

Taxsutra Insight : Recent Rulings Impacting Tax Audit u/s 44AB of the Income Tax Act

Tax audit u/s 44AB –

Assessment year	2016-17
Applicability	Turnover/gross receipts from business > Rs. 1 Crore Gross receipts from profession > Rs 25 Lakhs Profits and gains deemed profits and gains u/s 44AE, 44BB, 44BBB, 44AD
Due Date	Due date for furnishing return of income u/s 139(1)
Form (Rule - 6G)	Audit Report in Form 3CA or Form 3CB Statement of Particulars in Form 3CD

With the commencement of the tax audit season this year, the updated exclusive Taxsutra insight endeavors to compile the key rulings delivered since last tax-audit season till today which would impact the transactions typically covered in tax audits.

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Clauses 12: Presumptive income

Judgment	Summary
Nand Lal Popli [TS-6098-ITAT-2016(CHANDIGARH)-O]	Addition u/s. 69C cannot be made when assessee's turnover is not doubted and his profits reported at 8% in the tax return applying provisions u/s. 44AD is accepted : Chandigarh ITAT

Clauses 13 & 14: Method of Accounting and Valuation of closing stock

Judgment	Summary
Knight Frank (India) Pvt. Ltd. [TS-469-HC-2016(BOM)]	Upholds assessee's claim that provision of Sec. 145A are not applicable to service tax billed on services rendered by assessee; Also holds that since assessee has not claimed deduction for service tax, there is no occasion to invoke provisions of Sec. 43B to disallow it, relies upon coordinate bench ruling in Ovira Logistics P. Ltd. and Calibre Personnel Services Pvt. Ltd. : Bombay HC

NCR Corporation India Pvt. Ltd. [TS-362-HC-2016(KAR)]	Upholds ITAT order, allows Sec 43B deduction for excise duty paid on closing stock for AY 2004-05 following the ratio of Gujarat HC in Lakhanpal National Ltd. and SC in Berger Paints India Ltd.; Concludes that “it cannot be accepted that by virtue of Section 145A, the Parliament has diluted or nullified the effect of provisions of Section 43B providing for certain deductions.” : Karnataka HC
Aman Khera [TS-447-HC-2016(DEL)]	Lump sum amount received by assessee-individual (a doctor) on account of professional/management consultancy taxable in entirety on receipt basis; Concurs with Revenue’s view that in absence of books of account maintained by assessee it has to be presumed that cash system of accounting was followed, hence concept of accrual will not arise, also accepts Revenue’s argument that matching principle / AS-9 (dealing with principle of revenue recognition) were applicable only to companies and not to individuals : Delhi HC
Urvi Chirag Sheth [TS-302-ITAT-2016(Ahd)]	Holds that Sec. 145A (dealing with interest received by assessee or compensation or on enhanced compensation) is not a charging provision since the Section starts with a non-obstante clause, restricting the scope of the section to dealing with the method of accounting : Ahmedabad ITAT
AMCO Power systems Ltd [TS-607-HC-2015(KAR)]	Analyses the word 'paid', relies on SC ruling in Taparia Tools which considered the definition of "paid" in context of Sec 43(2) and held that "even if the amount is not actually paid but 'incurred', according to the method of accounting, the same would be treated as 'paid" : Karnataka HC
Bajaj Auto Ltd. [TS-518-HC-2016(BOM)]	Upholds change in stock-valuation method from lowest price to weighted average : Bombay HC
STCL Limited [TS-5335-HC-2016(KARNATAKA)-O]	Difference between price of iron ore on date of purchase and date of finalizing books of accounts is a loss on account of fall in value of closing stock, allowable as a business expenditure : Karnataka HC

Clause 15: Conversion of capital asset into stock-in-trade

Judgment	Summary
Hindoostan Spg. & Wvg. Mills Ltd. [TS-6014-ITAT-2016(MUMBAI)-O]	Land was converted as stock in trade, thereby, any flat built on the land was also part of the stock in trade; Flat was thus treated as part of the closing stock : Mumbai ITAT
Hindoostan SPG and WVG Mills Ltd. [TS-6014-ITAT-2016(MUMBAI)-O]	Flats built on land which is treated as stock-in-trade are also to be treated as stock-in-trade : Mumbai ITAT

Clause 16: Income u/s 28 & Capital receipts

Judgment	Summary
Ramaniyam Homes Private Limited [TS-217-HC-2016(MAD)]	Holds that waiver of 'principal' loan amount by bank is taxable perquisite of beneficiary assessee u/s 28(iv) (which provides that the value of any benefit or perquisite, whether convertible into money or not, arising from business shall be taxable as 'business income'); Rules that the waiver of a portion of loan would certainly tantamount to the value of a benefit, clarifies that "this benefit may not arise from "the business" of the assessee. But, it certainly arises from "business"; Observes that distinction between waiver of loan taken for acquiring capital asset and waiver of loan taken for trading activities does not exist in accounting practice : Madras HC
Credit Suisse Business Analysis [TS-430-ITAT-2016(Mum)]	Holds that 'share premium' money received by the assessee not taxable as income from other sources; Also holds that even if assessee had violated the provisions of the Companies Act it would be penalized by the provisions of that Act but "it would never turn a capital receipt in to revenue receipt or visa-versa" : Mumbai ITAT
Tamil Nadu Tourism Development Corporation Ltd. [TS-431-HC-2016(MAD)]	Holds that Govt. grants received by the assessee (corporation formed for improving tourism in the State of Tamil Nadu) for developing infrastructural facilities at tourist destinations is capital in nature; Notes that Govt. grants were coupled with an underlying obligation to only spend the amount on projects for which the grant was released and were not given for meeting assessee's day-to-day expenses, also notes that the projects for which the grants were advanced were dropped and funds were directed to be retained in a trust for future use in alternative projects as directed by the Govt. : Madras HC
Orient Blackswan Private Limited [TS-363-ITAT-2016(HYD)]	Compensation received on trademark dispute settlement shall be a capital receipt, not taxable u/s 28(va)(b) : Hyderabad ITAT
Satya Kant Khosla [TS-664-ITAT-2015(DEL)]	Amount received by assessee individual for not providing benefit of his skills/expertise in the two wheeler segment to any other person in India, a non-taxable capital receipt : Delhi ITAT
Reliance Fresh Ltd. [TS-5974-ITAT-2016(MUMBAI)-O]	Manner of accounting shall not determine taxability of income or allowability of any expenditure; Provisions of IT Act, 1961 and judicial precedents to hold the key : Mumbai ITAT

Clause 17: Consideration on transfer of Land/building and any land or building or both is/are transferred for less than the value adopted or assessed or assessable by any authority of a State Government

Judgment	Summary
Dattani Development [TS-415-ITAT-2016(Mum)]	Upholds AO's invocation of Sec 50C (which deems stamp duty valuation as full value consideration) with respect to alleged transfer of development rights in land by assessee-firm (a builder/developer) during AY 2007-08, Notes assessee's intention was always to hold the land for a long period of time to earn gains by way of appreciation in the value of the land; Taking into consideration plethora of rulings relied by Revenue, holds that Sec 50C is applicable to sale of development rights, moreover holds that "in-fact the assessee has not only sold development rights in the land but the assessee sold the entire land with ownership rights in the land if the development agreement are read in conjunction with deed of confirmation / conveyance executed by the assessee : Mumbai ITAT
Devindraben I Barot [TS-258-ITAT-2016(Ahd)]	Holds that deeming provisions of Sec. 50C shall not be applicable to transfer of rights in land by the assessee "which cannot be equated to land or building or both"; Observes that Sec. 50C is a deeming provision and it extends only to land or building or both, thus rules that "deeming provision can be applied only in respect of the situation specifically given and, hence, cannot go beyond the explicit mandate of the section" : Ahmedabad ITAT

Clause 18: Depreciation

Judgment	Summary
The Royal Bank of Scotland N.V. [TS-205-ITAT-2016(Kol)]	Allows assessee-bank's claim of depreciation at the rate of 60% prescribed for "computers including computer software" on ATM machines; Opines that "ATM machines are nothing but computers as they deal with the functions of decoding the information, processing the same and giving the output" : Kolkata ITAT
Surat Textile Mills Ltd [TS-315-ITAT-2016(Ahd)]	Allows assessee's claim for reduction of accumulated unabsorbed depreciation of earlier years while computing book profit u/s 115JB; Considering that book profit u/s 115JB is required to computed as per Part-II and Part-III of the Schedule-VI of Companies Act, ITAT holds that accounting treatment under Rehabilitation scheme was irrelevant for computing book profit, observes that "SICA has no overriding effect on the Companies Act" : Ahmedabad ITAT

<p>Spice Communication Ltd. [TS-298-ITAT-2016(DEL)]</p>	<p>Disallows excess depreciation claimed by assessee (a telecom service provider) to the extent of liability on capital asset waived during AY 2006-07; Notes that “it is the purchase price which has been reduced by the vendor in the process of settlement, which goes to reduce the actual cost of the asset : Delhi ITAT</p>
<p>IBAHN India Pvt Ltd [TS-44-ITAT-2016(Mum)]</p>	<p>Allows assessee’s depreciation claim @ 60 % on computer peripherals like routers and switches for AY 2011-12; In absence of definition of 'computers' under the Income-tax Act, ITAT refers to various jurisprudence; Acknowledges that ‘router’ does not process data the way a computer does, but only enables transmission of data and data packages; Holds that as long as ‘routers’ are used as integral part of computer, it should be classified as a 'Computer', however clarifies that ‘routers’ when used with other machines, independent of computers (e.g. TV routers), then it cannot be classified as computers : Mumbai ITAT</p>
<p>Dharampal Satyapal [TS-2-HC-2016(DEL)]</p>	<p>Holds that ‘net-worth’ of business transferred on slump-sale basis should be computed after providing for depreciation, despite not claimed by assessee; However, HC cautions that “reference to the said Clause in Explanation 2 to Section 50B of the Act has a different implication”; HC rules that “The reference to Clause C is clearly not for the purposes of computing the block of assets remaining with the Assessee after the slump sale. It is apparent from the above that the intended object and scope of Clause C as used in Section 50B of the Act is totally different than the purpose of the said provision when read as a part of Section 43 of the Act : Delhi HC</p>
<p>Sandvik Chokshi Ltd [TS-468-SC-2015]</p>	<p>Dismisses Revenue SLP against Gujarat HC judgment wherein the Court had rejected AO's invocation of Explanation 3 to Sec 43(1); Said Explanation empowers AO to determine 'actual cost' for the purpose of depreciation, if he is satisfied that the main purpose of the asset transfer was reduction of income-tax liability : SC</p>
<p>Rittal India Pvt Ltd [TS-29-HC-2015(KAR)]</p>	<p>Allows balance additional depreciation claim u/s 32(1)(iia) (which provides for further 20% depreciation on new plant and machinery installed) in AY 2008-09 i.e. year subsequent to installation year; HC holds that grant of additional depreciation is a onetime benefit to encourage industrialization and thus should be construed reasonably, liberally and purposively; Rules that “the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed” : Karnataka HC</p>

<p>Judgments on qualification as intangible assets (S. 32(1)(ii))</p>	<p>Kolkata ITAT in case of Landis + Gyr Limited [TS-421-ITAT-2016(Kol)] observes that in order to migrate into new lucrative business of manufacturing static meters assessee had acquired R&D unit of a proprietorship concern along with its specialized research engineers (having experience and domain knowledge in respect of static meters) after valuation by an independent expert, thus opines that “in essence” assessee had acquired knowhow which led to substantial increase in its turnover : Kolkata ITAT</p> <p>Chowgule and Company Pvt. Ltd. [TS-5020-HC-2016(BOMBAY)-O] – Allows depreciation taking note of the observations of the SC in Smifs Securities Ltd. wherein it was held that depreciation on Goodwill paid upon amalgamation is a permissible deduction in terms of Section 32 : Bombay HC</p>
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Clause 19: R&D Deductions

Judgment	Summary
<p>Strides Arcolab Ltd [TS-11-ITAT-2016-(Mum)]</p>	<p>Reverses CIT(A)’s order, allows deduction u/s 35(2AB) in respect of research and development expenses incurred by assessee towards its research centre for AY 2002-03; Notes that assessee made application to DSIR well in time, further there was no delay on its part in supplying any information to DSIR, opines that “the delay, in the given facts, cannot be attributed to the assessee” : Mumbai ITAT</p>

Clause 19: Other Deductions

Judgment	Summary
<p>Duncan Industries [TS-320-HC-2016(CAL)]</p>	<p>Denies deduction to assessee for amount paid to Bank as one-time settlement to clear the dues of New Tobacco company (‘NTC’); Concludes that “The learned Tribunal was utterly wrong in holding that the amount paid by the assessee to the bank in settlement of the debt owed by New Tobacco Company was a business loss of the appellant.” : Calcutta HC</p>
<p>TATA Industries Ltd. [TS-409-ITAT-2016(Mum)]</p>	<p>Deletes disallowance of interest u/s 36(1) (iii) in relation to strategic investments made in group companies : Mumbai ITAT</p>

Satyam Venture Engineering Services Private Limited [TS-466-ITAT-2016(HYD)]	Deletes disallowance u/s 37 and TP-adjustment in respect of commission paid by assessee (a joint venture company between Venture, USA and Satyam India) to one of its promoter companies (Venture USA) on domestic sales made to Satyam for AY 2004-05 to 2008-09 : Hyderabad ITAT
JCB India Ltd [TS-168-ITAT-2016(DEL)]	Holds that TPO's action of determining ALP at 'Nil' by holding that no benefit accrued to assessee-manufacturer and further, AO's action in confirming the addition without examining the applicability of Sec 37(1) of the Act, were contradictory to the ratio laid down by jurisdictional HC in Cushman & Wakefield; Observes that, "Once a particular amount has been added on account of transfer pricing adjustment by relying on the TPO's order, there cannot be one more disallowance of the same amount or some part of it by the AO u/s 37(1) of the Act" : Delhi ITAT

Clause 20: Employee related payments

Judgment	Summary
Bihar State Warehousing Corporation Ltd [TS-451-HC-2016(PAT)]	Allows deduction to assessee (a PSU) in respect of employees' contribution to PF deposited after PF Act due-date but before return filing due-date applying provisions of Sec 43B : Patna HC
Employees Provident Fund Organization [TS-422-ITAT-2016(DEL)]	holds that EPFO is liable to deduct tax u/s 192 in respect of settlement/withdrawals of accumulated balances by employees before 5 years of rendering of continuous service; observes that only provident funds set up under the PF Act 1925 or those set up by the Central Government are covered u/s 10(11) and assessee, being governed by EPF Act, is a recognized provident fund ('RPF') not covered by Sec 10(11) : Delhi ITAT
Wallace Flour Mills Co. Ltd [TS-506-HC-2016(BOM)]	Retrenchment compensation for transferred units' employees allowable : Bombay HC

Clause 21(a): Business expense allowances/disallowances and details of amounts debited being in the nature of capital, personal, advertisement expenditure etc.

Judgment	Summary
Allowable expenses	Jindal Power Limited [TS-358-ITAT-2016] - Voluntary CSR-expenses deductible, expl 2 to Sec. 37(1) not retrospective.

	<p>SAIC India Private Limited [TS-349-ITAT-2016(DEL)] - Allows deduction of full amount of retention bonus as revenue expenditure u/s 37.</p> <p>Ikea Trading (India) P Ltd. [TS-354-ITAT-2016(DEL)] - Renovation expenses on rented premises allowable u/s 30.</p> <p>LML Ltd. [TS-392-ITAT-2016(Mum)] - Legal expenses regarding promoters' dispute deductible.</p> <p>ICICI Securities Ltd. [TS-303-ITAT-2016(Mum)] - Incentives passed on to sister concern deductible.</p> <p>TATA Industries Ltd. [TS-409-ITAT-2016(Mum)] - Deletes disallowance of interest u/s 36(1) (iii) in relation to strategic investments made in group companies.</p> <p>Quantum Advisors Pvt. Ltd. [TS-389-ITAT-2016] - Mutual fund 'sponsor' promoting MF-scheme eligible for advertisement expense deduction.</p> <p>Harsoria Healthcare Pvt. Ltd. [TS-355-ITAT-2016(DEL)] - Swapping charges on transfer of loan.</p>
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Clause 21(b): Disallowances u/s 40(a)

Judgment	Summary
Sahana Dwellers Pvt. Ltd. [TS-127-ITAT-2016(Mum)]	Holds that compensation paid by assessee to the tenants towards alternative accommodation not in the nature of 'rent' as defined in Sec 194I, disallowance u/s 40(a)(ia) of the Act cannot be sustained : Mumbai ITAT
Red Chillies Entertainment Pvt. Ltd. [TS-336-ITAT-2016(Mum)]	Deletes expense disallowance u/s 40(a)(ia) in case of Red Chillies Entertainment Pvt. Ltd. for AY 2010-11, holds no Sec 194J TDS for payments made in "kind" to actors : Mumbai ITAT
ANZ Grindlays Bank [TS-105-HC-2016(DEL)]	Allows salary payment deduction in expense-year u/s 40(a)(iii) despite belated TDS-deposit : Delhi HC
Ryatar Sahakari Sakkare Karkhane Niyamit [TS-132-HC-2016(KAR)]	Upholds Sec 40(a)(ia) disallowance for TDS default on rent, professional charges and contractual payments to transporters made by assessee; Accepts Revenue's stand that Tribunal was not correct in interpreting the language of Sec 40(a)(ia) to mean that consequence of disallowance is attracted only in respect of amounts remaining payable at year-end : Karnataka HC

Bosch Limited [TS-116-ITAT-2016(Bang)]	Holds that TDS liability does not arise on year-end provisions for expenses which got reversed on first day of next accounting year, provisions were made in accordance with AS-29 issued by ICAI and assessee had suo moto disallowed the same u/s 40(a)(i) and 40(a)(ia) while computing taxable income : Bangalore ITAT
Herbalife International India [TS-257-HC-2016(DEL)]	No Sec 40(a)(i) disallowance to assessee (an Indian company) for TDS default on payment to US company towards administrative fee for AY 2001-02, invokes non-discrimination clause under Article 26(3) of India-USA DTAA : Delhi HC
Red Chillies Entertainment Pvt. Ltd. [TS-336-ITAT-2016(Mum)]	Deletes expense disallowance u/s 40(a)(ia) in case of Red Chillies Entertainment Pvt. Ltd. for AY 2010-11, holds no Sec 194J TDS for payments made in "kind" to actors : Mumbai ITAT
R K P Company [TS-357-ITAT-2016]	Deletes expense disallowance u/s 40(a)(ia) for AY 2010-11 allowing retrospective benefit of second proviso to Sec 40(a)(ia) inserted vide Finance Act, 2012 : Raipur ITAT
Textures & Weaves (India) Pvt. Ltd. [TS-372-ITAT-2016(CHNY)]	Deletes disallowance u/s 40(a)(ia) for non-deduction of TDS on payment made to foreign agents u/s 195 : Chennai ITAT
Hightension Switchgears Pvt. Ltd. [TS-375-HC-2016(CAL)]	Deletes Sec.40(a)(ia) disallowance in respect of non-deduction of tax at source u/s 194C on freight charges reimbursed to the suppliers; Notes that the supplier was bound to pay the freight charges to the goods transport agency under the contract of sale however, he was entitled to recover them from the assessee : Calcutta HC
Future Distributors [TS-423-ITAT-2016(Kol)]	Disbursal of prize monies on lottery tickets not commission : Kolkata ITAT
Piu Ghosh [TS-452-HC-2016(CAL)]	Sec. 40(a)(ia) not applicable to AY 2005-06; Presidential assent date vital, legislative intent 'unambiguous' : Calcutta HC
Soma Rani Ghosh [TS-497-ITAT-2016(Kol)]	PAN-driven TDS relief u/s 194C(6) also available to sub-contractors; Deletes Sec. 40(a)(ia) disallowance in respect of non-deduction of TDS u/s 194C on payment towards carriage inward and outward charges by virtue of Sec. 194C(6) : Kolkata ITAT

Clause 21(d): Disallowances u/s 40A(3)

Judgment	Summary
Ramnagar Pachwai & C.S. (S) Shop [TS-441-ITAT-2016(Kol)]	Deletes disallowance u/s 40A(3); Allows exemption from disallowance in view of Rule 6DD as assessee made cash deposits directly in payee's bank account : Kolkata ITAT

Anurag Radhesham Attal [TS-5602-ITAT-2016(PUNE)-O]	Deletes disallowance, holds that payments made by assessee to the farmers through commission agents – no disallowance u/s 40(A)(3) attracted : Pune ITAT
Bijoy Narayan Roy (Prop)(dead) Raghunath Chak C S Shop [TS-5590-ITAT-2016(KOLKATA)-O]	Cash transactions for business expediency and not involving any tax evasion is a relevant consideration for non-applicability of Sec. 40A(3) : Kolkata ITAT
Sapna Sanjay Raisoni [TS-5685-ITAT-2016(PUNE)-O]	Payments made in cash to MSRTC for purchase of scrap in auction would not attract the provisions of section 40A(3) : Pune ITAT

Clause 21(h): Disallowance u/s 14A

Judgment	Summary
HDFC Bank Ltd [TS-106-HC-2016(BOM)]	Allows HDFC Bank's writ, sets aside ITAT order upholding Sec 14A disallowance on interest expense with respect to investment made in tax-free securities for AY 2008-09 : Bombay HC
DSP Investment Private Limited [TS-214-HC-2016(BOM)]	Quashes non-speaking ITAT-order upholding Sec14A disallowance : Bombay HC
Pahilajrai Jaikishin [TS-5320-ITAT-2016(MUMBAI)-O]	Interest on partners' capital not an 'allowance', Sec 14A applicable : Mumbai ITAT
Allahabad Bank [TS-314-ITAT-2016(Kol)]	Accepts assessee's Sec 14A disallowance working; clarifies that it is not mandatory for AO to apply Rule 8D the moment he rejects assessee's basis of disallowance : Kolkata ITAT
West Bengal Infrastructure Development Finance Corporation [TS-27-ITAT-2015(Kol)]	Holds "disallowance under Sec. 14A of the Act cannot be in excess of the tax free income earned by the Assessee during the previous year" and thus "disallowance u/s. 14A of the Act be restricted to the tax free income earned by the assessee." : Kolkata ITAT
Max India Ltd. [TS-498-HC-2016(P & H)]	Upholds deletion of Sec 14A disallowance on account of interest expenditure by applying presumption of utilizing own funds towards tax-free investments : Punjab & Haryana HC
HDFC Bank Ltd [TS-106-HC-2016(BOM)]	Investments included securities forming part of stock in trade of assessee's business, acquired in regular course of business and thus they would not attract disallowance u/s 14A : Bombay HC

Aegon Religare Life Insurance Company Limited [TS-6099-ITAT-2016(MUMBAI)-O]	Section 14A not applicable to an insurance company even when it has earned dividend income exempt u/s. 10(34) : Mumbai ITAT
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Clause 21(i): Disallowance u/s 36(1)(iii)

Judgment	Summary
Hero Cycles (P) Ltd [TS-670-SC-2015]	Allows deduction for interest paid on funds borrowed from bank u/s 36(1)(iii); Observes that loan advanced to subsidiary company was imperative as business expediency in view of undertaking given to the financial institutions for providing additional margin for subsidiary's working capital requirements: SC
Kudu Industries [TS-654-HC-2015(P & H)]	Holds that disallowance u/s 36(1)(iii) for interest relating to advances given for non-business purposes should be computed on the basis of average interest rate for AY 2009-2010 : P & H HC

Clause 25: Deemed profits u/s 41

Judgment	Summary
LML Ltd. [TS-392-ITAT-2016(Mum)]	Forfeiture of share application money pursuant to a "Settlement and Clean Break Agreement" (SCB) with foreign collaborator not taxable u/s 41(1) for AY 2000-01 despite the fact that share application money were disclosed under the head "unsecured loan" in assessee's Balance Sheet : Mumbai ITAT
Alvares and Thomas [TS-222-HC-2016(KAR)]	Untraceable creditor doesn't amount to cessation of liability, deletes Sec 41(1) addition : Karnataka HC
Ramaniyam Homes Private Limited [TS-217-HC-2016(MAD)]	Upholds taxability of interest waiver u/s 41(1) since such interest was claimed as deduction earlier : Madras HC
SI Group India Ltd [TS-703-SC-2015]	Upholds Bombay HC judgment denying taxability u/s 41(1) in case of assessee making pre-mature payment of deferred sales tax liability under the incentive scheme : SC

Clause 26: Disallowance u/s 43B

Judgment	Summary
NCR Corporation India Pvt. Ltd. [TS-362-HC-2016(KAR)]	Allows Sec 43B deduction for excise duty paid on closing stock; Sec. 43B not diluted by Sec. 145A : Karnataka HC
Bihar State Warehousing Corporation Ltd [TS-451-HC-2016(PAT)]	Allows deduction to assessee (a PSU) in respect of employees' contribution to PF deposited after PF Act due-date but before return filing due-date applying provisions of Sec 43B : Patna HC
Calibre Personnel Services Pvt Ltd [TS-514-SC-2015]	Sec 43B not applicable where amounts of service tax payable not debited to the P&L A/c : SC
Plant Lipids Pvt. Ltd. [TS-5129-ITAT-2016(COCHIN)-O]	Tax, duty, cess or fee payable under any law for the time being in force referred to in section 43B does not cover purchase price of raw materials; Since it is reflected in the purchase bills with the purchase register that the appellant has not included the tax element in the cost of raw materials and again claimed VAT payable as an expense, therefore there is no reason for making the disallowance u/s. 43B : Cochin ITAT
Mother Theresa Educational Society - [TS-5443-ITAT-2016(VISAKHAPATNAM)-O]	Sec. 40(a)(ia) and 43B are not applicable, when income is computed under sec. 11 of the Act : Visakhapatnam ITAT

Clause 28/29: Transactions covered u/s 56(2)(vii)

Judgment	Summary
Dr. Rajan Pai [TS-299-ITAT-2016(Bang)]	Holds that Sec 56(2)(vii) cannot be applied to bonus shares, also clarifies that "Valuation of unquoted shares set out in Rule 11 UA(B) will have applicability only on receipt of shares as gift or for inadequate consideration." : Bangalore ITAT
Medplus Health Services P. Ltd. [TS-129-ITAT-2016(HYD)]	Deletes 'deemed-gift' income-addition u/s 56(2)(vii) with respect to group company's shares taken-over by assessee (a closely held company) alleged to be at consideration below FMV; concludes that provisions of Sec 56(2)(vii) were not properly and correctly applied in assessee's case, thus remits matter back for reconsideration: Hyderabad ITAT

Clause 31: Section 269SS/26 9T

Judgment	Summary
Hissaria Brothers [TS-471-SC-2016]	Dismisses Revenue's appeal against Rajasthan HC ruling in Hissaria Brothers deleting penalty u/s 271D/E for Sec 269SS/T default; HC had ruled that limitation period u/s 275(1)(a) dealing with penalties related to assessment was not applicable as infringement of Sec 269SS is independent of assessment proceedings : SC
Dinesh Jain [TS-294-SC-2016]	SC dismisses Revenue's SLP; HC upheld ITAT's action; ITAT held that penalty was not sustainable on merits as there was no violation of Sec. 269T when assessee assigned the loan to his wife by way of journal entry in absence of actual repayment to the lender : SC
Jai Laxmi Rice Mills [TS-736-SC-2015]	When original assessment order itself was set aside satisfaction recorded therein for the purpose of initiating penalty proceeding u/s 271E would also not survive : SC
JKD Capital & Finlease Ltd [TS-597-HC-2015(DEL)]	Quashes Sec 271E penalty levy for loan repayment in cash as penalty order barred by limitation : Delhi HC
Valley Extraction Pvt Ltd [TS-5600-ITAT-2016(CHANDIGARH)-O]	Share application money received in cash from the director due to business exigencies warranting immediate discharge of liabilities at assessee's work site situated in a notified backward area, a 'reasonable cause' for non-levy of penalty u/s. 271D for failure referred to in Section 269SS : Chandigarh ITAT

Clause 32: Brought forward loss/ depreciation allowance

Judgment	Summary
Parrys(Eastern) Pvt. Ltd. [TS-90-HC-2016(BOM)]	Deeming fiction u/s 50 cannot restrict short-term capital gain set-off against long-term loss : Bombay HC
SBI DFHI Limited [TS-380-ITAT-2016(Mum)]	Upholds penalty levy u/s 271(1)(c) for assessee's excessive claim of unabsorbed depreciation in terms of Explanation to Sec 115JB while computing book profits : Mumbai ITAT
Surat Textile Mills Ltd [TS-315-ITAT-2016(Ahd)]	Allows assessee's claim for reduction of accumulated unabsorbed depreciation of earlier years while computing book profit u/s 115JB : Ahmedabad ITAT
NEC HCL System Technologies Ltd [TS-28-ITAT-2016(DEL)]	Allows STPI- unit loss set-off against non-STPI profits : Delhi ITAT

Clause 32: Section 79 impact on losses

Judgment	Summary
Swiss Re Healthcare Services P. Ltd. [TS-175-ITAT-2016(Bang)]	Unabsorbed depreciation not hit by Sec 79; Holds that “unabsorbed depreciation is not a loss but allowances under section 32 of the Act...”, therefore Sec 79 is inapplicable to set off and carry forward of unabsorbed depreciation : Bangalore ITAT
Yum Restaurants (I) Pvt. Ltd. [TS-7-HC-2016(DEL)]	Intra-group share transfer triggers Sec 79 : Delhi HC

Clause 33: Chapter VIA Deductions

Judgment	Summary
Judgments on benefit on S.80IA/S.80IB	<p>Sameer Rajendra Shah [TS-266-ITAT-2016(PUN)] - Leasing premises to Big Bazaar part of multiplex income, allows deduction u/s 80IB(7A) : Pune ITAT</p> <p>Syngenta India Ltd. [TS-341-ITAT-2016(Mum)] - Loss-making units not relevant for computing Sec. 80IB deduction : Mumbai ITAT</p> <p>Meghalaya Steels Ltd [TS-124-SC-2016] - Allows Sec 80IB/IC deduction on subsidies applying 'direct-nexus' test : SC</p> <p>Ishwar Manufacturing Co.(P) Ltd [TS-9-ITAT-2016(CHANDI)] : Sec 80(IA)(10) not triggered on the basis of mere presumption : Chandigarh ITAT</p> <p>Bharat Sanchar Nigam Ltd [TS-737-ITAT-2015(DEL)] - Allows BSNL's tax-holiday other-receipts; 'Derived from' conditions absent in Sec 80IA(2A) : Delhi ITAT</p> <p>Micro Labs Ltd [TS-698-SC-2015] - SC division bench refers matter to larger bench to rule on whether assessee is entitled to simultaneous deduction under Sec 80IA (for infrastructure development) and Sec 80HHC (for export business) on same profits</p>

	<p>EIH Limited [TS-540-ITAT-2015(Kol)] - Rules that deductions u/s 80HHD (in respect of earnings in convertible foreign exchange) and u/s 80IA (in respect of profits / gains from industrial undertaking) can be claimed simultaneously in respect of same unit, as both the deductions are independent : Kolkata ITAT</p> <p>Mercedes Benz India Pvt. Ltd. [TS-5595-ITAT-2016(PUNE)-O] - Non-filing of audit report not fatal defect for claiming deduction; Merely a procedural defect which can be rectified by filing Audit Report : Pune ITAT</p> <p>Anoli Holding Pvt. Ltd. [TS-6134-ITAT-2016(AHMEDABAD)-O] - Sec. 80AC is mandatory, not directory; Deduction u/s. 80 IB is not allowable if return of income is not filed within the due date u/s. 139(1) even though the audit report was prepared before the due date : Ahmedabad ITAT</p> <p>Sun Pharmaceutical Industries Ltd. [TS-388-HC-2016(GUJ)] - Remarked that “in effect and substance, the Assessing Officer wants to sit in appeal over the order passed by the predecessor Assessing Officer and seeks to disallow the deductions which have already been granted by him.” HC thus held that “the claim of deduction under section 80HHC and 80IA of the Act had been processed at length by the Assessing Officer. The mere fact that such claim was not examined from a particular angle, therefore, cannot be a ground for reopening the assessment.” : Gujarat HC</p>
Southern Sea Foods [TS-167-SC-2016]	Allows Sec 80HHC deduction to exporter on incentive-payments from export-houses : SC
Kamaljeet Singh Aluwalia [TS-512-HC-2016(RAJ)]	Holds filing of audit report by Chartered accountant a mandatory requirement to claim deduction u/s 80HHC : Rajasthan HC

Clause 33: Chapter III Deductions

Judgment	Summary
Majmudar & Co. [TS-454-ITAT-2016(Mum)]	Allows Sec 10B deduction to law firm exporting legal services using ‘database’ : Mumbai ITAT
NEC HCL System Technologies Ltd [TS-28-ITAT-2016(DEL)]	Allows set-off of losses incurred by assessee’s STPI unit (eligible for Sec 10A deduction) against income from non-STPI unit for AY 2008-09 in view of CBDT circular no. 7 dated July 16, 2013 : Delhi ITAT

CRISIL Limited [TS-27-ITAT-2016(CHNY)]	Data processing - an IT enabled service; Quaifies for Sec.10A exemption : Chennai ITAT
Last Peak Data Pvt. Ltd [TS-676-ITAT-2015(Kol)]	Sec 10AA doesn't postulate physical existence in SEZ, grants benefit to STP unit : Kolkata ITAT
Riviera Home Furnishing [TS-668-HC-2015(DEL)]	Allows Sec 10B deduction on export incentives, customer claims : Delhi HC
Precision Camshafts Limited [TS-649-ITAT-2015(PUN)]	Income enhanced pursuant to Sec 40(a)(ia) disallowance eligible for Sec 10B deduction : Pune ITAT
Universal Precision Screws [TS-602-HC-2015(DEL)]	Allows Sec 10B deduction on FDR Interest : Delhi HC
Last Peak Data Pvt. Ltd. [TS-5877-ITAT-2015(KOLKATA)-O]	Sec 10AA doesn't postulate physical existence in SEZ, grants benefit to STP unit; ITAT grants Sec 10AA deduction to assessee registered as an STP unit : Kolkata ITAT
Super Auto Forge Pvt. Ltd. [TS-5002-ITAT-2016(CHENNAI)-O]	Relies upon Delhi HC ruling in KEI Industries Ltd wherein it was held that loss suffered by the assessee in a unit entitled for exemption cannot be set off against income from any other unit not eligible for such exemption : Chennai ITAT
All India Personality Enhancement & Cultural Centre for Scholars Aipeccs Society [TS-5515-HC-2015(DELHI)-O]	Surplus in charitable society's books not undisclosed income, 'intent to conceal' missing; Separately allows assessee's writ, allows Sec 10(22)/Sec 10(23C) exemption on educational activities despite assessee generating surplus : Delhi HC
Shri Balaji Prem Ashram & Nikhil Vidyalaya [TS-5856-ITAT-2015(CHANDIGARH)-O]	Held that assessee is carrying on the educational activity only during the year , it has to be given exemption under section 10(23C)(iiiad) of the Act; Held that since the assessee is claiming exemption under section 10(23C)(iiiad) of the Act , there is no need to file Audit Report in Form No.10BB : Chandigarh ITAT

Clause 34: Non-compliance with TDS provisions

Judgment	Summary
Bosch Limited [TS-116-ITAT-2016(Bang)]	TDS inapplicable to year-end expense-provisions reversed subsequently, income accrual to payee must : Bangalore ITAT
CEAT Ltd [TS-195-HC-2016(DEL)]	Allows TDS-refund to deductor regarding NR interest payment; Quashes CBDT's refund rejection : Delhi HC

HCL Comnet Ltd. [TS-456-ITAT-2016(DEL)]	TDS u/s 195 not applicable; Observes that payment towards AMC was in the nature of routine repairs/ replacement and maintenance and not in the nature of FTS absent managerial, technical or consultancy services being provided to assessee : Delhi ITAT
ITC Limited [TS-225-SC-2016]	Holds that TDS u/s 192 on salaries is not applicable on payment of tips by assessee hotel to its staff/waiters : SC
Symphony Marketing Solutions India Pvt Ltd [TS-312-HC-2016(KAR)]	Per-diem allowance not subject to Sec 192 TDS : Karnataka HC

Clause 36: Tax on distributed profits u/s 115-O

Judgment	Summary
Korn Ferry International Pvt. Ltd. [TS-439-ITAT-2016(Mum)]	Reject Revenue's stand that buy-back scheme was a colourable device to avoid payment of dividend distribution tax ('DDT') u/s 115O : Mumbai ITAT

Other cases pertaining to Tax Audit

Judgment	Summary
Koramangala Club [TS-5076-HC-2016(KARNATAKA)-O]	Deletes penalty u/s. 271B, accepts assessee's argument it was under a bonafide belief that provisions of Sec. 44AB are not applicable to a Club, a mutual concern : Karnataka HC
Calcutta Urology Research Centre Pvt. Ltd. [TS-5373-ITAT-2016(KOLKATA)-O]	Taxpayer cannot be penalized u/s.271B for failure on part of the Chartered Accountant to file Income Tax returns and Audit report; Holds that assessee had adduced reasonable cause in terms of sec.273B and accordingly is entitled for immunity from levy of penalty u/s 271B : Kolkata ITAT
Arun Agarwal [TS-6039-ITAT-2016(DELHI)-O]	Inadvertent mistake in clicking a wrong column that assessee was not liable for audit u/s.44AB while e-filing the return of income cannot lead to imposition of penalty u/s.271B, especially when a copy of the tax audit report was submitted during the course of assessment proceedings : Delhi ITAT

Singer Thana Large Sized Primary Agriculture Co- operative Marketing Society Limited [TS-6031-ITAT-2016(KOLKATA)-O]	Delay in appointment of statutory auditor by Cooperative Department, 'reasonable cause' for delay in filing audit report u/s. 44AB; Penalty u/s. 271B not leviable : Kolkata ITAT
Abu Mansur Ali [TS-6019-ITAT-2016(KOLKATA)-O]	Penalty u/s. 271B for non-filing of audit report not leviable when books of accounts itself not maintained; Holds that when the Revenue has taken a stand that the assessee did not maintain books of accounts and imposed penalty u/s. 271AAA on that account, it cannot further impose penalty u/s. 271B for failure to get its books of accounts audited : Kolkata ITAT
Chaitanya Enterprises Radhavilla [TS-6020-ITAT-2016(MUMBAI)-O]	Upholds levy of penalty u/s 271B upon assessee-builder for failure to obtain the tax audit report;ITAT holds that percentage completion method is prescribed under the Accounting Standard only for accounting profits and it does not give immunity to the assessee not get his accounts audited as the provisions of Sec. 44AB : Mumbai ITAT
Indian National Congress [TS-5167-HC-2016(DELHI)-O]	Congress denied Sec. 13A exemption for flouting audit report conditionality; Auditor in dock : Delhi HC

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