

ITRV DIRECT TAX CASE LAW DIGEST FOR YEAR 2013

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For full text of the case laws please log on to www.itrvault.in

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(Disclaimer: Though full efforts have been made to summarize the case laws correctly, yet ITR VAULT or the compiler is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)

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ASSESSMENT / REVISION / APPEALS / DEMAND / REFUND

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-AHD-011	Vodafone West Ltd. vs. ACIT	ITAT (Ahemdabad)	Tribunal has the power to grant unlimited stay of demand under third Proviso to section 254(2A)
2013-ITRV-HC-MUM-017	CIT vs. Salman Khan	Mumbai High Court	S. 292BB (Notice deemed to be valid in certain cases) does not have retrospective effect
2013-ITRV-HC-DEL-034	Court in its own Motion vs. CIT	Delhi High Court	Issued strict guidelines to end Dept's TDS credit & refund adjustment harassment
2013-ITRV-HC-MUM-035	UTI Mutual Fund vs. ITO	Mumbai High Court	Stay of demand can be granted even if there is no financial hardship
2013-ITRV-HC-MUM-037	Society of the Franciscan (Hospitaller) Sisters vs. DDIT (Exemptions)	Mumbai High Court	Stay applications are not a "Meaningless Formality". No recovery should be made during pendency of a stay application. S. 226(3) notice must ordinarily be pre-served on assessee.
2013-ITRV-HC-MUM-043	CIT vs. Sevak Pharma Pvt. Ltd	Mumbai High Court	Department has to show why appeal should not be dismissed following the Low Tax Effect Circular.
2013-ITRV-HC-MUM-054	HDFC Bank Ltd. vs. ACIT	Mumbai High Court	Demand should be stayed if strong prima facie case made out. Demand on covered issues cannot be recovered by adjustment of refunds - section 220(6).
2013-ITRV-HC-DEL-055	Joginder Pal Gulati vs. OSD – CPIO	Delhi High Court	Income-tax department must make return scrutiny guidelines public
2013-ITRV-HC-ALL-061	Vijay Prakash Agrawal & Anrs vs. CIT	Allahabad High Court	Passed strictures against department for harassing honest taxpayers in case of non-grant of refunds.
2013-ITRV-ITAT-DEL-075	Crystal Phosphates Ltd. vs. ACIT	ITAT (Delhi)	Assessment u/s 143(3) would be void if case is picked up contrary to CBDT's Scrutiny Guidelines
2013-ITRV-ITAT-MUM-080	Y. P. Trivedi vs. JCIT	ITAT (Mumbai)	Delay in filing appeal due to CA's fault is bona fide & must be condoned
2013-ITRV-HC-ALL-082	Fateh Chand Charitable Trust vs. CIT & Anrs	Allahabad High Court	Expressed Shock & Anguish at mal-administration by AO & CIT. CBDT directed to take action against erring officials

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2013-ITRV-HC-GUJ-111	Vaghjibhai S Bishnoi vs. ITO	Gujarat High Court	Condemned department's practice of not giving prompt & full credit for TDS
2013-ITRV-HC-ALL-113	CIT vs. Intezar Ali	Allahabad High Court	Directed CBDT to inquire into conduct of AO in framing assessment with ill-will/ ulterior motive
2013-ITRV-ITAT-AGRA-114	ITO vs. Shri Bhagwan Agarwal	ITAT (Agra)	Directed ICAI to initiate disciplinary proceedings against CA for suppressing information and obtaining order by fraud
2013-ITRV-SC-131	CIT vs. Gujarat Flouro Chemicals	Supreme Court	The department is not obliged to pay interest on interest u/s 244A as that is not provided in the law. Sandvik Asia 280 ITR 643 (SC) awarded compensation for inordinate delay on its facts
2013-ITRV-ITAT-MUM-132	Citicorp Finance (India) Ltd. vs. Addl. CIT	ITAT (Mumbai)	TDS Credit must be given even if TDS Certificate is not available/ entry is not shown in Form 26AS
2013-ITRV-SC-133	CIT vs. Reliance Energy Ltd.	Supreme Court	S. 234D does not apply to an assessment year commencing pre 1.6.2003 if the assessment order is passed prior to that date
2013-ITRV-HC-MUM-137	Bharat Petroleum Corporation Ltd. vs. ITAT	Mumbai High Court	<ul style="list-style-type: none"> • Tribunal has no power to dismiss appeal for non-appearance of appellant. It has to deal with the merits. • An application for recall of an ex-parte dismissal order is under s. 254(2) & must be filed within 4 years from the date of the order. • The Tribunal must permit "mentioning" of matters
2013-ITRV-HC-P&H-138	DCIT vs. ITAT	Punjab & Haryana High Court	Reprimands IT Department for "over-zealousness" and "ham-handed" attempt to recover taxes in violation of stay order. Tribunal is duty-bound to order refund of such taxes
2013-ITRV-ITAT-AHD-142	Prakash Vasantbhai Golwala vs. ACIT	ITAT (Ahemdabad)	Law of jurisdictional High Court is not binding if there is a later contrary judgement of non-jurisdictional High Court.
2013-ITRV-SC-144	Kathiroor Service Cooperative Bank Ltd. vs. CIT (CIB) &	Supreme Court	AO is empowered to launch fishing and roving enquiry with a view to detect tax evasion u/s 133(6)

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	Anrs		
2013-ITRV-HC-DEL-145	DIT (International Taxation) vs. Alcatel Lucent USA, Inc	Delhi High Court	A non-resident assessee which does not admit income chargeable to tax must be inferred to have induced the Indian payer not to deduct TDS and so it is liable for advance-tax interest u/s 234B
2013-ITRV-ITAT-MUM-147	Paresh S. Shah vs. ITO	ITAT (Mumbai)	Failure to comply with the criterion necessary to represent the matter before the Tribunal, in time, renders appeal liable for dismissal
2013-ITRV-HC-GUJ-149	Dattani & Co. vs. ITO	Gujarat High Court	ITAT is duty-bound to deal with all judgments cited during hearing of appeal
2013-ITRV-ITAT-MUM-154	Maharashtra Housing & Area Development Authority vs. Addl DIT (E)	ITAT (Mumbai)	AO's action of recovering outstanding taxes without affording reasonable time to take remedial steps is a misuse of powers and a gross violation of the directions laid down by the Courts. AO has to refund the taxes recovered
2013-ITRV-SC-159	Chironjilal Sharma HUF vs. Union of India & Ors	Supreme Court	Assessee is entitled to interest on cash appropriated during search even if refund is directed in appeal proceedings u/s 132B(4)/240/244A
2013-ITRV-ITAT-DEL-162	Lala Harbhagwan Das & Memorial & Dr. Prem Hospital (P) Ltd vs. CIT	ITAT (Delhi)	Termed CIT-DR's behaviour "<i>totally irresponsible, contemptuous and malicious</i>". Costs imposed & action for contempt of court to be initiated
2013-ITRV-SC-168	CIT vs. Mastek Ltd.	Supreme Court	High Court has power to hear the appeal on questions not formulated at the stage of admission of the appeal u/s 260A(4)
2013-ITRV-ITAT-DEL-171]	DCIT vs. Motorola Solutions India P. Ltd.	ITAT (Delhi)	Passed severe strictures on the AO for acts of "<i>malfeasance by pleading apparent ignorance and acting in subterfuge and an underhand manner</i>". CBDT requested to train officers properly to avoid them taking the law into their own hands with complete impunity and disregard for the law

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CAPITAL GAIN

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-MUM-012	Irfan Abdul Kader Fazlani vs. ACIT	ITAT (Mumbai)	S. 50C does not apply to transfer of immovable property held through company
2013-ITRV-ITAT-MUM-013	ITO vs. Prem Rattan Gupta	ITAT (Mumbai)	S. 50C does not apply to transfer of FSI & TDR
2013-ITRV-HC-DEL-027	CIT vs. Gita Duggal	Delhi High Court	Several independent units can constitute “a residential house” for the purposes of section 54 / 54F
2013-ITRV-HC-P&H-029	CIT vs. Ashwani Chopra	Punjab & Haryana High Court	A family settlement does not result in a “transfer” and compensation received to equalize inequalities in family settlement is not taxable as “income”.
2013-ITRV-HC-P&H-042	CIT vs. Jagtar Singh Chawla	Punjab & Haryana High Court	Deposit in capital gains account scheme by s. 139(4) due date is sufficient to claim deduction u/s 54F
2013-ITRV-HC-AP-081	CIT vs. Syed Ali Adil	Andhra Pradesh High Court	S. 54/54F deduction is allowable for purchase of multiple independent house units
2013-ITRV-HC-KAR-087	Bhoruka Engineering Inds. Ltd. vs. DCIT	Karnataka High Court	Scheme of sale of land through sale of shares of shell company is valid, section 10(38) is applicable
2013-ITRV-HC-ALL-124	CIT vs. Chandra Narain Chaudhri	Allahabad High Court	Explained extent to which reliance can be placed by AO on stamp duty valuation u/s 50 C
2013-ITRV-SC-128	Hill Properties Ltd. vs. Union Bank of India & Anrs	Supreme Court	Occupancy rights in flat conferred by Articles of Association confer ownership rights in flat. Restriction on transferability of flat in Articles of Association is void
2013-ITRV-ITAT-HYD-129	ITO vs. Zinger Investments (P) Ltd.	ITAT (Hyderabad)	Transfer of assets without monetary consideration is not a “slump sale” u/s 50B

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CAPITAL V/S REVENUE / ACCRUAL OF INCOME

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-P&H-023	CIT vs. Groz Beckert Asia Ltd.	Punjab & Haryana High Court (Full Bench)	Expenditure on corporate membership of club is revenue expenditure
2013-ITRV-HC-DEL-028	Khanna and Annadhanam vs. CIT	Delhi High Court	Compensation to CA Firm for loss of referral work is a non-taxable capital receipt
2013-ITRV-SC-134	CIT vs. Excel Industries Ltd.	Supreme Court	Laying down important law on accrual of income held: <ul style="list-style-type: none"> • Question whether income has accrued must be considered from a realistic & practical angle • If Dept has accepted adverse verdict in some years, it cannot be allowed to challenge verdict in other years • Disputes as to the year of taxability with no/ minor tax effect should not be raised by Dept
2013-ITRV-HC-DEL-153	Oracle India P. Ltd. vs. CIT	Delhi High Court	Expenditure on acquiring master copy of software subject to obsolescence is deductible as revenue expenditure u/s 37(1)

CHARITY / EXEMPT INCOMES

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-SC-005	DIT(E) vs. Raunaq Education Foundation	Supreme Court	Payment by post-dated cheque relates back to date of handing over of cheque it cannot be said that any undue favour was done by the assessee to deny it exemption u/s 11
2013-ITRV-SC-009	Bangalore Club vs. CIT	Supreme Court	Interest earned by a mutual association from deposits placed with member banks is not exempt on the ground of “mutuality”.
2013-ITRV-ITAT-MUM-139	in Hatkesh Co.op. Hsg. Soc. Ltd vs. ACIT	ITAT (Mumbai)	A Co-op Housing Society is not a mutual association because its members can earn income from its property. The transfer fee and TDR premium charged by the Society

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			from its members is a commercial transaction and not eligible for exemption on grounds of mutuality
2013-ITRV-ITAT-DEL-167	Sunder Deep Educational Society vs. Addl. DIT	ITAT (Delhi)	Explained law on taxability of voluntary donations as “anonymous donations” u/s 115BBC or as “cash credit” u/s 68 in hands of charitable trust for purposes of s. 11 exemption

DEDUCTIONS UNDER CHAPTER VIA

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-MUM-020	ACIT vs. Pratibha Industries Ltd.	ITAT (Mumbai)	Distinction between “developer” and “works contractor” in s. 80-IA(4) is explained
2013-ITRV-HC-GUJ-038	Katira Constructions Ltd. vs. Union of India & Others	Gujarat High Court	Explanation that s. 80IA(4) does not apply to “works contracts” is clarificatory and its retrospective operation is valid
2013-ITRV-ITAT-PUNE-049	B.T.Patil & Sons Belgaum Constructions Pvt. Ltd. vs. ACIT	ITAT (Pune)	Larger Bench verdict in B. T. Patil vs. ACIT 32 DTR 1 is not good law (for Section 80-IA(4))
2013-ITRV-ITAT-MUM-056	Hercules Hoists Ltd. vs. ACIT	ITAT (Mumbai)	Explaining Entire Law on S. 80-IA(5) controversy has held that loss of eligible unit, even if set-off against non-eligible profits, has to be aggregated & carried forward for set-off against future eligible profits
2013-ITRV-HC-GAU-097	CIT vs. Meghalaya Steels Ltd.	Gauhati High Court	Subsidies that reduce the cost of production have a direct nexus with manufacturing activities, and are "derived from", the industrial undertaking for purposes of section 80 - IB / 80 - IC
2013-ITRV-ITAT-LKN-115	Arvind Footwear Pvt Ltd vs. DCIT	ITAT (Lucknow)	Though Duty Drawback & DEPB were held not eligible for deduction u/s 80-IB in Liberty India 317 ITR 218 (SC), answer could be different if business model shows dependence on Duty Drawback & DEPB for survival

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DEEMED DIVIDEND [SECTION 2(22)(e)]

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-MUM-051	DCIT vs. Vikas Oberoi	ITAT (Mumbai)	Share application money is not “loan or advance” to be considered as deemed dividend u/s 2(22)(e)
2013-ITRV-ITAT-KOL-172	IFB Agro Industries Ltd vs. JCIT	ITAT (Kolkata)	Inter-corporate deposits (“ICDs”) are not “loans and advances” and are not assessable to tax as “deemed dividend” u/s 2(22)(e)

DEPRECIATION

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-SC-008	I.C.D.S. Ltd. vs. CIT	Supreme Court	A “Financier” satisfies the “ownership” & “user” test for depreciation admissible u/s 32
2013-ITRV-ITAT-MUM-040	Development Credit Bank vs. DCIT	ITAT (Mumbai)	Special Bench verdicts on Sale & Lease Back & lease finance are not good law, lessor is entitled to claim depreciation in the case of a “sale and lease back” transaction as well as in a “finance lease” u/s 32
2013-ITRV-ITAT-MUM-053	Gujarat Glass Private Limited vs. ACIT	ITAT (Mumbai)	Non-Compete Fee is not eligible for depreciation or amortisation u/s 32(1)(ii).
2013-ITRV-ITAT-MUM-116	Hathway Investments Pvt. Ltd vs. Addl. CIT	ITAT (Mumbai)	A finance lease designed as a sale-and-lease back has to be treated as a sham transaction for purposes of s. 32
2013-ITRV-ITAT-MUM-122	State Bank of India vs. DCIT	ITAT (Mumbai)	Lease transactions by Banks are in the nature of loans/ advances. Transaction of sale & lease back of railway assets cannot be treated as genuine for purposes of depreciation u/s 32
2013-ITRV-ITAT-AHD-123	UTI Bank Ltd. vs. ACIT	ITAT (Ahemdabad)	Sale & lease transactions by banks are genuine and eligible for depreciation u/s 32
2013-ITRV-ITAT-HYD-166	Tirumala Music Centre (P) Ltd. vs. ACIT	ITAT (Hyderabad)	Any right (including leasehold rights) which enables carrying on business effectively and profitably is an “intangible asset” & eligible for depreciation u/s 32(1)(ii)

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INCOME FROM HOUSE PROPERTY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-AHD-142	Prakash Vasantbhai Golwala vs. ACIT	ITAT (Ahemdabad)	Property used by firm in which assessee-owner is partner is not used for assessee's business, hence not entitled for exemption u/s 22

INTERNATIONAL TAXATION / TRANSFER PRICING / ROYALTY / FTS

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-CHN-006	Ascendas (India) Pvt. Ltd. vs. DCIT	ITAT (Chennai)	Explained law on valuation of shares of a closely held company for transfer pricing purposes
2013-ITRV-ITAT-DEL-014	L.G. Electronics India P. Ltd. vs. ACIT	ITAT (Delhi) (Special Bench)	The "Bright Line test" can be applied to disallow the excessive AMP expenses incurred by the assessee for the benefit of the brand owner
2013-ITRV-ITAT-DEL-019	Qualcomm Incorporated vs. ADIT	ITAT (Delhi)	Royalty earned by non-resident from another non-resident is not taxable in India u/s. 9(1)(vi)(c) even if payer embeds the know-how into products sold in India
2013-ITRV-HC-AP-022	Sanofi Pasteur Holding SA vs. Department of Revenue	Andhra Pradesh High Court	Gains arising on sale of shares of foreign company by NR to NR not taxable in India under India-France DTAA even if the foreign co only held Indian assets
2013-ITRV-ITAT-MUM-031	Siemens Limited vs. CIT	ITAT (Mumbai)	Services rendered by machines is not "fees for technical services" u/s 9(1)(vii)
2013-ITRV-ITAT-MUM-044	Evonik Degussa India P. Ltd. vs. ACIT	ITAT (Mumbai)	There would be no notional interest addition for delayed payments by AE while arriving at ALP under Transfer Pricing
2013-ITRV-ITAT-DEL-045	Cotton Naturals (I) Pvt. Ltd. vs. DCIT	ITAT (Delhi)	ALP of loan transaction has to be determined as per CUP & LIBOR
2013-ITRV-ITAT-MUM-046	Sandoz Private Ltd. vs. DCIT	ITAT (Mumbai)	ALP should be determined on segment-wise profits & not at an entity level. Adjustment cannot be made to the entire entity turnover/ profits

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2013-ITRV-ITAT-MUM-047	ThyssenKrupp Industries India Pvt. Ltd vs. ACIT	ITAT (Mumbai)	Automatic RBI approval means transaction is at Arms Length Price.
2013-ITRV-ITAT-MUM-048	SKOL Breweries Ltd. vs. ACIT	ITAT (Mumbai)	RBI approval has no relevance on issue of Arms Length Price
2013-ITRV-ITAT-KOL-050	ITO vs. Right Florist Pvt. Ltd.	ITAT (Kolkata)	Advertisement charges paid to Google & Yahoo is not chargeable to tax in India
2013-ITRV-ITAT-MUM-059	Aurionpro Solutions Ltd. vs. Addl CIT	ITAT (Mumbai)	Even business advances have to be benchmarked on Libor ALP for the purposes of Transfer Pricing
2013-ITRV-HC-DEL-063	CIT vs. Mentor Graphics (Noida) Pvt. Ltd	Delhi High Court	If more than one price is determined by the most appropriate method, the ALP has to be the arithmetical mean of such prices for the purposes of Transfer Pricing Law
2013-ITRV-HC-DEL-066	CIT vs. Stratex Net Works (India) P. Ltd	Delhi High Court	All related transactions cannot be considered for PLI determination under Transfer Pricing
2013-ITRV-ITAT-DEL-067	Convergys Customer Management Group Inc. vs. ADIT	ITAT (Delhi)	Law on what constitutes a PE and how to attribute profits to a PE explained
2013-ITRV-ITAT-MUM-068	ADIT vs. Clifford Chance	ITAT (Mumbai)	<ul style="list-style-type: none"> • Explained taxation of foreign professional firms & concept of “<i>force of attraction</i>” under India-UK DTAA. • Linklaters LLP 40 SOT 51 (Mum) / [2010-ITRV-ITAT-MUM-073] held to be not good law
2013-ITRV-ITAT-MUM-074	Platinum Investment P. Ltd vs. DDIT (International Taxation)	ITAT (Mumbai)	FII’s securities transactions’ profits is not assessable as “business profits’ u/s 115AD
2013-ITRV-ITAT-ITAT-078	Vijai Electricals Ltd. vs. Addl. CIT	ITAT (Hyderabad)	Transfer pricing provisions do not apply to an investment in share capital of overseas companies & transactions where there no “income” has arisen
2013-ITRV-HC-KAR-084	CIT vs. Nike Inc	Karnataka High Court	No income is attributable to Liaison Office’s activity of sourcing manufactured products from India even if fee for service is received from overseas buyer u/s 5 read with s. 9
2013-ITRV-	CIT vs. Agnity India	Delhi High	Companies with extreme turnover like

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HC-DEL-098	Technologies P. Ltd	Court	Infosys are not comparable for purposes of Transfer Pricing
2013-ITRV-ITAT-DEL-104	ACIT vs. Robert Arthur Keltz	ITAT (Delhi)	ESOP to expatriate employee of foreign company is not chargeable for period he was outside India even if ESOP was vested and exercised in India
2013-ITRV-ITAT-AHD-107	General Motors India P. Ltd. vs. DCIT	ITAT (Ahemdabad)	Foreign associated enterprise can be taken as ‘Tested Party’
2013-ITRV-ITAT-DEL-108	Reebok India Co. vs. Addl. CIT	ITAT (Delhi)	Explained the scope in the context of expenditure (royalty payment) for transfer pricing purposes
2013-ITRV-ITAT-AHD-109	Micro Links Ltd. vs. ACIT	ITAT (Ahemdabad)	Explained law on adjustment for notional interest on interest-free loan & excess credit period to AE for transfer pricing purpose
2013-ITRV-ITAT-BANG-118	Tellabs India Private Ltd vs. ACIT	ITAT (Bangalore)	Assignment of contract by AE is an international transaction and should be at arms length price
2013-ITRV-ITAT-MUM-120	Essar Oil Ltd. vs. Addl. CIT	ITAT (Mumbai)	Law on non-taxing foreign PE profits is no longer a good law after insertion of s. 90(3) & Notification dated 28.08.2008 (which has clarificatory effect)
2013-ITRV-ITAT-MUM-121	DDIT vs. Reliance Infocom Ltd / Lucent Technologies	ITAT (Mumbai)	Consideration for supply of software which is not embedded in equipment is taxable as “royalty”
2013-ITRV-HC-MUM-126	Vodafone India Service Pvt. Ltd vs. UOI & Anrs	Mumbai High Court	<ul style="list-style-type: none"> • S. 92CA(2A), though substantive, applies to all proceedings pending on 1.6.2011 & TPO can examine un-referred transactions. S. • 92CA(2B) applies even to cases where Form 3CEB is filed but the transaction is not reported. • DRP has power to hold that TPO had no jurisdiction & to quash his order. • Writ cannot be entertained where there is alternate remedy
2013-ITRV-HC-DEL-135	Cairn UK Holding Ltd. vs. DIT	Delhi High Court	Non-residents are eligible for the benefit of 10% tax rate on long-term capital gains under the Proviso to s. 112. The AAR should avoid giving conflicting rulings
2013-ITRV-	Metro & Metro vs.	ITAT	Explained law on taxation of fees for

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ITAT-AGRA-143	Addl. CIT	(Agra)	technical services u/s 9(1)(vii) & Article 12
2013-ITRV-HC-DEL-148	DIT vs. Infracsoft Ltd.	Delhi High Court	Non-exclusive & non-transferable license to use customized software is not taxable as “royalty” under Article 12 of India-USA DTAA
2013-ITRV-HC-MAD-150	Poompuhar Shipping Corporation Ltd vs. ITO (International Taxation)	Madras High Court	Equipment rental is taxable as “royalty” u/s. 9(1)(vi)/ Article 12 even if payer does not have control. The retrospective insertion of Explanation 5 to s. 9(1)(vi) is purely clarificatory
2013-ITRV-ITAT-MUM-152	Cadbury India Ltd. vs. Addl. CIT	ITAT (Mumbai)	<ul style="list-style-type: none"> • ALP of royalty for trademark usage and technical know-how fee can be determined as per TNMM for Transfer Pricing. • Approval of RBI & Govt. means payment is as at arms length
2013-ITRV-HC-MUM-155	Vodafone India Services Pvt. Ltd. vs. Union of India & Anrs	Mumbai High Court	Existence of income is a jurisdictional requirement for the applicability of Transfer Pricing provisions. AO must deal with it after giving personal hearing before making reference to TPO. The dept should not treat the assessee as an adversary who has to be taxed, no matter what
2013-ITRV-ITAT-MUM-156	ADIT (IT) vs. Valentine Maritime (Gulf) LLC	ITAT (Mumbai)	<ul style="list-style-type: none"> • If the contract falls u/s 44BB, incidental technical services are not assessable as “fees for technical services” u/s 9(1)(vii). • Verdict in Alcatel Lucent [2013-ITRV-HC-DEL-145] on liability of foreign company to pay s. 234B interest cannot be followed in Mumbai
2013-ITRV-ITAT-MUM-158	Platinum Asset Management Ltd. vs. DDIT (IT)	ITAT (Mumbai)	High Court verdict in Bharat Ruia 337 ITR 452 (Bom) / [2011-ITRV-HC-MUM-088] on taxation of derivatives as speculation income/ loss is not applicable to FIIs u/s 115AD
2013-ITRV-HC-DEL-170	Li and Fung India P. Ltd. vs. CIT	Delhi High Court	<ul style="list-style-type: none"> • TNMM under Rule 10B(1)(e) contemplates ALP determination with reference to the relevant factors (cost, assets, sales etc.) of the assessee and

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			<p>not those of the AE or third party.</p> <ul style="list-style-type: none"> • Assessee's study report cannot be discarded without showing how it is wrong. • Finding that assessee is a risk bearing entity should be based on tangible material
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PARTNERSHIP

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-CHN-090	Deloitte Haskins & Sells vs. DCIT	ITAT (Chennai)	Appointment of an existing partner as representative partner for another party may circumvent the ceiling on number of partners for purposes of s. 40(b)
2013-ITRV-HC-KAR-146	CIT vs. Dynamic Enterprises	Karnataka High Court	S. 45(4) does not apply if the retiring partner takes only money towards the value of his share and there is no distribution of capital assets among the partners
2013-ITRV-HC-MUM-151	CIT vs. Riyaz A. Sheikh	Mumbai High Court	Amount received by partner on his retirement is not chargeable to tax as capital gains

PENALTY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-AP-002	CIT vs. Sania Mirza	Andhra Pradesh High Court	There would be no s. 271(1)(c) penalty if income is not offered to tax due to "bona fide mistake".
2013-ITRV-ITAT-AHD-004	GE India Industrial Pvt. Ltd. vs. CIT(A)	ITAT (Ahemdabad)	S. 271(1)(c) penalty proceedings can be stayed to await decision on quantum appeal so to avoid multiplicity of proceedings & harassment to assessee
2013-ITRV-HC-DEL-016	CIT vs. Mak Data Ltd.	Delhi High Court	Surrender of income without explanation attracts penalty u/s 271 (1)(c).
2013-ITRV-HC-DEL-025	CIT vs. Liquid Investment & Trading Co.	Delhi High Court	There would be penalty u/s. 271(1)(c) on admission of quantum appeal by High Court as it shows that issue is debatable
2013-ITRV-HC-	CIT vs. M/s.	Mumbai High	There would be no s. 271(1)(c) penalty if

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MUM-030	Bennett Coleman & Co. Ltd	Court	income is not offered to tax due to “ <i>inadvertent mistake</i> ”
2013-ITRV-HC-MUM-041	CIT vs. Somany Evergreen Knits Ltd	Mumbai High Court	There would be no penalty u/s 271(1)(c) if wrong claim made is due to mistake/ wrong advice of CA
2013-ITRV-ITAT-PUNE-062	Amruta Organics Pvt. Ltd. vs. DCIT	ITAT (Pune)	Consistent losses show mistake/ absence of intention to evade taxes, hence do not attract penalty u/s 271(1)(c)
2013-ITRV-HC-KOL-073	CIT vs. Madan Theatres	Kolkata High Court	There would be no s. 271(1)(c) penalty for not offering capital gains on s. 50C stamp duty value
2013-ITRV-ITAT-MUM-077	Dynatron Pvt. Ltd. vs. DCIT	ITAT (Mumbai)	There would be no S. 271(1)(c) penalty for s. 40(a)(i) disallowance if TDS deducted next year
2013-ITRV-HC-MUM-089	CIT vs. Nalin P. Shah (HUF)	Mumbai High Court	No s. 271(1)(c) penalty is leviable even for unsustainable/ non-debatable claims if there is disclosure in the return
2013-ITRV-ITAT-DEL-091	Saket Agarwal vs. ITO	ITAT (Delhi)	There would be no s. 271(1)(c) penalty even if explanation given by assessee is unproved but is not disproved by AO
2013-ITRV-HC-KAR-093	CIT vs. Manjunatha Cotton & Ginning Factory	Karnataka High Court	No s. 271(1)(c) penalty is leviable in a case where assessee agreed to additions to buy peace
2013-ITRV-HC-DEL-110	CIT vs. HCIL Kalindee ARSSPL	Delhi High Court	S. 271(1)(c) penalty is valid even if claim is disclosed and as per CA certificate
2013-ITRV-ITAT-MUM-119	ITO vs. Gope M. Rochlani	ITAT (Mumbai)	Undisclosed income offered in belated return filed u/s 139(4) is eligible for immunity from penalty under Explanation 5 to s. 271(1)(c)
2013-ITRV-SC-140	MAK Data P. Ltd. vs. CIT	Supreme Court	Under Explanation 1 to s. 271(1)(c), <i>voluntary disclosure</i> of concealed income does not absolve assessee of s. 271(1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed
2013-ITRV-HC-MAD-157	CIT vs. Gem Granites	Madras High Court	S. 271(1)(c) penalty cannot be levied if the assessee discharges the primary burden by a cogent explanation and the AO is unable to rebut it. MAK Data [2013-ITRV-SC-140] explained

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RE-ASSESSMENT / RE-OPENING

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013- ITRV-ITAT-BANG-001	Synopsis International Ltd. vs. DDIT	ITAT (Bangalore)	Non-supply of recorded reasons before passing reassessment order renders the reopening void u/s 147. Subsequent supply does not validate reassessment order.
2013-ITRV-HC-DEL-003	CIT vs. Orient Craft Ltd.	Delhi High Court	Even s. 143(1) intimation cannot be reopened u/s 147 without “fresh material”
2013-ITRV-HC-GUJ-021	CIT vs. Mohmed Juned Dadani	Gujarat High Court	AO cannot assess other escaped income if original reason is dropped u/s 147
2013-ITRV-HC-GUJ-060	Vijay Rameshbhai Gupta vs. ACIT	Gujarat High Court	Reopening of assessment u/s 147 / 148 due to revenue audit’s compulsion is void
2013-ITRV-SC-112	CIT & Ors vs. Chhabil Dass Agarwal	Supreme Court	Writ petition to challenge a reassessment order u/s 147 should not be entertained by High Court
2013-ITRV-ITAT-MUM-127	Amarlal Bajaj vs. ACIT	ITAT (Mumbai)	Merely writing “approved” in the sanction form without recording satisfaction renders the reopening void u/s 147 / 151

SEARCH AND SEIZURE

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-SC-010	ACIT vs. A. R. Enterprises	Supreme Court	Despite TDS & Advance-tax, income is “undisclosed” if Return of Income is not filed by due date u/s 158B
2013-ITRV-HC-MUM-018	CIT vs. Akil Gulamali Somji	Mumbai High Court	Failure to obtain JCIT’s approval renders s. 153C Assessment Order Void
2013-ITRV-ITAT-MUM-020	ACIT vs. Pratibha Industries Ltd.	ITAT (Mumbai)	S. 153A assessment is mandatory even if no incriminating material is found
2013-ITRV-ITAT-MUM-070	Gurinder Singh Bawa vs. DCIT	ITAT (Mumbai)	After expiry of s. 143(2) time limit, s. 143(1) assessment is final & addition u/s 153A can be made only if <i>incriminating material</i> is found in search
2013-ITRV-HC-MP-092	in Rajesh Rajora vs. Union of India	Madhya Pradesh High Court	Hauls up Dept for Bogus raid on IAS Top Brass. Bogus s. 132 search due to "annoyance" of AO is abuse of power
2013-ITRV-	MGF	ITAT	In case of completed assessments, addition

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ITAT-DEL-125	Automobiles Ltd. vs. ACIT	(Delhi)	can be made only if incriminating document found during search u/s 153A
2013-ITRV-SC-159	Chironjilal Sharma HUF vs. Union of India & Ors	Supreme Court	Assessee is entitled to interest on cash appropriated during search even if refund is directed in appeal proceedings u/s 132B(4)/240/244A
2013-ITRV-ITAT-DEL-169	V. K. Fiscal Services P. Ltd. vs. DCIT	ITAT (Delhi)	Explained important principles of law relating to search assessments u/s 153A / 153C
2013-ITRV-HC-DEL-173	MDLR Resorts P. Ltd. vs. CIT & Ors	Delhi High Court	<ul style="list-style-type: none"> • Copy of search warrant should be given to the searched person u/s 132. • Defects in the panchnama do not invalidate the search or the s. 153A assessment proceedings

SECTION 10A / 10B / 10AA

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-KAR-085	Mindtree Ltd. vs. UOI & Anrs	Karnataka High Court	Withdrawal of MAT and DDT exemption to SEZs is not breach of promissory estoppel
2013-ITRV-SC-136	Himatsingka Seide Ltd. vs. CIT	Supreme Court	Unabsorbed depreciation (and business loss) of same (s. 10A/10B) unit brought forward from earlier years have to be set off against the profits before computing exempt profits

SECTION 14A / RULE 8 D

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-KOL-026	JCIT (OSD) vs. Pilani Investment & Industries Corpn. Ltd.	ITAT (Kolkata)	Expense specifically relatable to taxable income cannot be disallowed u/s 14A read with Rule 8D
2013-ITRV-ITAT-KOL-032	DCIT vs. Gulshan	ITAT (Kolkata)	Rule 8D(2)(ii) & (iii) do not apply to shares held as stock-in-trade

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	Investment Co. Ltd.		
2013-ITRV-ITAT-KOL-071	DCIT vs. Ashish Jhunjhunwala	ITAT (Kolkata)	There can be no S. 14A/ Rule 8D disallowance without showing how assessee is wrong
2013-ITRV-ITAT-KOL-088	REI Agro Ltd. vs. DCIT	ITAT (Kolkata)	There would be no s. 14A disallowance if satisfaction is not recorded with reference to A/cs. Under Rule 8D(2)(ii) loans for specific business purposes cannot be included. Under Rule 8D(2)(ii) & (iii) investments which have not yielded income cannot be included
2013-ITRV-ITAT-CHN-099	Sundaram Asset Management Co. Ltd. vs. DCIT	ITAT (Chennai)	S. 14A/ Rule 8D does not apply to short-term investments, gains from which are taxable
2013-ITRV-ITAT-CHN-100	ACIT vs. Best & Crompton Engineering Ltd.	ITAT (Chennai)	Interest on loans for specific taxable purposes is to be excluded for purposes of section 14A / Rule 8 D
2013-ITRV-ITAT-AHD-105	ITO vs. Karnavati Petrochem Pvt. Ltd.	ITAT (Ahmedabad)	Interest expenditure has to be netted against interest income and only the difference, if any, can be considered for disallowance u/s 14A read with Rule 8D
2013-ITRV-ITAT-MUM-106	DCIT vs. Damani Estates & Finance Pvt. Ltd	ITAT (Mumbai)	Explained the scope of applicability of s. 14A read with Rule 8D in the context of shares held as stock-in-trade
2013-ITRV-ITAT-MUM-160	in D. H. Securities P. Ltd. vs. DCIT	ITAT (Mumbai) (Third Member)	S. 14A & Rule 8D disallowance applies to tax-free securities held as stock-in-trade
2013-ITRV-HC-DEL-163	CIT vs. Oriental Structural Engineers P. Ltd.	Delhi High Court	Expenditure on acquiring shares out of “commercial expediency” & to earn taxable income cannot be disallowed u/s 14A / Rule 8 D
2013-ITRV-ITAT-CHN-164	DCIT vs. Allied Investments Housing P. Ltd.	ITAT (Chennai)	For disallowance u/s. 14A & Rule 8D onus is on AO to show how assessee’s claim is incorrect. AO has to show direct nexus between expenditure & exempt income. Disallowance cannot be made on presumptions

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SECTION 36 / 37 / OTHER BUSINESS DEDUCTIONS

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-HP-024	Confederation of Indian Pharmaceutical Industry vs. CBDT	Himachal Pradesh High Court	CBDT Circular disallowing expenditure on freebies to medical practitioners is valid
2013-ITRV-HC-MUM-033	CIT vs. Regalia Apparels Pvt. Ltd	Mumbai High Court	There would be no disallowance for compensatory payments under explanation to s. 37(1)
2013-ITRV-ITAT-MUM-072	ITO vs. LKP Securities Ltd.	ITAT (Mumbai)	Employees' PF/ ESI Contribution is not covered by s. 43B & is only allowable as a deduction u/s 36(1)(va) if paid by the "due date" prescribed therein
2013-ITRV-HC-UTK-076	CIT vs. Kichha Sugar Company Ltd	Uttarakhand High Court	"Due date" in s. 36(1)(va) for payment of employees' Provident Fund, ESIC etc contribution should be read with s. 43B(b) to mean "due date" for filing ROI
2013-ITRV-ITAT-CHN-079	Apollo Tyres Ltd. vs. DCIT	ITAT (Cochin)	Foreign currency loss on loan given to a subsidiary for capital purposes is not deductible
2013-ITRV-SC-086	CIT vs. Textool Co. Ltd.	Supreme Court	Though s. 36(1)(v) requires direct payment to the gratuity trust fund, payment to the LIC Group Gratuity Scheme is also allowable
2013-ITRV-ITAT-BANG-094	Biocon Ltd. vs. DCIT	ITAT (Bangalore) (Special Bench)	ESOP discount (difference between market price and issue price) is a deductible expenditure at the time of vesting of the option. An adjustment has to be made if the market price is different at the time of exercise of the option
2013-ITRV-HC-DEL-153	Oracle India P. Ltd. vs. CIT	Delhi High Court	Expenditure on acquiring master copy of software subject to obsolescence is deductible as revenue expenditure u/s 37(1)

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SECTION 41

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-DEL-165	CIT vs. Chipsoft Technology P. Ltd.	Delhi High Court	It would be illogical to say that a debtor or an employer, holding on to unpaid dues, should be given the benefit of his showing the amount as a liability, even though he would be entitled in law to say that a claim for its recovery is time barred, and continue to enjoy the amount. Taxable u/s 41(1)
2013-ITRV-ITAT-MUM-175	Yusuf R Tanwar vs. ITO	ITAT (Mumbai)	Liability outstanding for long period of time is assessable as income u/s 41(1) (despite no write-back in A/cs) if assessee is unable to prove genuineness of liability
2013-ITRV-ITAT-MUM-176	ITO vs. Shailesh D. Shah	ITAT (Mumbai)	Liability outstanding for long period of time is assessable as income u/s 41(1) (despite no write-back in A/cs) if assessee is unable to prove genuineness of liability

SECTION 68

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-DEL-058	ITO vs. Tulip Engineering P. Ltd	ITAT (Delhi)	In case of sale of investments there would be no addition u/s 68 if the assessee gives the identity of the person

SHARE TRANSACTIONS / DERIVATIVES / SPECULATION / HEDGING

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-HC-DEL-007	CIT vs. Avinash Jain	Delhi High Court	Gains on shares held in investment portfolio are not assessable as business profits
2013-ITRV-HC-GUJ-064	CIT vs Panchmahal	Gujarat High Court	Loss on foreign currency forward contracts by a manufacturer/ exporter is a "hedging"

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	Steel Ltd		<i>loss</i> ” and not a “ <i>speculation loss</i> ” u/s 43(5).
2013-ITRV-HC-DEL-095	CIT vs DLF Commercial Developers Ltd	Delhi High Court	Exemption given in s. 43(5) to derivatives from being treated as "speculative transaction" is not available to Expl to s. 73 and is speculation transaction for that purpose
2013-ITRV-ITAT-MUM-141	London Star Diamond Company (I) P. Ltd vs. DCIT	ITAT (Mumbai)	Loss on foreign exchange forward contracts is incidental to the exports business and not a “ <i>speculation loss</i> “ u/s 43(5). However, if the contract is prematurely cancelled, the assessee has to justify the loss
2013-ITRV-HC-DEL-161	CIT vs. Orient Instrument P. Ltd	Delhi High Court	Loss from shares dealing cannot be deemed to be from “ <i>speculation</i> ” under Explanation to s. 73 if company is not engaged in the “ <i>business</i> ” of shares dealing

TAX DEDUCTED AT SOURCE / SECTION 40(a)(i) / SECTION 40(a)(ia)

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-ITAT-KOL-036	ITO vs. MGB Transport	ITAT (Kolkata)	Special Bench verdict is binding despite suspension by High Court in matter related to disallowance due to non compliance of TDS provisions u/s 40(a)(ia).
2013-ITRV-ITAT-CTK-039	The Branch Manager (TDS) UCO Bank vs. Addl CIT	ITAT (Cuttack)	Delay in filing TDS return through NSDL is a technical breach and no penalty is leviable u/s 272A(2)(k)
2013-ITRV-HC-KOL-052	CIT vs. MD. Jakir Hossain Mondal	Kolkata High Court	Special Bench verdict in Merilyn Shipping (related to applicability of section 40(a)(ia) only on payable amounts as on 31st March) is not good law
2013-ITRV-ITAT-CHN-057	ITO vs. M Far Hotels Ltd.	ITAT (Cochin)	If DTAA is silent, there is no obligation to deduct surcharge & education cess u/s 195
2013-ITRV-HC-GUJ-065	CIT vs. Sikandarkhan N Tunvar	Gujarat High Court	Special Bench verdict in Merilyn Shipping (related to applicability of section 40(a)(ia) only on payable amounts as on 31st March) is not good law
2013-ITRV-HC-KOL-069	CIT vs. Crescent Export Syndicate	Kolkata High Court	Special Bench verdict in Merilyn Shipping (related to applicability of section 40(a)(ia) only on payable amounts as on 31st March) is not good law
2013-ITRV-	Apollo Tyres Ltd.	ITAT	There would be no s. 40(a)(ia) disallowance

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ITAT-CHN-079	vs. DCIT	(Cochin)	for default of short-deduction of TDS
2013-ITRV-SC-083	CIT vs. Silver Oak Laboratories P. Ltd.	Supreme Court	S. 194C TDS does not apply to contract manufacturing agreements
2013-ITRV-ITAT-MUM-096	ITO (TDS) vs. Wadhwa & Associates Relators P. Ltd	ITAT (Mumbai)	Lease premium paid to MMRDA is not "rent" and no TDS u/s 194 - I
2013-ITRV-ITAT-BANG-101	BIOCON Biopharmaceutics P. Ltd. vs. ITO (International Taxation)	ITAT (Bangalore)	AO has no power to issue Nil TDS certificate u/s 195(2) and TDS is applicable when payment is made in kind
2013-ITRV-ITAT-MUM-102	ITO (International Taxation) vs. Sun Pharmaceuticals Industries Ltd.	ITAT (Mumbai)	Application for refund of TDS (made u/s 195) due to cancellation of contract with non-resident can be made vide s. 154 application
2013-ITRV-HC-ALL-103	CIT vs. Vector Shipping Services P. Ltd.	Allahabad High Court	S. 40(a)(ia) disallowance applies only to amounts "payable" as of 31st March and not to amounts already "paid" during the year. Merilyn Shipping (SB) [2012-ITRV-ITAT-VIZ-117] approved
2013-ITRV-ITAT-BANG-117	ACIT (TDS) vs. Infosys BPO	ITAT (Bangalore)	Explained the law on s. 192 TDS obligation on medical reimbursement & LTC
2013-ITRV-HC-DEL-130	CIT vs. Rajinder Kumar / Naresh Kumar	Delhi High Court	Amendment by Finance Act 2010 permitting TDS payment till due date of ROI u/s 40(a)(ia) is retrospective
2013-ITRV-ITAT-AGRA-143	Metro & Metro vs. Addl. CIT	ITAT (Agra)	Explained disallowance u/s 40(a)(i) for failure to deduct TDS
2013-ITRV-ITAT-CHN-174	ITO vs. Theekathir Press	ITAT (Chennai)	For S. 40(a)(ia) TDS disallowance, view in favour of the assessee should be followed

GIFT TAX

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2013-ITRV-SC-015	Satya Nand Munjal vs. CGT	Supreme Court	Discussed taxability of a revocable transfer as deemed gift u/s 4(1)(c) of the Gift-tax Act

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