any proceedings against the defaulter Shri Aziz Ahmed Shaikh and that too the transfer was before the service of notice under rule 2 of the Second Schedule to the Income-tax Act. The assessee shall appear before the Tax Recovery Officer at the earliest and adduce necessary evidence and also make good his case for discharging the notice dated 27-3-2019. The authority concerned shall hear the assessee and pass appropriate order in accordance with law. It is expected by the authority concerned not to take any coercive steps against the assessee till the completion of this exercise as directed by the Court.
Sajid Salimbhai Saiyed v. UOI (2019) 265 Taxman 191 (Guj.)(HC)

S. 281 : Certain transfers to be void – Attachment of property – Transfer of property before assessment order was passed – Transfer is not void – Order of attachment by Tax recovery Officer is held to be void. [S. 156, 220 to 232, Second Schedule, R. 2, 4, 16(2), 48, Securitisation Act, 2002, S. 26E] 2179

On a writ petition challenging the order of attachment the Court held that, the guarantor had filed a return of income on July 31, 2009. His case was selected for scrutiny. Notices under S. 143(2) were issued in September 2010 and February 2011. A notice under S. 142(1) was issued on February 23, 2011. The order of assessment was passed only on December 27, 2011 under S. 143(3). Consequently, the demand notice under section 156 was issued only on December 27, 2011, giving the managing partner of the guarantor thirty days' time. Even if the period of thirty days was counted from the date of the notice, i.e. December 27, 2011, the notice period would expire on January 26, 2012.

Therefore, the managing partner of the guarantor became an assessee-in-default in terms of s. 220(4) only on January 26, 2012. The tax recovery certificate was issued on January 9, 2014. The order of attachment was issued on March 14, 2018. But the mortgage was created by the guarantor in favour of the bank on July 11, 2011, much before the order of assessment was passed under S. 143(3) on December 27, 2011. Hence the creation of the mortgage could not be said to have automatically become void in terms of S. 281(1) merely because of the pendency of the proceedings under S. 143 and 142. It required something more to be done, but it was not done in this case. As a matter of fact even an investigation under rule 11 was not carried out. Therefore, the order of attachment was illegal. On the date on which the order of attachment was passed, the property had already been sold by the bank, in exercise of the power conferred upon the bank under the 2002 Act. The order of attachment was set aside. The Sub-Registrar was to proceed to register the sale certificate issued by the bank upon compliance with the necessary formalities. (AY. 2009-10)

ICICI Bank Ltd. v. TRO (2019) 411 ITR 518 / 308 CTR 262 / 176 DTR 428 (T&AP)(HC)

2180 **S. 281B : Provisional attachment – Reasoned order – When earlier assessment years Tribunal has suspended the recoveries arising out of demands made on similar issues – Order of provisional attachment is set aside. [S.245, Art. 226]**

Allowing the petition the Court held that, power U/s. 281B are drastic powers permitting the AO to attach any property of an assessee even before completion of assessment or reassessment. These powers are thus in the nature of attachment before judgment. They have provisionally applicability and in terms of sub-section (2) of S. 281B a limited life. Such powers must be exercised in appropriate cases for proper reasons. Such powers cannot be exercised merely by repeating the phraseology used in the section and recording the opinion of the officer passing such order that he was satisfied for the purpose of protecting the interest of revenue, it was necessary so to do. On facts when earlier assessment years Tribunal has suspended the recoveries arising out of demands made on similar issues. Order of provisional attachment is set aside. (WP No. 2036 of 2019 dt 3-9-2019) (AY. 2016-17)

Vodafone Idea Ltd. v. Dy. CIT (2019) 182 DTR 177 / 311 CTR 210 (Bom.)(HC)

2181 **S. 281B : Provisional attachment – Search – Attachment of bank accounts and two immoveable properties – Tax,interest, penalties were unlikely to exceed attached two immoveable properties – Directed to lift provisional attachment on bank accounts. [S. 132]**

Pursuant to search action in order to protect interest of revenue, assessee's bank accounts and two immovable properties had been put under provisional attachment. On writ the Assessee submitted that he being 65 years of age, such action of Department, which had virtually prevented him from accessing his own funds in bank accounts, would cause great difficulty in meeting his day to day expenses, to meet with special requirements for medical attention for himself and his aged mother. Further, attachment on movable properties being enough to cover all possible tax, interest and penalty which may arise, even if all defences of assessee were negatived, attachment of back accounts be lifted. Court held that in view of fact that assessee's tax, interest and possible penalty

liabilities were unlikely to exceed valuation of aforesaid two immovable properties, provisional attachment of his bank accounts was to be lifted without disturbing attachment of immovable properties till litigation with respect to alleged undisclosed foreign income was over. The petitioner is prevented from selling, transferring, creating any charge or encumbrances on the said two immovable properties till the present litigation is over or without leave of the Court
Darius Sammotashaw v. DIT(Inv.) (2019) 265 Taxman 8 (Mag.) (Bom.)(HC)

S. 281B : Provisional attachment – Pendency of appeal – Stay – Directed the revenue authorities not to enforce the order until a decision is taken by the appellate Authority on stay application filed by the assessee. [Art. 226] 2182
Assessee – company was engaged in business of development of immovable properties. Before passing of assessment order, an order was passed under S. 281B attaching properties belonging to assessee in order to protect interest of revenue during assessment proceedings. Assessee filed petition contending that order under S. 281B was a non-speaking order and thus void ab initio and also additions made in the assessment order. Court held that factual aspects of the assessment cannot be examined in the writ petition. However provisional attachment was concerned, authorities were to be directed that order passed under S. 281B would not be enforced until a decision was taken by appellate authority on stay application filed by assessee. Accordingly the matter remanded.(AY. 2016-17)
Duo Meadows (P.) Ltd. v. ITO (2019) 265 Taxman 221 (Karn.)(HC)

S. 281B : Provisional attachment – Recovery of tax – Over 21 Per Cent of demand already collected – Assessments concluded – No justification to continue with provisional attachment. [S. 226(3)] 2183
Allowing the petition the Court held that once the assessment was complete there would be no justification for continuing with the order S. 281B. Over 21 percent of demand already collected. Assessment is concluded, hence no justification to continue with provisional attachment. Referred Instruction F. No. 404/22/2004 – ITCC, and Circular No. 179, dated September 30, 1975 (1976) 102 ITR 9 (St) (AY. 2005-06 to 2016-17)
Dabur Invest Corp. v. ACIT (2019) 416 ITR 282 / 181 DTR 328 / 310 CTR 591 / 266 Taxman 207 (Delhi)(HC)

S. 292BB : Notice of demand to be valid in certain circumstances – Reassessment – Notice issued on dead person – Reassessment is held to be bad in law. [S.147, 148] 2184
Allowing the petition the Court held that, notice was issued in name of assessee when she was no longer alive, it was inconceivable that she could have participated in reassessment proceedings to be estopped from contending that she did not receive it, therefore, provisions of S. 292BB were not applicable and accordingly the reassessment proceedings were quashed. (AY. 2010-11)
Rajender Kumar Sehgal v. ITO (2019) 260 Taxman 412 / 173 DTR 251 / 306 CTR 264 (Delhi)(HC)

2185 **S. 292C : Presumption as to assets, books of account – Does not hold good in case the addition is made in the hands of a person other than the person searched – Unexplained expenditure. [S. 69C, 153A, 153C]**

A search was carried on the premises of a firm. Certain material which evidenced undisclosed income and which was allegedly in the handwriting of one of the partners of the assessee firm was discovered and seized. Based on such material, the AO made an addition in the hands of the assessee firm. Held that the presumption under S. 292C works only against the person who is searched and does not work against a third person. Having discovered the material which allegedly was in the handwriting of one of the partners of the assessee firm, the AO did not endeavor to collect / produce any other evidence to establish the undisclosed income in the hands of the assessee firm, inspite of getting a second opportunity in the remand proceedings. In the circumstances, such addition in the hands of the assessee firm was to be deleted.

CIT v. Cordial Co. (2019) 176 DTR 185 / 308 CTR 159 (Ker.)(HC)

2186 **S. 293 : Bar of suits in civil courts – Review general principles – If the civil suit was not maintainable in view of S. 293 of the Act and this was the purported defence of the respondents and of the Department and consequential effect of the order dated September 8, 1965, no party could be left remediless and the grievance raised before the court of law, had to be examined on its own merits – There was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference – Decision of the Calcutta High Court affirmed. [S. 260]**

Dismissing the appeal the Court held that S. 293 of the Income-tax Act, 1961 puts a complete bar on filing suits in any civil court against the Income-tax authority. The mandate of law remained unnoticed by the single judge of the Calcutta High Court on October 26, 1990, while relegating the parties to address in the pending civil suit at Delhi although it was dismissed much prior to the pronouncement of the judgment dated October 26, 1990. Even in the appeal, the Division Bench granted liberty to the respondents to file a fresh civil suit in respect of the subject property in Delhi and neither party had brought to the notice of the court the mandate of law as envisaged under s. 293 of the Income-tax Act, 1961 that a civil suit against the Income tax Department was not maintainable under the law. The High Court took notice of this in its review jurisdiction when it arrived at the conclusion that there was an error apparent on the face of the record and consequently allowed the application for review, recalled the order dated October 19, 2012 and set aside the judgment and order dated March 31, 2006 passed in the miscellaneous application and for restoration of the writ petition to be heard on its own merits. The effect of S. 293 of the Act had been mistakenly omitted under the judgment in review. That apart, the effect of the order of the High Court on the Department's application in the 1957 suit was open to examination in the writ proceedings as it was the defence of the Department in the reply to the review application and before the court that in the auction sale which was held in the month of August, 1964, permission of the court was not obtained. After the order was passed on the Department's application by the single judge of the High Court in 1957 suit, it would certainly affect the auction sale held by the Department in reference to the

subject property in question. If the civil suit was not maintainable in view of S. 293 of the Act and this was the purported defence of the respondents and of the Department and consequential effect of the order dated September 8, 1965, no party could be left remediless and the grievance raised before the court of law, had to be examined on its own merits. There was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference. Decision of the Calcutta High Court affirmed. The court made it clear that its observations were only for the purpose of disposal of the appeal and the writ petition was to be decided by the High Court of Calcutta on its own merits, after hearing the parties, in accordance with law. The cases in which the review application could be entertained are : (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him (ii) mistake or error apparent on the face of the record (iii) any other sufficient reason. A review will not be maintainable in the following cases:
(i) repetition of old and overruled argument; (ii) minor mistakes of inconsequential import. Review proceedings cannot be equated with the original hearing of the case. A review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. The mere possibility of two views on the subject cannot be a ground for review. The error apparent on the face of the record should not be an error which has to be fished out and searched. The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition. A review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.
Sunil Vasudeva v. Sundar Gupta (2019) 415 ITR 281 / 180 DTR 289 / 309 CTR 457 / 267 Taxman 100 (SC)

Black Money (Undisclosed Foreign Income and Assets) and Imposition Act, 2015. (2015) 375 ITR 1(St)

2187 **S. 3 : Charge of tax – It is not correct to say that while exercising powers under Sections 85 and 86 of the Black Money Act, the Central Government has made the said Act retrospectively applicable from 01.07.2015. The penal provisions u/s. 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of S. 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon [S.2(9) (d), 50, 51, 59, 72, 85, 86]**

The appeal was against the interim order passed by the Delhi High Court. Question that falls for consideration is, as to whether the High Court was right in observing that while exercise of the powers under the provisions of Sections 85 and 86 of the Black Money Act, the Central Government has made the said Act retrospectively applicable from 01.07.2015 and passed a restraint order. Court held that it is not correct to say that while exercising powers under Sections 85 and 86 of the Black Money Act, the Central Government has made the said Act retrospectively applicable from 01.07.2015. The penal provisions u/s. 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of S. 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon. The Black Money Act has been passed by the Parliament on 11.05.2015 and it has received Presidential assent on 26.05.2015. Subsection (3) of Section 1 provides, that save as otherwise provided in the said Act, it shall come into force on the 1st day of April, 2016. However, by the notification/ order notified on 01.07.2015, which have been impugned before the High Court, it has been provided, that the Black Money Act shall come into force on 01.07.2015, i.e., the date on which the order is issued under the provisions of subsection (1) of Section 86 of the Black Money Act. Accordingly the High Court is requested to decide the writ petition on its own merits. However, the Court clarified that the observations made by us are only for the purposes of examining the correctness of the interim order passed by the High Court and the High Court would decide the writ petition uninfluenced by the same. Accordingly the appeal stands allowed as indicated above. (C A No.1563 of 2019, dt. 15.10.2019)(AY. 2019-20)

UOI v. Gautam Khaitan (2019) 311 CTR 249 / 183 DTR 1 / (2020) 420 ITR 140 (SC), www.itatonline.org

Editorial : Decision of Delhi High Court is reversed, Gautam Khaitan v. UOI (2019) 308 CTR 676 / 178 DTR 100 / 415 ITR 99 (Delhi)(HC)

2188 **S. 50 : Punishment for failure to furnish return of income – Where the assessee did not disclose its foreign assets in the course of search as well as in the settlement commission proceedings, he was liable to prosecution under the provisions of Black Money Act. [S. 55, 71, I.T. Act S. 153A]**

In its return of income, the assessee did not disclose its 4 bank accounts maintained in a foreign bank which were inherited by him from his mother. The details of such

accounts were found in the course of search and seizure. Assessee's subsequent application to settlement commission was rejected on account of failure to make true and honest disclosure. The assessment was finally completed u/s. 153A considering the 4 bank accounts maintained outside India. In the proceedings under the Black Money Act, the assessee argued that he was prevented from making disclosure under the Black Money Act (S. 71) as the proceedings were pending u/s. 153A of the Act. It was further argued that the Black Money Act came into force on 1st April, 2016 and could not be given a retrospective effect. Held that the Authorities had invoked sections 50 and 55 of the Black Money Act and not section 71 to prosecute the petitioner. Further, the Petitioner had the opportunity to make disclosure under the Search as well as the Settlement proceedings, but it chose not to do so. The failure to disclose under section 153A of the IT Act, 1961 was punishable under the Black Money Act. Further, the failure to disclose on the part of the Petitioner was subsequent to the coming into force of the Black Money Act. It could therefore, not be said that a retrospective effect was sought to be given to the Black Money Act. The assessee was liable for violation of the provisions of Black Money Act. Writ petition to quash the prosecution proceedings was dismissed. (A.Y. 2009-10 to 2015-16)

Shrivardhan Mohta v. UOI (2019) 175 DTR 161 / 307 CTR 396 / 102 taxmann.com 273 (Cal.)(HC)

Editorial : Refer Black money Act, Circulars, clarification etc. (2015) 375 ITR 1(St), (2015) 374 ITR 35(St), (2015) 375 ITR 97(St), (2015) 375 ITR 128(St), (2015) 378 ITR 8 (St)

S. 85 : Legislative Powers – Prosecution – Operation of impugned restraining order of High Court is stayed – Petitioners are free to prosecute respondent and proceed further in accordance with law, subject to the final decision of this matter. [S. 86] 2189

On SLP filed by Revenue against Delhi High Court's decision *Gautam Khaitan v. UOI (2019)415 ITR 99 (Delhi) (HC)* restraining the Revenue from taking any/or continuing any action against the assessee respondent, the Supreme Court held that operation of impugned restraining order against the assesse respondent is stayed and the Revenue is free to prosecute assesse respondent and proceed further in accordance with law, subject to final decision in the matter (SLP. No. 4911 of 2019 dt. 21-05-2019)

UOI v. Gautam Khaitan (2019) 308 CTR 681 / 178 DTR 105 (SC)

S. 85 : Legislative Powers – Cannot be exercised prior to date of coming into force of Act expressly stipulated in enactment – Initiation of proceedings by authorities by issuing orders pursuant to notifications is not sustainable – Authorities restrained from taking or continuing any action pursuant to notifications. [S. 1(3), 10(1), 85, 86] 2190

Parliament in the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 expressly provided therein that save as otherwise provided in the Act, it shall come into force on April 1, 2016. The power under the provisions of sections 85 and 86 of the Act to make rules or remove difficulties could be exercised by the Central Government, only once such Act came into force on April 1, 2016, the date expressly stipulated by Parliament in this behalf, and not prior thereto.

Notification Nos. S.O. 1790(E), dated July 1, 2015, S.O. 1791(E), dated July 1, 2015 and G. S. R. 529(E), dated July 2, 2015, purportedly promulgated under the provisions of

sub-section (3) of section 1, section 59 and sub-section (1) of section 63 and sub-sections (1) and (2) of section 85 of the Act, respectively seek to exercise powers conferred under the Act, prior to the day on which the Act came into force, i.e. April 1, 2016. Prima facie, the authorities could not have exercised the powers granted under the provisions of sections 85 and 86 prior to the enactment itself coming into force in terms of the provisions of section 1(3). The authorities were restrained from proceeding further and taking or continuing any action against the petitioner under the provisions of the 2015 act.

Gautam Khaitan v. UOI (2019) 415 ITR 99 / 178 DTR 100 / 308 CTR 676 / 265 Taxman 54 (Mag.)(Delhi)(HC)

Editorial : Order of High Court is reversed, UOI v. Gautam Khaitan (2019) 311 CTR 249 / 183 DTR 1 / (2020) 420 ITR 140 (SC), www.itatonline.org

Expenditure-tax Act, 1987

S. 2(10) : Chargeability – Room charges – No Distinction Double or triple quad occupancy – Act refers to room charges for an unit residential accommodation. [S. 3(1), Art. 226] 2191

Dismissing the petition the Court held that S.3(1) will have to be interpreted, having regard to the provisions therein, in their entirety disjunctively. Provisions in S. 3(1) or for that matter, other provisions in the Act, make no reference whatsoever to the aspects like 'occupancy' 'number of beds', 'room charges per bed' or 'room charges per occupant' Act refers to room charges for an unit of residential accommodation in terms of the definition in s. 2(10). There is no further distinction made in the Act on the basis of double occupancy or triple occupancy or quad occupancy when it comes to determination of room charges. Such distinction is some unilateral act by the hotel concerned and the same cannot govern the statutory construction, particularly when the provisions of a statute are quite clear. Expression per individual' refers to an individual incurring chargeable expenditure and consequently, primarily liable for payment of expenditure tax, expression 'per individual' does not refer to the individual, actually occupying the unit of residential accommodation in the hotel. Contention that the act does not apply to the assessee because the room charges for any unit of residential accommodation at their hotels are fixed on 'double occupancy basis' and therefore, though room charges per se may appear to exceed ₹ 1200 per day, having due regard to the expression per individual' appearing in s. 3(1) such room charges are required to be divided into two and upon such division, the room charges do not exceed ₹ 1200 and, therefore, the Act does not apply to them is not sustainable. Circumstances that the expenditure tax act came to be amended w.e.f. 1st June, 2002 also does not lead of the inference that the law prior to the amendment entitled the hotel or the person carrying on business of the hotel to divide the room charges as defined under S. 2(10) by number of beds in such room or number of occupants in such room. (AY. 1996-97)

Travel & Tourism Association of Goa v. UOI (2019) 182 DTR 377 / 311 CTR 185 (Bom.) (HC)

Income Declaration Scheme 2016 (IDS) – Finance Act, 2016 (2016) 381 ITR 134 (St) (S.178 to 196), (2016) 384 ITR 165 (St.) (Refer AIFTPJ. July 2016)

2192 **S. 183 : Payment of tax – Failure to pay third instalment – Rejection of application was held to be not justified – Permitted assessee to deposit tax under Income Declaration Scheme belatedly subject interest @ 12%. [IDS, S. 196 IT ACT, 119(2)]**

Assessee filed declaration of undisclosed income under Income Declaration Scheme, 2016. Subsequently, assessee paid 50 per cent of total tax, surcharge and penalty in two instalments, however, did not pay third instalment of remaining 50 per cent of tax, surcharge and penalty. Application to CBDT seeking extension of time for making payment of third instalment was rejected. High Court also dismissed writ petition. On appeal the Supreme Court held that the assessee was to be permitted to deposit third instalment with interest at rate of 12 per cent with Income Tax Department.

Dal Chandra Rastogi v. CBDT (2019) 264 Taxman 83 (SC)

Editorial: Order of High Court is reversed, Siddharth Rastogi v. CBDT (2018) 402 ITR 17/ 301 CTR 545 / 163 DTR 449 (Delhi)(HC)

Dal Chandra Rastogi v. CBDT (2018) 402 ITR 17 / 301 CTR 545 / 163 DTR 449 (Delhi)(HC)

Meena Rastogi v. CBDT (2018) 404 ITR 97 / 301 CTR 548 / 163 DTR 452 (Delhi)(HC)

2193 **S. 183 : Scheme – Composite declaration for several years – Condition laid down in scheme is fulfilled in respect of some years – Entitled to benefit of scheme for those years – Self-assessment tax and advance tax is not adjustable against amounts due under scheme – Appeal will be entertained without raising the issue of limitation, if the appeals are filed latest by April 30, 2019. [S. 246A]**

Court held that, composite declaration for several years is not permissible under the scheme. However where the condition laid down in scheme is fulfilled in respect of some of the years the assessee is entitled to benefit of scheme for those years. Self-assessment tax and advance tax is not adjustable against amounts due under scheme. Court directed the CIT(A) to entertain the appeal without raising the issue of limitation, if the appeals are filed latest by April 30, 2019. [Circular No. 25 of 2016 dt. 30-6-2016 ((2016) 385 ITR 22 (St).]

Umesh D. Ganore v. PCIT (2019) 413 ITR 66 / 308 CTR 377 / 177 DTR 185 (Bom.)(HC)

Mangesh D. Ganore v. PCIT (2019) 413 ITR 66 / 308 CTR 377 / 177 DTR 185 (Bom.)(HC)

2194 **S. 183 : Declaration of income – Benamidar – Misrepresentation – No provision for granting an opportunity of hearing – Cancellation of declaration is held to be valid. [S. 193, PBPT Act, 1988 S.24(4)]**

Dismissing the petition, the Court held that the mere fact that an acknowledgement may have been issued in Form-4 by the CIT, CPC did not provide any immunity to

the assesses, if it was found that the declaration was contrary to S.193 of the Finance Act, 2016, which begins with a non-obstante clause Where the jurisdictional Principal Commissioner/ Commissioner of Income Tax finds a declaration to be based on such misrepresentation or suppression of facts, he would not be precluded from holding the declaration itself to be void in terms of Section 193 of the FA, 2016. There is no provision as such in the IDS to afford the declarant a hearing prior to passing an order holding such declaration to be void for being in contravention of Section 193 of the Finance Act, 2016. (AY. 2011-2012, 2012-2013, 2016-2017)

Ankush Jain v. CIT (2019) 181 DTR 225 / 310 CTR 419 (Delhi)(HC)

Vaibhav Jain v. PCIT (2019) 181 DTR 225 / 310 CTR 419 (Delhi)(HC)

S. 184 : Amounts paid as advance tax can be adjusted towards amounts due under scheme – Rejection of application is held to be not valid. [S. 185] 2195

Allowing the petition, the Court held that, the assessee's declaration pertained to the AYrs. 2010-11 to 2015-16. Advance tax of ₹ 1,10,000/- had been paid by him for the AY 2013-14. There was no regular assessment for that year. If the amount paid by the assessee for the AY. 2013-14, being a sum of ₹ 1,10,000/- were adjusted, the payments made by him on November 21, 2016 (₹ 1,50,000), March, 28, 2017 (₹ 1,50,000) and September 27, 2017 (₹ 2,22,807) would be sufficient to discharge his liability in respect of the tax, surcharge and penalty payable by him towards his undisclosed income declared under the Income Declaration Scheme. Accordingly the rejection of the declaration was not valid. Notification No. S. O. 2476(E) dated July 20, 2016 (2016 386 ITR 5(St.) Circular No. 25 of 2016, dated June 30, 2016 (2016) 385 ITR 22 (St.) (AY. 2010-11 to 2015-16)

Alluri Purnachandra Rao v. PCIT (2019) 419 ITR 462 (Telangana)(HC)

S. 195 : Power to remove difficulties – Not depositing the first instalment with in time – Board refusing to condonation of delay – Concession and excess indulgence would have demotivating effect on honest taxpayers making regular and prompt tax deposit – Dismissal of application is held to be justified. [S. 184, ITA, S. 119, Art.14] 2196

Petitioner challenged the order of the CBDT refusing to condone the delay in paying first instalment of the tax payable under IDS 2016. Dismissing the petition the Court held that the view expressed by the CBDT stating that, concession and excess indulgence would demotivating effect on honest taxpayers making regular and prompt tax deposit. Accordingly dismissal of application is held to be justified.(WP N0. 14395 of 2018 dt 29-01-2019)

Sadhana R. Jain v. CBDT (2019) 174 DTR 385 / 307 CTR 207 (Bom.)(HC)

Kar Vivad Samadhan Scheme, 1998 (Finance Act, 2 of 1998)

2197 **S. 90 : Payment of tax – Validity of provision – Payment of tax – In view of the retrospective amendment, the petitioners challenge to the constitutional validity of section 90(2) of the Finance Act 1998 does not survive – Recovery notices were quashed. [S. 90(2), 91]**

Petitioner challenged the constitutional validity of the provision as regards payment of tax within 30 days from the passing of the order. Court held that S. 90(2) of the Finance Act, 1998 was amended on 12/05/2000 by the Finance Act, 2000 with retrospective effect from 01/09/1998. The amendment was to substitute the words "within 30 days from passing of an order" with the words "within 30 days from the receipt of the order passed by the designated authority". The amended Act provided that the substituted provision of section 90(2) shall be deemed to have been substituted with effect from 01/09/1998. In view of the retrospective amendment to section 90(2) of the Finance Act, 1998, the provision would now at all times read as under:-

"The declarant shall pay, the sum determined by the designated authority within 30 days from the receipt of an order passed by the designated authority and intimate the fact of such payment to the designated authority alongwith proof thereof and the designated authority shall thereupon issue the certificate to the declarant"

In view of the above retrospective amendment, the petitioners challenge to the constitutional validity of section 90(2) of the Finance Act, 1998 does not survive. So also, in view of the above amendment, the period of 30 days has to be computed not from the date of the passing of the order by the designated authority on 15/02/1999, but the period of 30 days has to be computed from the date of the receipt of the order/ certificate dtd.15/02/1999. In this case, the undisputed position is order/certificate dtd.15/02/1999 was received by the petitioners on 19/02/1999. The 30 days period under section 90(2) of the Finance Act, 1998 would run from 19/02/1999 onwards. The petitioners has deposited the amount on 23/03/1999. This is well within the 30 days period considering the fact that February has only 28 days. Accordingly the designated authority is directed to issue a final certificate under S. 90(2) read with section 91 of the Samadhan Scheme. Further the recovery notices are quashed and set aside.

Time Packaging Ltd. v. UOI (2019) 310 CTR 33 / 180 DTR 281 (Bom.)(HC)

Voluntary Disclosure of Income 1997
Finance Act, 1997

S. 68 : Certificate obtained by misrepresentation of facts – Revocation of Certificate is held to be justified. [S. 64(2)(i), S.147, 148, General Clauses Act, 1897, S. 21] 2198

Dismissing the petition the Court held that suppressing the returns filed earlier on March 14, 1996, the assessee had filed his revised return on May 8, 1997 by including ₹ 6,00,000 as gift received from the non-resident Indian. Hence, there had been a misrepresentation of facts in the declaration made by the assessee. Moreover the assessee could not avail of the benefits under the Scheme, when he had been served with the notice under section 148. The cancellation of the certificate was justified. (AY. 1994-95)

Subash Chand Jain v. CIT (2019) 419 ITR 216 (Mad.)(HC)

S. 68 : Certificate issued under scheme final – Amount mentioned in certificate cannot be assessed as undisclosed income. [S. 68(2), 158BC, 158BD] 2199

Dismissing the appeal of the revenue, the Court held that once the certificate under section 68(2) of the Finance Act, 1997 under the Voluntary Disclosure of Income Scheme had been issued by the Commissioner of Income-tax, it was not permissible for the Assessing Officer to go behind such certificate and he was required to accept it. Accordingly, the conclusions arrived at by the Tribunal were based upon concurrent findings recorded by it after appreciating the material on record. Nothing had been pointed out to indicate that the Tribunal had placed reliance upon any irrelevant material or that any relevant material had been ignored. The deletion of the additions was justified.

CIT v. Purshottamdas P. Patel (2019) 416 ITR 417 / 182 DTR 402 (Guj.)(HC)

Wealth-tax Act, 1957

2200 **S. 2(ea)(v) : Urban Land – Appeal – Maintainability – Low tax effect – Question of law has now been settled by the Supreme Court – Repeated instances of such question of law arising does not arise at all, since the WT Act is no more in force-In such circumstances though the question of law has to be answered in favour of the Revenue, there need be no recovery steps taken for reason of the appeals being below the monetary limits. [S. 260A, 268A]**

On appeal and considering the Department's contentions, (a) that even though the monetary limits of appeals may be less, the tax authorities have the discretion to file appeals, ignoring the tax effect, if there is a substantial question of law which is repeatedly arising and (b) issue is already settled in favour of Revenue by Supreme Court's decision, *Giridhar G. Yadalam v. CWT (2016) 384 ITR 52 (SC)*, it was held that by High Court that:

In all the assessment years question of law has now been settled by the Supreme Court hence repeated instances of such question of law arising does not arise at all, also because of the fact that WT Act is no more in force.

Though the question of law has to be answered in favour of the Revenue (following binding precedent of SC), there need be no recovery steps taken for reason of the appeals being below the monetary limit at the time of filing of the appeals itself; and in such circumstances present appeal is not therefore, maintainable. (WT Nos. 105, 107, 138, 143, 164, 167, 183 of 2009 dt. 15-02-2019)

CWT v. Meera Jacob (Smt.) (Decd.) (2019) 180 DTR 94 (Ker.)(HC)

2201 **S. 2(ea)(v) : Urban Land – Expression "the construction of building not permissible under any law in force" cannot be equated with regulatory requirement of any statutory provision which mandates obtaining of permission from the Competent Authority – Restriction and prohibition are two different concepts – Tribunal was right in holding that lands were includible in net wealth as 'urban land'.**

Dismissing the appeal the Court held that, the expression "the construction of building not permissible under any law in force" cannot be equated with regulatory requirement of any statutory provision which mandates obtaining of permission from the Competent Authority. Restriction and prohibition are two different concepts; building regulations may amount to restriction of development of land but not prohibition of putting up construction thereon. Tribunal was right in holding that lands were includible in net wealth as 'urban land' under s. 2(ea)(v) (WTA Nos. 414, 415, 418, 425 & 426 of 2016 dt. 3-12-2018) (AY. 2007-08)

Sarovar Hotels (P) Ltd. v. Dy.CWT (2019) 307 CTR 791 / 176 DTR 209 (Bom.)(HC)

2202 **S. 2(ea) : Assets – Urban land held as stock-in-trade – Shown as investment-Liable to wealth tax – No substantial question of law. [S. 2(ea)(v), 2(m)]**

Dismissing the appeals of the assessee the Court held that the land was purchased on July 30, 2007. It was not in dispute that, even though a joint development agreement was executed on July 31, 2007, no development had taken place on the subject land for

the past more than a decade. Yet another factor which would belie the assessees' claim to have intended to use the subject land for the purpose of carrying on business, was that they had not, either before or after purchase of this land, carried on any business, much less in relation to the land. The Tribunal, and the authorities below, had relied on the fact that the assessees had filed their return, for the year ending March 31, 2008, in Form ITR 2 ; they had shown the asset as a fixed asset (immovable property) in their balance-sheet for the year March 31, 2008 and March 31, 2009 and except for their self-serving statement that the subject land was intended to be used as stock-in-trade for the purpose of carrying on business, no other evidence had been adduced by the assessees in support of such a claim, though the onus was on them to prove it. The findings of fact that the land constituted an asset for purposes of the Wealth-tax Act did not give rise to any substantial question of law. (AY. 2008-09,2009-10)
Devineni Avinash v. PCIT (2019) 412 ITR 28 / 177 DTR 428 / 308 CTR 650 (T&AP)(HC)
Devineni Lakshmi (Smt) v. PCIT (2019) 412 ITR 28 / 177 DTR 428 / 308 CTR 650 (T&AP) (HC)

S. 2(ea) : Assets – Commercial establishments or complexes – Exception provided in S.2(ea)(i)(5) covers all commercial establishments, whether they have one unit or more. [S.2(ea)(i)(5)] 2203
The assessee had rented out three units located in three different areas of Mumbai to a bank. Assessee sought to exclude such units from his 'assets' on the ground that they were commercial establishments, covered under the exception provided in S. 2(ea)(i)(5). The case of the Revenue was that the word used in the exception is 'commercial establishments', i.e. plural. Since in the instant case, three single units were rented out, the benefit of the exception was not available to the assessee. Rejecting such contention of the Revenue, the High Court held that the expression 'commercial establishments' would include all establishments, whether they have one unit or more. (AY. 2010-11)
PCWT v. Taradevi Ratanlal Bafna (2019) 174 DTR 201 / 307 CTR 331 (Bom.)(HC)

S. 2(ea) : Assets – Urban land – Belonging – Ownership – Owner – Pendency of litigation regarding ownership of land is pending for adjudication – Possession with assessee – Includible in net wealth – Protective assessment is held to be valid. 2204
Allowing the appeal of the revenue the Court held that ; the words "belonging to" which determine the basis of levy and attract the charge of wealth-tax under the Wealth-tax Act, 1957 are of wider import than the narrower concept of "ownership" of the assets which is rigid and narrower in its scope than the words "belonging to". The words "belonging to" may include within their ambit, the concept of "ownership" also, but the converse may not be always true. The "ownership" of a property continues to be with the owner, even if the property is under a charge or even litigation about title and possession and such "ownership" is not lost merely because of such charge over the property. The word "owner" or "ownership" itself is not defined in the definition clause of the Wealth-tax Act, 1957. The intention of the Legislature is, to throw the tax net of the wealth-tax a little wider and not to cover only "owners" of the assets stricto sensu. Accordingly on facts though litigation is pending regarding the ownership of land, the possession is with the assessee, hence includible in net wealth.

Court also held that protective assessment of Person in possession of land is held to be valid and Tribunal was not justified in setting aside the protective assessment made by the assessing authority. (AY. 1999-2000 to 2004-05)
CIT v. Meenakshi Devi Avaru (Smt.) (Decd.) Through Legal Heirs (2019) 410 ITR 306 / 176 DTR 1 / 308 CTR 83 (Karn.)(HC)
CIT v. Kamakshi Devi (Smt.) (2019) 410 ITR 306 (Karn.)(HC)

2205 **S. 2(ea) : Assets – Cash in hand – Excess of ₹ 50000 – Not maintained books of account – Includible as asset – Non-productive assets – Amendment is constitutionally valid – Revision is held to be not valid when the Assessing Officer has followed the ratio of jurisdictional Tribunal. [S. 25, Art. 14]**
Amendment in 1992, the Act to levy wealth tax on non-productive assets is constitutionally valid. When as assessee has not maintained books of account cash in excess of ₹ 50000 is held to be includible as asset. Court also held that Tribunal was right in holding that jurisdiction assumed by the Commissioner under S.25 of the Wealth-tax Act is not accordance in law, when the Assessing Officer has decided the issue on the basis of jurisdictional Tribunal.
P. A. Jose v. UOI (2019) 410 ITR 55 / 306 CTR 568 / 174 DTR 152 (Ker.)(HC)

2206 **S. 2(ea) : Assets – Agricultural land – Capital gains – Measurement of distance – Distance of land from municipal limits aerially, not by road, and which have been substituted by Finance Act, 2013 with effect from 1-4-2014 are prospective in operation – Conversion of land from Agricultural use to non agricultural use though the land was converted into non-agricultural purposes, cultivation of the land for agricultural purposes till the date of sale continued unabated and as such, the land should be treated as agricultural land – Not liable to wealth tax. [S. 17, 2(14)(iii)(b)]**
Dismissing the appeal of the revenue the Tribunal held that, measurement of distance of land from municipal limits aerially, not by road, and which have been substituted by Finance Act, 2013 with effect from 1-4-2014 are prospective in operation and cannot be applied for the relevant year. As regards conversion of land from Agricultural use to non agricultural use though the land was converted into non-agricultural purposes, cultivation of the land for agricultural purposes till the date of sale continued unabated and as such, the land should be treated as agricultural land. Not liable to wealth tax. (AY.2007-08, 2009-10)
ACWT v. M.R. Jayaram (2019) 174 ITD 1 (Bang.)(Trib.)

2207 **S. 18(1)(c) : Penalty – Concealment – In the absence of any proof to show that there was an attempt on the part of the assessee to conceal the particulars or to furnish inaccurate particulars, the levy of penalty was not justified by invoking the deeming provision of Expln. 3 to S. 18(1)**
Dismissing the appeal of the Revenue High Court held that in the absence of any specific finding of the AO or the CIT(A) that no reasonable cause has been shown by the assessee for not filing voluntary return, levy of penalty under S.18(1)(c) was not justified by invoking the deeming provision of Expln. 3 to S. 18(1). Order in *Shanti Ramanand Sagar v. CIT (2017) 88 Taxmann.com 72 (Bom.)(HC)* is distinguished. (AY. 1997-98, 1998-99)
CIT v. Rajwanti Properties (P) Ltd. (2019) 310 CTR 113 / 181 DTR 1 (Mad.)(HC)

S. 18(1)(c) : Penalty – Concealment – Difference of opinion between the assessee and the department with respect to the valuation of the property is not a ground for levy of penalty. 2208

On the basis of a valuation report, the assessee declared a certain value of its immovable property in its wealth tax return. The WTO disputed this valuation and used another mechanism to determine the value. In appeal, the CWT (A) reduced the addition by taking into consideration the price of properties in the similar area. The Tribunal inter alia upheld the CWT(A)'s order. Held that where the assessee had claimed a certain value of its land on the basis of a valuation report, the dispute by the department against such valuation would not amount to concealment of wealth and therefore, penalty could not have been imposed. (AY. 2007-08)

PCWT v. Hemant Vitthal Waje (2019) 175 DTR 41 / 307 CTR 216 (Bom.)(HC)

S. 25 : Commissioner – Revision of other orders – Condonation of delay – Beyond six years – CBDT circular prescribing time limit for condonation – Not binding on High Court – Delay condoned and directed the Commissioner to decide on merit. [S. 2(ia)(i)(4), 25(1)(c) (ii), IT Act, S. 264 Art. 226] 2209

The petitioner erroneously included the commercial and residential properties for the purpose of wealth tax though the said properties were let out for a minimum period of 300 days and exempt as per S.2(ia)(i)(4) of the Act. The petitioner became aware of the exempt provision in the year 2015. The petitioner filed an application for revision of the order with application for condonation of delay. The Commissioner rejected the applications for condonation of delay by referring the Circular of the Board No. 9 of 2015 (R.No 312/22/15-OT) (2015) 374 ITR 25 (St) wherein the Board instructed that delay beyond six years from the relevant year cannot be condoned. On writ the Court held that petition pertained to assessment years 2003-04 to 2012-13. This was a case of overstatement of wealth and it was not a case of understatement or non-filing of returns. More importantly, the assessees had also paid the tax on the wealth that had been overstated in the returns. The respondent had even recorded in the orders that the properties which had been erroneously included in the returns by the petitioners were clearly exempt under section 2(ea)(i)(4) of the Wealth-tax Act. The order was to be set aside in so far as it rejected the assessees' request for condonation of delay for the assessment years 2003-04 to 2010-11. The other part of the order wherein the prayer for condonation of delay for the assessment years 2011-12 and 2012-13 was acceeded to, was to be sustained. Court held that the Circular is not binding on High Court. (AY. 2003-04 to 2012-13)

Lakshmi Muthukrishnan v. PCIT (2019) 418 ITR 513 (Mad.)(HC)

Vasanthi Muthukrishnan v. PCIT (2019) 418 ITR 513 (Mad.)(HC)

Interpretation of taxing statutes Constitution of India-Precedents

2210 **Art. 141 : Precedent – SLP dismissal – Non-speaking order – It does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger. [Art. 136]**

Court held that the dismissal of an SLP by the Supreme Court against an order or judgment of a lower forum is not an affirmation of the same. If such an order is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution or attract the doctrine of merger. Followed *Kunhayammed v. State of Kerala (2000) 245 ITR 360 (SC), (2000) 5 SCC 359, Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. (2019) 4 SCC 376* (CAO(S). 9533-9537 of 2019, dt. 18.12.2019)

P. Singaravelan v. District Collector (SC), www.itatoline.org

2211 **Art. 141 : Precedent – Dismissal of SLP in limine – Dismissal of SLP at threshold without indicating any reasons, does not constitute any declaration of law or binding precedent under Art. 141 of the Constitution of India [Art. 141]**

Court held that Supreme Court in *Employees Welfare Assn. v. UOI (1989) 4 SCC 187, and State of Punjab v. Davinder Pal Singh Bhullar (2011) 14 SCC 770* the court held the dismissal of an SLP in limine simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the constitution.

State of Orissa v. Dhirendra Sundar Das (2019) 6 SCC 270 / (2019) AIR SC 2331

2212 **Art. 142 : Interpretation of taxing statutes – Equity or hardship not factor to be considered in deciding validity of provision – Promissory estoppel – No estoppel against legislature. [S. 35AC, Art. 142]**

Court held that in a taxing statute, a plea based on equity or hardship is not legally sustainable. The validity of any provision especially a taxing provision cannot be struck down on such reasoning. The plea of promissory estoppel is not available to an assessee against the excise of legislative power. No vested right accrues to an assessee in the matter of grant of any tax concession to him.

Prashanti Medical Service & Research Foundation v. UOI (2019) 416 ITR 485 / 180 DTR 209 / 309 CTR 457 / 265 Taxman 504 (SC), www.itatonline.org

2213 **Interpretation – No estoppel against law – Concession in law given by Counsel which is contrary to the statutory rules is not binding on the litigant.**

No estoppel against law-Concession in law which is contrary to the statutory rules is not binding on the litigant. A concession given by Counsel, if it is a concession in law and contrary to the statutory rules, is not binding on the litigant for the reason that there

cannot be any estoppel against law (see also *Himalayan Cooperative Group Housing Society v. Balwan Singh (2015) 7 SCC 373 Bharat Heavy Electricals Ltd. v. Mahendra Prasad.*)
Jakhmola & V. Ramesh v. ACIT (Mad.)(HC) (CANO. 7577 of 2019 dt. 26.09.2019)
Directorate of Elementary Education v. Pramod Kumar Sahoo (SC), www.itatonline.org

Interpretation – Precedent – Recalled order cannot be relied upon as precedent. 2214
Court held that since the relief given order had already been recalled, fresh decision made on its basis flawed. Accordingly the order is set aside and matter remanded to CESAT CA No. 10950 of 2017 dt 1-08/2019.
CIT of CX. CUS & S. T v. Bakelite Hylam Ltd. (2019) (27) G.S.T.L. 641 (SC)

Interpretation of taxing statutes – Precedent – Supreme Court – Pronouncement of Supreme Court is binding on High Court though not ratio decidendi of judgment. 2215
A pronouncement of Supreme Court is binding on High Court though not ratio decidendi of judgment. There can be no estoppel against a settled position in law. Effect of decision in *Peerless General Finance and investment Co. Ltd. v. Reserve Bank of India (1992) 75 Comp Cas 12 (SC) (CA No 1265 of 2007, dt.09.07.2019)* (AY. 1985-86, 1986-87)
Peerless General Finance and investment Co. Ltd. v. CIT (2019) 416 ITR 1 / 265 Taxman 413 / 309 CTR 321 / 180 DTR 97 (SC), www.itatonline.org

Interpretation of taxing statutes – Retrospectivity – Power of Courts – Intention of legislature to be seen. [S.43(5), 73] 2216
Court held that even though an amendment, including one in the context of the Finance Act is brought in to force with effect from a stipulated date, the Court may as an exercise of statutory interpretation, determine whether the amendment is clarificatory or was intended to operate with retrospective effect. The test to be applied is essentially one of the intent of the legislature.
Snowtex Investment Ltd. v. PCIT (SC)(2019) 414 ITR 227 / 265 Taxman 3 / 308 CTR 665 / 178 DTR 89 (SC), www.itatonline.org

Interpretation of taxing statutes – Intention of legislature to be seen – Industrial undertaking – Initial assessment year. [S. 80IC] 2217
It is well accepted that a statute must be construed according to the intention of the legislature and courts should act upon the true intention of the legislation while applying law and while interpreting the law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature.
PCIT v. Aarham Softronics (2019) 412 ITR 632 / 261 Taxman 529 / 175 DTR 105 / 307 CTR 233 (SC), www.itatonline.org

Precedent – Binding nature – Pending before larger Bench – Till issue is decided earlier decision of APEX Court is binding. 2218
Court held that any reference to larger Bench does not make law already laid down by Apex Court, not binding on courts below till issue is decided by larger Bench.
Tanya Khan Afridi v. J & K. Board of Professional Examination AIR 2019 J&K 175

2219 **Precedent – Appeal – Merger – Dismissal of appeal on ground of low tax effect – High Court order does not merge in order of Supreme Court.**

The appeal to the Supreme Court from the judgment in *Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 384 ITR 490 (Ker.)* has been dismissed in view of Circular No. 3 of 2018 dated July 11, 2018 ([2018] 405 ITR (St.) 29) of the Central Board of Direct Taxes since the tax effect was less than ₹ 1 crore does not mean that the judgment of the High Court has merged with the order of the apex court in that civil appeal. (AY. 2007-08 to 2010-11 2012-13)

CIT v. Poonjar Service Co-Operative Bank Ltd. (2019) 414 ITR 67 (FB) (Ker.)(HC)

2220 **Natural Justice – Right of cross examination is not required to be granted when the statement is not used against the assessee and matter is decided on other evidence – Non furnishing of the documents on which the reliance is being made, principle of natural justice is violated – Matter remanded.**

Court held that when the statement is not used against the assessee, right of cross examination is not required to be given. Addition is made on the basis of the other evidence. Court also held non furnishing of vital documents on which the department relied on is not made available is violative of natural justice. Matter remanded.

CIT of CE& Cust. v. Twenty first century wire Rods Ltd. (2019) (28) G. S. T. L 10 (Bom.) (HC)

Advocates Act 1961

S. 35 : Punishment of advocates for misconduct – Appeal – Delay – Delay of 20 long years in filing second appeal could not be condoned on mere ground that counsel, who was representing appellant, did not inform her about outcome of litigation before lower authority – Cost of ₹ 1000 was directed to be paid to the High Court Legal Services – Sub-Commit tee, Nagpur. 2221

Appellant filed instant application seeking condonation of delay of 20 years in filing second appeal. According to appellant, she entrusted her brief to advocate who did not take any steps to pursue matter, consequently, delay occurred in as much as it was the submission of appellant that counsel, who was representing appellant, did not inform outcome of litigation to her. Dismissing the petition the Court held that it is expected from litigant that he or she remains in contact with lawyer who is representing his or her cause in Court of law. Therefore, a litigant cannot take spacious plea that once case is entrusted with an advocate, his or her work is over and advocate will take care of matter. Accordingly in absence of any plausible explanation on part of appellant for condonation of delay in filing appeal, said appeal was to be dismissed being barred by limitation. Court also directed to the petitioner to pay cost of ₹ 1000/- to be paid to the High Court Legal Services Sub-Committee, Nagpur.

Kanta v. Manjulabai (2019) 266 Taxman 326 (Bom.)(HC)

Benami Transactions (Prohibition of Right to Recover Property) Ordinance, 1988

2222 **S. 2 : Benami transactions – Right to recover the property – Financial assistance was given is not a determinative factor – Burden of proving the Benami Transaction lie on the person who alleges – Failure of plaintiff to establish intention of father to purchase properties for and behalf of family – Transaction cannot be said to be benami in nature – Appeal of petitioner is dismissed.**

In considering whether a particular transaction is benami, six circumstances can be taken as a guide : (1) source from which purchase money came; (2) nature and possession of property, after purchase; (3) motive, if any, for giving transaction a benami colour; (4) position of parties and relationship, if any, between claimant and alleged benamidar; (5) custody of title deeds after sale & (6) conduct of parties in dealing with the property after sale. Mere fact that financial assistance was given is not a determinative factor. Court held that the properties were purchased by the Defendants and the plaintiff has no right to claim ¼ share in the suit properties. (CA. NO. 1099 of 2008, dt. 09.04.2019)

P. Leelavathi v. V. Shankarnarayana Rao (2019) 263 Taxman 105 / AIR 2019 SC 1938 (SC), www.itatonline.org

Benami Transactions (Prohibition) Act, 1988 (Amended Act)

S. 2(9) : Benami transaction – Defining expressions fiduciary capacity and trustee, it is not as if any vested right existing under earlier provisions of section 4(3) is taken away. [S. 4(3)] 2223

By provisions of section 2(9) of Amended Act, expressions HUF, fiduciary capacity and trustee have been defined, giving them meaning which law required, and this was done to remove any doubt or confusion with respect to meaning of expressions fiduciary capacity and trustee as found in repealed provisions of section 4(3) of unamended Act; therefore, by defining expressions fiduciary capacity and trustee, it is not as if any vested right existing under earlier provisions of section 4(3) is taken away. Therefore, definitions of exempted transactions to prohibited benami property transactions, and now contained in four exceptions in section 2(9) were always deemed to have been included in exceptions to prohibited benami transactions.

Anis Ur Rehman v. Mohd. Tahir (2019) 261 Taxman 488 (Delhi)(HC)

S. 2(9)(c) : Benami transaction – Notice and attachment – High demonitised notes – Preliminary objection not raised in reply to show cause notice – No statutory provision for passing of separate order against objections raised – Provisions not pari materia with reassessment under Income tax law – Objection of assessee is unsustainable. [S. 19(1)(g), 24(2), 24(3), IT Act, S.147, 148, 153A] 2224

The AO passed the order treating the transactions as not genuine and made additions in respect of old high demonitised notes. The Department treated the transaction as not genuine and against such transfer of money by RTGS, for deposit of unaccounted cash in old high denomination notes, there was no actual delivery of gold bars. Summons were issued to the assessee under section 19(1)(b) of the Prohibition of Benami Property Transactions Act, 1988. The assessee filed a reply to the summons and the Deputy Commissioner required certain documents and clarifications, to which the assessee responded. An order of provisional attachment was passed, attaching the sundry debtors' loans and advances and investments shown in the balance-sheet, under section 24(3) of the 1988 Act. A show cause notice under section 24(1) of the 1988 Act, was issued to Yogesh Kumar More and a copy was forwarded to the assessee which called for submission of an explanation from the assessee in the matter. The show cause notice stated that the Department had sufficient documentary evidence to conclude that the transaction fell within the purview of a "benami transaction" and to treat the property in question as "benami property" within the meaning of section 2(9)(C) of the 1988 Act. In his reply to the notice, the assessee stated that he had not been provided with full copies of statements, affidavits and evidence, which was in violation of the principles of natural justice. The assessee made a request for passing a separate speaking order before passing the final order. On a writ dismissing the petition, the Court held that there was no provision in the 1988 Act for dealing separately with the preliminary objection and to pass any order before passing of the final order. Therefore, the request of the assessee

to pass a separate order dealing with the objections was not supported by any provision of law. The contention of the assessee that section 24(1) of the 1988 Act and section 147 of the 1961 Act adopted the same language and were pari materia could not be accepted as the sphere and operation of these sections were completely different. Section 24 of the 1988 Act and the subsequent provisions are for the purpose of concluding whether the property in question could be treated as benami property, whereas the provisions of section 147 of the 1961 Act and the subsequent provisions, i.e., section 148 to section 153 would operate while the assessment or reassessment is undertaken by the assessing authority. Therefore, the contention of the assessee for passing a separate speaking order to the objections raised could not be accepted. Even otherwise, on the merits, when the assessee filed a reply to the notice, there was nothing in his reply which could be termed to be an objection of a preliminary nature which would be required to be dealt with before passing the final order.
Virendra Ramanlal Soni v. DCIT (2019) 414 ITR 722 (Guj.)(HC)

2225 **S. 2(9) : Benami transaction – Person making contribution for purchase of property are not owners of property but property in law is of persons in whose name title with respect thereto has been recorded. [S. 4]**
Plaintiff instituted suit for partition of a property claiming that plaintiff and four defendants were having 1/5th undivided share therein under deed of purchase of subject property in favour of plaintiff and four defendants. Defendant No.1, in opposition to application under Order XII rule 6 of CPC stated that though sale deed by which property was purchased was in joint names of plaintiff and four defendants but entire sale consideration for purchase of property was equally paid by defendant No.1 and by his brother 'A'. Plea of sale consideration having been contributed by defendant No.1 and 'A', did not in law constitute defendant No.1 and 'A' as owners of property and property in law is of persons in whose name title with respect thereto has been recorded i.e., plaintiff and four defendants. Accordingly, defence of defendant No.1 was not allowed under section 4 and thus, final decree for partition of property was passed.
Ekant Baruta v. Rakesh Baruta (2019) 261 Taxman 565 (Delhi)(HC)

2226 **S. 2(9) : Benami transaction – Burden of proof – Property was purchased out of loan proceeds – Burden of proof on revenue – Appeal of revenue was dismissed. [S.24(3)]**
Dismissing the appeal of the revenue, the Tribunal held that,after amendment, the onus of proving a benami transaction rests entirely on the shoulders of the owner/ benamidar. Before amendment, the burden of proof was on the prosecution to prove the guilt of the Benamidar and beneficial owner. Once both are able to discharge their burden of proof as per amended law, then the burden of proof shifts to the prosecution. Once the burden shifts upon the IO, the principles of general law available prior to amendment would apply. Accordingly the appeal of revenue was dismissed. (MP-PBPT-163/MUM/2019(Stay) FPA-PBPT-206/MUM/2018, dt. 26.03.2019)
Akashdeep Iniatiing Officer v. Manpreet Estate LLP (AT PBPT Act), www.itatonline.org

S. 2(9) : Benami transaction – Advance salary – Allegation of amount was advanced to bring demonetised money in to circulation – Order attaching the bank account was set aside – The authorities have failed to discharge the burden. [S. 2(5), 3, 24, 46, PMLA, 2002, S.2(u)] 2227

Order attaching the bank account on the presumption that the amount was advanced to bring demonetised money into circulation was set aside. The attached properties are released on the ground that the authorities have failed to discharge the burden. Followed *Sitaram Agarwal v. Subrata Chandra (2008) 7 SCC 716.*
V. Rajinikanth v. DCIT (2019) 260 Taxman 47 (PBPTA-AT)
T. Raja v. K. Visakha (2019) 260 Taxman 225 (PBPTA-AT)

S. 2(12) : Beneficial Owner – Provisional attachment – Return of money on cancellation of order – Appellant cannot be held to be beneficial owner – Attachment of bank account was set aside. [S. 2(9), 24] 2228

Applicant company is engaged in manufacturing of ceramic wall tiles, agreed to supply ceramic tile to company ACPL for consideration of ₹ 75 lakhs-ACPL paid ₹ 75 lakhs to applicant towards supply of ceramic tiles through company DMPL. However, on finding that ACPL was not genuine and was involved in money laundering activity, appellant returned ₹ 75 lakhs received from ACPL by cancelling order. Initiating Officer held that applicant was a beneficial owner of ₹ 75 lakhs routed in its bank account by company ACPL through DMPL. Accordingly, Initiating Officer attached bank account of appellant in which the said ₹ 75 lakhs was transferred. Tribunal held that neither any material was placed nor available on record proving that appellant had entered into any benami transaction or in any way a beneficial owner of amount in question. Initiating Officer had not said anything substantial against appellant. Accordingly on facts, appellant could not be held as a beneficial owner with regards to amount transferred in account of assessee hence the order of attachment of bank account of appellant was set aside.
Iscon Ceramic (P.) Ltd. v. Initiating Officer (2019) 265 Taxman 364 (PBPTA-AT)

S. 3 : Benami Transactions – Part payment of consideration or payment of stamp duty by person other than purchaser – Hindu Undivided Family – Purchases of properties in favour of wife much prior to sale of ancestral property – Properties could not be said to have been purchased in wife's name from funds received by selling ancestral properties – Act cannot be applied retrospectively. 2229

Court held that under section 3 of the Benami Transactions (Prohibition) Act, 1988, there was a presumption that a transaction made in the name of the wife and children is for their benefit. By the Benami Transactions (Prohibition) Amendment Act, 2016, section 3(2) of the Benami Transactions (Prohibition) Act, 1988 the statutory presumption, which was rebuttable, was omitted. The Benami Transactions (Prohibition) Act, 1988 would not be applicable retrospectively. The burden of proving that a particular sale is benami and that the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an interference of that fact. While considering a particular transaction benami,

the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct. Decision of the Madras High Court in AS No. 785 of 1992 dt 5-8-1992 is partly reversed.
Mangathai Ammal (Decd.) through LRS v. Rajeswari (2019) 414 ITR 358 / 267 Taxman 506 (SC)

2230 **S. 3 : Prohibition of benami transactions – The Benami Amendment Act, 2016, amending the Benami Act, 1988, comes into force on 01.11.2016 and does not have retrospective effect. [S. 2((9), 5,8 and Art. 226, 227]**
The Benami Amendment Act, 2016, amending the Benami Act, 1988, comes into force on 01.11.2016 and does not have retrospective effect. Unless a contrary intention is reflected, every legislation is presumed and intended to be prospective. In the normal course of human behavior, one is entitled to arrange his affairs keeping in view the laws for the time being in force and such arrangement of affairs should not be dislodged by retrospective application of law. The High Court can strike down wrong exercise of jurisdiction under Article 226 & 227 to save individuals from lengthy proceedings and unnecessary harassment. (S.B. Civil Writ Petition No. 2915/2019, dt. 12.07.2019)
Nikharika Jain v. UOI (2019) 107 taxman.com 272 (Raj.)(HC), www.itatonline.org

2231 **S. 4 : Prohibition of the right to recover property held benami – Fiduciary capacity – Purchase of property in the name of trustworthy employee – Trail Court rejected the suit to recover the property on the ground that suit was barred – Matter restored back to Trial Court decide on merits. [Civil Procedure Code, 1908, Order VII Rule 11(d)]**
The appellant purchased the property in the name of employee who was a trustworthy employee for benefit of himself and his employees. The employee has left the job and refused to transfer back in the name of the appellant. The appellant filed the suit for seeking direction to respondent to hand over possession of suit flat to appellant. Trial court rejected the petition on the ground that suit was barred by virtue of provisions of section 4 of the Prohibition of Benami Property Transactions Act,1988 red with Order VII Rule 11(d) of the Civil Procedure Code, 1908. On appeal allowing the appeal the Court held that there was a fiduciary relationship between appellant and ex employee, accordingly the matter was restored back to Trial Court to decide matter on merit.
Guruswami Ganga Naikar v. Vaishali Mohan Kshirsagar (2019) 261 Taxman 504 (Bom.)(HC)

2232 **S. 4 : Suit for declaration of title with respect to premises – Plea raised by appellant was barred under S. 4 or not, could not have been subject matter of assessment at stage when application under Order VII Rule 11 CPC was taken up for consideration-Court directed the Trial Court to expedite the matter and dispose of the pending suit as early as possible and preferably within six months. [Code of Civil Procedure, Order 1908 VII Rule 11]**
Appellant filed a suit for declaration of title with respect to premises and prayed that he be declared as owner of premises and that sale deed dated 24-7-2006 executed

by his father i.e., first defendant, in favour of second defendant be cancelled. It was alleged that appellant had paid consideration for purchase of said premises in name of first defendant as first defendant was not having enough money to purchase the said premises. However, second defendant got said premises transferred in his favour taking undue advantage of first defendant's fragile health. Second defendant submitted an application under Order VII Rule 11 of Code of Civil Procedure praying for rejection of plaint on ground that suit was barred under section 4. Court held that since transactions falling under section 4(3)(b) are completely saved from mischief of section 4, question as regards whether matter comes within purview of section 4(3) is an aspect which must be gone into on strength of evidence on record. Question whether plea raised by appellant was barred under section 4 or not could not have been subject matter of assessment at the stage when application under Order VII Rule 11 CPC was taken up for consideration. Accordingly matter required fuller and final consideration after evidence was led by parties and, therefore, suit filed by appellant could not be said to be barred under section 4. Accordingly the appeal is allowed, the view taken by the lower Courts is set aside and the application preferred by the second defendant under Order VII Rule 11 CPC is dismissed. Since the suit has been pending since 2006, the Trial Court is directed to expedite the matter and dispose of the pending suit as early as possible and preferably within six months.
Pawan Kumar v. Babulal (2019) 263 Taxman 354 (SC)

S. 4 : Suit property was bought by a registered conveyance deed and there was also no challenge to registered deed conveying title to plaintiffs, vague and unsubstantiated pleas claiming purchase of property from siphoning off of family business by defendant could not be allowed to be sustained. [S. 2(a)] 2233

Plaintiffs instituted suit seeking decree of mandatory injunction for removing defendent from suit property owned by plaintiffs. They contended that they allowed defendant to reside in said suit property on gratuitous basis. Defendant submitted that suit property had been purchased from funds of joint family business belonging to their late father and that property was a benami property and that, she had a right in same. Except for a bald plea in written statement that suit property had been purchased from funds siphoned off from family business, there was no other plea raised in written statement to explain what right defendant had to reside in suit property and, thus, defence was vague, evasive and lacked material particulars. Since suit property was bought by a registered conveyance deed and there was no challenge to said registered deed conveying title to plaintiffs, vague unsubstantiated plea of defendant claiming purchase of property from siphoning off of family business could not be allowed to be sustained. Once a licensee would always be a licensee. The license given in favour of the defendant stands terminated. The defendant would clearly be liable to be evicted.
Rajeev Tandon v. Rashmi Tandon (Smt.) (2019) 263 Taxman 50 (Delhi)(HC)

Chartered Accountants Act, 1949

2234 **S. 16 : Officers and employees, salary, allowances, etc. – Termination of service of employee – State Government was not competent authority to refer industrial dispute against petitioners to Industrial Tribunal – Central Government has the jurisdiction – Award passed was set aside. [Industrial Disputes Act, 1947 S.2(a)(i)]**

The respondent No. 3 raised an industrial dispute against the petitioners i.e. Institute of Chartered Accountants of India claiming that he was employed as peon by the petitioners on 22-2-1993 and that his services were illegally terminated on 7-10-1998. He raised an industrial dispute wherein he prayed for reinstatement with all back wages and continuity of service. The claim of the respondent No. 3 was contested by the petitioners and there after an award was passed. On appeal High Court held that State Government was not competent authority to refer industrial dispute against petitioners to Industrial Tribunal and Central Government has the jurisdiction. Accordingly the award passed was set aside.

Institute of Chartered Accountants of India v. State of U.P (2019) 265 Taxman 5 (All.)(HC)

2235 **S. 16 : Officers and employees, salary, allowances etc. – Management trainee – Person appointed on probation for a specified period – Does not get confirmation automatically.**

Dismissing the petition the Court held that, person appointed on probation for a specified period, does not get confirmation automatically.

Anand Kumar v. ICAI (2019) 262 Taxman 65 (Delhi)(HC)

2236 **S. 22 : Professional or other misconduct – Auditor – No objection certificate – Only requirement is communication from the Chartered accountant who accepts position as an auditor.**

Dismissing the petition the Court held that, in terms of clause (8) of First Schedule of Act, there is no requirement for an auditor to secure a no objection certificate from previous auditor as only requirement is that Chartered Accountant, who accepts position as an auditor, must communicate with previous auditor about same.

Ssay & Associates v. ICAI (2019) 267 Taxman 370 (Delhi)(HC)

2237 **S. 22 : Professional or other misconduct – Decision of Director Discipline of ICAI – Not to entertain complaint and decision of board of discipline of ICAI to concur with director discipline's opinion could not be faulted – Petition was dismissed with cost of ₹ 1 lakh was directed to be deposited with the Delhi High Court Legal Services Committee with in a period of two weeks.**

Petitioner company filed a complaint with ICAI alleging that accounts and audit report in respect of seven companies had not been prepared in compliance with provisions of Companies Act and since, accounts of said companies were certified by, he was guilty of professional misconduct. It was noticed that 'J' had retired from firm of Chartered Accountants that was appointed to conduct audit of said companies and complaint was made after seven years of last audit report being signed by him in respect of said

companies and thus, complaint was barred by limitation. Further, all seven companies were admittedly closely held private companies and neither petitioner not its directors have any dealing with said companies or with 'J' and no person who had dealt with said companies, had raised any complaints or any allegations with regard to accounts not being true and fair or of any misstatement in auditor's report. Court also noted that petitioner had been pursuing complaints against various members of ICAI with relentless fevour and had filed various petitions before instant court and instant court had dismissed said petitions with cost. Further, there was no element of public interest involved in complaint made. Accordingly the decision of Director Discipline of ICAI to not to entertain complaint and decision of board of discipline of ICAI to concur with director discipline's opinion could not be faulted. Court also held that the present petition is a frivolous one and the filing of such petitions ought to be discouraged, as it takes up considerable judicial time at the cost of bona fide litigants who are in urgent need of relief was also dismissed with costs quantified at ₹ 1 lakh. Notwithstanding the same, the petitioner has chosen to press instant petition as well. In the circumstances, the instant petition should be dismissed with costs.
Wholesale Trading Services (P.) Ltd. v. ICAI (2019) 267 Taxman 245 (Delhi)(HC)

S. 22 : Professional and other misconduct – ICAI has jurisdiction to entertain complaint against chartered Accountant for sexual harassment. [S. 21] 2238
Court held that complaint against a Chartered Accountant regarding outraging modesty of a woman and/or other offences involving moral turpitude, would fall within meaning of 'other misconduct' as defined in clause (2) of Part IV of First Schedule and, Board of Discipline of ICAI has jurisdiction to entertain such complaint.
Lalit Agrawal v. ICAI (2019) 261 Taxman 459 (Delhi)(HC)

Central Excise Act, 1944

2239 **S. 4 : Dharmada cannot be considered as trading receipts and was not part of the assessable value – No duty was payable on the component of Dharmada. [S. 5, 11AA, 173Q]**

If an amount (Dharmada, Charity) is paid at the time of the sale transaction for a purpose other than the price of the goods, it cannot form part of the transaction value. Such payment is not for the transaction of sale and cannot be treated as consideration for the goods.

The fact that the payment is compulsory upon purchase does not mean that it is involuntary because the purchaser purchases the goods out of his own volition. Dharmada cannot be considered as trading receipts and was not part of the assessable value. No duty was payable on the component of Dharmada. (CA No. 5282 of 2005,dt. 09.04.2019)

D. J. Malpani v. CCE (LB) (2019) 176 DTR 305 / 308 CTR 73 (SC), www.itatonline.org

Companies Act, 1956

S. 295(4) : Directors – Professionals – Liability of professionals acting as Non-executive directors – Cannot be prosecuted for offences committed by the company. 2240

Practicing professionals are prohibited from acting as full time directors. They can only act as non-executive directors not performing administrative duties. Such persons cannot be prosecuted for offences committed by the company. It will be a travesty of justice to prosecute all Directors, if the offence is committed without their knowledge. The accounts are signed by such directors in a routine manner and they are not subject to vicarious liability (*Homi Phiroz Ranina & Ors. v. State of Maharashtra 2003 (3) Mh.L.J. 34* followed). Accordingly the process issued by the learned Magistrate under section 295 (4) of the Companies Act, 1956 on 24.5.2002 and the summons dated 3.11.2015 are quashed and set aside. Rule is made absolute accordingly.(CWP No. 1528 of 2016, dt. 30.01.2019)

Rajendra Shah S/o. Ambalal Shah v. State of Maharashtra (Bom.)(HC), www.itatonline.org

Contempt of Courts Act, 1971

2241 **S. 2(a) : Contempt of court – Advocate – Held to be proper – Judicial independence and courage to be shown while delivering the justice. [S. 12]**

Dismissing the petition in respect of contempt proceedings against an Advocate, the court held that debarment from entering court premises / debarment from making appearances in addition to or in substitution of imprisonment and fine under the Contempt of Courts Act is held to be valid. Followed *Mahipal Singh Rana v. State of U.P (2016) 8 SCC 335*. Court also observed that in the instant case the advocate has acted contrary to the obligations. He has set a bad example before others while destroying the dignity of the court and the judge. The action has the effect of weakening of confidence of the people on courts. The judiciary is one of the main pillars of democracy and is essential to peaceful and orderly development of society. The Judges has to deliver justice in a fearless and impartial manner. He cannot be intimidated in any manner or insulted by hurling abuses. Judges are not fearful saints. They have to be fearless preachers so as to preserve the independence of the judiciary which is absolutely necessary for survival of democracy.

Rajesh Tiwari, Advocate v. Alok Pandey, Chief Judicial Magistrate (2019) 6 SCC 465 (SC)

Contract Labour (Regulation and Abolition) Act, 1970

Workmen-concession on facts and law made by counsel – Test to be applied to find out whether contract labourers are direct employees or not. 2242

Issue before the Court was, "Whether termination of services of workman Shri Mahendra Prasad Jakhmola, s/o Late Shri Vachaspati Jakhmola, Helper by the employer, w.e.f. 13.11.2001, is justified and / or as per law? If not, what benefit/relief the concerned workman is entitled for and with what other details?"

Court analysed the various tests to find out whether contract labourers are direct employees or not, meaning of the expression "control and supervision", meaning of "master-servant" relationship. When the findings in a judgement can be said to be "perverse" and such that no reasonable person could possibly arrive at. Litigant is bound by concessions of fact and law made by his Counsel/Authorized representative during the hearing. (CANOS. 1799-1800 of 2019, dt. 20.02.2019)

Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola (SC), www.itatonline.org

General Sales tax (GST)

2243 **Doctrine of promissory estoppel – New Package Scheme of incentives, 1993 – The eligibility for sales-tax exemption cannot be withdrawn under General Sales tax (GST) [Art. 39(b), 39(c)]**

Under the New Package Scheme of incentives, 1993, monetary and other incentives in the nature of tax subsidy or tax exemption at the rate prescribed in the scheme and other benefits were given. As per the eligibility certificate issued by the competent authority the certificate was valid for nine years. The Commissioner Sales tax prescribed the effective date, but while doing so, curtailed the validity period by about three years and incentives given in the Incentive Scheme have been substantially reduced by new policy prescribing new tax structure of the State. Assessee challenged the policy on the ground that new policy violates principle of promissory estoppel.

Allowing the petition the Court held that, once a promise has been solemnly given by the State with an intention that it would be acted upon and which has been indeed acted upon and liabilities suffered by the promisee, the State cannot be permitted to backtrack on the promise and change its position so as to cause loss to the promisee. The eligibility for sales-tax exemption cannot be withdrawn under GST. (WP No. 2209 of 2018, dt. 16.07.2019)

K. M. Refineries and Infraspace Pvt. Ltd. v. State of Maharashtra (Bom.)(HC), www.itatonline.org

Goods and Service Tax
Finance Act 1994

S. 65 : Builder – Collection of non refundable deposits – Not liable to collect service tax. 2244

Dismissing the appeal of the revenue the Court held that, the collection of non-refundable deposits by the assessee from prospective flat buyers, for maintaining the building, does not result in the assessee providing management, maintenance or repair service as defined in Section 65(105)(zzg) of Finance Act 1994 (C EA no. 9 of 2018, dt. 19.09.2018)

CST v. Crescendo Associates (Bom.)(HC) www.itatonline.org
CST v. Shri Krishna Chaitanya Enterprises (Bom.)(HC) www.itatonline.org
CST v. Green Valley Developers (Bom.)(HC) www.itatonline.org
CST v Kumar Rathi (Bom.)(HC) www.itatonline.org

GST-Applicability of Rule 117 of CGST Rules 2245

"Whether the due date contemplated under Rule 117 of the Rules to claim transitional credit is procedural in nature or a mandatory provision?"

Held : The entitlement of credit of eligible duties on the purchases made in the pre-GST regime as per the then existing CENVAT credit rules is a vested right and therefore, it cannot be taken away by virtue of Rule 117 of the CGST Rules, 2017, with retrospective effect for failure to file the form GST Tran-1 within the due date. The provision for facility of credit is as good as the tax paid till the tax is adjusted and therefore, the right to the credit had become absolute under the Central Excise Act and therefore, the credit is indefeasible and the same cannot be taken away. The right to carry forward credit is a right or privilege, acquired and accrued under the repealed CEA, 1944 and it has been saved under Section 174(2) (c) of the CGST Act, 2017 and, therefore, it cannot be allowed to lapse under Rule 117 of the CGST, 2017, for failure to file declaration form GST Tran-1 within the due date. It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision. (SPLA No. 5758 to 5762 of 2019. Dt. 6th September, 2019

Siddharth Enterprises v. The Nodal Officer (2019) AIFTP Times

GST-Powers-S. 83 of the SGST Act, 2017 2246

Writ applicant seeks to challenge the action of blockage of the input tax, provisional attachment of the stock of goods, provisional attachment of its Bank Accounts in exercise of powers under Section 83 of the SGST Act, 2017.

Held: Although there is no specific challenge to the order passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, by virtue of such order, the impugned order of provisional attachment cannot be defended. The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far reaching power. Such power

should be used sparingly and only on substantive weighty grounds and reasons. The power of provisional attachment under Section 83 of the Act should be exercised by the authority only, if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. The power u/s. 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee (SCA No. 13132 of 2019 dt 28th August, 2019)
Valerius Industries v. UOI (2019) AIFTP Times-October-P 7 (Guj.)(HC)

2247 **GST-AAR**

"Whether the discount provided by the Principal Company to their dealers through the applicant is taxable under the GST laws? Whether the amount shown in the Commercial Credit note issued to the applicant by the Principal Company attracts proportionate reversal of input tax credit? Is there any tax liability under GST laws on the applicant for the amount received as reimbursement of discount or rebate provided by the Principal Company as per agreement between the Principal Company and their dealers and also an agreement between the principal and distributors?"

Held: The price of the products supplied by the applicant is determined by the supplier/ principal company and the applicant has no control on the price of the products. Therefore, the additional discount given by the supplier through the applicant; which is reimbursed to the applicant is to offer a special reduced price by the distributor/ applicant to the customers and hence the amount represent consideration paid by the supplier of goods/principal company to the distributor/applicant for supply of goods by the distributor / applicant to the customer. Therefore, this additional discount reimbursed by the supplier of goods / principal company to the distributor / applicant is liable to be added to the consideration payable by the customer to the distributor / applicant to waive at the value of supply under Section 15 of the CGST / SGST Act at the hands of the distributor / applicant. The supplier of goods / principal company issuing the commercial credit note is not eligible to reduce his original tax liability and hence the recipient / applicant will not be liable to reverse the ITC attributable to the commercial credit notes received by him from the supplier. The applicant is liable to pay GST at the applicable rate on the amount received as reimbursement of discount / rebate from the principal company (AAR No. KER/60/2019 dt. 16th September, 2019)
Santhosh Distributors (2020) AIFTP Times January-P.11) (Ker.)(AAR)

2248 **GST-AAR**

"Applicability of GST over and above ₹ 7,500; GST on reimbursement of electricity charges; GST on collection of sinking fund / corpus fund."

Held: The exemption of ₹ 7,500/- in terms of entry no. 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is applicable for maintenance charges collected from members. The benefit of exemption up to ₹ 7,500/- is applicable on per flat basis, when members have more than one flat. The exemption of '₹ 7,500/-' in terms of entry no. 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, on maintenance charges charged by a Resident Welfare Association (RWA) from, resident is available only, if such charges do not exceed ₹ 7,500/- per month per

member. In case the charges exceed ₹ 7,500/- per month per member, the entire amount is taxable. The electricity charges paid for power consumed towards common facilities and separately recovered from members is liable to GST as consideration received for the supply of maintenance services to the members. The Corpus Fund or Sinking Fund collected from members is not to GST, as it amounts to deposits received towards future supply of services to members (No. KAR-ADRG 42/2019 dt. 17th September, 2019.
Prestige South Ridge Apartment Owners' Association (2019) AIFTP Times-Nov-P.7 (Karn.) (AAR)

GST-AAR 2249

"The Applicant offers optional Parental Mediclaim insurance for employees' parents. As per this scheme, the Applicant initially pays the entire premium and 50% of the premium is recovered from the respective employees who opt for parental insurance scheme. Whether recovery of 50% of Parental Health Insurance Premium from employees, amounts to supply of service under Section 7 of the CGST Act, 2017 and whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees?"
Held: The activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business. The activity undertaken by the applicant of providing mediclaim policy for the employees' parent through insurance company neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST Act 2017. Hence, the applicant is not rendering any services of health insurance to their employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee. (No. GST-ARA-19/2019-20/B-108 dt. 4th October, 2019)
Jotun India P. Ltd. (2019) AIFTP Times-Nov-P 7 (Maha.)(AAR)

GST-AAR 2250

"Whether the contractor can charge GST on the value of material supplied by the recipient of service? What should be the mechanism to calculate the taxable value as per section 15 of the Act?"
Held: In the present case, the material is supplied by the contractee and therefore, the question raised by the applicant as to whether they can charge GST on the same is irrelevant. The applicant, on this issue of supply of subject materials, is not a supplier of goods/services and as per the provisions of Section 95 of the CGST Act, they cannot raise this question. Hence the question is not answered-As per section 15 of CGST Act, 2017 any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be included in the value of taxable supply-GST is payable on the entire contract value as per certificate issued by the Architect i.e. R.A. Bill without deducting the value of Cement, Mild Steel, Tor Steel and Structural Steel provided by the contractee. (No. GST-ARA-03/2019-20/B-90 dt. 20th August, 2019)
Tejas Const. & Ifr. P. Ltd. (2019) AIFTP Times-October-P.7 (Maha.)(AAR)

Limitation Act, 1963

2251 **S.5 : Extension of prescribed in certain cases – Condonation of delay – 916 days – A liberal approach is to be taken in the matter of condonation of delay – The consideration for condonation of delay would not depend on the status of the party, namely the Government or the pubic bodies – Condonation of delay is not automatic – No proper explanation was filed for condonation of delay – Condonation of delay was dismissed. [Civil Procedure, 1908, Order XXI of the Code Art. 226]**

The petitioner contended that the delay in preferring the appeal was due to non-convening of executive council and due to no availability of Vice-Chancellor. Delay was not accepted by the division bench of the High Court. Aggrieved by the order, the university has filed the petition and contended that on merits would cause grave injury to the public institution. Court held that a liberal approach is to be taken in the matter of condonation of delay & the consideration does not depend on the status of the party, even so the condonation of long delay should not be automatic since the accrued right or adverse consequence to the opposite party is also to be kept in perspective. While considering condonation of delay, routine explanation is not enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. Delay was not explained properly hence the appeal is dismissed. (*Collector, Land Acquisition Anantnag v. Mst Katiji (1987) 167 ITR 471 (SC), (1987) (2) SCC 107* distinguished) (CA Nos 9488 9489 of 2019 (SLP (Cl) Nos.55815582 of 2019), dt. 17.12.2019)

University of Delhi v. UOI (SC), www.itatonline.org

Prevention of Money Laundering Act, 2002

S. 50(2) : Summons – Summons cannot be quashed in Writ proceedings [S. 3, 50(3), Art. 20, 226] 2252

Dismissing the petition, the Court held that, it is trite law that at the stage of show-cause notice, charge sheet, summons or notice to appear, constitutional courts would not interfere so as to interject the proceedings and thereby prevent the authorities from proceeding. Ordinarily, a writ petition would not lie against a show-cause notice for the reason that it does not give rise to any cause of action. Summons issued under section 50(2) of the Act has nothing to do with the regulations as defined under the Regulatory Rules. The rules are referable only to proceedings for adjudication and not to pre-adjudication proceedings. In fact, section 50(2) does not refer to an accused at all. At the pre-adjudication stage, i.e., during investigation stage, the authorities are not required to state or reveal the nature of the material upon which they intend to rely for summoning a person for investigation. Accordingly, dismissing the writ petition, that summons clearly disclosed that they had been issued in exercise of power vested under section 50(2) and 50(3) of the Act. There being no challenge to the Constitutional validity of these provisions and the jurisdiction of the authority not being in serious dispute, the writ petition on the ground of investigation being hit by article 20 of the Constitution of India could not be entertained at this stage.

Sachin Narayan v. Income-Tax Department (2019) 417 ITR 641 (Karn.)(HC)

West Bengal Sales Tax Act, 1994
Service tax-Finance Act 1994

2253 **S. 2(30) : Club – Mutuality – A club registered as a 'company' u/s. 25 of Companies Act is not like other companies as it has no shareholders, no dividends declared, and no distribution of profits takes place – Such clubs cannot be treated as separate in law from their members-when a club supplies goods to its members, there is no "sale" and sales-tax cannot be levied – From 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form. [S. 2(5), 2(10) 2(30), Constitution of India, Art. 366 (29-A), 367, Contract Act, 1872, S. 2(d), Companies Act,1956, S. 25(1)(b), Income-tax, 1961 S. 2(24)(vii), 2(31), 44, 45, Indian Contract Act 1872, S.2(d), General Clauses Act, 3 (42), Finance Act, 1994, S. 65 (105) (zze), 65B (37), 66B, 66D, 68]**

This Appeal arises out of a reference order by a Division Bench of this Court, in *State of West Bengal v. Calcutta Club Limited (2017) 5 SCC 356*. Three questions to be answered by a larger Bench as follows: "(i) Whether the doctrine of mutuality is still applicable to incorporated clubs or any club after the 46th Amendment to Article 366(29-A) of the Constitution of India?

(ii) Whether the judgment of this Court in Young Men's Indian Assn. [*CTO v. Young Men's Indian Assn., (1970) 1 SCC 462*] still holds the field even after the 46th Amendment of the Constitution of India; and whether the decisions in Cosmopolitan Club [*Cosmopolitan Club v. State of T.N., (2017) 5 SCC 635 : (2009) 19 VST 456 (SC)*] and Fateh Maidan Club [*Fateh Maidan Club v. CTO, (2017) 5 SCC 638 : (2008) 12 VST 598 (SC)*] which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law? (iii) Whether the 46th Amendment to the Constitution, by deeming fiction provides that provision of food and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?" After considering various case laws, the Court held that a club registered as a 'company' U/s. 25 of Companies Act is not like other companies, as it has no shareholders, no dividends declared, and no distribution of profits takes place. Such clubs cannot be treated as separate in law from their members. The ratio decidendi in *Bacha F. Guzdar v. CIT (1955) 27 ITR 1 (SC)* does not apply to such clubs. When a club supplies goods to its members, there is no "sale" and sales-tax cannot be levied (*Bangalore Club v. CIT (2013) 350 ITR 509 (SC), ITO v. Venkatesh Premises Co-operative Society Ltd (2018) 402 ITR 670 (SC)*. Court also held that, from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form. The appeals of the Revenue are, therefore dismissed. WP (C) No.321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law. (CA No..4184 of 2009, dt. 03.10.2019)

State of West Bengal v. Calcutta Club Ltd. (2019) 182 DTR 409 / 311 CTR 121 / 2019 (29) G.S.T.L 545 (SC) www.itatonline.org

CC Central Excise and Service v. Ranchi Club Ltd. (2019) 182 DTR 409 / 311 CTR 121/ 2019 (29) G.S.T.L 545 (SC) www.ittonline.org

Circulars, Notifications & Articles

2019-Articles (3-9-2019)

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Budget speech of Minister of Finance for 2019-20 (2019)410 ITR 165(St)

Finance Bill, 2019 (Bill No.5 of 2019 (2019) 410 ITR 185 (St)

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Circular No 1 of 2019, dated 1 st January, 2019-Income tax deduction from salaries during the financial year 2018-19 under section 192 of the Income-tax Act, 1961 (2019) 410 ITR 81 (St)

Circular No 4 of 2019 dated 28 th January 2019-clarification regarding liability and status of Official Agencies under the Income-tax Act-reg (2019) 410 ITR 207 (St)

Circular No 5 of 2019, dated 5 th February, 2019-Monetary limits for filing /withdrawal of wealth-tax appeals by the Department before ITAT, HCs and SLPs /appeals before SC through extending the scope of Circular 3 of 2018-Measures for reducing litigation (2019) 411 ITR 7 (St)

Circular dated 8 th February, 2019-Corrigendum to circular No 1 of 2019 dated 1-1-2019 : Income tax deduction from salaries during the financial year 2018-19 under section 192 of the Income-tax Act,1961-Regarding (2019) 411 ITR 8 (St)

Circular No 6 of 2019 dated 31 st March, 2019-Giving effect to the judgment(s) order(s) of the Honourable Supreme Court on Aadhar-PAN for filing return of income-Reg. (2019) 412 ITR 44 (st)

Circular no.7 of 2019 dt. 8-04-2019-Order under section 119 of the Income-tax Act, 1961-Period of furnishing of the report. (2019) 413 ITR 8 (St)

Circular No 9 of 2019 dt 6-05-2019-Sub-Procedure, format and standards for issuance of certificate for tax deduction at source in Part B of form No. 16---Reg. (2019) 414 ITR 13 (St)

Circular No. 9 of 2019, dt. 14-05 2019-Order U/s. 119 of the Act-S.44AB-Report under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31 st March 2020 (2019) 414 ITR 15 (St)

Circular No. 10 of 2019 dt. 22-05 2019-Condonation of delay in filing of Form No. 10B for years prior to the assessment year 2018-19-Reg. (2019) 418 ITR 2 (St)

Circular No. 13 of 2019, dated 24-06-2019-Exemption of service element and disability element of disability pension granted to disabled personnel of armed forces who have been invalidated on account of disability attributable to or aggravated by such service-Reg. (2019) 415 ITR 209 (St)

Circular No. 14 of 2019, dated 3-07-2019-Clarification regarding taxability of income earned by a non-resident investor from off shore investments routed through an alternative investment fund –Reg. (2019) 415 ITR 210 (St)

Circular No. 15 of 2019 dated 12-07-2019-Issues in respect of payment of third installment under the Income Declaration Scheme, 2016-Clarification on certain procedural issues under section 195 of the Income Declaration Scheme,2016 read with section 119 of the Income tax Act, 1961 –reg.(2019) 415 ITR 212 (St)

Circular No. 16 of 2019, dated 7 th August 2019-Clarification with respect to assessment of Startup Companies involving application of section 56(2) (viib) of the Income tax Act,1961-reg.(2019) 417ITR 1(St)

Circular No.17 of 2019, dated 8 th August 2019-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 3 of 2018-Measures for reducing litigation (2019) 416 ITR 106 (St)

Circular No.18 of 2019, dated 8 th August, 2019-Clarification in respect of filling-up of the ITR forms for the assessment year 2019-20 (2019) 416 ITR 107 (St)

Circular No. 22 of 2019, dated 30 th August, 2019-Consolidated circular for assessment of Startups –Reg. (2019) 417 ITR 2 (St)

Circular No. 23 of 2019 dated 6 th September 2019-Exception to monetary limits for filing appeals specified in any circular issued under section 268A of the Income tax Act, 1961-Reg. (2019) 417 ITR 4 (St)

Circular No. 24 of 2019, dated 9 th September, 2019-Procedure for identification and processing of cases for prosecution under Direct Tax laws-reg. (2019) 417 ITR 5 (St)

Circular No. 25 of 2019, dated 9 th September, 2019-Relaxation of time-Compounding of offences under Direct Tax laws-One time measure-Reg. (2019) 417 ITR 10 (St)

Circular No. 28 of 2019 dated 27-09-2019-Clarification on delay in filing Form No. 10B for the assessment year 2016-17 and assessment year 2017-18-Board's order under section 119(2) of the Income-tax Act, 1961-Reg. (2018) 418 ITR 4 (St)

Monetary limits-Appeals-S.268A-Office memorandum, dated 16th September, 2010 : Sub : Special order of Board exempting cases involving bogus long term capital gains (LTCG) short term capital loss (STCL) through penny stocks from monetary limits specified in any circular issued under section 268A of the Income-tax Act, 1961-reg. (2019) 417 ITR 53 (St)

Circular No.26 of 2019,dated 26 th September,2019-Sub : Clarification in respect of filling-up return forms for the assessment year 2019-20. (2019) 417 ITR 64 (St)

Circular No. 27 of 2019, dated 26 th September, 2019-Sub: Conduct of assessment proceedings through " E. Proceeding " facility during financial year 2019-20-Reg. (2019) 417 ITR 68 (St)

Circular No. 29 of 2019, dated 2 nd October, 2019 –Sub : Clarification in respect of option exercised under section 115BAA of the Income tax Act, 1961 inserted through the Taxation Laws (Amendment) Ordinance, 2019-reg. (2019) 417 ITR 70 (St)

CBDT Circular-Due date of filing of return-Circular dated 27 th September,2019-Order under section 119 of the Income tax Act,1961 (From 30 th September to 31 st October 2019) (2019) 417 ITR 63 (St)

Circular dated 31st October, 2019 : Order under section 119 of the Income-tax Act, 1961 : Jammu and Kashmir-Extension of date for filingof return (2019) 418 ITR 23 (St)

Circular No. 30 of 2019, dated 17 th December, 2019-Condonation of delay under section 119 (2) (b) of the Act in filing of Form No. 9A and Form No. 10 for the assessment year 2017-2018-Extension of applicability of circular No.7 of 2018-Reg.(2020) 420 ITR 390 (St)

Circular No. 32 of 2019 dated 30 th December, 2019-Clarifications in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961-Reg. (2020) 420 ITR 25 (St)

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Notifications :

Notification under clause (v) of the Explanation to section 48 : Cost of inflation index. Notification No S.O 3266 (E) dated 12 th September 2019 (2019) 417 ITR 29 (St)

Special Courts

Offences and prosecutions under Income-tax Act, 1961-S.280A(1): Central Government in consultation with Chief Justice of High Court of Karnataka designates Special Courts in State of Karnataka for the purpose of this clause. Notification No. S.O. 376(E),dated 11-10-2019 (2019) 418 ITR 6 (St)

E-Assessments : Notification under section 120(1), 120(2) and 120(5) Income tax authorities notified for the purpose of conduct of E. assessment proceedings. Notification No.S.O. 3435(E) dt. 23 rd September 2019 (2019) 418 ITR 24 (St)

Income tax (12th Amendment) Rules, 2019-Notification No. G.S.R.No 825 (E) dated 6 th November 2019 (2019) 418 ITR 19 (St)

Prevention of Money Laundering Act, 2002.

Notification under section 72A : Inter-ministerial Co-ordination Committee (IMCC) constituted for the purpose of the said section. (2019) 418 ITR 1 (St)

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