

2017
DIGEST OF CASE LAWS
DIRECT TAXES

Supreme Court
High Courts
Income-tax Appellate Tribunal
Authority for Advance Ruling
Allied Laws
Reference to CBDT Circulars 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

2017 – Digest of Case Laws on Direct Taxes

We are glad to present “2017 – Digest of Case Laws on Direct Taxes”. This year’s digest is the sixth year of our private publication for the reference of professional colleagues who regularly appear before High Courts, the Tribunal and Commissioners of Income-tax (Appeals).

In this publication, our research team has digested section-wise, 2223 cases which are reported in the year 2017 in various reports, journals, magazines and online media. The cases are digested in the descending order of relevance, i.e. Supreme Court, High Courts, Tribunal and Authority for Advance Ruling.

We have made an attempt to make editorial notes in some of the cases where the judgment of Tribunal is affirmed or reversed by High Courts or where an SLP is granted or rejected by the Supreme Court against the judgments of 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 is also provided which are arranged section-wise and subject-wise.

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

Case	Presented in index of case laws as ;
Dow Agro Sciences India P. Ltd.	Dow Agro Sciences India P Ltd. ; ACIT v.
CIT v. Madhur Housing and Development Co.	Madhur Housing and Development Co., CIT v.*
DIT v. A. P. Moller A/S	A.P. Moller A/S ; DIT v.*
PCIT v. Kusum Health Care P. Ltd.	Kusum Health Care P. Ltd.; PCIT v.*
UOI v. Vodafone Group PLC United Kingdom	Vodafone Group PLC United Kingdom; UOI v.*
CWT v. Atma Ram Properties (P) Ltd.	Atma Ram Properties (P) Ltd.; CWT v.

In the year 2012, we had published “Digest of Case Laws – Direct Taxes – (2003-2011) – A Tax Companion” to commemorate 150 years of the Bombay High Court, which was published jointly with the AIFTP and the ITAT Bar Association. All the publications from 2003-11 and from 2012 to 2017 are hosted on www.itatonline.org for the benefit of tax professionals and public at large. Those who desire to refer to digest may download and store the same on their desktops/laptops, mobiles and iPads/Tablets.

This year we have tried to publish only the ratio of the case laws. We desire to have objective suggestions from the readers, which may help us to publish a digest of cases

Preface

from 2003 to 2018, where only the ratio of the case laws would be published, jointly with the AIFTP and the ITAT Bar Association. The proposed publication will be in print format and also in the digital form. While referring to the digest, if any error or mistake is noticed by readers, they are requested to inform us by e-mail or in writing, which will enable us to take corrective measures in our next publication. We hope this publication will serve as a useful reference to busy professionals. This digest is for private circulation in print format with the objective of facilitating quick reference for professional colleagues. We desire to have your valuable guidance. Your valuable suggestions may be sent to ksalegal@gmail.com.

For Research and Editorial Teams,

Yours Sincerely,

Dr. K. Shivaram

Senior Advocate

31-08-2018

ABBREVIATIONS

Journals, Reports, Magazines and online

Ahmedabad Chartered Accountants Journal	– ACAJ
All India Federation of Tax Practitioners Journal	– AIFTPJ
All India Tax Tribunal Judgments	– TTJ
All India Reporter	– AIR
The Bombay Chartered Accountant Journal	– BCAJ
The Chamber of Tax Consultants	– The Chamber's Journal
Company Cases	– Comp-Cas
Current Tax Reporter	– CTR
Direct Taxes Reporter	– DTR
Excise Law Times	– ELT
Goods and Services Tax Reports	– GSTR
Income-tax Tribunal Decisions	– ITD
ITR's Tribunal – Tax Reports (ITR (Trib.))	– ITR (Trib)
Income-tax Reports	– ITR
Supreme Court Cases	– SCC
Taxman	– Taxman

Online

www.bombayhighcourt.nic.in

www.ctconline.org

www.delhihighcourt.nic.in

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www.manupatra.com

www.taxlawsonline.com

www.taxmann.com

Abbreviations – Authorities

Additional Commissioners of Income-tax	– Addl. CIT
Authority for Advance Rulings	– AAR

Abbreviations

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

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Supreme Court	– (SC)
High Court	– (HC)
Allahabad	– (All.)
Andhra Pradesh & Telangana	– (T&AP)
Assam	– (Guwahati)
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)
Uttarakhand	– (Uttarakhand)
Uttar Pradesh	– (UP)

Tribunal Benches

Agra	– (Agra)
Ahmedabad	– (Ahd.)
Allahabad	– (All.)
Amritsar	– (Asr.)
Bangalore	– (Bang.)
Bilaspur	– (Bilaspur)
Calcutta	– (Kol.)
Chandigarh	– (Chd.)
Chennai	– (Chennai)

Abbreviations

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

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- 9 **S.2(22)(e) : Deemed dividend – Any payment by a closely – held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be “dividend” on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. However, the legal fiction in s. 2(22)(e) does not extend to, or broaden the concept of, a “shareholder”**
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- S.2(22)(e) : Deemed dividend – Advance in the course of business, cannot be assessed as deemed dividend. (AY. 2010-11)** 20
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- S.2(22)(e) : Deemed dividend – Assessee was not a shareholder in lender company, loan taken by any partner cannot be taxed as deemed dividend. (AY. 2009-10)** 21
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- S.2(22)(d) : Deemed dividend – Buyback of shares – Payment made to its holding company for buy back of shares prior to 1-6-2013 can not be treated as dividend. [S.115QA, Companies Act, S.77A] (AY. 2011-12)** 22
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- S.2(24) : Income – Promotions – Appearances for promotion never took place, hence no income accrued to the assessee. [S. 2(24)(iv)] (AY. 2009-10, 2010-11)** 23
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- 24 **S.2(47)(v) : Transfer – Development agreement – If the entire consideration is not received by the assessee and physical possession of the property is not parted with, there is no transfer – Investment made within six months of transfer, was held to be eligible for benefit of S. 54EC. [S. 45, 54EC] (ITA No. 139 of 2015, dt. 20.11.2017)(AY. 2008-09)**
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- 25 **S.2(29A) : Long-term capital asset – The period of holding shall be computed from the date when the specific flat is earmarked and allotted by the builder in favour of the assessee and not from the date of registration of flat. [S.2(42A,) 45] (AY. 2010-11)**
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- 26 **S.4 : Charge of income-tax – Entertainment subsidy – Capital or revenue – A subsidy granted by the Govt. to achieve the objects of acceleration of industrial development and generation of employment is capital in nature and not revenue. [S. 28 (i)]**
CIT v. Chaphalkar Brothers Pune (2018) 400 ITR 279/ 300 CTR 113/161 DTR 41/252 Taxman 360 (SC)
Editorial: Decision in CIT v. Chaphalkar Brothers (2013) 351 ITR 309 (Bom) (HC) is affirmed
- 27 **S.4 : Charge of income-tax – Subsidy – Capital or revenue – Judgement of Delhi High Court in *CIT v. Bhushan Steels & Strips* was stayed. Supreme Court stays judgment of the Delhi High Court in *CIT v. Bhushan Steels & Strips* which held that if the recipient has the flexibility of using it for any purpose and is not confined to using it for capital purposes, the subsidy is revenue in nature and is taxable as profits. Court issued notice. In the meantime, the operation of the impugned judgment shall remain stayed. [S.28(1), 56] (SLP No. 30728-30732/2017, dt. 20.11.2017)**
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- 28 **S.4 : Charge of income-tax – Hindu law – Burden is on the member to establish the property is his individual and not ancestral presumption continues to operate in family**
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- 29 **S.4 : Charge of income-tax – Capital or revenue receipt – Sales tax subsidy – Matter was remanded to High Court for consideration. [S. 28(i)]**
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- 30 **S.4 : Charge of income-tax – Capital or revenue – Subvention received by assessee from parent company at time when assessee making losses, payment to protect capital investment was held to be not revenue receipt. [S.2(24), 28(i)] (AY. 1999-2000, 2000-2001, 2001-2002)**
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- S.4 : Charge of income-tax – Subsidy – Grant or subsidy was forwarded by the Government of India to help the assessee in its revival by making payment to employees towards voluntary retirement scheme. [S. 2(24), 2(25)] (AY. 2002-03, 2003-04)** 31
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- S.4 : Charge of income-tax – Gain or loss on account of fluctuation in exchange rate is neither in nature of royalty nor interest hence liable to tax-receipt of foreign exchange on sale proceeds of exports beyond the end of the previous year relevant to the assessment year resulting in gain or loss would not be considered to be a part of export turnover, but an income that arose on a separate transaction- DTAA- India – Malaysia. [S. 80HHC,90, Art, 12, 13] (AY. 1991-92)** 34
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- S.4 : Charge of income-tax – Capital or revenue – Subsidy – Government allowing assessee to retain sales tax collected by it up to a particular limit and there was no conditions attached to utilisation of amount. Therefore the subsidy is assessable as revenue in nature. (AY. 1995-96)** 35
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- 38 **S.4 : Charge of income-tax – Capital or revenue – Sales tax subsidy is held to be capital in nature**
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- 39 **S.4 : Charge of income-tax – Accrual – Carbon receipts were neither sold and/or transferred during the year cannot be included as income. [S. 5] (AY. 2009-10)**
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- 40 **S.4 : Charge of income-tax – Accrued interest on non-performing assets is not assessable. [S. 145] (AY. 2007-08)**
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- 41 **S.4 : Charge of income-tax – Interest on non-performing assets cannot be recognised on accrual basis, assessee is bound by Reserve Bank of India guidelines. [S. 43D, 119, 145, Reserve Bank of India Act, 1934, S. 45Q, Non-banking companies prudential norms (Reserve Bank) directions, 1998] (AY. 2010-11)**
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- 42 **S.4 : Charge of income-tax – Interest on interim compensation received pending final disposal by the High Court is chargeable to tax. [S. 145, CPC, S. 144] (AY. 1998-99 to 2001-02)**
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- 43 **S.4 : Charge of income-tax – Capital or revenue – Non-compete fees – Receipt of non-compete fees is capital receipt and not assessable as capital gains. [S. 28(iv), 45, 55(2)]**
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- 44 **S.4 : Charge of income-tax – Capital or revenue – Profits from sale of carbon credits capital in nature**
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- 45 **S.4 : Charge of income-tax – Capital or revenue – Transport subsidy to stimulate industrial activity in backward region was held to be capital receipt. [S.2(24)] (AY. 2001-2002)**
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- 46 **S.4 : Charge of income-tax – Land purchased for company by its director – Sale of land cannot be assessed in the hands of director. (AY. 2009-2010)**
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- S.4 : Charge of income-tax – Capital or revenue – Club-Security deposit as entrance fee, which were refundable after 25 years is capital receipt. [S.28(i)] (AY.2008-09, 2011-12, 2012-13)** 50
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- S.4 : Charge of income-tax – Sale of CER certificate was held to be capital receipts. (AY. 2006-07 to 2009-10, 2011-12 to 2013-14)** 53
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- 56 **S.4 : Charge of income-tax – Interest received on enhanced compensation was not liable to be taxed as income from other sources [S. 56, Land Acquisition Act, 1894, S. 28, 34] (AY. 2008-09)**
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- 57 **S.4 : Charge of income-tax – Mutuality – A club whose membership is also open to the persons from the public and whose management is looked after by officials of HUDA is eligible to claim the benefits of mutuality. (AY. 2006-07)**
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- 58 **S.4 : Charge of income-tax – Capital or revenue – Interest earned on fixed deposits – Funds received from Reserve Bank of India to meet the capital expenditure for setting up the project – Funds temporarily placed in fixed deposits with banks – Interest earned on such deposits should be reduced from the capital cost of the project and not chargeable to tax – Interest cannot be assessed as income from other sources. [S.56] (AY. 2011-12)**
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- 59 **S.4 : Charge of income-tax – Capital or revenue – Accrual – Arbitration award received on account of escalation damage and delays in completing the project will be a capital receipt. Dispute regarding the contract and amount awarded on arbitration. The issue relating to damages and interest still sub-judice and hence cannot be taxed till the proceedings attain finality. [S.5, 145] (AY. 2007-08).**
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- 60 **S.4 : Charge of income-tax – Capital or revenue – Interest subsidy received under Technology upgradation fund Scheme is capital receipt. (AY. 2007-08)**
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- 61 **S.4 : Charge of income-tax – Merely because HUF of assessee had not filed return of income, AO cannot assess the capital gain in the hands of individual. [S. 45] (AY. 2009–2010)**
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- 62 **S.4 : Charge of income-tax – Capital or revenue – Gains due to fluctuation in foreign exchange – Source of funds for capital expenditure hence capital receipt. (AY. 2008-2009)**
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- 63 **S.4 : Charge of income-tax – Method of accounting – stock in trade – Development of property – Income in respect of transfer of immovable property recognised only when risks, rewards and ownership of property transferred to buyer. Matching principle – Accounting Standard-9. [S. 2(47), 5, 145] (AY. 2007-2008)**
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- 75 **S.5 : Scope of total income – Non-resident – Permanent establishment – Assessee deciding venue and participating teams bound to it to compete in racing in terms agreed with assessee – Proof of assessee carrying on business in India for duration of race within meaning of expression under article 5(1) of DTAA – DTAA – India-United Kingdom. [Art. 5(1), 13 195]**
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- 76 **S.5 : Scope of total income – Suppliers showed recovered amount from assessee as advance – Tax collected from customers shown as advance – Amount collected not to be taxed as no real income accrued. [S.147] (AY. 2008-09)**
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- 77 **S.5 : Scope of total income – Direct credit of salary for services rendered outside India into NRE bank account was held to be not taxable in India (AY. 2011-2012)**
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- 78 **S.5 : Scope of total income – Accrual – Seafarer – Services were rendered outside India on a foreign shipsalary receipts shall not include in income as same was credited in NRE account maintained in Indian Bank. (AY. 2012-2013)**
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- 79 **S.5 : Scope of total income – Marine engineer – Salary accrued outside India – Just because foreign employer directly credited salary to NRE account, same could not be brought to tax in India. (AY. 2011-12)**
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- 80 **S.5 : Scope of total income – Grossing up of income – Tax withheld in USA (Federal and State Tax) should not be added back to quantify income taxable in India – DTAA-India-USA [S. 90, 198, Art 25] (AY. 2011-12)**
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- S.9(1)(i) : Income deemed to accrue or arise in India – Permanent Establishment (PE) – “fixed place of business”, “service PE” and “agency PE” – The fact that there is close association and dependence between the US company and the Indian companies is irrelevant. The functions performed, assets used and risk assumed, is not a proper and appropriate test to determine whether there is a location PE – DTAA – India-USA [Art. 5, 6, 7, 26] (AY. 2001-02 to 2007-08)** 86
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- 87 **S.9(1)(i) : Income deemed to accrue or arise in India – Business connection – Liaison office – Income attributable to liaison office was held to be not assessable in India – DTAA – India-Japan [S. 44BB, Art. 5] (AY. 1994-95, 1995-96)**
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- 88 **S.9(1)(i) : Income deemed to accrue or arise in India – Capital gains – Capital gain on sale of shares of Indian Company by a resident of Mauritius was held to be not taxable in India – DTAA – India – Mauritius [S. 9, 45, 90, 245 (R), Art.13]**
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- 89 **S.9(1)(i) : Income deemed to accrue or arise in India – Business connection – Capital gains – Stay of Arbitration proceedings – Multiple foreign corporate entities of same group cannot bring multiple arbitration proceedings under multiple investment protection treaties against a host State in relation to same investment, when reliefs sought are the same – DTAA – India-UK [S. 195, 201(1), 201(IA)]**
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- 90 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Sale of shares was held to be not liable to capital gains tax – DTAA – India-Netherlands – Singapore [S. 2(47), 269UA(d), Art.13(1), 11(1)] (AY. 2005-06)**
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- 91 **S.9(1)(i) : Income deemed to accrue or arise in India – Business connection – AO satisfied with income attributable under Article 9 of India-Denmark DTAA in respect of 141 ships out of 145 ships – revenue cannot bring income of these 4 ships to tax in India under section 9.**
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- 92 **S.9(1)(i) : Income deemed to accrue or arise in India – Royalty – Payment for software not royalty hence not taxable in India as royalty, but business income, DTAA – India – China [S.9(1)(vi), Art. 12, Copyright Act, 1957, S. 14.]**
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- 93 **S.9(1)(i) : Income deemed to accrue or arise in India – International; Airlines Technical Pool (IATP) – Reciprocity in service rendered and received from pool members – Amount received from pool not taxable in India. DTAA India-Germany – Netherland. [Art. 8]**
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- S.9(1)(i) : Income deemed to accrue or arise in India – Capital gains – Investment income of assessee was held to be not taxable in India as per Article 14(6) of Indo-Spain tax treaty, and that gain on forex transaction entered in to hedge investment in securities was capital gains and not taxable in India-DTAA-India – Spain [Art. 14(5), 14(6)] (AY. 2007-08 to 2009-10)** 94
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- 130 **S.9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services– Common facilities is not technical services – Reimbursement of a common technical computer facility is not “fees for technical services”. Amount received by way of reimbursement of expenses does not have the character of income DTAA-India-Denmark. [Art. 12]**
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- 133 **S.9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Amount received as reimbursement of travel expenses of its employees deputed in India for providing technical assistance to a group concern cannot be assessed as technical services. (AY. 2009-2010)**
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- 174 **S.10(38) : Long term capital gains from equities – Penny stocks – Shares – Long-term capital gains claimed cannot be treated as bogus unexplained income if the paper work is in order. The fact that the Company whose shares were sold has violated SEBI norms and is not traceable does not mean that the assessee is at fault. [S.45, 68] (AY. 2005-06)**

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- 176 **S.10A : Free trade zone – Depreciation and business losses pertaining to non 10A unit cannot be set off against profits of units eligible for exemption. (AY. 2004-2005)**

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- 177 **S.10A : Free trade zone – Unabsorbed depreciation and business loss brought forward can be set off against current year's profit (AY. 2005-06)**

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- 179 **S.10A : Free trade zone – Deduction to be allowed on profit increased by amount of disallowance [S. 40(a)(v)] (AY. 2008-09)**

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253 **S.12AA : Procedure for registration – Trust or institution – Receipts on account of commercial activities exceeding limits prescribed in proviso to section 2(15), in particular year, does not give automatic power to Commissioner for cancellation of registration. [S. 2(15), 12, 13(8)] (AY.2009-2010)**

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254 **S.12AA : Procedure for registration – Trust or institution – Activities of trust is genuine – Restoration of registration granted was held to be proper. [S. 2(15), 11]**

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255 **S.12AA : Procedure for registration – Trust or institution – If aggregate receipts exceeds specified relief exemption would be denied, however registration shall not be cancelled. [S.2(15)]**

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256 **S.12AA : Procedure for registration – Trust or institution – No material indicating that assessee or its affairs not carried out in accordance with object of trust – Registration cannot be cancelled. [S.(2.15)] (AY.2009-2010)**

DIT (E) v. Maharashtra Housing & Area Development Authority (2017) 392 ITR 240 (Bom.)(HC)

257 **S.12AA : Procedure for registration – Trust or institution – Registration was directed to be granted. [S. 80G(5)(vi)] (AY. 2016-17)**

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258 **S.12AA : Procedure for registration – Trust or institution – The Commissioner only had to see whether the objects of the assessee-trust were charitable in nature or not and accordingly directed the Commissioner to grant registration [S. 2(15)]**

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259 **S.12AA : Procedure for registration – Trust or institution – Withdrawal of exemption only on the ground that, receipts of assessee exceeded specified monetary limits was held to be not justified – Matter remanded. [S. 2(15) (AY. 2005-06 to 2010-11)]**

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- 285 **S.14A : Disallowance of expenditure – Exempt income – Incumbent upon Assessing Officer to enquire and determine whether there is nexus. (AY. 2006-2007)**
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- 286 **S.14A : Disallowance of expenditure – Exempt income – Stock-in-trade – No disallowance can be made. [R. 8D] (AY. 2008-2009)**
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- 341 **S.23 : Income from house property – Double taxation – Lease of property to family members at nominal rent – Family members letting the same at very higher amount – Rental income was rightly taxed in the hands of assessee, however same cannot be taxed once gain in the hands of the family members. [S.4, 22] (AY. 1998-99)**
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- 342 **S.23 : Income from house property – Annual value – Let out a portion of building at lesser rent to a related party, AO was justified to determine the annual value of the building at the value/rent received from unrelated party. [S. 22] (AY. 1996-97)**
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- 343 **S.23 : Income from house property – Annual value – More than one house – Property remained vacant throughout the year would not be assessed u/s. 23(1)(c) but under S.23(1)(a) annual value will be determined notionally. [S. 22, 23(1)(b), 23(1)(c)] (AY. 2001-02 to 2007-08)**
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Editorial : SLP of the assessee is dismissed. Susham Singla v. CIT (2017) 247 Taxman 312 (SC)
- 344 **S.23 : Income from house property – Annual value – Let out building annual value is to be estimated. [S. 22, 23(1)(b)] (AY. 1996-97)**
CIT v. K.M. Mehaboob (Dr.) (2017) 244 Taxman 263 (Ker.)(HC)
- 345 **S.23 : Income from house property – Annual value – The Assessing Officer cannot treat a rental income as business income without any substantial material on record – Rule of consistency to be applied – Also, taxes paid by the landlord to the government, not recovered from the client can be allowed as deduction from the business income even if not deductible in S. 23. [S. 22] (AY.2010-2011)**
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- S.23 : Income from house property – Common Area Maintenance Charges and non-occupancy charges paid by the assessee to the Society are deductible from the rent while computing the annual letting value [S. 22] (ITA No. 4776/Mum/2014, dt. 01.11.2017)(AY. 2010-11)** 346
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- S.23 : Income from house property – Annual value – Properties under construction and property/shop used by assessee for business purpose could not be estimated on market value as the properties were vacant or under construction – Where the properties were let out the AO has to take actual rent received and not on notional basis. [S. 23(1)(b)] (AY. 2010-11)** 347
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- 354 **S.28(i) : Business income – Income from house property – Rental income and service charges received by Assessee Company as business income during course of business carried out by them of operating and running Mall as commercial activity is held to be assessable as business income. [S. 22]**
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- 355 **S.28(i) : Business income – Sale consideration received by builder was held to be assessable as business income, provisions of S. 50C was held to be not applicable [S.48, 50C] (AY. 2009-10)**
CIT v. Glowshine Builders & Developers (P) Ltd. (2017) 251 Taxman 223 / (2018) 405 ITR 540 (Bom.)(HC)
- 356 **S.28(i) : Business income – Income from house property – Ware house charges assessable as business income [S. 22]**
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- 357 **S.28(i) : Business income – Capital or revenue – Non-Compete Fee – Agreement was held to be non genuine hence assessable as business income [S. 4] (AY. 2001-02)**
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- 358 **S.28(i) : Business income – Interest earned on short-term fixed deposits is assessable as “profits and gains of business” and not as “income from other sources”. [S.56] (AY. 2011-12)**
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- 359 **S.28(i) : Business – Income from house property – Main business activity of assessee consisting of construction of different types of buildings and leasing them out, incomes will be assessable as business income. [S.22] (AY. 2008-2009)**
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- 360 **S.28(i) : Income from business – Income from other sources – Income from running of departmental store is assessable as business income and not as income from house property. [S. 22] (AY. 2006-07 to 2010-11)**
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- 361 **S.28(i) : Business income – Capital gains – Amount received on sub-licencing was held to be assessable as business income and not as capital gains. [S. 45] (AY. 2007 08, 2008-09)**
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- S.28(i) : Business income – Rental receipt from letting out commercial properties is assessable as business income and not as income from house property.[S.22] (AY. 2010-11)** 369
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- 371 **S.28(i) : Business income – Short term capital gains – Shares were held for less than 30 days during year assessable as business income. [S. 2(42A, 2(42B), 45] (AY.2008-09) *Digvijay Finlease Ltd. v. DCIT (2017) 163 ITD 431 (Ahd.)(Trib.)***
- 372 **S.28(i) : Business loss – Embezzlement – Loss by embezzlement being incidental to banking business of assessee bank, it should be allowed as deduction in year in which it was discovered [S. 145] (AY. 1997-98) *J & K Bank Ltd. v. ACIT (2017) 250 Taxman 380 / 298 CTR 500 / 157 DTR 361 (J&K)(HC)***
- 373 **S.28(i) : Business loss – Purchase and sale of shares – Assessing Officer has not brought any evidence to show that the transactions were false, hence disallowance of loss was held to be not valid. (AY. 2003-04, 2004-05, 2006-07) *PCIT v. Rungta Properties (P) Ltd. (2017) 249 Taxman 18 / (2018) 162 DTR 64 / 403 ITR 234 (Cal.)(HC)***
- 374 **S.28(i) : Business loss – Foreign cars – Not forming part of a block of assets – Not granted depreciation – Held, on sale, provision of S. 50 is not applicable – Held, loss on sale is a business loss. [S.2(11), 50] (AY. 1999-00, 2000-01) *Madan, K. D. v. ITO (2017) 152 DTR 21 / 248 Taxman 157 / 297 CTR 437 (Mad.)(HC)***
- 375 **S.28(i) : Business loss – Advancing loans – Companies in liquidation – Loss is allowable as business loss – Stock in trade – Erosion in value of shares, valuation at market values is permissible [S. 37(1)] (AY.1987-88) *CIT v. Tamilnadu Industrial Investment Corpn. Ltd. (2017) 394 ITR 255 (Mad.)(HC)***
- 376 **S. 28(i) : Business loss – Advances written off – Allowable as deduction [S. 37(1)] (AY. 2010-11) *DCIT v. J. Thomas & Co. (P) Ltd. (2017) 167 ITD 572 (Kol.)(Trib.)***
- 377 **S.28(i) : Business loss – Loss on sale of securities and bonds emanated from investments was held to be allowable as business loss, notwithstanding the fact that securities were grouped under head ‘investment’ owing to prescribed format of RBI [S.37(1)] (AY.2009-10, 2010-11) *ACIT v. Chanasma Nagrik Sahakari Bank Ltd. (2017) 167 ITD 151 / (2018) 194 TTJ 269/ 167 DTR 393 (Ahd.)(Trib.)***
- 378 **S.28(i) : Business loss – Loss on account of premium paid on face value of security is required to be amortized for remaining period of maturity. (AY.2009-10, 2010-11) *ACIT v. Chanasma Nagrik Sahakari Bank Ltd. (2017) 167 ITD 151 / (2018) 194 TTJ 269 / 167 DTR 393 (Ahd.)(Trib.)***
- 379 **S.28(i) : Business loss – Foreign exchange loss on forward contracts through hedging export sales – Allowable as business loss. (A.Y. 2012-13) *DCIT v. Elitecore Technologies (P) Ltd. (2017) 165 ITD 153 / 186 TTJ 1 / 150 DTR 185 (Ahd.)(Trib.)***

- S.28(i) : Business loss – Loss claimed by the assessee on account of mark to market losses on account of fluctuation in foreign currency in respect of hedging forward contract is not allowable as there was no underlying asset on the date of balance sheet. [S.43(5)] (AY. 2009-10)** 380
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- S.28(i) : Business loss – Forward contracts on foreign exchange – Loss not a speculation loss. (AY.2005-2006, 2006-2007, 2008-2009)** 382
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- S.28(i) : Business loss – Expenditure for provision of liability regarding exchange rate fluctuation was held to be revenue loss. [S.28(i)] (AY. 2004-05)** 383
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- S.28(i) : Business loss – Amount fraudulently withdrawn from the account was held to be allowable as business loss. (AY. 2004-05, 2005-06, 2006-07)** 384
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- S.28(i) : Business loss – Cash destroyed by fire was held to be allowable as business loss. (AY. 2010-11)** 385
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- S.28(i) : Business loss – Co-operative bank – Loss incurred on shifting securities from ‘Available for sale’ (AFS) category to ‘Held to Maturity’ (HTM) category is not allowable as business loss. (AY.2009-10)** 386
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- S.28(i) : Business loss – Forward exchange contracts – Losses incurred on account of entering with banks for purpose of hedging loss in connection with its import/export business was held to be allowable as business loss. [S.43(5)] (AY. 2009-2010)** 387
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- S.28(1) : Business loss – Chit fund – If subscriber incur the loss and if the amount was utilised for the purpose of business, the same is allowable as business loss. [S. 37(1)] (AY. 2004-05)** 388
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- 389 **S.28(i) : Business loss – Foreign exchange fluctuation loss on account of export proceeds lying in EEFC account based on RBI guidelines, is allowable as revenue loss. [S. 37(1)] (AY. 2008-09)**
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- 390 **S.28(i) : Business loss – Fenders which were reflected as a ‘Fixed asset in the ‘Balance sheet- Loss was not allowable as business loss. (AY. 2009-10)**
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- 391 **S.28(i) : Business loss – Share trading and future and option losses-loss on derivatives being future option loss on transactions entered on NSE, he would be entitled to set off same against profit on sale of property. [S. 22] (AY. 2007-08)**
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- 392 **S.28(i) : Business loss – Trading – Fenders were purchased which was reflected as capital asset in books of account, loss on sale of fenders was held to be not allowable as business loss. (AY. 2009-2010)**
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- 393 **S. 28(i) : Business loss – Chit fund business – If a subscriber incurs loss in subscribing to chit fund to raise funds to use them in his business or for business purpose, such a loss is an allowable deduction. (AY. 2004-05)**
Kamal Raheja v. ITO (2017) 162 ITD 55 / 183 TTJ 538 / 145 DTR 225 (SMC)(Luck)(Trib.)
- 394 **S.28(iv) : Business income – Value of any benefit or perquisites – Converted into money or not – Only fact that the assessee attended annual day celebrations and addressed the employees of the Company which gifted a villa to the assessee in Dubai does not amount to rendering of professional services or carrying out brand endorsement activities and hence the value of villa cannot be brought to tax u/s. 28(iv) [S. 28(iv)] (AY. 2008-09)**
Shahrukh Khan v. ACIT (2017) 189 TTJ 547 / 158 DTR 77 / 84 taxmann.com 209 (Mum.)(Trib.)
- 395 **S.28(iv) : Business income – Amalgamation – There was no business transaction in amalgamation, surplus of assets over liability of subsidiary company resulting from said amalgamation was not taxable. [S.28(i)] (AY. 2003-04)**
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- 396 **S.28(iv) : Business income – Value of any benefit or perquisites – Converted into money or not-Concession of duty on import of capital goods conditional on certain quantum of export, still be a concession on capital account hence cant be assessed as business income. [S.4] (AY. 2001-02, 2004-05, 2006-07)**
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- S.28(iv) : Business income – Value of any benefit or perquisites – Converted into money or not – Part-time director as well as employee, not drawing salary – Value of rent free accommodation was held to be not a perquisite – Value of rent free accommodation to be determined as per guidelines of Municipal Corporation. [S. 2(24)(iv), 17(2), 23(1)(a)] (AY. 2010-11, 2011-12)** 397
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- S.32 : Depreciation – Building on leased premises – Lessee cannot be said to be owner for claiming depreciation, however lessee is entitled to depreciation on the cost of construction incurred by him but not on the cost incurred by the owner and reimbursed by the lessee. (AY. 1992-1993)** 401
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- S.32 : Depreciation – Charitable Trust – Even if the entire expenditure incurred for acquisition of a capital asset is treated as application of income for charitable purposes, assessee is entitle to depreciation and entitle to carry forward. S. 11(6) inserted by Finance (No. 2) Act, 2014 is effective from asst. year 2015-16 and it is prospective in nature. [S.11(1)(a)]** 402
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- 405 **S.32 : Depreciation – Additional depreciation – Though the control of plant and machinery of windmill was with GEB assessee is entitle to additional depreciation. [S.32(1)(ia)] (AY.2006-07)**
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- 406 **S.32 : Depreciation – Lease – lessee is entitled to depreciation. (AY. 1995-96)**
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- 407 **S.32 : Depreciation – Non-compete fees – Depreciation was allowed in earlier years and has to be allowed also in current year. (AY.2009-10)**
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- 408 **S.32 : Depreciation – Lease back of assets – Boiler – Depreciation was held to be allowable- Transaction could not be termed as dubious or colourable device, but a genuine business transaction. (AY. 1985-86)**
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- 409 **S.32 : Depreciation – Block of assets – Entitled to depreciation which formed block of assets though assets of one unit was sold and transferred and were not put to use during the year. [S. 2(11)] (AY. 2005-06)**
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- 410 **S.32 : Depreciation – Installation/UPS used as conjunction with a computer network is entitle depreciation.**
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- 411 **S.32 : Depreciation – Activity of mining, mineral processing for exports, shipping and stevedoring carried out by assessee would amount to production hence entitle to additional depreciation.**
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- 412 **S.32 : Depreciation – Brand Equity – Business or commercial rights of a similar nature hence entitle to depreciation. (AY. 2001-02)**
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- 413 **S.32 : Depreciation – Actual cost – Customs duty paid subsequent on debonding of unit was held to be added to actual cost. [S. 43(1)]**
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- 414 **S.32 : Depreciation – Ownership of asset was not established – Depreciation was held to be not allowable. (AY. 2008-09, 2009-10, 2010-11)**
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- S.32 : Depreciation – Good will – Depreciation was held to be allowable. (AY. 2000-01)** 419
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- S.32 : Depreciation – Lease of hotel premises – Lessee is entitle to depreciation. (AY. 1994-95)** 423
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- 424 **S.32 : Depreciation – Carry forward deficit of earlier years – Entitle to claim the depreciation and also allowed to set off carry forward deficit of earlier years. [S.11] (AY. 2007-08)**
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- 425 **S.32 : Depreciation – Ownership of asset – Toll roads not owned by assessee – Order of Appellate Tribunal directing Assessing Officer to grant depreciation on toll roads was held to be not proper. (AY. 2007-2008)**
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- 426 **S.32 : Depreciation – Building constructed solely for manufacture of medicine – Factory building a plant – Entitled to depreciation at 25%. (AY. 1999-2000)**
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- 427 **S.32 : Depreciation – Ownership of asset-Leased premises – Non-registration of lease agreement – Does not negate entitlement to continue in possession in part performance of agreement to sell – Assessee entitled to claim depreciation. [Transfer of Property Act, 1882, S.53A] (AY. 1994-1995)**
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- 428 **S.32 : Depreciation – Plant – Truck terminus charging parking fees – Plant entitled to higher rate of depreciation at 25%.[S.43] (AY.2004-2005)**
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- 429 **S.32 : Depreciation – User of asset – Not necessary that all items falling within plant and machinery should be simultaneously used – Finding that assets used for business – Assessee entitled to depreciation.**
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- 430 **S.32 : Depreciation – User of assets – Manufacturing activity was stopped on account of stay from Court and commenced after litigation was over, depreciation was held to be allowable. (AY. 2009-10)**
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- 431 **S.32 : Depreciation – ‘Visicooler’ was installed by manufacturer of cold drink, at distributor’s or retailer’s premises was entitle to additional depreciation. [S. 32(1)(ia), 43(3)] (AY. 2010-11)**
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- 432 **S.32 : Depreciation – Generation of electricity – Eligible additional depreciation. [S. 32(ia)]. (AY. 2007-08, 2011-12, 2012-13)**
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- 443 **S.32 : Depreciation – Additional depreciation – Machinery installed in the second half of the preceding year on which 50% of the additional depreciation was allowed – The assessee cannot claim the balance 50% of the additional depreciation in the subsequent year. Deprecation on UPS equipment is to be allowed at the rate of 60%. (AY. 2007-08 to 2011-12)**
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- 447 **S.32 : Depreciation – Block – Entire block of assets was not put to use for business purposes during the period hence depreciation was held to be not allowable. [S.2(11)] (AY. 2010-2011)**
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- 448 **S.32 : Depreciation – Additional depreciation – Windmill – Production of electricity eligible for additional depreciation. (AY. 2008-09, 2009-2010)**
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- 450 **S.32 : Depreciation – Carry forward and set off – Assessee entitled to Carry forward and set off against profits and gains without any limit whatsoever. (AY. 2006-07)**
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- 463 **S.32AB : Investment deposit account – Interest – Cannot be considered as business income for purposes of sections 32AB and 80HHC – Directions to Assessing Officer to pass fresh assessment order. [S. 56,80HHC] (AY. 1989-1990)**
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- 466 **S.35 : Scientific research expenditure – Development of in-house research and development facility – Assessee entitled to weighted deduction. [S.35(2AB)]. (AY.1995-1996)**
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- 480 **S.35AC : Eligible projects – Amendment terminating benefit with effect from 1-4-2017 was held to be valid. [Art. 226]**
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- 486 **S.36(1)(iii) : Interest on borrowed capital – Advance of loan to an individual or to a director of company for the purpose of business hence interest was held to be allowable.**
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- 487 **S.36(1)(iii) : Interest on borrowed capital – Borrowing was utilised for setting up a new unit and capitalised in the books of account was held to be allowable as revenue expenditure. (AY. 1997-98)**
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- 496 **S.36(1)(iii) : Interest on borrowed capital – Interest-free advance to another concern for purpose of business-Assessee proving availability of interest-free funds – Deletion of disallowance proper. [S.37(1)] (AY.1995-1996)**
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Editorial: SLP is granted to the Department, CIT v. Torrent Pharmaceuticals Ltd. (2017) 392 ITR 5 (St.)
- 497 **S.36(1)(iii) : Interest on borrowed capital – Interest paid for two years – Interest was held to be deductible as prior period expenditure. (AY. 1993-1994)**
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- 498 **S.36(1)(iii) : Interest on borrowed capital – No disallowance in case Assessee had sufficient funds and interest-free advances were given to sister companies based on commercial expediency. (AY. 2010-11)**
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- 500 **S.36(1)(iii) : Interest on borrowed capital – Advance to subsidiaries – Sufficient interest free funds – No disallowance can be made [S. 37(1)] (AY. 2013-14)**
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- 514 **S.36(1)(v) : Contribution to approved gratuity fund – Payment of gratuity was held to be allowable. [S. 37(1), 40A(7)] (AY. 2002-03, 2003-04)**
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- 515 **S.36(1)(v) : Contribution to approved gratuity fund – Payment towards LIC group leave encashment scheme is held to be deductible. (AY.2010-2011)**
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- 516 **S.36(1)(va) : Any sum received from employees – Contributions paid after due dates under respective acts but before due date for filing of return was held to be allowable.**
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- 517 **S.36(1)(va) : Any sum received from employees – Employees’ contribution towards employees’ State insurance and employees’ provident fund – Payments after due dates prescribed in relevant statutes but before filing return was entitled to deduction. [S. 2(24)(x)] (AY. 2004-2005)**
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- 518 **S.36(1)(va) : Any sum received from employees – Provident Fund and Employees’ State Insurance contributions, cannot be disallowed if paid after due date under respective Act but paid before filing of return. [S. 43B, 139(1)] (AY. 2003-2004 to 2008-2009)**
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Editorial : SLP of the revenue was dismissed, CIT v. Rajasthan State Beverages Corporation Ltd. (2017) 392 ITR 2 (St.)
- 519 **S.36(1)(va) : Any sum received from employees – Deposited with the Government before the due date of filing of return of income is allowable. [S.139(1)] (AY. 2012-13)**
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- 520 **S.36(1)(vii) : Bad debt – Advance to suppliers for business which was lying outstanding for number of years was written off was held to be allowable as deduction, though the suit was not filed for recover of the said amounts. [S. 28(i)] (AY.2009-10)**
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- 530 **S.36(1)(vii) : Bad debt – Amount written off as bad debts in books of account is held to be deductible. [S.36(2)] (AY. 2005-2006, 2006-2007, 2008-2009)**
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- 536 **S.37(1) : Business expenditure – Transportation charges was paid by account payee cheque after deduction tax at source, expenditure was rightly deleted by the Tribunal. [S. 133(6), 260A] (AY.2007-08)**
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- 548 **S.37(1) : Business expenditure – Payment made as per agreement for joint production of film was held to be allowable as business expenditure. (AY. 2006-07)**
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- 549 **S.37(1) : Business expenditure – Commission – Disallowance of commission only on the ground that supply was made to Govt. department would not be sustainable. Matter remanded. (AY. 2005-06)**
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- 551 **S.37(1) : Business expenditure – Prepaid insurance expenses was held to be allowable.**
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- 552 **S.37(1) : Business expenditure – Employees’ stock option plan – Once option given and exercised by employee liability is ascertained it is not contingent liability hence allowable as business expenditure. (AY. 2007-08)**
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- 553 **S.37(1) : Business expenditure – Capital or revenue – Contribution as part of shelter fund paid to land and building department of government to protect land held as stock-in-trade from acquisition is held to be revenue expenditure. (AY. 1995-96)**
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- 555 **S. 37(1) : Business expenditure – Capital or revenue – Amount paid on conversion of exported unit to a domestic tariff unit was held to be revenue expenditure.**
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- 565 **S.37(1) : Business Expenditure – Capital or revenue – Premium paid on pre redemption of debentures was to be allowed as revenue expenditure. (AY. 2001-02)**
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- 569 **S.37(1) : Business expenditure – Capital or revenue – Hotel business – Expenditure on repair and on arranging for temporary entrance and exit during repair was held to be revenue expenditure. (AY. 2007-08)**
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- S.44B : Shipping business – Non-residents – Computation – Ship or an aircraft is engaged in business of operating in international traffic, its income would be taxable in place of its HQ, onus is on assessee to prove – DTAA-India-Singapore [S.9(1)(i), 90, Art, 8] (AY. 2010-11)** 782
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- S.44B : Shipping business – Non-residents – Slot hire charges’ received from operation of ships in international traffic was eligible for article 8 benefit of India-UAE DTAA, not liable to tax in India. [S.90, Art. 8] (AY. 2007-2008)** 783
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- S.44BB : Mineral oils – Computation – Amounts received as “mobilisation fee” on account of provision of services and facilities in connection with the extraction etc. of mineral oil in India attracts S.44BB and have to be assessed as business profits. [S.4,5, 9(1)(i)] (AY. 1986-87, 1987-88, 2000-01)** 784
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Editorial: Review petition of assessee is dismissed Sedco Forex International Inc v. CIT (2018) 256 Taxman 65 (SC)

- 785 **S.44BB : Mineral oils – Award – Umpire held that tax was paid by sub-contractor under sections 5 and 9 as existing at relevant time, impugned award was to be set aside [S.5, 9, Arbitration Act, 1940 S.13, Contract Act, 1872, S.37] (AY.1984-85 to 1988-89)**
Hyundai Corporation v. Oil and natural Gas Corpn. Ltd. (2017) 251 Taxman 219 (SC)
- 786 **S.44BB : Mineral oils – Computation – Reimbursement of actual expenses was not be excluded while computing the income. [S.2(45), 5(2)]**
Ensco Maritime Ltd. v. ADIT (2017) 244 Taxman 261 (Uttarakhand)(HC)
Editorial : SLP is granted to the assessee; Ensco Maritime Ltd. v. Addl. DIT (2017) 244 Taxman 190 (SC)
- 787 **S.44BB : Mineral oils – Supply, installation etc. of software used for oil and gas exploration has been held as taxable under S.44BB. (AY. 2007-08, 2009-10)**
Hampson Russel Limited Partnership v. ADIT(IT) (2017) 57 ITR 719 (Delhi)(Trib.)
- 788 **S.44BB : Mineral oils – Include crude petroleum and liquid products derived from crude petroleum, not restricted to petroleum and natural gas. Words and phrases – "Mineral oils".**
Hyundai Heavy Industries Co. Ltd., In re (2017) 392 ITR 37 (AAR)
- 789 **S.44BB : Mineral oils – Non-residents – Amount received from hiring of barge used for offshore accommodation of employees was also liable to be taxed under section 44BB. (AY. 2007-08)**
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- 790 **S.44BB :Mineral oils–Business for prospecting/exploration, mineral oil etc. – Insertion of S.44DA in proviso to S.44BB is with effect from 1-4-2011 is prospective in nature. [S.44DA] (AY. 2005-2006, 2009-2010)**
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- 791 **S.44BB : Mineral oils – Computation – Payment by a non-resident to another non-resident [S.115A] (AY.2013-14)**
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- 792 **S.44BBB : Foreign companies – Civil construction – Turnkey power projects – Consultancy services is not covered – Matter remanded [S.145]. (AY. 2008-09)**
SMEC International (P) Ltd. v. ADIT (2017) 77 taxmann.com 4 / 183 TTJ 45 (Delhi)(Trib.)
- 793 **S.45 : Capital gains – Joint development agreement – Transaction which never materialised cannot be assessed as real income – There was no transfer of land where development agreement entered in to between developer and housing society for development of certain land owned by society was not registered [S 2(47)(v), 48**

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S.45 : Capital gains – An amount received from a wholly-owned subsidiary in consideration of transfer of shares of the WOS to a group of shareholders is not taxable as capital gains. The Department cannot subject a transaction under the Gift-tax Act and also levy tax under the Income-tax Act. [Gift-tax Act] 794

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S.45 : Capital gains – Business income – Mere object clause in memorandum of understanding with developer couldn't be a determining factor to conclude that this was a part of assessee's regular business – Sale of flats assessable as capital gains and not as business income [S.2(13), 28 (i)] (AY. 2003-04, 2004-05, 2006-07) 797

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S.45 : Capital gains – Transfer of possession of land to developer amount to transfer and liable to capital gains tax – Land and development charges deductible from sale consideration – Market value of land as on 1-4-1981 has to be taken. [S.2(47), Transfer of property Act, 1953, S.53A] (AY. 1995-96) 799

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- 800 **S.45 : Capital gains – Transfer – Development agreement land owned by society, agreement was not registered hence not liable to capital gains tax. [S. 2(47)(v), Transfer of Property Act, 1882, S.53A] (AY. 2008-09)**
PCIT v. Amrik Singh Basra (Dr.) (2017) 248 Taxman 180 (P&H)(HC)
- 801 **S.45 : Capital gains – Business income – Investment in shares – As explained in Circular No. 6, dated 29-2-2016, in respect of listed shares and securities held for a period of more than 12 months immediately preceding date of its transfer has to be assessed as capital gains [S.28(i)] (AY. 2006-07)**
PCIT v. Ramniwas Ramjivan Kasat (2017) 248 Taxman 484 (Guj.)(HC)
- 802 **S.45 : Capital gains – Long-term capital loss – Redeemable cumulative preference shares resulting in long-term capital loss- carry forward of long-term capital loss was held to be justified. [S.2(29B)] (AY. 2006-07)**
PCIT v. Consolidated Finvest and Holdings P. Ltd. (2017) 397 ITR 540 (Delhi)(HC)
- 803 **S.45 : Capital gains – Business income – profit from sale of shares – Shares had been purchased as investment hence profits from sales assessable as capital gains. [S.28(i)] (AY. 1992-93 to 1996-97)**
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- 804 **S.45 : Capital gains – Development agreement – Amount to be received by the developer cannot be assessed as the development agreement itself did not survive later on. [S.2(47)(v)] (AY. 2009-10)**
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- 805 **S.45 : Capital gains – Family arrangement does not amount to transfer – Corporate veil can be pierced only for the benefit of revenue – Lifting of corporate veil on the basis of family arrangement was held to be not valid. The fact that the company is wholly owned subsidiary of the family is irrelevant – Transfer of shares are held to be liable to capital gains tax. [S.2(47), 47] (AY. 1995-96)**
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- 806 **S.45 : Capital gains – Business income – Equity shares – Frequent transactions – Receipts to be treated as short-term capital gains [S.28(i), 111A] (AY.2008-2009, 2009-2010)**
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- 807 **S.45 : Capital gains – Transfer of trading stock into investment is permissible – Profit from sale of shares was held to be assessable as Long-term capital gains and not as business income. [S.10(38), 28(i), 45(2)] (AY. 2006-2007)**
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- S.45 : Capital gains – Business income – Land had been purchased as investment, gains on sale of land was assessable as capital gains. [S.28(i), 260A] (AY. 2005-2006)** 808
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- S.45 : Capital gains – Sick Company – When assessee started earning profits liability to capital gain tax was upheld. (AY.2010-11)** 809
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- S.45 : Capital gains – Full value of consideration is neither market value nor necessarily price stated in document for sale but the price actually arrived at between parties to transaction. [S.48, 55A] (AY. 2006-2007)** 810
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- S.45 : Capital gains – Cost of acquisition – Life interest in trust – Relinquishment/surrender does not constitute gift – Cost of acquisition of asset would be deemed to be nil. [S.49(1)(ii), Gift tax Act, 1958, S.2(xii), 4(1)(c), 4(1)(d)] (AY. 1984-85)** 811
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Editorial: Order in Nulsi N. Wadia v. ACIT (1996) 56 TTJ 88 (Mum.)(Trib.) is set aside.
- S.45 : Capital gains – Penny stocks – If the DMAT account and contract note show details of the share transactions and the AO has not proved the transactions to be bogus, the capital gains earned on the said transactions cannot be treated as unaccounted income. The fact that the broker was tainted and violated SEBI regulations would not make assessee's transactions bogus. [S.68] (ITA No. 4862/mum/2014, dt. 18.09.2017)(AY. 2005-06)** 812
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- S.45 : Capital gains – Purchase and sale of shares – Average holding period was 72 days hence income earned was held to be assessable as capital gains and not as business income [S.28(i)] (AY. 2010-11)** 813
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- S.45 : Capital gains – Business income – Plots shown as investment – Subjected same to wealth tax – Intention at the time of Purchase to be considered – Consequential gains to be capital gains. [S.2(14), 28(i)] (AY. 2011-12)** 814
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- S.45 : Capital gains – Capital asset – Conversion of agricultural land to non-agricultural – Sale is liable to be capital gains tax. [S.2(14)(iii), 133(6)] (AY. 2012-13)** 815
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- 816 **S.45 : Capital gains – Allotment letter – Indexation – Allotment right constitutes a capital asset, hence profit earned on sale of such allotment right would be taxable as capital gains and not as income from other sources [S.2(14), 56v] (AY. 2010-11)**
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- 817 **S.45 : Capital gains – Real income – An amount which is payable only on fulfilment of conditions does not create an enforceable right and has to be excluded while computing capital gains. [S.48] (ITA No. 5097/Mum/2015, dt. 01.11.2017)(AY. 2010-11)**
Gordhandas S. Garodia, (Late) v. DCIT (Mum)(Trib.); www.itatonline.org
- 818 **S.45 : Capital gains – Transfer – In terms of Joint Development Agreement, assessee gave vacant and peaceful possession of his land to builder after receiving a part of agreed cash deposits amounts to transfer of property and liable to capital gains tax in year in which said JDA was entered into. [S.2(47)(v)] (AY.2011-2012)**
ITO v. Shafiq Mohammed Shah. (2017) 164 ITD 664 / 190 TTJ 379 / 159 DTR 161 (Chennai)(Trib.)
- 819 **S.45 : Capital gains – Joint venture agreement – Possession as well as development rights were given to the developer – Taxable in year in which development agreement executed. [S.2(47)(v), 147, 148, Transfer of Property Act, S.53A] (AY. 2007-08)**
Sumeru Soft (P) Ltd. v. ITO (2017) 165 ITD 48 / 188 TTJ 605 / (2018) 161 DTR 105 (Chennai) (Trib.)
- 820 **S.45 : Capital gains – Possession – Registration of sale deed related back to date on which agreement for sale was executed, hence capital gains arose from such sale was to be assessed in year of execution of sale deed. [S.2(47)] (AY. 2009-2010)**
Ashwin C. Jariwala v. ITO (2017) 164 ITD 255 (Mum.)(Trib.)
- 821 **S.45 : Capital gains – Transfer – Mere execution of Power of Attorney cannot be considered as transfer for assessing the capital gains as neither any agreement for sale was executed nor handed over the possession. [S.2 (47)(v)] (AY. 2007-2008)**
Mithra Ram (Smt.) v. ITO (2017) 164 ITD 411 / 57 ITR 555 (Chennai)(Trib.)
- 822 **S.45 : Capital gains – Assessable in the year of possession and not in the year of registration of agreement or advance received. [S.2(47)(v)] (AY. 201011)**
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- 823 **S.45 : Capital gains – Transfer of participating interest to Indian contractor, profit is taxable as capital gain. [S.2(14), 2(42)] (AY. 2010-11)**
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- S.45 : Capital gains – Capital or revenue – Amount received from assignment of patent is taxable as capital gain under section 55(2)(a) and its cost has to be taken at RS.Nil. [S.55(2)(a)] (AY. 2008-09)** 824
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- S.45 : Capital gains – Penny stock – Failure to provide a copy of the statement and an opportunity to cross examination, the addition is bad in law – Direct evidences relating to sale/purchase, brokers note cannot be disregarded. (AY. 2008-09)** 825
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- S.45 : Capital gains – Penny stocks – Failure to give opportunity of cross examination – Addition was deleted. [S.131, 147] (AY. 2006-07)** 826
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- S.45 : Capital gains – Capital loss – Capital asset – Convertible share warrants – Share warrant is a capital asset and loss generated from its forfeiture is capital loss. [S.2(14)] (AY. 2009-2010)** 827
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- S.45 : Capital gains-Long term capital gains – Purchase of shares in off market–Sale consideration received should be assessable as long term capital gain and not income from undisclosed sources. [S.69] (AY.2005-06)** 828
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- S.45 : Capital gains – Business income – Investment portfolio – Investment was kept for long term assessable as capital gain and not as business income. [S.28(i)] (AY. 2006-07)** 829
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- S.45 : Capital gains – Full value of the consideration – Under value of assets – If the AO does not allege that the assessee received more consideration than is stated in the sale deed, he cannot make an addition to the stated consideration. [S.40A(2)(b), 48, 50C, 55A] (AY.2006-07)** 830
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- S.45 : Capital gains – Long term or short term – Letter of allotment – for considering whether an asset is a “long-term capital asset”, the period of holding must be computed on a de facto basis. The letter of allotment, even though not “ownership”, must be taken as the date of holding the asset and not the date of agreement to sale was registered. [S.2(14), 2(29A), 2(42A), 2(47), 54, 54F] (AY. 2011-12)** 831
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- 832 **S.45 : Capital gains – Business income – Portfolio Management Scheme (PMS) – Gains assessable as capital gains and not as business income. [S.28(i), 48] (AY. 2010-11, 2011-12)**
ACIT v. Sachin R. Tendulkar (2017) 163 ITD 65 / 147 DTR 282 / 184 TTJ 374 (Mum.) (Trib.)
- 833 **S.45 : Capital gains – Business income – Investor in shares – Long term capital gain was accepted as an investor, short term capital gains cannot be assessed as business income as a trader. [S.10(38), 28(i)] (AY. 2006-07, 2009-10)**
ITO v. Dilip B. Desai HUF (2017) 55 ITR 19 (SN)(Kol.)(Trib.); www.itatonline.org
- 834 **S.45 : Capital gains – The capital gains arising on transfer by a foreign company of shares in another foreign company holding assets in India is liable to tax in India-DTAA-India-UK. [S.2(14), 2(47), 9(1)(i), Art. 14] (AY.2007-08)**
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- 835 **S.45 : Capital gains – Business income – Portfolio management scheme – Principle of consistency – AO was directed to assessee the income as capital gains. [S.28(i)] (AY. 2008-2009, 2010-2011)**
Venkatesh Satyaraj v. DCIT (2017) 53 ITR 406 (Mum.)(Trib.)
- 836 **S.45 : Capital gains – Search – Purchase and sale of shares – Long-term capital gains was to be accepted. [S.153A] (AY.2003-2004)**
CIT v. Asha V. Mehta (Smt.) (2017) 54 ITR 191 (Mum.)(Trib.)
- 837 **S.45 : Capital gains – Sale of shares cannot be assessed as income from undisclosed sources when the broker and stock exchange confirmed the genuineness of transaction. [S.69] (AY. 2005-06)**
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- 838 **S.45(2) : Capital gains - Conversion of a capital asset in to stock-in-trade – Land is converted in to stock in trade – Capital gains is to be computed up to the date of conversion in to stock in trade and for a period thereafter as business income. [S.28(i), 45] (AY. 2011-12)**
CIT v. Essorpe Holdings (P) Ltd. (2017) 249 Taxman 222 / 159 DTR 403 (Mad.)(HC)
- 839 **S.45(2) : Capital gains – Conversion of a capital asset in to stock-in-trade – Non-disclosure of conversion of capital asset into stock-in-trade – Does not change characteristics of transactions. [S.45] (AY. 2007-08)**
DCIT v. Chennupati Kutumbavathi. (2017) 165 ITD 454 / 188 TTJ 356 / 155 DTR 233 (Visakha)(Trib.)

- S.45(5) : Capital gains – Accrual – Compulsory acquisition – Enhanced compensation and interest thereon under an interim order passed by the High Court in pending appeals relating to land acquisition matter are liable to be assessed for income tax in the year in which it has been received. [S.5, 45, 155(16)]** 840
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Editorial: Decision in CIT v. Chet Ram (HUF) (2009) 315 ITR 3 (P&H)(HC) was reversed.
- S.47 : Capital gains – Conversion of partnership in to a company – Premature transfer of shares, transferee company is not liable to pay capital gains tax. [S.45, 47(xiii), 245N]** 841
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- S.48 : Capital gains – Computation – Stamp valuation – Reference to DVO for ascertaining full value of consideration would not be maintainable – S.50C would apply even to case where document evidencing transfer of capital asset had not been presented for registration [S.45, 50C, 55A] (AY. 2009-10)** 842
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- S.48 : Capital gains – Computation – Cost of acquisition has to be arrived at on basis of actual consideration paid by assessee to vendors for purchasing property and not on basis of only apparent consideration stated in sale deed. [S.45, 50C] (AY. 2007-08)** 843
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- S.48 : Capital gains – Cost of acquisition – Interest on loan for acquiring capital asset is to be treated as part of cost of acquisition. (AY. 2013-14)** 844
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- S.48 : Capital gains – Cost of acquisition – Expenditure incurred for getting illegal occupants evicted from land was held to be allowable. (AY. 2009-2010)** 845
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- S.48 : Capital gains – Indexation – Government securities indexation benefit is available [S.45] (AY. 2003-04)** 846
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- S.48 : Capital gains – Family partition – Indexed cost of acquisition to be computed with reference to year in which previous owner acquired asset and not year in which assessee acquired asset. [S.45] (AY. 2010-2011)** 847
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- 848 **S.49 : Capital gains – Previous owner – Cost of acquisition – Relinquishment of life interest in property is not gift in absence of transfer by releaser to assessee. No acquisition of capital assets by way of gift [S.49(1)(ii), Gift-tax Act, 1958 S.4(1) (c),(d) (e)] (AY. 1984-85)**
Nusli N. Wadia v. CIT (2017) 394 ITR 638 / 248 Taxman 46 / 151 DTR 325 (Bom.)(HC)
- 849 **S.49 : Capital gains – Previous owner – Cost of acquisition – Merely mentioning in sale deed that property was free from all encumbrances was not material and thus, was not a correct interpretation of the legal position. (AY. 2012-13)**
Rama Vohra (Smt.) v. ITO (2017) 57 ITR 694 (Delhi)(Trib.)
- 850 **S.49 : Capital gains – Cost with reference to certain modes of acquisition – Will – Cost of acquisition of a property has to be taken on basis of its market value on date of acquiring same by previous owner and not when said property was originally acquired [S.45] (AY.2011-2012)**
Adarsh Kumar Swarup v. DCIT (2017) 164 ITD 188 (Delhi)(Trib.)
- 851 **S.50 : Capital gains – Depreciable assets – Block of assets – Sale of business – Value of breakages of bottles not deductible in computing written down value of bottles in determining capital gains. [S.45] (AY. 1999-2000)**
CIT v. Alankar Business Corporation Ltd. (2017) 396 ITR 280 (Mad.)(HC)
Editorial: Order in Alankar Business Corporation Ltd. v. Dy.CIT (2008) 298 ITR (AT) 18 (Chennai)(Trib.) is affirmed.
- 852 **S.50 : Capital gains – Depreciable assets – Block of assets – Once depreciation is allowed on an asset it would remain a business asset and any profit earned on sale of such asset would be taxed [S.2(11), 32, 45] (AY. 1991-92)**
Meena V. Pamnani (Smt.) v. CIT (2017) 159 DTR 1 / 251 Taxman 100 / (2018) 404 ITR 548 (Bom.)(HC)
- 853 **S.50 : Capital gains – Depreciable assets – Block of assets – Where an asset is demolished , and the block of asset ceases to exist, the difference between the written down value and the salvage received shall be treated as short term capital gain or short term capital loss. [S.2(11), 43(6), 45, 148] (AY. 2003-04)**
Sidamshetty Ramesh (HUF) v. ITO (2017) 154 DTR 82 / 187 TTJ 498 (Hyd.)(Trib.)
- 854 **S.50 : Capital gains – Depreciable assets – Block of assets – Acquiring the property for fit-out has demonstrated that it acquired the property, however if the property was not used for the purpose of business during the relevant year the assessee is not entitle to depreciation. [S.32] (AY. 2012-13)**
Indogem v. ITO (2017) 151 DTR 376 / 186 TTJ 392 (Mum.)(Trib.)

- S.50 : Capital gains – Depreciable assets – Block of assets – Asset on which depreciation is not allowable on account of its non-user for business purpose during relevant year, would not form part of said block for calculation purpose. [S.2(11), 32] (AY. 2010-2011)** 855
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- S.50B : Capital gains – Slump sale – Undertaking is sold as a running business with all assets and liabilities for a slump price, no part of the consideration can be attributed to depreciable assets – If the undertaking is held for more than three years, it constitutes a “long-term capital asset” and the gains are assessable as a long-term capital gain. [S.45, 48, 50(2)] (AY.1991-92)** 856
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- S.50B : Capital gains – Slump sale – Specific and separate valuation for land, building and machinery was ascertained hence the sale cannot be considered as of “slump sale” – Review petition dismissed. [S.2(14), 2(42C), 45] (AY. 1995-1996)** 857
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- S.50B : Capital gains – Slump sale – If defiant assets or properties are left out because they cause certain circumstances exemption cannot be denied. [S.2(19A), 2(42C), 45]** 858
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- S.50C : Capital gains – Full value of consideration – Stamp valuation – Contribution of immoveable property as capital by partner – Transaction was held to be colourable device and non genuine hence addition was held to be justified. [S.45(3)](AY. 2004-05)** 859
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- 862 **S.50C : Capital gains – Full value of consideration – Stamp valuation – When there are two valuation reports, one by the Departmental Valuation Officer and the other by the registered valuer of the Income-tax Department, in such a situation, the adjudicating authority has to examine both the reports on facts and come to a conclusion as to which report is more realistic on the facts of the case and then choose to adopt the same. [S.45] (AY 2005-2006)**
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- 863 **S.50C : Capital gains – Full value of consideration – Stamp valuation – Sale of shares of subsidiary company – Provision cannot be applied to shares [S.2(47), 45 269UA] [AY. 2011-12]**
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- 864 **S.50C : Capital gains – Full value of consideration - Stamp valuation – Agreement to sell entered much before the date of transfer of property – first and second proviso inserted by Finance Act, 2016 w.e.f. 01-04-2017, should be treated as curative in nature and with retrospective effect from 1st April 2003 [S.45] (AY. 2008-09)**
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- 865 **S.50C : Capital gains – Full value of consideration – Stamp valuation – The AO is not entitled to make an addition to the sale consideration declared by the assessee if the difference between the valuation adopted by the Stamp Valuation Authority and that declared by the assessee is less than 10%. [S.45] (AY. 2010-2011)**
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- 866 **S.50C : Capital gains – Full value of consideration – Stamp valuation – Unregistered sale, value declared by assessee is to be adopted – Matter remanded for verification. [S.45, 48] (AY. 2006-07)**
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- 868 **S.50C : Capital Gains – Full value of consideration – Stamp valuation – Value adopted by Stamp Authorities is deemed to be full value of consideration for purposes of computation of capital gains. Assessee neither challenged value as adopted by stamp duty valuation authorities nor sought reference to DVO. [S.48] (AY. 2009-2010)**
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- 877 **S.54 : Capital gains – Profit on sale of property used for residence – Amendment to section 54(1) was to be construed as prospective in nature and therefore, as per earlier provisions assessee would be entitled to exemption of two residential houses and not a single property only. (AY. 2012-13)**
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- 892 **S.54B : Capital gains – Land used for agricultural purposes – Growing of dry crops in two assessment years prior to sale of land – Exemption was held to be allowable [S.45] (AY. 2006-07)**
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- 893 **S.54EC : Capital gains – Investment in bonds – The amounts received as an advance is eligible for deduction. The fact that the investment is made prior to the transfer of the asset is irrelevant. [S.45] (ITA No. 1009 of 2014, dt. 14.12.2016)(AY.2008-09)**
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- 894 **S.54EC : Capital gains – Investment in Bonds – Delay in making investment of about 6 months – Exemption should not be denied merely on bar of limitation especially when the CBDT has wide power of condonation. Delay was condoned. [S.119] (AY. 2013-14)**
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- 895 **S.54EC : Capital gains – Investment in Bonds – Period of six months mentioned in S.54EC has to be regarded as six British Calendar months. [S.45, General Clauses Act, 1897] (AY. 2009-2010)**
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- 896 **S.54F : Capital gains – Investment in a residential house – Getting more than one residential house in several blocks, arising from one development agreement is entitled to exemption. [S.45] (AY. 2012-13)**
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- 897 **S.54F : Capital gains – Investment in a residential house – Surrender of tenancy rights – Failure by assessee to obtain allotment letter under provision of Maharashtra Ownership of Flats Act, 1963, not entitle to exemption. [S.45, Maharashtra Ownership of Flats Act, 1963] (AY 2006-2007)**
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- 898 **S.54F : Capital gains – Investment in a residential house – Purchase of residential house outside India prior to amendment – Exemption is allowable. [S.45]**
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- 908 **S.54F : Capital gain – Investment in a residential house – Non-utilisation of deposit made in capital gain account scheme- Addition cannot be made in the year of deposit, but in the year where three years expires. [S.45, 54] (AY. 2012-13)**
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- 909 **S.54F : Capital gains – Investment in a residential house – Entire amount of capital gain not utilised for purpose of acquiring new house, nor was unutilized amount deposited in capital gains account, assessee is entitled for exemption only amount invested in acquiring new residential property till date of filing of return. [S.45, 139(1)] (AY. 2011-2012)**
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- 910 **S.54F : Capital gains – Investment in a residential house – Invested entire sale consideration in business with help of loan had completed construction of new house within three years period of date of transfer – Exemption cannot be denied. [S.45] (AY. 2010-11)**
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- 912 **S.54F : Capital gains – Investment in a residential house – A trust which is for the sole benefit of an individual, has to be assessed as an “individual” and not as an “AOP”. Consequently, a trust is eligible for exemption. [S.161] (AY. 2012-13)**
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- 913 **S.54F : Capital gains – Investment in a residential house – Deposit was not within due date for filing return but return filed belatedly – Deposit in specified bonds made within due date for filing was held to be entitled to exemption. [S.45, 54EC, 139(4)] (AY.2011-2012)**
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- S.54G : Capital gains – Shifting of industrial undertaking from urban area – Deposit of unutilised capital gain was made by assessee within time limit provided for filing of return under section 139(5), assessee would be entitled to exemption – Period of six months for making deposit under section 54EC should be reckoned from the dates of actual receipt of the consideration. [S.54G(2), 54EC, 139(1), 139(5)] (AY. 2009-10)** 915
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- 923 **S.56 : Income from other sources – Interest income wrongly taken due to clerical error – Actual interest income should be computed on basis of TDS certificate. (AY. 2009-2010)**
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- 924 **S.56 : Income from other sources – Assessee formed to build own operate power plant and deposited unutilised funds in short term deposits, interest income from such deposits assessable as income from other sources and not as business income. [S.28(i)] (AY. 2012-2013)**
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- 925 **S.56 : Income from other sources – Agricultural Income – Failure to produce the evidence in support of agricultural activities the gross receipts from agricultural income assessed as income from other sources. (AY.2010-2011, 2011-12)**
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- 926 **S.56 : Income from other sources – A HUF is a “group of relatives”. Consequently, a gift received from a HUF by a member of the HUF is exempt from tax as provided in the Explanation to S.56(2)(vi). [S.56(2)(vi)] (ITA no. 1906/Mum/2014, dt. 19.04.2017) (AY. 2010-11)**
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- 927 **S.56 : Income from other sources – Gift was given by donor at time of illness, or it was ‘occasioned’ while donor was undergoing treatment, would not by itself make it a gift in contemplation of death; same would be assessable. [S.2(24)(xv), 56 (2)(vii)] (AY. 2012-13)**
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- 928 **S.56 : Income from other sources – No nexus between interest receipt and works contract – Interest on fixed deposits was held to be assessable as income from other sources. [S.44AD] (AY. 2009-10)**
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- 929 **S.57 : Income from other sources – Interest – Interest from fixed deposit in bank – Interest paid on loan against security of fixed deposit is not deductible. [S.57(iii)]**
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- 938 **S.68 : Cash credits – Advances towards booking of plots – Addition was held to be justified as the details were not produced. (AY. 2008-09)**
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- 939 **S.68 : Cash credits – Trade creditors in earlier years stood accepted in scrutiny assessments, genuineness of expenses under consideration cannot be doubted.**
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- 940 **S.68 : Cash credits – By changing versions frequently and by producing witnesses who inspired no confidence, the assessee did not discharge his primary burden – Assessee must prove that credit was genuine, addition was held to be justified. [S.251] (AY. 1995-96)**
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- 941 **S.68 : Cash credits – Share application money – Amounts received through banks and identity of applicants established – Addition was held to be not valid. (AY. 2007-08)**
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- 942 **S.68 : Cash credits– Not satisfactorily explained the source – Addition was held to be justified – No question of law [S.147, 260A] (AY. 2005-06)**
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- 943 **S.68 : Cash credits – Capital account – Agricultural income – No evidence was furnished – Addition was held to be justified. (AY. 2005-06)**
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- 944 **S.68 : Cash credits – Sale of shares – When purchase of shares were accepted as genuine in the year of sale consideration cannot be assessed as cash credits. (AY. 2006-07)**
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- 945 **S.68 : Cash credits – Amount credited in the books of account though cheque received from various creditors were not presented for collection in banks addition was held to be justified. (AY. 2003-04)**
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- 946 **S.68 : Cash credits – Share application amount – Amount received by cheque and confirmation was filed – Addition was held to be not justified. (AY. 1994-95)**
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- S.68 : Cash credits – Share premium – Capital or revenue – Amendment is effective from 1-4-2013 hence amount received as share premium can not be assessable for the AY. 2012-13. [S.2(24)] (AY. 2012-13)** 947
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- S.68 : Cash credits – Share application money – Merely because, failure of the parties to appear before the AO, additions cannot be made, when the assessee had produced other documentary evidence to prove the genuineness of the transaction. [S.260A]** 948
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- S.68 : Cash credits – Sums outstanding against trade creditors for purchases – Addition was held to be not justified. (AY. 2006-07)** 949
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- S.68 : Cash credits – Capital account of partners – Once an unexplained credit is found in the books of the assessee, a rebuttable presumption is drawn against the assessee that the said credit is part of the income of the assessee.** 950
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- 954 **S.68 : Cash credits – Peak credits – Accommodation entries – Burden is on assessee to prove the source of deposits and corresponding payments – If the assessee is unable to prove, the theory of peak credits cannot be applied – Addition as cash credit was held to be justified. [S.148] (AY. 1995-96)**
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- 955 **S.68 : Cash credits – Share application – Permanent application number provided – Mode of payment explained – No direct or indirect relation between company and share applicants – Deletion of addition was held to be justified.**
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- 956 **S.68 : Cash credits – Identity, genuineness and creditworthiness of cash creditors were proved, addition was held to be not justified. (AY. 2008-09)**
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- 957 **S.68 : Cash credits – Firm – Capital contribution – All creditors are assessed to tax – Burden is discharged addition was held to be not justified.**
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- 958 **S.68 : Cash credits – Peak credit – Unexplained entry in bank statement – Claim for benefit of peak credit – Implication after application of section 68 to opening balance of assessee *vis-a-vis* further transactions – Matter remanded.**
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- 959 **S.68 : Cash credits – Gift from brother – Capacity of the brother to give gift was not established – Addition was held to be justified. [S.56(2)] (AY. 2009-10)**
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- 960 **S.68 : Cash credits – Failure by assessee to prove three essential requirements i.e., identity of creditor, genuineness of transactions and credit worthiness of creditor, addition was held to be justified.**
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- 961 **S.68 : Cash credits – Partner – Ability of partner to contribute amount in cash to assessee not substantiated by supporting documents, liable to tax in hands of assessee. (AY. 2004-2005, 2005-2006)**
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- S.68 : Cash credits – Subscriptions of share premium done through banks and recorded in books of account – Genuineness, identity and capacity of subscribers proved – Addition was held to be not justified. (AY.2011-2012)** 963
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- S.68 : Cash credits – Bogus share capital/ premium – The proviso to S.68 (which creates an obligation on the issuing Co to explain the source of share capital & premium) has been introduced by the Finance Act 2012 with effect from 01.04.2013 and does not have retrospective effect. If the AO regards the share premium as bogus, he has to assess the shareholders but cannot assess the same as the issuing company's unexplained cash credit. (AY.2008-09)** 965
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- S.68 : Cash credits – Share capital – Entries made in pay-in-slips cannot prevail over entry in books of account, addition cannot be made as income from undisclosed sources.** 966
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- S.68 : Cash credits – Identity and credit worthiness was not established hence addition was held to be justified. (AY. 2007-08)** 967
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- S.68 : Cash credits – Share capital – Merely because its directors are not produced personally before the AO, addition cannot be made unless the AO demonstrates with specific evidence that the assessee has really obtained accommodation entries by showing cash deposits linked to the investors. (AY. 2008-09)** 968
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- S.68 : Cash credits – Cash deposited in bank account maintained and operated by assessee – Explanation regarding nature and source of cash deposit was not explained satisfactorily – Addition was held to be justified.** 969
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- 970 **S.68 : Cash credits – Shell companies – Failure to produce lenders – Addition was held to be justified. (AY. 2007-08)**
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Editorial: Affirmed by High Court, Pavankumar M. Sanghvi v. ITO (2018) 301 CTR 265 (Guj.)(HC)
- 971 **S.68 : Cash credits – Unexplained investment – Share capital – Addition was held to be justified as the assessee has not proved the source of investment by producing the evidences. [S.69, 69C] (AY. 2009-10)**
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- 972 **S.68 : Cash credits – Bogus sales – Cash sale of gold bars to undisclosed customers, sales was held to be non genuine – Addition was held to be justified. [S.131] (AY. 2006-07)**
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- 973 **S.68 : Cash credits – Unsecured loans received – No lenders produced – Lenders were found to be shell companies – Documents submitted at fag end of assessment proceedings – Loan transaction considered non-genuine. (AY. 2007-08)**
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- 974 **S.68 : Cash credits – Parties replied to the notices hence addition was deleted. (AY. 2004-05)**
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- 975 **S.68 : Cash credits – Deposit in foreign bank accounts – Documents relied upon did not contain signature of bank official and, moreover, requisite information was not received from foreign banking authority, impugned addition was to be set aside. [S.153A] (AY. 2006-2007)**
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- 976 **S.68 : Cash credits – Bank deposits – A mere mention of advance for sale of property without any supporting evidence, addition was held to be justified. (AY. 2011-2012)**
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- 977 **S.68 : Cash credits – Bank deposit – Bank statement could not be construed to be a books of account maintained hence addition cannot be made as cash credits.**
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- 978 **S.68 : Cash credits – Proved the identity by filing confirmation and bank details, addition was held to be not justified. (AY. 2005-2006)**
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- S.68 : Cash credits – Statement recorded under duress, which is retracted later, cannot be the sole basis for addition – When the assessee has given explanation of source, addition cannot be made only on the ground that lender has raised bogus share capital. (AY. 2013-14)** 982
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- S.68 : Cash credits – Share capital – Identity, genuineness of subscriber was established – AO is duty bound to investigate the creditworthiness of the creditor/subscriber, the genuineness of the transaction and veracity of the repudiation – Addition cannot be made without giving an opportunity of cross examination. [S.131]. (AY. 2007-08)** 986
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- 987 **S.68 : Cash credits – “On Money” received by an assessee for sale of agricultural land has to be treated as “agricultural income” and exempted from tax if the facts show that the assessee has no other source for the receipt. [S.2(14), 56] (AY. 2013-14)**
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- 988 **S.68 : Cash credits – Bogus capital gains – A transaction cannot be treated as fraudulent if the assessee has furnished documentary proof and proved the identity of the purchasers and no discrepancy is found – The AO has to exercise his powers u/s. 131 & 133(6) to verify the genuineness of the claim and cannot proceed on surmises. [S.131, 133(6)] (AY. 2003-04)**
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- 989 **S.68 : Cash credits – Penny stocks – A transaction evidenced by payment/receipt of share transaction value through banking channels, transfer of shares in and from the D-mat account, etc. cannot be treated as a bogus transaction. [S.45] (AY. 2005-06)**
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- 990 **S.68 : Cash credits – Advances received from customers towards supply of products later adjusted against subsequent sales cannot be assessed as cash credits. (AY.2005-2006, 2006-2007, 2008-2009)**
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- 991 **S.68 : Cash credits – Share application – Share application money received from daughter of one of director – Addition was held to be not valid. (AY. 2010-11)**
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- 992 **S.68 : Cash credits – Gift by parents – Addition was deleted. (AY.2009-2010)**
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- 993 **S.68 : Cash credits – Genuineness of gift cannot be disbelieved simply because there was no occasion to make gift. (A.Y. 2005-06)**
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- 994 **S.69 : Unexplained investments – Gold ornaments – Burden is on assessee to prove, addition was held to be justified. [S.132, 158BC]**
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Editorial: SLP is granted to the assessee Sudhir Gopi v. CIT (2017) 398 ITR 5 (St.)
- 995 **S.69 : Unexplained investments – Survey – Agreement to sell was not acted upon hence the addition was held to be not valid. [S.133]**
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- S.69 : Unexplained investments – Merely on the basis of seizure of diaries and files additions cannot be made. [S.132, 153A] (AY. 1993-94, 1994-95)** 996
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- S.69 : Unexplained investments – Land – The assessee being retired from Govt. service and getting only pension, addition was rightly deleted by the Tribunal. (AY. 2006-07, 2007-08)** 997
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- S.69 : Unexplained investments – Physical verification of stock tallying with books of account maintained by assessee – Verification made by bank is not relevant evidence,deletion of addition is held to be justified. (AY. 2008-09)** 998
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- S.69 : Unexplained investments – Reduction of addition on renovation of hotel and set off of lease payment is question of fact.** 999
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- S.69 : Unexplained investments – Purchase of shares – Accommodation entries – Addition was held to be justified as the assessee did not discharge its primary onus to prove as to why he deviated from the normal course of conduct while dealing in securities. (AY. 2008-01)** 1000
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- S.69 : Unexplained investments – Cash deposits in the bank accounts – The AO was directed to consider only peak credit in the bank account and the matter was remanded back to the AO for the same [S.144] (AY. 2008-09)** 1001
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- S.69 : Unexplained investments – Seized documents – Merely on the basis of seized documents in third party premises, additions cannot be made – Addition can not be made on estimation/extrapolation. Addition on the basis of seized document print out from Blackberry mobile was held to be not justified. [S.28(i), 69C 132, 153A] (AY.2006-07 to 2010-11)** 1002
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- S.69 : Unexplained investments – Search – Disclosure made in the course of search and seizure proceedings – Retraction of statement was held to be not valid – Addition was held to be justified [S.132(4), 133A, 153C] (AY. 2010-2011, 2011-12)** 1003
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- 1004 **S.69 : Unexplained investments – Income from undisclosed sources – Premium money on sale of cigarettes – In the absence of any conclusive material, premium money collected by the retailers or whole sale buyers towards advertisement and sales promotion, addition was held to be not justified. [S.4, 145(2)] (AY. 1984-85 to 1986-87) *GTC Industries Ltd. v. ACIT (2017) 154 DTR 1 / 57 ITR 384 / 187 TTJ 389 (SB)(Mum.) (Trib.)***
- 1005 **S.69 : Unexplained investments – Addition unjustified where assessee had explained source of investment but Commissioner (Appeals) failed to consider same – Matter remanded. (AY. 2006-07) *Kumud Gupta v. ITO (2017) 165 ITD 147 (Asr.)(Trib.)***
- 1006 **S.69 : Unexplained investments – In absence of any evidence on record cash premium collected by the distributors cannot be assessed as income of the assessee in the absence of evidence that bank accounts were controlled by assessee. (AY. 1984-85 to 1986-87) *GTC Industries Ltd. v. ACIT (2017) 164 ITD 1 / 57 ITR 384 / 187 TTJ 369 (SB)(Mum.) (Trib.)***
- 1007 **S.69 : Unexplained investments – Credit notes issued by Assessee to various business constituents not reconciled with the accounts of other parties – Addition was held to be not justified. (AY. 2009-10) *ACIT v. Oracle Granito Ltd. (2017) 186 TTJ 661 (Ahd.)(Trib.)***
- 1008 **S.69 : Unexplained investments – Survey – Merely on the basis of stock found in the premises additions cannot be made as undisclosed stock when proper explanation was furnished with supporting evidence. [S.133A] (AY.2010-2011) *Niranjan Kumar Agrawal v. ITO (2017) 53 ITR 643 (Patna)(Trib.)***
- 1009 **S.69 : Unexplained investments – Unexplained deposits in bank, addition was held to be justified. (AY. 2009-2010) *Swarn Singh v. CIT (2017) 391 ITR 135 (P&H)(HC)***
- 1010 **S.69 : Unexplained investments – Bogus purchases – Burden is on revenue to prove that the transaction is of benami nature, addition was deleted. [S.132](AY. 2004-05 to 2008-09) *Ashok Nanda v. DCIT (2017) 54 ITR 54 (Indore)(Trib.)***
- 1011 **S.69A : Unexplained money – Cash seized from bed room of sister – Failure to explain the source and contradiction in statement, addition was held to be justified. [S.132] (AY. 2006-07) *Ashokbhai H. Jariwala v. ACIT (2017) 399 ITR 181 / 80 taxmann.com 175 (Guj.)(HC)*
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- S.69A : Unexplained money – Cash was seized from bank lockers of assessee company during a search action which was disclosed by Director before Settlement commission and paid taxes thereon – Addition cannot be made in the assessment of the Company [S.132, 245D(4)] (AY. 2010-11)** 1012
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- S.69A : Unexplained money – Failure to explain the source of gold ornaments recovered by police from assessee, addition was held to be justified. [S. 132, 132B, Evidence Act, 1872, S.110] (AY. 2007-08)** 1013
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- S.69A : Unexplained money – Cash withdrawal and deposit to bank was unable to be linked, hence addition as unexplained income was held to be justified. (AY. 2007-08)** 1014
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- S.69A : Unexplained money – Evidentiary value of documents found – Merely on the basis of chart found in the possession of third party addition was held to be not justified. [S.153C] (AY. 2009-10)** 1015
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- S.69A : Unexplained money – Cash deposits in bank – No documentary proof in respect of credit purchases linking sales – Addition was held to be justified. [S.44AF, 147] (AY.2008-2009)** 1016
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- S.69A : Unexplained money – Recurring deposit in joint names of assessee and his wife – Addition of amount and interest was not justified. (AY.2009-2010)** 1017
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- S.69B : Amounts of investments not fully disclosed in books of account – Difference between stock statement furnished to bank for availing higher credit facilities and that in books of account – Deletion of addition was held to be justified. (AY. 2002-2003, 2003-2004)** 1018
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- S.69B : Amounts of investments not fully disclosed in books of account – Sufficient cash balance as per books of account – Addition was held to be not justified on the basis of cash flow statement. [S.37(1), 69C, 132] (AY.2010-11)** 1019
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- 1020 **S.69B : Amounts of investments not fully disclosed in books of account – Set off of losses was to be allowed – Amendment in sub-section (2) of s.115BBE by Finance act, 2016 is held to be effective from 1-4-2017. [S.71, 158BBE]. (AY. 2013-2014)**
ACIT v. Sanjay Bairathi Gems Ltd. (2017) 166 ITD 445 / 189 TTJ 487 / 157 DTR 225 (Jaipur)(Trib.)
- 1021 **S.69C : Unexplained expenditure – Entire purchases shown on basis of fictitious invoices were debited in trading account hence entire addition was held to be justified and not 25% of total purchases.**
N.K Industries Ltd. v. Dy.CIT (2016) 72 taxmann.com 289 (Guj.)(HC)
Editorial: SLP of the assessee was dismissed ,N. K. Proteins Ltd. v. Dy. CIT (2017) 250 Taxman 22 (SC)
- 1022 **S.69C : Unexplained expenditure – On Money – Once on money is considered as revenue nature, then any expenditure out of such money cannot be treated as unexplained expenditure, for that would amount to double addition in respect of the same amount. [S.132(4)] (AY. 1990-91 to 1993-94)**
CIT v. Golani Brothers (2017) 250 Taxman 446 / 160 DTR 24 / (2018) 300 CTR 245 (Bom.) (HC)
- 1023 **S.69C : Unexplained expenditure – Assessment of third person – An admission of the assessee which is retracted cannot be the basis of addition – The addition cannot be sustained in the absence of material which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another – Notice was held to be not valid. [S.132(4), 153C] (AY. 2009-10)**
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CIT v. Hita Land Pvt. Ltd. (2017)154 DTR 244 / 249 Taxman 275 / 297 CTR 204 (Bom.) (HC)
CIT v. Dilp V. Derai (2017) 154 DTR 244 / 249 Taxman 275 / 297 CTR 204 (Bom.)(HC)
- 1024 **S.69C : Unexplained expenditure – Bogus purchases – Considering the law declared by the Supreme Court in the case of *Vijay Proteins Ltd. v. CIT* Special Leave to Appeal decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP and confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of *Sanjay Oilcake Industries v. CIT (2009) 316 ITR 274 (Guj.)* and *N.K. Industries Ltd. v. Dy. CIT, Tax A No.240/2003* decided on 20.06.2016, the parties are bound by the principle of law pronounced in**

the aforesaid three judgments. Accordingly the matter was set aside to the Assessing Officer to decide considering the facts of the case. Counsel for both sides have agreed for set aside of the matter. (ITA no. 170/2009, dt. 10.05.2017)

CIT v. Carpet Mahal (Raj.)(HC); www.itatonline.org

S.69C : Unexplained expenditure – Bogus purchases – No quantity details maintained – Failure to produce sellers – Addition was held to be justified. 1025

CIT v. Bright Future Gems (2017) 392 ITR 580 (Raj.)(HC)

S.69C : Unexplained expenditure – Survey – Bogus purchases – Failure to produce parties for verification and failure to furnish relevant purchase documents addition of 12% of alleged bogus purchases was confirmed. [S.133(6), 143(3), 147] (AY. 2007-08 to 2011-12) 1026

PBA Infrastructure Ltd. v. ACIT (2017) 167 ITD 158 (Mum.)(Trib.)

S.69C : Unexplained expenditure – Marriage expenses of daughter – Additions can not be made on the presumption that, the assessee came from affluent family and had big stature – House hold expenses – Estimate on account of house hold expenses was held to be justified considering large number of family. (AY. 2010-11) 1027

Ashok Kumar Gupta v. ITO (2017) 167 ITD 165 (Delhi)(Trib.)

S.69C : Unexplained expenditure – Bogus purchases – If books of account is not rejected, no addition can be made on presumptions – Merely returning of notices under S.133(6) sent to those suppliers could not be sufficient to make additions u/s. 69C. [S.133(6),145] (AY. 2010-11 and 2011-12) 1028

Fancy Wear v. ITO (2017) 167 ITD 621 (Mum.)(Trib.)

S.69C : Unexplained expenditure – Bogus purchases – Addition was restricted to 2% of purchases. (ITA No. 3699/Mum/2016,dt. 05.05.2017)(AY. 2009-10) 1029

Geolife Organics v. ACIT (Mum.)(Trib.); www.itatonline.org

Vikram N. Chandan v. ACIT (Mum.)(Trib.); www.itatonline.org

Jabarsingh B. Daiya v. ACIT (Mum.)(Trib.); www.itatonline.org

Rajendra Nemichandji v. ACIT (Mum.)(Trib.); www.itatonline.org

S.69C : Unexplained expenditure – Bogus purchases, Merely non-appearance of the supplier in absence of any other corroborate evidence cannot be a basis to justify the stand of the Revenue that the transaction of purchase is bogus. (ITA No. 508/JP/2016,dt. 10.04.2017)(AY. 2007-08) 1030

Beauty Tax v. DCIT (Jaipur)(Trib.); www.itatonline.org

S.69C : Unexplained expenditure – Purchase of shares out of speculative income which was accepted by revenue, addition cannot be made as unexplained expenditure (ITA No. 3028 to 3023/Mum/2011 dt. 17.11.2016) (A.Y. 2002-03 to 2006-07) 1031

Anjali Pandit (SMT) v. ACIT (2016) 188 TTJ 645 (Mum.)(Trib.)

Dharmesh Pandit (HUF) v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.)

Dharmesh Pandit v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.)

Rajendra Pandit v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.)

- 1032 **S.69C : Unexplained expenditure – Bogus purchases – Purchases of paddy recorded and matched with report of Agricultural Marketing Committee (AMC) – No disallowance on ground that failed to maintain proper books of account [S.145] (AY. 2009-2010)**
ACIT v. Sri Ramalingeswara Rice & Oil Mill (2017) 162 ITD 696 (Visakha)(Trib.)
- 1033 **S.69C : Unexplained expenditure – Expenditure covered under FBT – Ad-hoc disallowances of 10% expenses was held to be not justified. [S.145] (AY.2009-10)**
ACIT v. Sri Ramalingeswara Rice & Oil Mill (2017) 162 ITD 696 (Visakha)(Trib.)
- 1034 **S.69C : Unexplained expenditure – Bogus Purchases – Purchases cannot be treated as bogus merely on the basis of the statements and affidavits filed by the alleged vendors before the sales-tax department – Additions cannot be made without giving an opportunity of cross examination. [S.133(6)] (AY. 2010-11)**
ACIT v. Mahesh K. Shah (2017) 148 DTR 1 / 184 TTJ 702 (Mum.)(Trib.)
- 1035 **S.69C : Unexplained expenditure – Bogus purchases – If the assessee has not discharged the onus of producing the documentation and the suppliers, the AO is entitle to estimate the gross profit. [S.133(6), 145] (ITA No. 4463/Mum/2016, dt. 04.04.2017)(AY. 2009-10)**
Ratnagiri Stainless Pvt. Ltd. v. ITO (Mum.)(Trib.); www.itatonline.org
- 1036 **S.69C : Unexplained expenditure – Bogus purchases – Additions to be made to make profit comparable with that of preceding year. (AY. 2010-2011)**
Arun Shimpi v. ITO (2017) 53 ITR 151 (Mum.)(Trib.)
- 1037 **S.70 : Set off loss – Surrender of undisclosed amount invested in ‘Build-Operate – Transfer’ Project undertaken by the assessee – Income surrendered during search and seizure assessable under the head ‘Income from business and profession’ and can be allowed to be set-off against the unabsorbed and current year business losses and depreciation. [S.32, 71, 72, 132] (AY. 2011-12)**
Prashanti Surya Construction Co. Pvt. Ltd. v. DCIT (2017) 56 ITR 202 (Chandigarh)(Trib.)
- 1038 **S.70 : Set off of loss – One source against income from another source – Same head of income – Loss arising on sale-purchase of shares on which STT was paid could be set off against gains arising from sale purchase of shares on which STT was not paid [S.111A](AY. 2009-2010)**
Dy. CIT v. Diamond Co. Ltd. (2017) 162 ITD 131 (Kol.)(Trib.)
- 1039 **S.72 : Carry forward and set off of business losses – Long-term capital loss – According to S.154 (8), Assessing officer is under a statutory obligation to have suo motu disposed of the application within a period of six months from the end of the month in which the application was received by him, but had allowed a period of about one and half year to lapse after the date of filing the application under S.154 and failed to dispose of the application of the assessee. Despite a specific direction by the**

Commissioner (Appeals) to the Assessing Officer on the basis of a circular issued by the Central Board of Direct Taxes, the Assessing Officer had not cared to dispose of the application even till date. Assessing Officer to determine entitlement of assessee towards carry forward of loss. [S.45, 154(8).(AY.2010-2011, 2011-2012)

Informed Technologies India Ltd. v. DCIT (2017) 54 ITR 397 (Mum.)(Trib.)

S.72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Income accrued to amalgamated company u/s. 41(1) had to be adjusted and thereafter net loss is allowed to be set off. [S.41(1)] (AY. 1983-1984)

McDowell and Company Ltd. v. CIT (2017) 393 ITR 570 / 247 Taxman 101 (SC)

Editorial: Decision in McDowell and Company Ltd v. CIT (Karn.)(HC) I.T.R.C NO 12 of 2002 dt 5-4-2005 was affirmed.

S.72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – BIFR has power to restrict benefit to amalgamated company. [Sick Industrial Companies [S.32, Special provisions] Act, 1985, S.15, 19](AY. 1992-93, 1993-94)

Ballarpur Industries Ltd. v. CIT (No.2) (2017) 398 ITR 145 / (2018) 301 CTR 116 / 162 DTR 274 (Bom.)(HC)

S.72A : Carry forward and set off of accumulated loss and unabsorbed depreciation –When only specific assets and liabilities transferred, would not amount to demerger. Accumulated loss and unabsorbed depreciation relating to transferred division would remain with assessee-company and allowed to be adjusted. [S.2(19AA), 2(41A), Companies Act, 1956, S.391 to 394](AY. 2004-05)]

DCIT v. NOCIL Ltd. (2017) 165 ITD 138 / 159 DTR9 / 190 TTJ 192 (Mum.)(Trib.)

S.72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Merely because specified authority did not pass any order for obtaining certificate u/s.72A, carried forward loss of amalgamating company could not be denied for set off. (AY. 1996-1997)

ITO v. GKW Ltd. (2017) 164 ITD 621 / (2018) 164 DTR 54 / 191 TTJ 457 (Kol.)(Trib.)

S.73: Losses in speculation business – Loss in share transactions including valuation loss to be treated as speculative loss – Such Loss cannot get set off against a business income. [S.28(i)]

Ratnamani Seamless P. Ltd. v. ITO (2017) 393 ITR 339 (Guj.)(HC)

S.73 : Losses in speculation business – Assessee carried out business of trading in shares as member of stock exchange – Its transactions included both on proprietary account and on behalf of its clients – Proprietary share trading incurred loss and proprietary derivative trading incurred profit – AO treated loss as speculation loss u/s. 73 and did not allow setoff – Tribunal held that it was a composite business and there was no loss from integrated transaction after setting of loss from profits from other heads of share trading. (AY. 2010-2011)

Dy.CIT v. MPC Securities Ltd. (2017) 153 DTR 29 / 160 ITD 199 / 186 TTJ 677 / 72 taxmann.com 209 (Kol.)(Trib.)

- 1046 **S.73 : Losses in speculation business – When gross total income consisted mainly of business income and not infrom from house property, capital gains or other sources -loss incurred in trading of shares was to be treated as speculation loss. (AY. 2008-09, 2010-11)**
DCIT v. Mangal Tirth Estates Ltd. (2017) 163 ITD 705 / 157 DTR 11 / 189 TTJ 654 (Chennai)(Trib.)
- 1047 **S.73 : Losses in speculation business – Future and options – Share transactions entered electronically (screen based) in recognised stock exchanges – Loss there would be speculative in nature but could not be termed as sham. [S.43(5)] (AY. 2007-08)**
ITO v. PKS Holdings (2017) 162 ITD 1 / 152 DTR 215 / 187 TTJ 60 (Kol.)(Trib.)
- 1048 **S.80 : Return for losses – Carry forward and set off – Assessee a public sector body – Delay due to audit as it can be audited only by CAG – Matter set aside to Assessing Officer to file appropriate application or purse remedy with CBDT. [S.119, 139,260A] (AY. 2006-07)**
Chhattisgarh State Civil Supplies Corporation v. CIT (2017) 396 ITR 440 / 159 DTR 142 / 299 CTR 142 (Chhattisgarh)(HC)
- 1049 **S.80G : Donation – Registration u/s. 12A granted pursuant to ITAT order – No stay order against the registration – Entitle to registration u/s. 80G(5) of the Act. [S.10(23C), 12A]**
CIT v. Shri Shivaji Education Society (2017) 399 ITR 186 (Bom.)(HC)
- 1050 **S.80G : Donation – Renewal of registration – Assessee is not maintaining regular accounts of its receipts and expenditure – Not entitled to registration [S.10(23C) 80G(5)]**
CIT v. Rama Educational Society (2017) 396 ITR 16 (All.)(HC)
- 1051 **S.80G : Donation – Donation in kind is not eligible deduction.**
Nahar Spinning Mills Ltd. v. CIT (2017) 395 ITR 12 / 82 taxmann.com 154 (P&H)(HC)
- 1052 **S.80G : Donation – In view of amendment of S.80G(5)(vi) by Finance Act (No. 2) 2009 there is no requirement of renewal of registration in case of valid registration on 1-10-2009. [S.11, 263]**
Imarat Shariah Educational and Welfare Trust v. CIT (2017) 392 ITR 301 / 245 Taxman 101 / 298 CTR 293 / 157 DTR 305 (Patna)(HC)
Shri Mahavir Sthan Nyas Samiti v. UOI (2017) 392 ITR 301 / 245 Taxman 101 / 298 CTR 293 / 157 DTR 305 (Patna)(HC)
- 1053 **S.80G : Donation – Surplus funds utilised for setting up new institutions – Eligible for approval. [S.2(15), 11]**
CIT v. Dr. Virendra Swaroop Educational Foundation. (2017) 391 ITR 386 / 245 Taxman 68 (All.)(HC)

- S.80G : Donation – Surplus income utilised for charitable purposes – Trust entitled to approval for purposes of section 80G. [S.10(23C), 11, 12AA] (AY. 2010-2011 to 2014-2015)** 1054
CIT v. Gulab Devi Memorial Hospital (2017) 391 ITR 73 / 245 Taxman 73 / 291 CTR 471 (P&H)(HC)
- S.80G : Donation – Object of propagating and inculcating religious feelings, brotherhood and nationalism among Aggarwal community – Denial of approval was held to be not valid. [S.2(15) 11, 12, 80G(5) (iii)] (AY. 2016-17)** 1055
Maharaja Aggarsain Charitable Trust v. CIT (2017) 167 ITD 476 / (2018) 168 DTR 18 (Chd.)(Trib.)
- S.80G : Donation – Charitable activities carried outside India – No approval obtained in terms of section 11(1)(c) – Application seeking exemption u/s. 80G(5)(vi) was to be rejected, however, no Charitable activities carried out cannot be sole ground for rejection of application. [S.11, 12AA]** 1056
Barefoot College International v. CIT (2017) 165 ITD 213 / 157 DTR 1 / 189 TTJ 336 (Jaipur)(Trib.)
- S.80G : Donation – Contribution to Chief Minister’s Relief Fund is held to be deductible. (AY.2010-2011)** 1057
A.P. Beverages Corporation Ltd. v. DCIT (2017) 54 ITR 228 (Hyd.)(Trib.)
- S.80HH : Newly established industrial undertakings – Back ward areas – Scientific research expenditure – Expenditure on research not to be reduced from profits and gains of eligible undertaking – Job charges – Allowable as deduction. [S.35(1)(iv), 80I] (AY.1995-1996)** 1058
CIT v. Torrent Pharmaceuticals Ltd. (2017) 393 ITR 625 (Guj.)(HC)
Editorial: SLP is granted to the Department, CIT v. Torrent Pharmaceuticals Ltd. (2017) 392 ITR 5 (St.)
- S.80HHC : Export business – Non furnishing of audit report of accountant whether deduction is available is question of law – High Court is directed to decide the question of law. [S.260A]** 1059
CIT v. Pix Transmission Ltd. (2017) 396 ITR 695 / 298 CTR 229 / 157 DTR 271 (SC)
Editorial : Decision in CIT v. Pix Transmission Ltd. ITA No. 245 of 2004 dt 10-1-2005 (Bom)(HC) is set aside.
- S.80HHC : Export business – Amount received as commission had to be taken into consideration while computing amount of deduction – Matter was set aside to High Court to decide a fresh. [S.260A]** 1060
Veejay Marketing v. Dy. CIT (2017) 297 CTR 17 / 247 Taxman 151 / 154 DTR 91 (SC)

- 1061 **S.80HHC : Export business – Assess was entitled to reduce interest paid by it from interest received by it, while calculating deduction- Delay of 3381 days in refiling the special leave petition was not condoned. Petition was dismissed both on the ground of delay as also on merits. Court also observed that the concerned authorities need to wake up. [S.80HHC(4A)]**
CIT v. Krishan K. Aggarwal (2017) 245 Taxman 75 (SC)
Editorial: Refer, CIT v. Krishna K. Aggarwal (2008) 170 Taxman 23 (Delhi)(HC), ACG Associated Capsules (P) ITD v. CIT (2012) 343 ITR 89 (SC)
- 1062 **S.80HHC : Export business – Amendment Act, 2005 is prospective in operation and would apply to both categories of exporters having turnover below Rs. 10 crores and above Rs.10 crores.**
UOI v. Paliwal Overseas (P) Ltd. (2017) 244 Taxman 195 (SC)
- 1063 **S.80HHC : Export business – Interest on fixed deposits with bank for availing credit facility for export – Interest income as specified is deductible. [S.28(i)] (AY. 1998-99)**
Laxminarain Khetan v. ITO (2017) 155 DTR 276 / 298 CTR 83 (All.)(HC)
- 1064 **S.80HHC : Export business – Exporter furnishing disclaimer certificate with details of export, supporting manufacturer is entitled to benefit of deduction. (AY. 1996-97)**
CIT v. Arya Exports and Industries (2017) 398 ITR 327 / 157 DTR 292 (Delhi)(HC)
- 1065 **S.80HHC : Export business – Total Turnover from export business to be taken into account – Amount written back to be excluded. [S.41(1)] (AY. 1994-95)**
Rollatainers Ltd. v. CIT (2017) 394 ITR 512 / 148 DTR 129 (Delhi)(HC)
- 1066 **S.80HHC : Export business – Computation – Ninety per cent of net interest or net rent included in profits and not of gross interest or gross rent, to be deducted. [S.80HHC, Cl. 1, Expln. (baa)] (AY.1995-1996)**
CIT v. Torrent Pharmaceuticals Ltd. (2017) 393 ITR 625 (Guj.)(HC)
Editorial: SLP is granted to the Department,CIT v. Torrent Pharmaceuticals Ltd. (2017) 392 ITR 5 (St.)
- 1067 **S.80HHC : Export business – Hundred per cent export oriented undertaking – Export turnover – Deduction cannot be denied where assessee has availed of exemption under section 10B. [S.10B] (AY. 1996-97)**
Mahavir Spinning Mills Ltd. v. CIT (2017) 391 ITR 290 / 151 DTR 303 (P&H)(HC)
- 1068 **S.80HHE : Export business – Computer software – Export of television news software is entitle to deduction. (AY. 1999-2000)**
CIT v. New Delhi Television Ltd. (2017) 398 ITR 452 / 85 Taxmann.com 3 (Delhi)(HC)
Editorial: SLP of revenue is dismissed CIT v. New Delhi Television Ltd. (2018) 256 Taxman 68 (SC)

- S.80-I : Industrial undertaking – Old machinery used in old unit and depreciation claimed on it in earlier assessment year – Entitled to benefit of deduction on machinery.** 1069
CIT v. Popular Art Palace P. Ltd. (2017) 391 ITR 352 (Raj.)(HC)
- S.80-I : Industrial undertakings – Forklift truck used in old unit and ready for use in new unit – Not plant and machinery – Assessee not entitled to benefit envisaged under section 80I(2). [S. 80I(2)]** 1070
CIT v. Popular Art Palace P. Ltd. (2017) 391 ITR 352 (Raj.)(HC)
- S.80-IA : Industrial undertakings – Depreciation had to be reduced for computing the profits eligible for deduction, as section 80-IA is a complete code by itself. Depreciation has to be allowed for the year even though the assessee has exercised option not to claim depreciation. [S. 32, 30 to 43D] (AY. 1997-98 to 2000-01)** 1071
Plastiblends India Limited v. ACIT (2017) 398 ITR 568 / 298 CTR 281 / 158 DTR 1 / 251 Taxman 188 (SC)
- S.80-IA : Industrial undertakings – Manufacture or production – Any activity which brings a commercially new product into existence constitutes production. Bottling of Liquefied Petroleum Gas (LPG) Cylinders amounted to ‘production’ and the same was eligible for the deduction – The process of bottling of LPG renders it capable of being marketed as a domestic kitchen fuel and, thereby, makes it a viable commercial product. [S. 80HH, 80-I]** 1072
CIT v. Hindustan Petroleum Corporation Ltd. (2017) 396 ITR 696 / 155 DTR 97 / 297 CTR 3 / 84 taxmann.com 215 (SC)
CIT v. Bharat Petroleum Corporation Ltd. (2017) 396 ITR 696 / 155 DTR 97 / 297 CTR 3 / 84 taxmann.com 215 (SC)
CIT v. BPCL (2017) 396 ITR 696 / 155 DTR 97 / 297 CTR 3 / 84 taxmann.com 215 (SC)
297 CTR 3 / 155 DTR 97 (SC)
Editorial: Decision in CIT v. Hindustan Petroleum Corporation Ltd. (2014) 361 ITR 190 (Bom.)(HC)
- S.80-IA : Industrial undertakings – Infrastructure development – Contract with construction of bridges development of air ports and railway system is entitle to deduction. [S.80IA(4) (i)(b)] (AY. 2003-04, 2006-07)** 1073
CIT v. TRG Industries (P) Ltd. (2016) 76 taxmann.com 105 / (2017) 297 CTR 58 / 155 DTR 109 (J&K)(HC)
Editorial: TRG Industries (P) Ltd. v. Dy.CIT (2013) 59 SOT 64 (URO)(Amritsar) (Trib.) is affirmed
- S.80-IA : Industrial undertakings – Infrastructure development – Person developing infrastructure facility and person operating it may be different, both are entitled to deduction [S.80-IA(4)] (AY. 2003-04)** 1074
PCIT v. Nila Baurat Engineering Ltd. (2017) 399 ITR 242 / (2018) 166 DTR 388 (Guj.)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Nila Baurat Engineering Ltd (2018) 256 Taxman 291 (SC)

- 1075 **S.80-IA : Industrial undertakings – Infrastructure development – Assessee setting up industrial park with more than thirty units in financial year relating to assessment year 2010-11, completion certificate dated 8-5-2013 is not relevant. Entitled to deduction. (AY. 2010-11)**
Devraj Infrastructures Ltd. v. Chairman/Member (Industrial Park) (2017) 399 ITR 331 (Guj.)(HC)
- 1076 **S.80-IA : Industrial undertakings – Income derived from container station is eligible for deduction [S.80IA(4)] (AY. 2010-11)**
PCIT v. Seabird Marine Services P. Ltd. (2017) 398 ITR 436 / 156 DTR 170 (Guj.)(HC)
Editorial: SLP is granted to the revenue; PCIT v. Seabird Marine Services P. Ltd. (2017) 397 ITR 140 (St)(SC)
- 1077 **S.80-IA : Industrial undertakings – Only losses of the years beginning from the initial assessment year are to be brought forward for set-off against profits of the eligible unit. Losses of earlier years which are already set off against income cannot be brought forward notionally for set-off. The fiction in s. 80-IA(5) is created only for a limited purpose and cannot be extended [S.80IA(5)] (ITA No. 707 of 2014, dt. 14.06.2017)(AY. 2009-10)**
CIT v. Herculer Hoists Ltd. (Bom)(HC); www.itatonline.org
- 1078 **S.80-IA : Industrial undertakings – Initial assessment – Loss of earlier years already set off against other income cannot be carried forward and set off against profits. (AY. 2000-01 to 2007-08)**
CIT v. Leo Fasteners (2017) 398 ITR 462 (Mad.)(HC)
Editorial: SLP of revenue is dismissed CIT v. Leo Fasteners (2018) 256 Taxman 296 (SC)
- 1079 **S.80-IA : Industrial undertakings – Infrastructure development – Airport authority of India- There is no requirement that agreement should be one entered into by airport which is already functional, the Order of the Tribunal was set aside. [S.80IA(4), Airports Authority of India Act, 1994, S. 12] (AY. 2005-06 to 2007-08)**
Cochin International Airport Ltd. v. Dy. CIT (2017) 398 ITR 400 / (2018) 162 DTR 79 (Ker.)(HC)
- 1080 **S.80-IA : Industrial undertakings – Infrastructure development – AO should give reasons to reject the books of account, hence estimate of profit by the AO was held to be not justified [S.80IA(8), 145] (AY.2006-07, 2007-08)**
PCIT v. Harpreet Kaur (2017) 397 ITR 125 (Delhi)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Harpreet Kaur (2018) 256 Taxman 127 (SC)
- 1081 **S.80-IA : Industrial undertakings – Infrastructure development – Initial assessment year – Once the requirements of the section are satisfied in the first year, the deduction cannot be withdrawn in the subsequent years.**
CIT v. International Tractors Ltd. (2017) 155 DTR 243 / 297 CTR 119 (Delhi)(HC)

- S.80-IA : Industrial undertakings – Interest on margin money to be included for the computation of deduction. [S. 56] (AY. 2001-02 to 2004-05)** 1082
CIT v. Shah Alloys Ltd. (2017) 396 ITR 711 / 250 Taxman 131 (Guj.)(HC)
Editorial : SLP of revenue is admitted, PCIT v. Shah Alloys Ltd. (2017) 250 Taxman 77 (SC)
- S.80-IA : Industrial undertakings – Generation of power for captive consumption – rate of power generation is to be taken at rate supplied by electricity board to its consumers not at rate at which supplied to electricity board. [S. 80IA(4)]** 1083
PCIT v. Gujarat Alkalies and Chemicals Ltd. (2017) 395 ITR 247 (Guj.)(HC)
- S.80-IA : Industrial undertakings – Initial assessment year is the year opted by assessee for claiming deduction and not year of commencement of eligible business- Deduction allowable without setting off losses or unabsorbed depreciation set off in earlier years against other business income – CBDT was directed not to file appeals where the circular was issued accepting the order of High Court. [S.80IA(5)] (AY. 2011-12)** 1084
CIT v. Best Corporation Ltd. (2017) 395 ITR 367 (Mad.)(HC)
Editorial : SLP of the revenue was dismissed, CIT v. Best Corporation Ltd. (2016) 388 ITR 58(St.)
- S.80-IA : Industrial undertakings – Loss in year prior to initial assessment year already absorbed cannot be notionally brought forward and set off against profits of eligible business. (AY. 2010-2011)** 1085
PCIT v. GRT Hotels and Resorts P. Ltd. (2017) 392 ITR 440 (Mad.)(HC)
- S.80-IA : Industrial undertakings – Infrastructure development – Assessee involved in generation of electricity – Deduction claimed under 80IA – AO took tariff for sale of Electricity from Captive Power Plants as per orders of Rajasthan Electricity Regulatory Commission and M.P. Electricity Regulatory Commission – Disallowed deduction u/s. 80IA due to negative profits – Computation of AO not correct – Market price to be taken. (AY. 2010-2011)** 1086
Birla Corporation Ltd. v. Dy. CIT (2017) 59 ITR (Trib.) (S.N.) 59 (Kol.)(Trib.)
- S.80-IA : Industrial undertakings – Liquidated damages – Power generation – Allowable as deduction. (AY. 2006-07 to 2009-10, 2011-12 to 2013-14)** 1087
Rajasthan State Mines & Minerals Ltd. v. ACIT (2017) 188 TTJ 137 (Jp)(Trib.)
- S. 80-IA : Industrial undertakings – Infrastructure development – develop, operate and maintain the rail systems for smooth movement of goods from factory till nearest railway station – Deduction was allowed in first year, and cannot be disallowed in subsequent year. (AY. 2009-10, 2010-11)** 1088
Ultratech Cement Ltd. v. ACIT (2017) 153 DTR 153 / 186 TTJ 547 (Mum.)(Trib.)

- 1089 **S.80-IA : Industrial undertakings – Infrastructure development – Merely trader hence not eligible to deduction. [S.80IA(iv)] (AY.2007-2008)**
Reach Network India (P) Ltd. v. ACIT 166 ITD 461 / 189 TTJ 823 / 157 DTR 257 (Mum.)(Trib.)
- 1090 **S.80-IA : Industrial undertakings – Each eligible unit income to be computed separately – Initial year option is with assessee – Unabsorbed depreciation and carried forward loss cannot be notionally carry forward and taken in to for the purpose of computation of deduction. [S. 261] (AY. 2011-12)**
DCIT v. S.V.P.B. Spinners (P) Ltd. (2017) 165 ITD 235 (Chennai)(Trib.)
- 1091 **S.80-IA : Industrial undertakings – Infrastructure development – Developing, operating and maintaining infrastructural facility of toll road would be eligible for deduction, ownership is not required. [S.80IA(4)] (AY. 2011-2012)**
BMW Industries Ltd. v. DCIT (2017) 162 ITD 650 (Kol.)(Trib.)
- 1092 **S.80-IA : Industrial undertakings – Generation of electricity for captive consumption – Market value – Assessing Officer to compute such profits and gains on such reasonable basis as he may deem fit by objective satisfaction and not a subjective satisfaction. [S.80IA(8)] (AY. 2003-2004 to 2011-2012)**
Electrosteel Castings Ltd. v. DCIT (2017) 53 ITR 5 (Kol.)(Trib.)
- 1093 **S.80-IAB : Industrial undertakings – Development of Special Economic Zone – Derived – Interest derived from security deposit was held to be not derived from undertaking hence not entitle to deduction. (AY. 2009-10)**
Cyber Pearl Information Technology Park P. Ltd. v. ITO (2017) 399 ITR 310 (Mad.)(HC)
- 1094 **S.80-IAB : Industrial undertakings – Derived – Interest from fixed deposit from Bank was not derived from business of developing Special Economic Zone hence not entitle to deduction. (AY. 2009-10)**
Cyber Pearl Information Technology Park (P) Ltd. v. ITO (2017) 248 Taxman 415 / 148 DTR 345 (Mad.)(HC)
- 1095 **S.80-IB : Industrial undertakings – Manufacture – Conversion of 24 carat gold in to gold ornaments constitute manufacture and entitle to deduction [S. 2(29BA)] (AY. 2010-11)**
PCIT v. Lakesh Handa (2017) 399 ITR 305 / 158 DTR 332 / 299 CTR 92 / 85 taxmann.com 6 (J&K)(HC)
- 1096 **S.80-IB : Industrial undertakings – Initial assessment year – Small scale industrial undertaking – Assessee is not entitled to benefit of exemption if it loses its eligibility as a small scale industrial undertaking in a particular assessment year even if in initial year eligibility was satisfied- Liberal construction does not mean ignoring conditions for exemption. (AY. 2005-06, 2007-08)**
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- 1187 **S.92C : Transfer pricing – Arm’s length price – Operating cost – Claim of assessee to exclude cost of infrastructure to be allowed – Plea of perversity in findings neither specific nor supported by documents hence not entertained. [S. 260A] (AY. 2011-12)**
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- 1198 **S.92C : Transfer pricing – Arm’s length price – Enabled services (ITES) to AE – Financial aspects of dissimilar activities of two enterprises not comparable – Companies rendering entirely different services not comparable-Company following different financial year can be adopted as comparables if data for relevant period available. (AY. 2009-2010)**
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- 1201 **S.92C : Transfer pricing – Licensing of brand and supply of technical know-how-TPO/DRP/Tribunal disaggregated transaction & benchmarked technical support arrangement applying CUP method – Matter remanded for determining whether aggregation is warranted or not. (AY.2011-12)**
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- 1203 **S.92C : Transfer pricing – Arms length price – Where there was a strike in the assessee company, the net profit margin was required to be adjusted on account of such abnormal event. (AY.2006-07)**
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- 1204 **S.92C : Transfer pricing – Arm’s length price – When no adequate information of capacity utilization of comparables was available – Adjustment on account of capacity utilization cannot be claimed. Services provided being functionally different would not be comparable (AY 2007-08, 2008-2009)**
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- S.92C : Transfer pricing – Arm’s length price – TNMM method – adjustment can be made either in the case of the tested party (i.e. controlled transaction) or the comparables (i.e. uncontrolled transactions) so that the difference which could materially affect the amount of net profit margin is removed. Abnormal loss on account of cancellation of forward contracts absent in cases of Comparables – Assessing officer to make Adjustment in operating cost and rework profit level indicator. (AY. 2009-10)** 1205
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- S.92C : Transfer pricing – Arm’s length price – Accounting period of comparable company should be same as that of the assessee company – Where the functional profile of comparable company & assessee company is same as in earlier years vis-à-vis current year, then, in absence of any contrary evidence, and in order to maintain consistency, the treatment given to the comparable company in the earlier year should be given the current year. [S. 92] (AY. 2009-10)** 1207
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- 1213 **S.92C : Transfer pricing – Corporate guarantee – Does not fall with in the purview of international transaction. Other issues matter was remanded to the AO [S.92B] (AY. 2004-05, 2011-12)**
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- 1214 **S.92C : Transfer pricing – Arm’s length price – Rendering software development services to AE, companies having RPT of upto 15 per cent of total revenue could be considered as comparable companies. Turnover of around Rs. 110 crores, companies having turnover in excess of Rs. 200 crores, were not acceptable as comparables. Where segment information was not available it could not be accepted as comparables. (AY. 2005-06)**
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- 1215 **S.92C : Transfer pricing – Arm’s length price – Advertisement, marketing and promotion expenses – Neither assessee nor TPO had followed the judgment in case of Sony Ericsson (231 Taxman 113), matter was to be remanded for fresh adjudication. (AY. 2010-11)**
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- 1216 **S.92C : Transfer pricing – Arm’s length price – Interest – Quasi capital transaction cannot be determined on basis of simple loan transaction for the purpose of ALP – Product registration charges paid to AE with mark up of 10% ALP cannot be compared with another intra transaction carried out in earlier point of time. Addition in respect of commission on corporate guarantee furnished was held to be not sustainable. (AY. 2009-10, 2010-11)**
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- 1217 **S.92C : Transfer pricing – Arm’s length price – TP adjustment cannot be made if an assessee avails only certain services out of bunch of services mentioned in an agreement specially when TPO does not doubt arm’s length price of availed services. (AY. 2010-11)**
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- 1218 **S.92C : Transfer pricing – Arm’s Length Price – Corporate guarantee given to AE not involving any cost to the assessee and no bearing on profits, income, loss of assets is outside the ambit of international transaction. (AY. 2007-08 to 2011-12)**
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- S.92C : Transfer pricing – Arms’ length price – Loans advanced to AE situated in Singapore – Corporate guarantee – Not charging any interest from AEs and non-AEs for providing mobilization advances – Adjustment under TP provisions was not attracted. [S.92B] (AY. 2011-12)** 1219
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- S.92C : Transfer pricing – Arm’s length price – Addition on account of transfer pricing adjustment in advertisement, marketing & promotion – Matter was set aside. (AY. 2010-11)** 1221
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- S.92C : Transfer pricing – Adjustment on account of location savings costs was directed to be deleted. (AY. 2009-10, 2011-12)** 1222
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- S. 92C : Transfer pricing – Comparable – Absence of financial statement, TPO was directed to exclude there companies from the list of comparbles. (AY. 2012-13)** 1227
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- 1229 **S.92C : Transfer pricing – Distribution activity – Trader – Resale method (RPM) is most appropriate. (ITA No. 235/Pun/2013, dt. 16.06.2017)(AY. 2008-09)**
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- 1230 **S.92C : Transfer pricing – IT enabled services (ITES) rendered to AE – Extraordinary event of amalgamation during relevant year – Cannot be accepted as valid comparable for ALP. (AY. 2008-09)**
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- 1231 **S.92C : Transfer pricing – A credit rating company is functionally dissimilar to a knowledge based research service provider. (AY. 2012-13)**
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- 1232 **S.92C : Transfer pricing – Foreign exchange gain/loss arising out of revenue transactions – Operating revenue/cost – For both assessee as well as comparables. (AY. 2012-13)**
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- 1233 **S.92C : Transfer pricing – Purchase of components from AE – TNMM – Huge additions in fixed assets made during relevant year – Depreciation exclusion before computed corresponding profit level indicator accepted – Matter remanded. (AY. 2007-08, 2008-09)**
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- 1234 **S.92C : Transfer pricing – Capacity under utilization – Adjustments in hands of comparable entities – Matter remanded. (AY. 2007-08)**
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- 1235 **S.92C : Transfer pricing – Corporate guarantee provided to foreign bank – Fee @ 1% from AE charged for guarantee provided on borrowal – ALP determined at 3.35% - Situations held to be incomparable. (AY. 2009-10)**
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- S.92C : Transfer pricing – Transaction services and medical transcription business – ITES providers – Non-comparable. (AY. 2009-10)** 1236
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- S.92C : Transfer pricing – Nature of services – Akin to ITES companies – It was held by the Tribunal that the nature of services rendered by the assessee were akin to services provided by ITES companies. Therefore, effort should be made to find out comparables which are functionally similar within ITES segment. Hence the claim of the assessee that it should be classified as a business support services provider is not acceptable. (AY. 2009-10)** 1238
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- S.92C : Transfer pricing Arm’s length price – Supply of items to Associated enterprises same at lower price and same at higher price – Adjustment was held to be not valid only on the basis of low price – Where a company which purchased more than 1/5th of total sales of assessee, would have a distinctly dominant influence on pricing and could exercise a defacto control and, therefore, lower authorities were justified in treating said company as AE of assessee. [S. 92A] (AY.2011-12)** 1239
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- S.92C : Transfer pricing – Segmental Accounting – Benchmarking of transactions – Profit Level Indicator – Assessee producing tubes for pharmaceutical packaging and solar trail activity exception to its regular business – Loss incurred in solar trial run-up – To be excluded for determining profit level indicator. (AY. 2010-11)** 1240
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- S.92C : Transfer pricing – Transfer Pricing Officer does not reflect any justifiable factors for selecting the RPM method in preference to the TNM method selected by the assessee as the most appropriate method-Arm’s length rate of the corporate guarantee commission/fee was estimated at 0.5%. (ITA No. 3406/Mum/2014, dt. 05.05.2017)(AY. 2008-09)** 1242
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- 1243 **S.92C : Transfer pricing – Arm’s length price – Comparable – Functional difference – A company engaged in rendering KPO services, and a company providing highly technical engineering consultancy services, could not be accepted as comparables while determining ALP-Working capital adjustment was remanded back for disposal afresh. (AY.2007-08)**
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- 1244 **S.92C : Transfer pricing – Arm’s length price – Resale price method (RPM) is best suited for determining ALP of an international transaction in nature of purchase of goods from an AE, which are resold as such to unrelated parties. (AY. 2003-04)**
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- 1245 **S.92C : Transfer pricing – Arm’s length price – Reimbursement costs should be excluded as they do not involve any functions to be performed so as to consider it for profitability purposes while computing operating cost. (AY.2011-12)**
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Editorial : Affirmed, PCIT v. CPA Global Services (P) Ltd. (2017) 151 DTR 161 (Delhi)(HC)
- 1246 **S.92C : Transfer pricing – Arm’s length price – Service industry – Working capital adjustment not to be denied on ground of non-matching of working capital adjustment with financials-opportunity to be given to assessee to get financials corrected – Software development – Selection of comparable – Functional comparability in current year only. [S .92CA] (AY. 2008-2009)**
Comverse Network Systems India P. Ltd. v. ACIT (2017) 54 ITR 158 (Delhi)(Trib.)
- 1247 **S.92C : Transfer pricing – The accretion of brand value, as a result of use of the brand name of foreign AE under the technology use agreement, which has been accepted to be an arrangement at an arm’s length price, does not result in a separate international transaction hence a notional adjustment cannot be made in the hands of the Indian AE towards compensation receivable from the foreign AE for “deemed brand development”. [S.2(24), 92B] (AY. 2009-10 to 2011-12)**
Hyundai Motor India Limited v. DCIT (2017) 153 DTR 41 / 187 TTJ 97 (Chennai)(Trib.)
- 1248 **S.92C : Transfer pricing – Arm’s length price – International transaction can be clubbed, if such transactions are closely connected with each other, contention that when TNMM is applied at the entity level, there was no necessity of separate bench marking in respect of royalty transactions cannot be accepted. (IT(TP) A Nos. 159/Bang/2015, 132/Bang/2016 & 86/Bang/2017, dt. 21.04.2017)(AY. 2010-11 to 2012-13)**
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- S.92C : Transfer pricing – Arm’s length price – Interest on loans – International interest rate fixed being LIBOR linked interest rate to be applied. (AY.2007-2008, 2008-2009)** 1250
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- S.92C : Transfer pricing – Arm’s length price – Interest-free loans to associated enterprise – LIBOR rate applicable and not domestic rate. (AY. 2003-2004 to 2011-2012)** 1251
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- S.92C : Transfer pricing – Arm’s length price – Giving guarantee on a loan availed of by its associated enterprises is an international transaction, arm’s length guarantee commission at 0.5 per cent was directed to be adopted against at 2 percent adopted by DRP. (AY. 2003-2004 to 2011-2012)** 1252
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- S.92C : Transfer pricing – Arm’s length price-proportion to international transaction bears to the total turnover. (AY. 2004-05, 2005-06, 2006-07)** 1253
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- S.92CA : Transfer pricing – Reference to Transfer Pricing Officer – Assessing Officer must give assessee opportunity to be heard before making reference. [S. 92C, Art. 226]** 1254
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- S.92CA : Reference to transfer pricing officer – Before making a reference to the TPO, the assessee is required to be given an opportunity to show-cause why the reference may not be made to the TPO and thereafter a speaking order is required to be passed by the AO. [S.92C, Art. 226]** 1255
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- S.92CA : Reference to transfer pricing officer – Jurisdiction of TPO is extendable to other international transactions which come to his notice during the course of proceedings before him. (AY. 2011-12)** 1256
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- S.115A : Fees for technical services – Payments made to non-resident and TDS deducted – Provision of Section 206AA cannot be applied on the contention that non-resident does not have PAN. [S.206AA] (AY. 2011-12)** 1257
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- 1258 **S.115BBC : Anonymous donations – No detail was available on record about donations made to assessee-trust, same was to be treated as anonymous donations and to be included in total income of assessee-trust for taxation [S.10(23C)] (AY.2008-09)**
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- 1259 **S.115BBC : Anonymous donations – Trust noting names and addresses of donors – Assessing Officer failing to verify donors – Treatment of receipt as anonymous donation was not justified. [S.11, 80G(5)(vi)] (AY. 2009-2010)**
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- 1260 **S.115BBE : Tax on income – Cash credits – Addition was made on the basis of information received from the Bank, without giving an opportunity of hearing – Order was set a side. [S.68, 131(1), Art. 226] (AY. 2014-15)**
Lakshmanan Magendiran v. ITO (2017) 293 CTR 371 / 148 DTR 158 (Mad.)(HC)
- 1261 **S.115E : Non-residents – Capital gains – Bonus shares – Original shares having been purchased in foreign exchange, bonus shares are also foreign exchange assets, though cost of acquisition shall be ‘nil’ under section 55(2)(aa). Tribunal also held that ,assets (bonus shares) acquired by way of foreign exchange fall within the definition of foreign exchange asset under S.115E (b) and eligible for a concessional rate of 10 per cent under S.115E. and eligible for concessional rate of 10 percent. [S.55(2)(aa)] (AY. 2012-13)**
Shashi Parvatha Reddy v. DCIT (IT) (2017) 167 ITD 587 (Hyd.)(Trib.)
- 1262 **S.115J : Book profits – Assessing Officer cannot go behind net profit shown except as provided in Explanation to section 115J.**
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Editorial: SLP of revenue was dismissed, PCIT v. J.K. Synthetics Ltd. (2016) 388 ITR 54 (St.)
- 1263 **S.115JA : Book profits – Provision for doubtful debt – Provision for doubtful debt, but simultaneously obliterating provision from its accounts by reducing corresponding amount from loans and advances on assets side of balance-sheet-actual write off - not hit by amendment [S.15]B, 260A] (AY. 2003-04)**
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- 1264 **S.115JA : Book profits – Excess depreciation and a provision towards land development – In current year these were written back/withdrawn – In computation of book profit under MAT provisions, reduction of provisions would be allowed only if book profit of earlier year was increased by amounts claimed as provisions, matter remanded to the Assessing Officer. (AY. 1998-99, 1999-00)**
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- S.115JAA : Book profit – Deemed income – Tax credit – Payment of entire taxes (including surcharge and cess) is eligible for MAT credit, while calculating interest on ‘assessed tax’ u/s. 234B of the Act. [S.234B] (AY. 2011-12)** 1266
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- S.115JB : Book profits – Disallowance of expenditure on exempt income – Amount disallowed u/s. 14A of the Act cannot be added to arrive at book profit for purposes. [S.14A, R.8D] (ITA No. 337 of 2013, dt.10.02.2015) (AY. 2007-08)** 1267
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- S.115JB : Book profits – Provision cannot apply to insurance companies as they are required to prepare accounts as per Insurance Act and regulations of Insurance Regulatory Development Authority (IRDA) [Companies Act, 1956, Schedule VI] (AY. 2005-06)** 1268
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- S.115JB : Book profits – The AO is not entitled to add to the “book profits” the amounts arising from sale of land which are directly credited to the Capital Reserve Account in the balance sheet rather than routing it through Profit and Loss Account in the manner provided as per Part II and Part III of Schedule VI to the Companies Act, 1956. (ITA No. 436 of 2015, dt. 18.07.2017)(AY. 2004-05)** 1269
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- S.115JB : Book profits – Amendment with retrospective effect providing for inclusion of diminution in value of asset debited to profit and loss account is valid in law.** 1270
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- S.115JB : Book profits – Books of account certified under companies Act to be accepted – Capital receipt which was claimed as exemption for book profit was held to be not justified. [S.2(24)](AY. 2005-06)** 1271
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- S.115JB : Book profits – Deduction of accumulated unabsorbed depreciation of earlier years was to be allowed. [S.32] (AY 2012-13)** 1272
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- 1274 **S.115JB : Book profits – Computation under clause (f) of Explanation 1 to section 115JB(2) – To be made without resorting to computation prescribed under section 14A read with rule 8D. [Matter Remanded] [S.14A, R.8D] (AY. 2008-09)**
ACIT v. Vireet Investment (P) Ltd. (2017) 165 ITD 27 / 154 DTR 241 / 188 TTJ 1 (SB) (Delhi) (Trib.)
- 1275 **S.115JB : Book profits – Disallowance u/s. 14A could not be imported into clause (f) of Expl. 1 to s.115JB for purpose of computing book profit [S.14A] (AY. 2009-10)**
DCIT v. Reliance Natural Resources Ltd. (2017)166 ITD 385 (Mum.)(Trib.)
- 1276 **S.115JB : Book profits – Excise duty and interest subsidy received by assessee in respect of undertaking situated in notified area of Sikkim cannot be treated as income for the purpose of computing book profits. (AY. 2007-08)**
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- 1277 **S.115JB : Book profits – AO cannot increase the book profits by the amount of additional disallowance made u/s. 14A [S.14A] (ITA No. 1807/Mum/2011 & 1812 /Mum/ 2011 Bench “A” dt. 16-11-2017 (AY. 2006-07, 2008-09)**
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- 1278 **S.115JB : Book profits – Profit from sale of fixed assets cannot be included as part of book profit. (AY. 2007-08)**
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- 1279 **S.115JB : Book profits – Provision for warranty cannot be treated as provision for diminution in value of any assets so as to be covered by Expl. 1(i) to S.115JB(2) – No additions to book profit can be made in respect of said amount. (AY. 2008-09, 2011-12)**
Anchor Electricals (P) Ltd. v. DCIT (2017) 164 ITD 510 / (2018) 191 TTJ 26 (UO)(Mum.) (Trib.)
- 1280 **S.115JB : Book profits – Disallowance under section 14A r.w. Rule 8D – Not applicable for MAT calculation. [R. 8D] (AY. 2012-13)**
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- 1281 **S.115JB : Book profits – Rent equalization reserve debited to profit and loss account was to be added back while computing book profit. [AS.19] (AY. 2008-09)**
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- 1282 **S.115JB : Book profits – Waiver of loan cannot be added while computing the book profit. [S.41(1)] (AY. 2004-05)**
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- S.115JB : Book profits – While computing book profits AO was justified in making addition of expenditure relatable to exempt income determined u/s.14A. [S.14A] (AY. 2010-11, 2011-12)** 1283
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- S.115JB : Book profits – Provision for bad and doubtful debts not deductible. (AY. 2008-2009, 2010-2011)** 1284
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- S.115JB : Book profits – Disallowance always a part of expenditure debited to profit and loss account – Disallowance should be added to book profits for purpose of computing tax liability – Amount of addition should be restricted to actual disallowance. [S.14A, R.8D] (AY. 2008-2009, 2010-2011)** 1285
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- S.115JB : Book profits – Capital gains – Long-term capital gains – Benefit of indexed cost of acquisition to be considered for purpose of computing tax liability. [S.45] (AY. 2008-2009, 2010-2011)** 1286
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- S.115O : Domestic companies – Tax on distributed profits – Constitutionally valid – The provisions of Section 115O are well within the competence of Parliament. To put any limitation in the said provision as held by the Calcutta High Court that additional tax can be levied only on the 40% of the dividend income shall be altering the provision of Section 115O for which there is no warrant. The Calcutta High Court having upheld the vires of Section 115O no further order was necessary in that writ petition. [Constitution of India, Art. 246]** 1287
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- S.115O : Domestic companies – Tax on distributed profits – Chargeability of Dividend Distribution Tax on amount of dividend depends on when it is declared, or paid and not for which year it is paid. (AY.2010-11, 2011-12)** 1288
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- 1289 **S.115O : Domestic companies – Tax on distributed profits – DDT being tax on dividend Whether Article 10 of the India Switzerland would be applicable even if such dividend is payable by a domestic company – Matter remanded – DTAA-India-Switzerland [Art. 10] (AY. 2008-09)**
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- 1290 **S.115O : Domestic companies – Tax on distributed profits – Paid dividend distribution tax within stipulated time period of 14 days from date of declaration of dividend – Levy of interest was set side. [S.115P] (AY. 2010-11, 2011-12)**
Informed Technologies India Ltd. v. Dy.CIT (2017) 162 ITD 153 / 54 ITR 397 / 183 TTJ 60 (Mum.)(Trib.)
- 1291 **S.115VG : Shipping business – Tonnage income – Debit and reversal of expenditure – Provision written back could not have been excluded and taxed separately. (AY. 2011-12)**
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- 1292 **S.115VG : Shipping companies – When computation of income of qualifying ships had been computed under tonnage tax scheme, no separate addition made in respect of foreign exchange gain allocated to those ships. [S.43A] (AY.2010-11)**
SvitzerHazira (P) Ltd. v. DCIT 166 ITD 396 (Mum.)(Trib.)
- 1293 **S.115VI : Shipping business – Shipping income – Interest on house building advances – Liquidated damages – Interest on arbitration award – Though they may be incidental business income but they are not profit from core activities of shipping; hence, could not be said to form part of computation of tonnage tax. Interest on arbitration award is not from core activity as it is not directly from shipping activity but is compensatory in nature akin to interest on deposits, hence, to be separated from core activity and to be taxed separately. [S.38 to 43C] (AY. 2009-10-11)**
Dredging Corporation of India Ltd. v. ACIT (2017) 167 ITD 485 / (2018) 191 TTJ 858 (Visakha)(Trib.)
- 1294 **S.115WA : Fringe benefits – Charge of tax – Fringe benefits deemed to have been provided, clarification made by the Central Board of Direct taxes cannot be said to be contrary to the provisions of the statute. [S.115W, 119] (AY. 2006-07 to 2008-09)**
Gujarat Chamber of Commerce and Industry v. UOI (2017) 395 ITR 457 / 150 DTR 98 / 295 CTR 66 (Guj.)(HC)
- 1295 **S.115WA : Fringe benefits – Expenses incurred by partners is not liable to FBT. (AY. 2008-09, 2009-10)**
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- S.115WB : Fringe benefits – Constitutional validity – Provisions clear as to their range of operation – Applicability depending on facts of each case hence provision cannot be read down. [Art. 226]** 1296
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- S.119 : Central Board of Direct Taxes – Monetary limits – Appeal – CBDT has no power to issue circular with retrospective effect. [S.260A, 268A]** 1297
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- S.119 : Central Board of Direct Taxes – Instructions – Attachment and sale of property- Limitation – The CBDT has no jurisdiction to issue a Circular to amend the legislative provisions set out in the Act. Such action is ultra vires and liable to be quashed. [R. 68B]** 1298
CIT v. S. V. Gopala Rao (2017) 396 ITR 694 / 298 ITR 228 / 157 DTR 291 (SC)
Editorial : Decision in S.V. Gopala Rao v. CIT (2004) 270 ITR 433 (AP) is affirmed.
- S.119 : Central Board of Direct Taxes – Investigation against off shore bank account holders – PIL was dismissed as as Government had constituted a Multi Agency Group (MAG) consisting of officers of Central Board of Direct Taxes (CBDT), Reserve Bank of India (RBI), Enforcement Directorate (ED) and Financial Intelligence Unit (FIU) to ensure speedy and coordinated investigation in cases of persons whose names had appeared in ‘Panama Paper Leaks’ and Special Investigation Team (SIT) had been constituted by Supreme Court, no further direction were to be given to CBI for investigation against Indian offshore bank account holders revealed in Panama Papers. Manohar Lal Sharma v. CBI (2017) 205 COMP CASE 180 / (2018) 252 Taxman 22 (SC)** 1299
- S.119 : Central Board of Direct Taxes – Condonation of delay – Ex parte order by the Assessing Officer – Rejection of the application was set aside and directed the CBDT to decide afresh. [S.139, Art 226]** 1300
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- S.119 : Central Board of Direct Taxes – Circulars though inconsistent with provisions of statutes are binding on authorities. [S.4, 43D, 145] (AY. 2010-11)** 1301
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- S.120 : Income tax authorities – Additional ground on jurisdiction was admitted – Additional Commissioner perform functions and exercise powers of an AO only if he is specifically directed u/s. 120(4)(b). [S.2(7A), 120(4)(b), 127, 245(1)] (AY. 2001-02)** 1302
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- S.127 : Power to transfer cases – Transfer of case for administrative convenience was held to be valid [S.132]** 1303
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- 1304 **S.127 : Power to transfer cases – Shifting of registered Office – Corresponding address remain unchanged – Transfer of assessment proceedings to Mumbai was held to be not valid. (AY. 2015-16)**
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- 1305 **S.127 : Power to transfer cases – Transfer of case was done after giving a reasonable opportunity of hearing and by passing reasoned order hence transfer of case was held to be valid. [S.132]**
Genus Electrotech Ltd. v. UOI (2017) 250 Taxman 550 / (2018) 162 DTR 103 (Guj.)(HC)
- 1306 **S.127 : Power to transfer cases – Once order for transfer of case is set aside by the High Court, subsequent notice issued u/s. 158BC is unjustified [S.158BC]**
CIT v. Lalitkumar Bardia (2017) 155 DTR 1 / 298 CTR 72 (Bom.)(HC)
- 1307 **S.127 : Power to transfer cases – Transfer of cases due to re-structuring of department was held to be valid. (AY.2008-09 to 2013-14)**
Kanak Gardens Pvt. Ltd. v. CIT (2017) 394 ITR 627 (Ori.)(HC)
Swayastuti Pattanayak v. CIT (2017) 394 ITR 627 (Ori.)(HC)
Rajalaxmi Ray v. CIT (2017) 394 ITR 627 (Ori.)(HC)
- 1308 **S.127 : Power to transfer cases – Decision of transfer could not become illegal unless and until assessee showed as to how assessee was prejudiced by not given an opportunity of being heard.**
Dr. Monu Pattanayak v. PCIT (2017) 146 DTR 55 / 291 CTR 507 (Orissa)(HC)
- 1309 **S.127 : Income tax authorities – Additional ground on jurisdiction was admitted – Power to transfer cases –Assessment order passed without authority of law was held to be bad in law. [S.2(7A), 120(4)(b), 143(3), 254(1)] (AY. 2001-2002)**
Tata Sons Ltd. v. ACIT (2017) 162 ITD 450 (Mum.)(Trib.)
- 1310 **S.132 : Search and seizure – Block assessment – Reason to believe – Not disclosing of the recording of reasons for search and seizure action, cannot be held to be invalid, in view of amendment made in section 132A, by Finance Act, 2017. Contentions not taken before the authorities are not permitted to be raised. [S.132A, 158BD, 261]**
N. K. Jewellers v. CIT (2017) 398 ITR 116 / 251 Taxman 7 / 298 CTR 113 / 157 DTR 238 (SC)
- 1311 **S.132 : Search and seizure – Survey – Assessment – It is but natural that concealed income found at the time of search and survey has to be distributed among all the family members who were carrying on business. It is also a reasonable conclusion that the income had been earned over a period of time and should be spread over various years. [S.133A, 260A] (AY.1988-89 to 1990-91)**
CIT v. Rekha Bai (2017) 393 ITR 22 / 150 DTR 49 / 246 Taxman 369 / 294 CTR 16 (SC)

- S.132 : Search and seizure – Severe strictures passed to condemn the illegal practice of the Dept of collecting undated cheques from taxpayers after search/ survey without even quantifying the extent of duty evasion. Attempt of the unscrupulous officers is to ‘negotiate’ the evaded duty by threats and coercion. It is not rule of law but anarchy unleashed by holders of public office. It is an abuse of law which has to be stopped – Central Vigilance Commissioner (CVC) is directed to issue the guide lines. [Central Excise Act, 1944] (W.P.(C) 3070/2017 & CM No. 13393/2017, dt. 15.05.2017)** 1312
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- S.132 : Search and Seizure – Return of seized articles – Non returning of gold ornaments seized as the prosecution was pending was held to be justified. [S.276(1), 277]** 1313
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- S.132 : Search and seizure – Certain records were not produced in spite of constant directions by Revenue, search was justified. [S.153A, Art. 226] (AY. 2009-10)** 1314
Aditya Narayan Mahasupakar v. CCIT (2017) 246 Taxman 106 (Orissa)(HC)
- S.132 : Search and seizure – Warrant of authorisation – Section did not compel him to give reasons and non-mention of reasons in itself did not vitiate the order and the court would never go into the adequacy of such reason – Writ petition is held to be not maintainable. [S.153, 153A, Art. 226, 227] (AY.2009-2010 to 2014-2015)** 1315
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- S.132 : Search and seizure – Notice u/s. 131(1A) is not required to be issued prior to carrying out search proceedings – Writ Petition is not maintainable. [S.131(1A), 153A, Art. 226] (AY.2009-10 to 2014-15)** 1316
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- S.132(4) : Search and seizure – Surrender of income – Onus on assessee to prove genuineness, addition as unexplained income was held to be justified. [S.132] (AY. 2004-05 to 2008-09)** 1317
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- S.132A : Powers – Requisition of books of account – Cash seized from two passengers in car was release by Deputy Superintendent of police was held to be valid.** 1318
ITO (Inv) v. Deputy Superintendent of Police (2017) 250 Taxman 254 (Guj.)(HC)
- S.132B : Application of seized or requisitioned assets – Refund of seized amount or part thereof – Revenue is liable to pay interest and the assessee cannot be held liable to pay interest for failure to pay advance tax. [S.132B(4), 234B, 234C]** 1319
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- 1320 **S.132B : Application of seized or requisitioned assets – Person in respect of whom search conducted was beneficial owner of monies in such account, hence restraint order and direction for provisional attachment of such account was held to be valid. [S.132, Art. 226]**
Strategic Credit Capital P. Ltd. v. Ratnakar Bank Ltd. (2017) 395 ITR 391 / 81 taxmann.com 408 (Delhi)(HC)
Veena Singh v. DI(Inv) (2017) 395 ITR 391 / 81 taxmann.com 408 (Delhi)(HC)
- 1321 **S.132B : Application of seized or requisitioned assets – Seized cash – Adjustment permissible only towards tax dues already determined and not against amounts that might become due in pending assessments. Department liable to return remaining cash to assessee with statutorily provided interest [S.132, 132B(3), 132B(4)] (AY. 2002-03 to 2004-05)**
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- 1322 **S.133A : Power of survey – Statement is not conclusive – In absence of any contrary evidence or explanation the same can be acted upon. As a result the High Court upheld the order of the AO and denying depreciation allowance to the Assessee. [S.32] (AY.1996-97)**
Pebble Investment & Finance Ltd. (2017) 156 DTR 247 (Bom.)(HC)
- 1323 **S.133A : Power of survey – Surrender of commission income – Burden on the assessee to prove that the statement was wrong in fact – Statement recorded during survey an important piece of evidence – Addition was held to be justified. [S. 69] (AY.2006-07)**
Shree Supari & Spices (P) Ltd. v. CIT (2017) 160 DTR 433 / (2018) 300 CTR 90 (All.)(HC)
- 1324 **S.133A : Power of survey – Voluntary declaration of unaccounted money after two months after survey – Retraction of statement after two years, addition as undisclosed income was held to be justified. [S.69A] (AY. 2009-10)**
PCIT v. Avinash Kumar Setia (2017) 395 ITR 235 / 153 DTR 57 / 248 Taxman 106 (Delhi)(HC)
- 1325 **S.133A : Power of survey – Merely on the basis of statement during course of survey without supporting evidence additions cannot be made.**
CIT v. Iibs Infonet Pvt. Ltd. (2017) 394 ITR 538 (Delhi)(HC)
- 1326 **S.133A : Power of survey – Statement was retracted – Statement in survey operations has no evidentiary value – Merely on the basis of statement, addition cannot be made. [S.68] (AY. 2007-08, 2008-09)**
ACIT v. Shree Krishna Developers (2017) 56 ITR 154 (Ahd.)(Trib.)
- 1327 **S.133A : Power of survey – Admission of addition of income – Rejection of books of account was held to be justified – Gross profit could be telescoped to addition made on excess stock. [S.145] (AY. 2007-08)**
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- S.139 : Return of income – Return of income filed within time showing the taxable income, can be revised showing the loss – Tribunal was justified in allowing the carry forward of speculation loss [S.139(1), 139(5)] (AY. 2005-06)** 1328
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- S.139 : Return of income – BIFR extending the period for filing of return, carry forward and set off of loss and depreciation loss cannot be denied. [S.32, 154] (AY. 2001-02)** 1329
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- S.139 : Return of income – Revised return – Return filed u/s. 139(1) or u/s. 139(4) within extended period of one year from the end of the relevant assessment year or before completion of assessment, which ever is earlier – Can be revised – Amendment with effect from April 1 2017 is retrospective in nature – Matter set aside to Assessing Officer. [S.139(1), 139(4), 139(5)]** 1330
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- S.139 : Return of income – Return not filed electronically – Manual return filed within due date – Benefit of set off and carry forward of losses allowed. Matter Remanded [S.80] (AY. 2011-12)** 1331
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- S.139 : Return of income – Revised return within a period of one year from end of assessment year is valid return. [S.139(9)] (AY.2010-2011)** 1332
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- S.139 : Return of income – Omission to consider conversion of capital asset to stock in trade in Original return – Evidenced by minute book of Board – Tax auditor appears before AO – Revision under S.139(5) is valid. [S.139(5)] (AY. 2009-10)** 1333
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- S.139 : Return of income – Revised return – Belated return u/s. 139(4) cannot be revised and claim that the income was wrongly included certain amount in his total income as taxable. Income will continue to be included as income of the assessee in accordance with return filed by the assessee under S.139(4) of the Act. [S.139(1), 139(4), 139(5)] (AY. 2008-09)** 1334
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- S.139AA : Return of income – Quoting of Aadhar number – Legislative powers – Provision is held to be valid – Proviso to S.139AA(2) cannot be read retrospectively as it takes away vested rights – It will only have prospective effect. [Art. 14, 19(1)(g), 21]** 1335
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- 1336 **S.139AA : Return of income – Quoting of Aadhaar Number – Department was directed to accept assessee's return in hard copy. [Art. 21] (AY. 2017-18)**
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- 1337 **S.139AA : Return of income – Quoting of Aadhaar Number – Quoting of Aadhaar Number as per the requirement under the 1961 Act, is the prerogative of Parliament to make a particular provision directory in one statute and mandatory in another and that by itself could not be a ground to question the competence of the Legislature. [S.139(5)(c)]**
Thiagarajan Kurnaraja v. UOI (2017) 398 ITR 740 / 159 DTR 209 / 299 CTR 192 (2018) 252 Taxman 164 (Mad.)(HC)
- 1338 **S.142(2A) : Inquiry before assessment – Special audit – For referring the matter to special audit there need not be any books of account before Assessing Officer. (AY.2009-10)**
Takshashila Realities (P) Ltd. v. DCIT (2017) 247 Taxman 156 (Guj.)(HC)
- 1339 **S.142(2A) : Inquiry before assessment – Special audit – Audit fee – If audit report is of good quality and inter alia, authored by a qualified professional having a fair number of years of experience, then he/she may be entitled to ask for highest prescribed billing rate – High Court directed the Commissioner to re-consideration of auditors fee. [R. 14B]**
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- 1340 **S.142(2A) : Inquiry before assessment – Special audit – Amendment to S.142(2A) w.e.f. 1-6-2013 adding new grounds on which assessing officer may direct special audit – Amendment is valid. [Art. 14] (AY. 2007-08 to 2013-14)**
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- 1341 **S.142(2A) : Enquiry before assessment – Special audit – Multiplicity of transactions in accounts and specialized nature of business activities, order passed for special audit was held to be justified. (AY. 2010-11)**
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Editorial: SLP of assessee was dismissed, Takshashila Realities (P) Ltd. v. Dy. CIT (2017) 250 Taxman 13 (SC)
- 1342 **S.142(2A) : Enquiry before assessment – Special audit – After preparing detailed satisfaction note Principal Commissioner approved proposal for special audit and opportunity was given to petitioner, hence there is any error or illegality in passing the order of special audit. (AY. 2009-10 to 2015-16)**
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- S.142(2A) : Inquiry before assessment – Special audit – Limitation – Power of AO to extend time suo motu is only with effect from 1-4-2008 hence assessment order on basis of audit report submitted beyond period specified was held to be not valid. [S.143(2), 153(1)] (AY. 2003-04)** 1343
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- 1350 **S.143(2) : Assessment – Notice – Notice served on the old address – Assessment was held to be void. [S.282, 292BB, General Clauses Act, S.27] (ITA No. 1382 of 2014, dt. 07.02.2017)(AY.2006-07)**
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- 1351 **S.143(2) : Assessment – Notice – Return filed as individual and revised in the status of HUF without variation in income – Participated in the proceedings – Cannot raise the plea that no notice was issued in the name of HUF – Assessment cannot be held to be bad in law. [S.292BB] (AY. 2001-01)**
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- 1352 **S.143(2) : Assessment – Non issue of notice u/s. 143(2), order is bad in law. [S.143(1), 143(3)] (AY. 2007-08)**
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- 1353 **S.143(2) : Assessment – Notice – When there is no valid service of notice with in prescribed period of limitation, order passed was set aside. [S.143(3)] (AY. 2008-09)**
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- 1354 **S.143(2) : Assessment – Notice – If the Department fails to produce evidence relating to the issue and service of the S.143(2) notice, an adverse inference has to be drawn as per S.114 of the Evidence Act. The assessment order has to be held invalid and void ab initio. On merit addition on account of share application money was deleted. [S.68,143(3)] (ITA No.5626/DEL/2012 & CO 319/DEL/2016, (dt. 30.03.2017)(AY. 2004-05)**
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- 1355 **S.143(2) : Assessment – Notice – Proper service of the notice u/s. 143(2) is mandatory and its failure renders the assessment order void. The fact that an unauthorized person appeared on behalf of the assessee before the AO does not mean that the notice was properly served. [S.143(3)] (ITA Nos. 181 & 426/Kol/2013, dt. 30.11.2016) (AY. 2008-09)**
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- 1356 **S.143(2) : Assessment – Notice – Affixture of notice in the first instance for the reason of that otherwise limitation of service would have expired was held to be invalid. [S.282, 292BB] (AY.2000-01)**
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- 1357 **S.143(2) : Assessment – Jurisdiction – Non-corporate assessee, income up to 15 lakhs – Scrutiny notice issued by the Asstt. Commissioner instead of Assessing Officer was held to be invalid (AY. 2010-11)**
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- S.143(3) : Assessment – Bogus purchases – Cross examination – A statement by the alleged vendor that the transactions with the assessee are only accommodation entries and that there are no sales or purchases cannot be relied upon by the AO unless the assessee is given the opportunity to cross-examine the vendor. [S.131] (ITA No. 4299 of 2009, dt. 22.02.2011)** 1361
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- S.143(3) : Assessment – Ex-parte order not ordinarily be passed – Order was set-aside. [S.147, 148] (AY. 2007-2008 to 2011-2012)** 1362
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- S.143(3) : Assessment – Amalgamation – Appointed date mentioned in scheme in absence of any specified date by court, company ceases to exist from such date hence not liable to assessment for relevant financial year. (AY. 2008-09)** 1363
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- S.143(3) : Assessment – Bogus purchases – Trader – Stock register is maintained and quantity detailed provided, Tribunal restricted the addition to 2% of the bogus purchases. (ITA No.880-882/Mum/2016, ITA No.1321-1323/Mum/2016, dt. 29.08.2017) (AY. 2009-10 to 20011-12)** 1364
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- 1366 **S.143(3) : Assessment – Amalgamation – Mere mentioning of PAN of merged company only to differentiate between amalgamated and amalgamating companies for period when both of them were in existence, would not make assessment order invalid. (AY. 2009-10)**
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- 1367 **S.143(3) : Assessment – Jurisdiction – Order passed without jurisdiction only on the basis of PAN was held to be void ab-initio. [S.120, 127] (AY. 2010-11)**
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- 1368 **S.143(3) : Assessment – Reasonable cause for not appearing before the Assessing Officer, matter was remanded. [S.253] (AY. 2011-12, 2012-13)**
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- 1369 **S.143(3) : Assessment – Business income – Refund of entry tax – Crediting of amount in P&L account itself would not be conclusive to say that corresponding income accrued to assessee and same was liable for taxation. [S.41(1)] (AY. 2006-07)**
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- 1370 **S.143(3) : Assessment – An addition towards income cannot be made merely on the basis of the statement of a third party that an amount has been paid to the assessee in the absence of conclusive evidence. [S.131] (ITA No. 467/JP/2011 and 519/JP/2011, dt. 25.11.2016) (AY. 2007-08)**
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- 1371 **S.143(3) : Assessment – Bogus purchases – One to one relationship/nexus between the purchases and sales has not been established by the assessee, the purchases have to be treated as bogus and 12% of the purchase cost is assessable as profits. [S.69C] (ITA No. 2601/Mum/2016, dt. 18.01.2017)(AY. 2009-10)**
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- 1372 **S.143(3) : Assessment – Dumb documents – On money – Flats were sold at concessional rates, additional was held to be not justified on mere suspicion. [S.145] (ITA No. 1502/Ahd/2015, dt. 14.02.2017)(AY. 2011-12)**
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- 1373 **S.143(3) : Assessment – Addition made on basis of dumb paper was held to be not valid. [S.132] (AY. 2004-05 to 2008-09)**
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- 1374 **S.143(3) : Assessment – Assessment was done without following the guidelines of scrutiny and without taking the approval, the order was held to be bad in law. [S.133A, 143(2)] (AY.2008-09)**
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- S.144 : Best judgment assessment – Rejection of books of account – Estimate of wastage during survey proceedings – Report of ceramic research laboratory stating that quantum of wastage variable – Input /output ratio – Deletion of additions was held to be justified. [S.69C, 133A, 145(3)]** 1377
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- S.144 : Best judgment assessment – Nothing on record to show the satisfaction of assessing officer that books were incorrect, incomplete or unreliable hence best assessment is held to be not justified. [S.145(3), 260A] (AY. 2012-13)** 1378
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- S.144 : Best judgment assessment – Rejection of books of account – Estimation must be reasonable and not on presumptions – Premium money on sale of cigarettes – In the absence of any conclusive material premium money collected by the retailers or whole sale buyers towards advertisement and sales promotion addition was held to be not justified. [S.4, 145(2)](AY. 1984-85 to 1986-87)** 1382
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- 1383 **S.144 : Best judgement assessment – Method of accounting – Trading in iron scrap – Failure to produce books of accounts was held to be justified in rejecting the books of account, however the AO was directed to apply GP at 5% of turnover. [S.145(3)]. (AY. 2009-10)**
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- 1384 **S.144C : Reference to dispute resolution panel – Issuance of draft assessment orders by assessing officer mandatory, without following the procedure the passing of the order was held to be invalid and consequently demand notices and penalty proceedings also invalid. [S.156, 271(1)(c)] (AY. 2007-08, 2008-09)**
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- 1385 **S.144C : Reference to dispute resolution panel – Alternative remedy – Direction of DRP which would result into an assessment which is open to challenge as per the provisions of the Act, writ was held to be not maintainable. [S.92C, Art.226]**
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- 1386 **S.144C : Reference to dispute resolution panel – It is mandatory for the Assessing officer to pass draft assessment order after receipt of report of transfer pricing officer, even if report of transfer pricing officer has been made under order of remand of tribunal, violation of the provision the order is bad in law. [S.292B] (AY.2006-07 to 2008-09)**
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- 1387 **S.144C : Reference to dispute resolution panel – While giving effect to directions of dispute resolution panel, Assessing Officer cannot make any other addition which was not contemplated in draft order of assessment. [S.92CA] (AY. 2009-10)**
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- 1388 **S.144C : Reference to dispute resolution panel – Circular clarifying that requirement of issuing draft assessment order applies to all orders passed after 1-10-2009 irrespective of assessment year. (AY. 2009-10)**
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- 1389 **S.144C : Reference to dispute resolution panel – Natural justice – Order was passed without considering the documents filed, the order of DRP is set aside. [Art. 226, 227] (AY. 2013-14, 2014-15)**
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- 1390 **S.144C : Reference to dispute resolution panel – Rejection of objection – Remedy of assessee is by way of appeal – Writ could not be issued to quash assessment order. [S.92C, Art. 226] (AY. 2012-13)**
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- S.144C : Reference to dispute resolution panel – Forwarding of draft assessment order – Actual service of copy of draft assessment order necessary – Time limit of nine months from end of month in which draft order forwarded to assessee for Dispute Resolution Panel to pass order – Receipt of draft assessment order dated 26-3-2014 on 22-8-2014 – Jurisdiction of Dispute Resolution Panel to pass order did not lapse on 31-12-2014. High Court can remand case to Dispute Resolution Panel even though time limit would have expired. (AY. 2008-2009)** 1392
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- S.144C : Reference to dispute resolution panel – No variation in returned income – Draft assessment order not issued – Order u/s. 143(3) is valid. [S.143(3)] (AY. 2010-11)** 1393
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- S.144C : Reference to dispute resolution panel – Assessment u/s. 143(3) making certain adjustment to ALP without passing draft assessment order was held to be invalid. [S.92C] (AY. 2010-11)** 1394
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- 1398 **S.145 : Method of accounting – Gross Profit rate could not be computed with reference to returns of subsequent assessment years. (AY. 1986-97)**
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- 1399 **S.145 : Method of accounting – Provision for damage was prepared – Supported by factual evidences, claim of reduction from closing stock of packing material and finished goods has to be allowed. (AY.2009-10)**
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- 1400 **S.145 : Method of accounting – Eligible and non eligible divisions – Common expenses related to both divisions were irrationally debited in books of division not eligible for deduction, rejection of books of account was held to be justified. [S.80HH, 80-I] (AY. 1994-95, 1995-96)**
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- 1401 **S.145 : Method of accounting – Rejection of books of account – Day to day stock register is not maintained – Applying the gross profit rate on basis of past history was held to be justified. [S.145(3)]**
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- 1402 **S.145 : Method of accounting – Where revenue had modified or substituted method of valuation of closing stock in particular year, same methodology would also have to be applied for valuation of opening stock for that year [S.154, 254(2)] (AY. 2003-04)**
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- 1403 **S.145 : Method of accounting – Merely low gross profit cannot be the ground to reject the books of account. (AY. 2007-08)**
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- 1404 **S.145 : Method of accounting – Undervaluation of closing stock – Revenue has not brought any evidence hence deletion of addition was held to be justified. [S.260A] (AY. 2006-07)**
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- 1405 **S.145 : Method of accounting – Books of account are genuine hence rejection of books of account was held to be not justified. [S.80IA, 145(3)]**
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- 1406 **S.145 : Method of accounting – Income computation and disclosure standards (ICDS) has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. If S.145 (2) is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution. The ICDS which overrule the provisions of the Act, the Rules thereunder and the judicial precedents applicable thereto, are**

struck down as ultra vires the Act. To that extent, Notification Nos.87 and 88 dated 29.09.2016 and Circular No. 10 of 2017 issued by the CBDT are also held to be ultra vires the Act and struck down as such. [S.44AB, 145(2), Art. 14, 19, 141, 145, 265] (AY. 2017-18)

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- 1414 **S.145 : Method of accounting – Project completion method – Justified in debiting costs such as advertisements, interest, brokerage, incurred on account of agreement with the purchasers- Writing off 45% of land which he is required to leave open for roads, parks, schools, colleges, hospitals, clubs and community sites under HDRUA, is allowable. (AY. 1994-95)**
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- 1415 **S.145 : Method of accounting – Valuation of closing stock – Revised return – Tribunal finding that method of valuation by Assessing Officer was correct, question of fact. [S.139(5), 260A] (AY. 1998-1999)**
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- 1416 **S.145 : Method of accounting – Rejection of accounts – Decline in gross profit – Suppression of sales – Deletion of addition was held to be justified. (AY. 2006-2007)**
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- 1417 **S.145 : Method of accounting – Gross profit rate – Estimate of 32 per cent. to be adopted considering average profit of six years shown by assessee.**
CIT v. Popular Art Palace P. Ltd. (2017) 391 ITR 352 (Raj.)(HC)
- 1418 **S.145 : Method of accounting – Weighted average cost of valuing stock is an accepted method of accounting, which is approved by accounting standard issued by the ICAI. AO is not entitle to disregard the method if the assessee has consistently followed the said method. (ITA No. 297 of 2014 dt 6-03-2017) (AY. 2009-10)**
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- 1419 **S.145 : Method of accounting – Application of net profit rate of 9 % on gross receipt was held to be justified. (AY.2005-2006, 2007-2008, 2008-2009)**
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- 1420 **S.145 : Method of accounting – Low gross profit – Books of account could not have been rejected merely on increase or decrease in GP/NP. [S.145(3)] (AY. 2011-12)**
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- 1421 **S.145 : Method of accounting – Sales-tax refund had to be taken into consideration while determining the total business receipts/turnover and the estimation of net profit rate had to be determined accordingly. [S.41(1)] (AY. 2008-09)**
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- 1422 **S.145 : Method of accounting – Upfront expenditure – Held to be allowed though followed amortization method in its books. [S.35D, 37(1)] (AY. 2013-14)**
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- S.145 : Method of accounting – Real estate business-Rejection of books of accounts and estimate of income at the rate of 8 per cent on the gross receipts was held to be justified. (AY. 2010-11, 2011-12)** 1423
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- S.145 : Method of accounting – Non maintenance of stock register and decline in GP rate, addition is held to be not justified. (AY. 2009-10)** 1424
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- S.145 : Method of accounting – Foreign company which has established place of business in India, as per the provisions of Companies Act, 1956, AS-7 is applicable .[S.44AA(2), 44BBB(1), AS-7, Companies Act, 1956, 227(4A)] AY. 2009-10** 1425
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- S.145 : Rejection of books of account & estimate business income was held to be not justified, when the current years result was better than earlier years. [S.44AE, 44E, 145(3)] (AY.2012-13)** 1427
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- S.145A : Method of accounting – Valuation – Irrespective of the method of accounting followed, the unutilized CENVAT credit does not constitute income and cannot be directly added to the closing stock. The assessee is entitled to follow the exclusive method and value the closing stock by excluding the MODVAT credit. [S.145] (ITA No. 146 of 2015, dt. 07.07.2017)(AY. 2008-09)** 1428
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- 1431 **S.145A : Method of accounting – Valuation – Change of method – Assessee accepting 5% as basis for valuing slow moving stock – No records to doubt bona fides of valuation – Addition on account of slow moving, non-moving and obsolete stores written off to be deleted.**
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- 1432 **S.145A : Method of accounting – Opening and closing stock are valued exclusive of taxes – Enhancing the value of semi-finished goods and finished goods in the closing stock not warranted. (A.Y. 2009-10)**
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- 1433 **S.147 : Reassessment – Audit objections – If the AO disagrees with the information/objection of the audit party and is not personally satisfied that income has escaped assessment but still reopens the assessment on the direction issued by the audit party, the reassessment proceedings are without jurisdiction. [S.148] (AY.1991-92)**
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- 1434 **S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Notice was held to be invalid [S. 80IC, 148] (AY. 2006-07)**
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- 1435 **S.147 : Reassessment – After the expiry of four years – No failure to disclose correct facts – Reassessment was held to be bad in law. [S. 10B, 14A, Industries Development & Regulation Act, 1951 S. 14] (AY. 2010-11)**
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- 1436 **S.147 : Reassessment – After the expiry of four years – Failure to deduct tax at source on lease rent – when there is no finding or reason that the assessee has failed to disclosure fully and truly all the relevant material facts necessary for proper assessment – Reassessment was held to be bad in law Reassessment was held to be bad in law. [S. 148] (AY. 2008-09)**
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- 1437 **S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment was held to be not valid [S.148] (AY. 2004-05)**
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- 1438 **S.147 : Reassessment – After the expiry of four years – Deduction at source – No tangible material was available with the revenue – Reassessment was held to be bad in law. [S. 40(a)(i), 195] (AY. 2009-10)**
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- 1439 **S.147 : Reassessment – After the expiry of four years – Reassessment was held to be bad in law. [S. 14A, 148] (AY. 2003-04)**
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- S.147 : Reassessment – After the expiry of four years – Absence of new material – Reassessment was held to be not valid – Even on principle of rule of consistency, reassessment was held to be not valid [S. 80IA, 148] (AY. 2003-04)** 1440
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- 1448 **S.147 : Reassessment – After the expiry of four years – Exemption was allowed after scrutinising the material – Reassessment was held to be bad in law. [S.54B, 148] (AY.2009-10)**
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- 1449 **S.147 : Reassessment – After the expiry of four years – Depreciation – There was no failure to disclose material facts, reassessment was held to be invalid. [S. 32, 43(1), 148] (AY. 288-09, 2009-10, 2010-2011)**
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- 1450 **S.147 : Reassessment – After expiry of four years – Notice on the basis of mere suspicion was held to be bad in law. [S.148] (AY. 2008-09)**
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- 1451 **S.147 : Reassessment – After the expiry of four years – Approval was granted on the basis of quantum of income mentioned in proceedings – Reassessment was without application of mind hence bad in law. [S.148, 151(1)] (AY. 2010-11)**
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- 1452 **S.147 : Reassessment – After the expiry of four years – Share application money – Notice was quashed and guidelines were laid down and the Revenue is directed to adhere to them. [S.68, 148] (AY. 2008-09)**
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- 1453 **S.147 : Reassessment – After the expiry of four years – Disallowance of part of expenditure – No allegation of failure to disclose material facts necessary for assessment, notice was held to be not valid. [S. 37(1), 148] (AY. 2009-2010)**
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- 1454 **S.147 : Reassessment – After the expiry of four years – Nothing to show failure by assessee to disclose true and correct facts, notice was held to be invalid. [S.37(1), 40(a) (ia), 148, 194H] (AY. 2009-2010)**
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- 1455 **S.147 : Reassessment – After the expiry of four years – Cash credits Notice on grounds that loans were not genuine and cost of construction was inflated was held to be invalid as there was no failure to disclose material facts necessary for assessment. [S. 68, 69,148] (AY.2009-2010)**
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- S.147 : Reassessment – After the expiry of four years – Brokers client code modification- Failure by assessee to substantiate loss by producing evidence – Assessee participating in reassessment proceedings without pressing its earlier objections raised, reassessment was held to be valid. [S.148]** 1456
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- S.147 : Reassessment – With in four years – AO has not examined the question of enhanced compensation and an element of interest – Reassessment was held to be valid. [S.10(37), 56(2), 148] (AY. 2011-12)** 1461
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- S.147 : Reassessment – Notice served after limitation period – Notice was issued within limitation period but all attempts to serve notice on assessee failed, and, notice was finally served after limitation period, reassessment made to tax sale proceeds of agricultural land was justified. [S.45, 148, 149, 153, 292B, 292BB](AY.2008-09)** 1462
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- 1463 **S.147 : Reassessment – Capital gains – Conversion of stock-in-trade – Entire issue of conversion of stock-in-trade into capital asset was gone into and disposed of during regular assessment, reopening of assessment on same issue was not permissible, interim stay was granted. [S.45, 47(iv)] (AY.2009-10)**
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- 1464 **S.147 : Reassessment – Order of Tribunal quashing the reassessment proceedings merely on the basis of earlier notices without comparison with the relevant years was held to be not valid – Matter was set aside. [S. 148] (AY. 2001-02, 2002-03)**
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- 1465 **S.147 : Reassessment – Absence of new or tangible material – Reassessment was held to be not valid – Notice issued u/s. 143(2) and assessment was not completed, cannot be the basis for reassessment. [S. 80IB, 143(2), 148, 263] (AY. 2001-02 to 2005-06)**
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- 1466 **S.147 : Reassessment – No failure on the part of assessee – Reassessment was held to be not valid. [S.80-IC, 148] (AY. 2009-10)**
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- 1467 **S.147 : Reassessment – Deemed dividend – Advance of the amount was financial transaction and not loan hence reassessment was held to be not valid. [S. 2(22)(e), 143(1), 148] (AY. 2010-11)**
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- 1468 **S.147 : Reassessment – Change of opinion – Business income – Remuneration from firm was claimed as exempt though disallowed in the assessment of firm – Reassessment was held to be not valid [S. 28(v), 40(b), 148] (AY. 2010-11)**
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- 1469 **S.147 : Reassessment – Survey – Voluntary disclosure in the statement – Allotment of shares – Reassessment was held to be justified. [S. 69B, 131, 133A, 143(1)] (AY. 2009-10)**
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- 1470 **S.147 : Reassessment – Cash credits – Share capital – Reliance on statements of third parties who have not been subjected to cross examination is not permissible. Voluminous documents produced by the assessee cannot be discarded merely on the basis of statements of individuals contrary to such public documents – Reassessment was held to be not valid [S.68, 148] (AY. 2008-09)**
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- S.147 : Reassessment – Share capital – Information from PDIT (Inv.) that the assessee was one of the beneficiary of accommodation entries by way of bogus share application from various bogus companies – Reassessment proceedings was held to be valid. [S.69B, 132, 143(1), 148] (AY. 2011-12, 2012-13)** 1476
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- 1480 **S.147 : Reassessment – On the basis of documents seized in the course of search and survey operation of third person, issue of notice u/s. 148 was held to be valid. [S. 132, 148]**
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- 1481 **S.147 : Reassessment – With in four years – Change of opinion – Capital gains exemption was allowed after scrutiny assessment – Reassessment to deny the exemption was held to be not justified. [S.40(a)(ia), 45, 148] (AY. 2011-12)**
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- 1482 **S.147 : Reassessment – When the assessee is made aware the issue to be answered and sufficient opportunity of hearing was afforded non issue of notice u/s. 143(2) is immaterial, hence the assessment is valid. [S. 115]B, 143(2), 148] (AY. 2005-06)**
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- 1483 **S.147 : Reassessment – Tax evasion petition pertaining to another assessment year cannot be looked into after recording reasons for reopening of assessment. Jurisdictional requirement for reopening of assessment was not fulfilled hence the notice was quashed. [S.148] (AY.2009-10)**
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- 1484 **S.147 : Reassessment – Notice issued after order of court approving amalgamation in name of non-existent transferor company was held to be invalid. [S.148] (AY. 2008 -09)**
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- 1485 **S.147 : Reassessment – Notice on basis of order of revision – Order of revision set aside hence the notice for reassessment was held to be not valid. [S.80IA, 263] (AY. 1998-99, 2000-01 to 2002-03)**
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- 1486 **S.147 : Reassessment – Notice would be without jurisdiction for absence of reason to believe that income had escaped assessment even in case where assessment has been completed earlier by intimation under section 143(1). [S.143(1), 148]**
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- 1487 **S.147 : Reassessment – Lease hold rights – Assessee has not brought any decision of High Court or Tribunal in the objection filed by the assessee – Hence the writ petition was dismissed. [S.50C, 148] (AY. 2009-10)**
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- S.147 : Reassessment – No fresh material – Enhanced fee – Reassessment was held to be invalid. [S. 37(1)145, 148] (AY. 1977-98 to 2002-03, 2004-05, 2009-10)** 1492
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- S.147 : Reassessment – Assessment cannot be reopened once proceeded under section 153A, without having any incriminating material was found against the assessee. [S.132, 153A] (AY. 2002-03 to 2004-05)** 1496
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- 1497 **S.147 : Reassessment – Within four years – Assessment u/s. 143(1) – Reassessment notice is held to be valid – Rule of consistency cannot be applied when the assessment was made u/s. 143(1). [S. 80P, 143(1), 148] (AY. 2008-09)**
Jolly Maker 1 Trust v. ITO (2017) 396 ITR 274 (Bom.)(HC)
Editorial: SLP of assessee is dismissed; Jolly Maker 1 Trust v. ITO (2017) 394 ITR 13 (St.)
- 1498 **S.147 : Reassessment – Within four years – Change of opinion – No change in law or fresh material adduced – Reassessment was held to be bad in law. [S.132, 133A, 147] (AY. 1999-2000)**
CIT v. Akshar Enterprises (2017) 396 ITR 317 (Guj.)(HC)
- 1499 **S.147 : Reassessment – Information received from investigation wing per se not tangible material there has to be link between material and formation of opinion that income has escaped assessment – Reassessment is held to be invalid. [S.143(1), 148] (AY.2008-09)**
PCIT v. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 / 249 Taxman 610 / 156 DTR 79 (Delhi) (HC)
Editorial : Order in RMG Polyvinyl (I) Ltd v. Dy.CIT (2016) 48 ITR 674 (Delhi)(Trib.) is affirmed.
- 1500 **S.147 : Reassessment – Unexplained investments – Re-opening notice merely on basis of one Sauda Chitthi seized from third party but not acted upon, was unjustified. [S.69, 148] (AY. 2009-10)**
Chintan Jadhavbhai Patel v. ITO (2017) 246 Taxman 361 (Guj.)(HC)
Editorial: SLP of revenue is dismissed ITO v. Chintan Jadhavbhai Patel v. ITO (2018) 254 Taxman 226 (SC)
- 1501 **S.147 : Reassessment – Change of opinion – Excess payment to sister concern – Reassessment was held to be not valid. [S.148] (AY. 2005-06)**
Jivraj Tea Company v. DCIT (2017) 394 ITR 422 (Guj.)(HC)
- 1502 **S.147 : Reassessment – Passing reassessment order without disposing objection raised by assessee against notice was held to be not valid – If income mentioned in reasons does not forms part of reassessed income, reassessment was held to be bad in law. Alternative remedy is not an absolute bar to challenge the jurisdictional issue. [S.143(1), 148, Art. 226] (AY. 2008-09)**
Martech Peripherals P. Ltd. v. DCIT (2017) 394 ITR 733 / 295 CTR 528 / 81 taxmann.com 73 / 151 DTR 313 (Mad.)(HC)
- 1503 **S.147 : Reassessment – Subsequent information that amounts shown as towards share application was bogus – Notice to reassessment was held to be valid. [S.143(1), 148] (AY. 2007-08)**
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- S.147 : Reassessment – Reassessment in respect of income other than that in respect of which reason to believe recorded is permissible. [S. 148] (AY. 1996-97)** 1504
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- S.147 : Reassessment – Undisclosed investment – Addition on the basis of district valuation report hence reassessment was held to be valid – Credit worthiness of creditors was not established, addition was held to be valid. [S. 69, 148] (AY. 1992-93 to 1995-96)** 1505
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- S.147 : Reassessment – Order passed without disposing of objections was held to be bad in law – Officer was directed to deposit cost of ₹ 5000. [S. 148] (AY. 2009-10)** 1506
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- S.147 : Reassessment – Within four years – Where an issue has already been decided in favor of the assessee in preceding and subsequent assessment years, reopening on such issue is not permissible. [S.80IB, 148]** 1507
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- S.147 : Reassessment – Loose papers seized in search & seizure – Writ petition is filed to the High Court challenging re-assessment after order was passed – Alternate remedy of appeal to lower authorities was available – Writ petition was dismissed. [S. 148, Art. 226]** 1508
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- S.147 : Reassessment – Objection raised by the Assessing Officer was not disposed by the Assessing Officer, order was held to be bad in law, Alternative remedy is not a bar to entertain the writ petition. [S. 142(1), 148, Art.226]** 1509
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- S.147 : Reassessment – Borrowed satisfaction – Mere reproduction of investigation report in reasons recorded is not sufficient, in the absence of tangible material and reasons recorded, reassessment was held to be not valid. [S. 143(1), 148, 151] (AY. 2004 05)** 1510
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- S.147 : Reassessment – Notice is deemed to be served if not returned as unserved – Reassessment proceedings was held to be valid. [S. 148, 282] (AY.1996-97)** 1511
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- 1512 **S.147 : Reassessment – Notices for reassessment for assessment years forming part of block assessment period was held to be impermissible. [S. 132, 148, 153A, 158BC] (AY. 1994-95 to 1996-97)**
South Asian Enterprises Ltd. v. CIT (2017) 398 ITR 387 / 154 DTR 1 / 298 CTR 565 (Delhi)(HC)
- 1513 **S.147 : Reassessment – Share premium – The Assessing officer merely brushed aside the explanations filed by the assessee without even considering the same. There was no basis of reopening the assessment and that therefore, it was held that the reopening is invalid. [S. 148] (AY. 2008-09)**
Sunbarg Tradelink (P) Ltd. v. ITO (2016) 74 taxmann.com 16 / (2017) 292 CTR 222 (Guj.)(HC)
- 1514 **S.147 : Reassessment – Merger – Issue which was subject matter of appeal reopening of assessment was held to be bad in law. [S. 148, 246] (AY. 2010-11)**
Radhaswami Salt Works v. ACIT (2018) 400 ITR 249 (Guj.)(HC)
- 1515 **S.147 : Reassessment – Best judgment assessment – Failure to file return – Failure to comply with notices issued – Reassessment was held to be valid. [S. 142(1), 144, 148] Gauri Shankar Prasad (Dr.) v. ITAT (2017) 393 ITR 635 (Patna)(HC)**
- 1516 **S.147 : Reassessment – Change of opinion – Cash credits – Reopening on mere change of opinion by subsequent Assessing Officer is not permissible. [S.68, 133, 148] (AY. 2011-2012)**
Orient News Prints Ltd. v. Dy. CIT (2017) 393 ITR 527 / 78 taxmann.com 108 (Guj.)(HC)
- 1517 **S.147 : Reassessment – Cash credits – Unsecured loans Subsequent information discovered as bogus – Reassessment was held to be justified. [S.68, 131, 133A, 143(1), 148] (AY. 2012-13)**
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Pratibha Singh v. Dy.CIT (2017) 291 CTR 439 / 146 DTR 65 (HP)(HC)
- 1518 **S.147 : Reassessment – Agricultural land – Information rendering genuineness of municipal corporation certificate produced by assessee doubtful – Notice for reassessment was held to be justified. [S. 2(14), 143(3), 148] (AY. 2008-2009)**
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- 1519 **S.147 : Reassessment – Assessee was neither owner of land nor received any sale consideration – Reassessment was held to be not valid. [S.148, 226] (AY. 2009-2010)**
Vinodbhai Shamjibhai Ravani v. Dy.CIT (2017) 393 ITR 491 / 79 taxmann.com 237 / 156 DTR 14 (Guj.)(HC)
Editorial: SLP of revenue is dismissed on the ground of delay as well as on merits Dy CIT v. Vinodbhai Shamjibhai Ravani (2018) 256 Taxman 128 (SC). Also refer Dy. CIT v. Alpesh Gokulbhai Kotadia (2018) 256 Taxman 423 (SC)

- S.147 : Reassessment – Unexplained investment – CIT(A) holding that no addition was either on the basis of report of valuation officer or of valuation of stamp duty- Reopening on the basis of District valuation officer was held to be bad in law. [S.69, 148] (AY. 2005-2006)** 1520
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- S.147 : Reassessment – Bogus transactions – Statement of third person not having live link with assessee’s suspected income, the reassessment was held to be bad in law. [S.68, 133A, 148] (AY. 1997-1998 to 2001-2002)** 1521
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- S. 147 : Reassessment – Objection raised by the assessee was not dealt with, Assessing Officer was directed to pass speaking order. [S. 142(1), 148] (AY. 2011-12)** 1522
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- S.147 : Reassessment – Information received from Directorate of Revenue Intelligence regarding bogus purchases by assessee – Existence of tangible material – Directed the Tribunal to hear Department’s appeals on merits. [S. 148] (AY.2003-2004 to 2005-2006)** 1523
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- S.147 : Reassessment – Business income – Audit party – Assessing Officer reopened the assessment considering the audit objections and independently considering other issues, hence reassessment was held to be valid. [S. 28(i), 148] (AY. 2009-2010)** 1524
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- S.147 : Reassessment – Wrong claim – Reassessment was held to be valid. [S. 36(1) (viiia), 148, Art. 226] (AY. 2007-08, 2008-09)** 1525
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- S.147 : Reassessment – Information received from Investigation Wing – Reassessment was held to be justified. [S. 131,148] (AY. 2001-2002)** 1526
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- S.147 : Reassessment – Date of issue would be date on which notice is handed over to Postal Department – Notice handed over to Postal Department before expiry of time hence notice was not barred by limitation. [S. 148, 149] (AY. 2008-2009)** 1527
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- 1528 **S.147 : Reassessment – Notice under compulsion by audit party was held to be not valid. [S.148] (AY. 2010-2011)**
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- 1529 **S.147 : Reassessment – Notice issued solely on objections of audit party was held to be not valid. [S.148] (AY. 2000-2001)**
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- 1530 **S.147 : Reassessment – Accommodation entries – Ex-parte assessment order was set aside and permission granted to assessee to file objections – Cost was imposed on the assessee – AO was directed to dispose the objections of the assessee. [S.148, Art. 226] (AY. 2007-2008 to 2011-2012)**
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- 1531 **S.147 : Reassessment – Cash credits – Share application money – Genuineness of transactions and creditworthiness of investors not established by assessee to satisfaction of Assessing Officer – Reassessment notice was held to be valid. [S.68, 133A, 148] (AY. 2008-2009)**
Aravali Infrapower Ltd. v. DCIT (2017) 390 ITR 456 / 77 taxmann.com 322 (Delhi)(HC)
- 1532 **S.147 : Reassessment – Deduction allowed after inquiry – Reassessment was held to be not valid. [S.24, 148] (AY. 2010-2011)**
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- 1533 **S.147 : Reassessment – Notice issued after three years of receipt of information from U. K. tax authority-Exclusive reliance upon U. K. revenue authorities’ information not sufficient to attribute sum of money to assessee’s income – Reassessment was held to be bad in law. [S.148] (AY. 1982-1983)**
CIT v. Late K.M. Bijli (2017) 390 ITR 402 / (2017) 152 DTR 147 (Delhi)(HC)
- 1534 **S.147 : Reassessment – Service of notice on accountant of assessee – Company – Power of attorney given to accountant to conduct assessment proceedings not including authority to accept any fresh notice – Reassessment was not valid. [S.148, 282] (AY. 1996-1997)**
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- 1535 **S.147 : Reassessment – Client code modification by assessee’s stock broker not showing any link to conclude income of assessee escaped assessment – Reason to suspect and not reason to believe – Notice without jurisdiction – Interim relief granted. [S.148] (AY. 2009-2010)**
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- S.147 : Reassessment – Depreciation – Truck terminus – Material giving rise to belief must be mentioned in notice – Material not appearing in notice – Notice was held to be not valid. [S.32, 43(3), 148] (AY.2004-2005)** 1536
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- S.147 : Reassessment – Merely because the assessee’s income is “shockingly low” and others in the same line of business are returning a higher income. The invocation of the jurisdiction on the basis of suspicions and presumptions cannot be sustained. [S.148] (WP. No. 36483/2016, dt. 13.02.2017) (AY. 2012-13)** 1537
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- S.147 : Reassessment – Within four years – Loss on sale of share Misrepresentation of facts – Reassessment was held to be valid. [S.73, 148] (AY. 2001-02)** 1538
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Editorial : SLP of assessee was dismissed, Eureka Stock and Share Broking Services Ltd. v. CIT (2017) 248 Taxman 81 (SC)
- S.147 : Reassessment – Change of opinion – Where during the original assessment proceedings, the Assessing Officer raised query and sought information/materials which were supplied by the assessee, reopening of assessment was merely a reappraisal of the assessment records. A mere change of opinion did not constitute a “reason to believe” to reopen a concluded assessment. [S.148] (AY. 2007-08)** 1539
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- S.147 : Reassessment – Within four years – Query was raised in the assessment proceedings which were responded, non consideration of same in the assessment order, does not give raise to reassessment proceedings. [S.148] (AY. 2005-06)** 1540
CIT v. Aroni Commercial Ltd. (2017) 393 ITR 673 / 146 DTR 145 / 292 CTR 229 (Bom.) (HC)
- S.147 : Reassessment – Share premium – No material to suggest that the assessee had received any share premium – Reassessment was quashed. [S.148] (AY. 2008-09)** 1541
Sunbarg Trade link P Ltd. v. ITO (2017) 146 DTR 182 (Guj.)(HC)
- S.147 : Reassessment – A question relating to jurisdiction which goes to the root of the matter can always be raised at any stage – Issue of notice or service of notice in the set aside appeal can be raised- Matter was set aside to Tribunal to decide the jurisdictional issue of reassessment. [S.148] (AY. 1997-98)** 1542
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- 1543 **S.147 : Reassessment – Unabsorbed depreciation – All that the amendment by the Finance, Act, 2002 did, with effect from April 1, 2002, was to remove the cap which meant that the previously limited benefit was subjected to such restrictions. The notice was unsustainable and the reassessment was quashed. [S. 32(2), 148] (AY. 2010-11)**
Motor and General Finance Ltd. v. ITO (2017) 393 ITR 60 (Delhi) (HC)
- 1544 **S.147 : Reassessment – Audit information – Reopening of assessment when the AO is acting on the dictates of the audit party and is not applying his own mind was held to be bad in law. [S. 148] (SCA No. 8343 of 2013. dt. 19.06.2017) (AY. 2007-08)**
Mehsana District Central Co-op Bank Ltd. v. ACIT (Guj.)(HC); www.itatonline.org
- 1545 **S.147 : Reassessment – Special category of States – On merit the allowability of claim was not doubted, however merely on the ground that there was delay of 46 days in filing of return reassessment was held to be not valid. [S.80-IC, 148] (AY.2011-12)**
Fiberfill Engineers v. Dy.CIT (2017) 299 CTR 173 | 157 DTR 330 | 85 taxmann.com 27 (Delhi)(HC)
- 1546 **S.147 : Reassessment – Change of opinion – Exemption u/s. 10B was granted to the assessee after examining the reply filed by the assessee – Even otherwise the assessee is entitled to exemption – the notice and consequent assessment order is quashed. [S.10B, 148](AY. 2000-2001, 2001-02)**
Velingkar Brothers v. ACIT (2017) 157 DTR 50 (Bom) (HC)
- 1547 **S.147 : Reassessment – After the expiry of four years – No new tangible material – Payment of TDS before the due date of filing of returns – Reassessment was held to be bad in law. [S. 40(a)(ia)] (AY. 2005-06)**
ACIT v. Crescent Construction Co. (2017) 188 TTJ 497 (Mum.)(Trib.)
- 1548 **S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment was held to be in valid. [S.10B, 148] (AY. 2007-08 to 2010-11).**
ACIT v. Nikkamal Jewellers (2017) 59 ITR 116 (Chd.)(Trib.)
- 1549 **S.147 : Reassessment – After the expiry of four years – Details were examined in the original assessment proceedings – Reassessment is held to be in valid. [S. 148] (AY. 2002-03)**
ACIT v. Tata Chemicals Ltd. (2017) 185 TTJ 123 (Mum.)(Trib.)
- 1550 **S.147 : Reassessment – Within four years – Reassessment not valid if it based on the same reason on which the AO had already made an addition in the original proceedings. [S.148] (AY 2007-08)**
DCIT v. BNK Capital Markets Ltd. (2017) 59 ITR (Trib.) (SN.) 79 (Kol.)(Trib.)
- 1551 **S.147 : Reassessment – Within four years – Notice u/s. 143(2) was not issued before passing of the order – Reassessment was held to be bad in law, even though the assessee has participated in the proceedings. [S.143(2), 148, 292BB] (AY.2008-09)**
Alok Mittal v. Dy CIT (2017) 167 ITD 32 | (2018) 192 TTJ 764 (SMC) (Kol) (Trib)

- S.147 : Reassessment – Within four years – Where an issue regarding allowance of loss has already been decided in favor of the assessee by the AO by proper application of mind while, reassessment is not valid as no tangible material is available to form different opinion. (AY.2006-07)** 1552
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- S.147 : Reassessment – Notice – Reopening of assessment not valid in case reasons are vague and general and the notice is issued in a mechanical manner without any application of mind. [S.143(1), 148] (AY. 2006-07, 2007-08, 2008-09)** 1553
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- S.147 : Reassessment – Amortisation – AO has not considered the issue of allowability of the amortization of mining land and leasehold land. He had simply allowed the claim without making any enquiry – Reassessment was held to be valid. (AY. 2006-07 to 2009-10, 2011-12 to 2013-14)** 1554
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- S.147 : Reassessment – Change of opinion – No failure on part of assessee to submit related documents – Initiation of reassessment proceedings invalid. [S.11(5), 148] (AY. 2004-05 & 2005-06)** 1555
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- S.147 : Reassessment – Within four years – Mere production of the balance-sheet, profit and loss account or account books – Not disclosure – Reassessment was held to be valid. [S.5, 148] (AY. 2008-09)** 1556
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- S.147 : Reassessment – Change of opinion – Additional depreciation was allowed after verification of facts – Reassessment was held to be bad in law. [S. 32, 148] (AY. 2008-09, 2009-2010)** 1557
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- S.147 : Reassessment – Transfer of information – No opinion was formed in the original assessment – Reassessment was held to be valid. [S. 2(22)(e), 148] (AY. 2009-10)** 1558
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- S.147 : Reassessment – Mandatory notice u/s. 142(2) was not issued – Reassessment was held to be invalid. [S. 139(9), 148, 292BB] (AY.2004-05, 2005-06)** 1559
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ITO v. Anil Kumar (2017) 55 ITR 97 (Asr.)(Trib.)

- 1560 **S.147 : Reassessment – Reassessment solely made on the basis of information received from investigation wing as assessee was beneficiaries of accommodation entries was held to be not valid when no cross examination allowed to the assessee. [S. 148] (AY. 08-09, 2010-11, 2012-13)**
ITO v. Reliance Corporation (2017) 55 ITR 69 (SN) (Mum.)(Trib.)
- 1561 **S.147 : Reassessment – On the basis of information from investigation wing in order to verify the genuineness of transaction in modification of clients code, reassessment was held to be bad in law. [S. 45,143(3)] (ITA No. 501 & 502/Ahd/2016, dt. 09.03.2017) (AY. 2008-09)**
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Rachna Sachin Jain (Smt.) v. ITO (Ahd.)(Trib.); www.itatonline.org
- 1562 **S.147 : Reassessment – Capital gains Penny stocks – Statement of third party cannot be the sole basis for disallowing the claim of the assessee in respect of capital gains – Failure to give opportunity of cross examination – Addition was deleted. [S. 45, 131, 148] (AY. 2006-07)**
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Jaswantraj Bhutaji Shah HUF v. ITO (2017) 57 ITR 1 (Mum.)(Trib.)
Rajmal M. Sanghvi v. ITO (2017) 57 ITR 1 (Mum.)(Trib.)
- 1563 **S.147 : Reassessment – Deemed dividend – Advance for anticipated sale of land – Genuineness of agreement was doubted as the agreement was unregistered – Reassessment was held to be valid, and addition as deemed divided was held to be justified. [S. 2(22)(e), 148] (AY 2004-2005)**
Kapil N. Shah v. ITO (2017) 166 ITD 572 (Mum.)(Trib.)
- 1564 **S.147 : Reassessment – Reasons recorded for reopening of the assessment based on factual error and finding based on the said recorded reason is held to be null and void – Refusal of exemption was held to be not justified. [S. 10(23C), 148] (AY. 2007-08, 2008-09)**
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- 1565 **S.147 : Reassessment – Share application money – Reopening of assessment to make roving inquiry is impermissible and negative burden that purchasers not relatives cannot be put to assessee – Reasons of reopening recorded by Assessing Officer not sustainable. [S. 68, 148] (AY.2009-2010)**
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- 1566 **S.147 : Reassessment – Disclosing lower sale consideration – Reassessment was held to be valid. [S.45, 50C, 148] (AY. 2006-07)**
Nitin R.Bhuva v. ITO (2017) 54 ITR 14 (Chennai)(Trib.)

- S.147 : Reassessment – Information from Investigation Wing – No valid notice served upon assessee either through registered post or through affixture, reassessment was held to be not valid. [S.148] (AY.1996-1997)** 1567
Jewellery Exports P. Ltd. v. ACIT (2017) 54 ITR 1 (Delhi)(Trib.)
- S.147 : Reassessment – Undated reasons – Reopening on borrowed satisfaction was held to be impermissible. [S. 148] (AY. 2004-2005)** 1568
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- S.148 : Reassessment – Once writ petition was withdrawn without liberty to file fresh petition on same ground second writ petition was held to be not maintainable. [S. 147, 260A, 271(1)(b), Art. 226](AY. 2002-03)** 1569
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- S.148 : Reassessment – Jurisdiction to issue notice was challenged after limitation period prescribed under S.124(3) – Reassessment was held to be valid. [S. 124, 147] (AY. 2012-13 to 2014-15)** 1570
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- S.148 : Reassessment – Notice – Writ against notice of reassessment was held to be not maintainable. [S. 147, Art. 226] (AY.2009-10)** 1571
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- S.148 : Reassessment – Notice – Writ against notice of reassessment was held to be not maintainable. [S.147, Art. 226] (AY. 2009-10)** 1572
Maruti Sah & Brothers v. ITO (2017) 291 CTR 409 / 145 DTR 406 (Uttarakhand)(HC)
- S.148 : Reassessment – Notice – Where Assessing Officer has issued notice for reopening u/s. 148 only against amalgamating company and not against assessee company which was amalgamated/successor company, assessment made in name of assessee company was void. [S.147] (AY. 2006-2007)** 1573
Dy.CIT v. Mani Square Ltd. (2017) 190 TTJ 742 / 88 taxmann.com 77 (Kol.)(Trib.)
- S.148 : Reassessment – Officer who issued notice u/s. 148 and officer who had subsequently issued notice u/s. 143(2) were having concurrent jurisdiction over assessee, reassessment proceedings could not be challenged on ground that notice u/s. 148 was not validly issued. [S. 147] (AY. 2009-2010)** 1574
Anasuya Mekala (Smt.) v. DCIT (2017) 164 ITD 498 / 187 TTJ 363 / 153 DTR 220 (Hyd.)(Trib.)
- S.150 : Assessment – Order on appeal – Observation of Tribunal in AY. 1990-91 is not a finding or direction u/s. 150 and thus re-assessment proceedings are not sustainable. [S. 45(4), 147, 148, Art. 226] (AY. 1990-91)** 1575
Kala Niketan v. UOI (2016) 293 CTR 178 / 148 DTR 121 (Bom.)(HC)

- 1576 **S.151 : Reassessment – Sanction – Sanction accorded despite mention of non-existent section in the notice is prima facie evidence of non application of mind on the part of the sanctioning authority. S. 292B cannot cure such defect, petition was admitted. [S.147, 148, 151, 292B]**
Admitting the petition against the reassessment notice the Court held that; Sanction for issuing a reopening notice cannot be mechanical but has to be on due application of mind. Sanction accorded despite mention of non-existent section in the notice is prima facie evidence of non application of mind on the part of the sanctioning authority. S. 292B cannot cure such defect. Petition was admitted and ad .interim relief was granted. (WP No.3063 of 2017, dt. 22.12.2017) (AY. 2014-15)
Kalpna shantilal Haria v. ACIT (Bom.)(HC); www.itatonline.org
- 1577 **S.151 : Reassessment – Sanction – After the expiry of four years – Approval granted by Director instead of Joint Commissioner – Notice and proceedings thereunder was held to be invalid as the statutory requirement was not fulfilled. [S. 143(1), 148, 151(2)] (AY. 2005-06, 2006-07)**
Yum ! Restaurants Asia Pte Ltd v. Dy. DIT (No.1) (2017) 397 ITR 639 (Delhi)(HC)
Yum ! Restaurants Asia Pte Ltd v. Dy. DIT (No.2) (2017) 397 ITR 665 (Delhi)(HC)
- 1578 **S.151 : Reassessment – Sanction for issue of notice – The mere appending of the word “approved” by the CIT while granting approval to the reopening is not enough- He has to record satisfaction after application of mind. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal. [S.68, 147, 148] (AY. 2001-02)**
PCIT v. N. C. Cables Ltd. (2017) 391 ITR 11 / 149 DTR 90 (Delhi)(HC)
- 1579 **S.153 : Assessment – Time limit – When the assessment was set a side the same has to be completed with in limitation period, it is not necessary that entire assessment order is set aside – Order passed was held to be beyond period of limitation hence quashed. [S. 153(2A)] (AY. 2007-08)**
Nokia India (P) Ltd. (2017) 251 Taxman 85 / 298 CTR 334 / 157 DTR 169 (Delhi)(HC)
- 1580 **S.153 : Assessment – Reassessment – Limitation Period between vacation of stay and receipt of order by income-tax department is not excluded hence the order of reassessment passed is barred by limitation. [S.147, 148] (AY. 2006-07)**
Saheb Ram Om Prakash Marketings P. Ltd. v. CIT (2017) 398 ITR 292 / 160 DTR 281 (Delhi)(HC)
- 1581 **S.153A : Assessment – Search – Assessment can be made only on the basis of incriminating evidence found during search – Assessment u/s. 143(1) or 143(3) does not make any difference. [S.132, 143(1), 143(3)] (AY. 2002-03, 2003-04)**
CIT v. SKS Ispat and Power Ltd. (2017) 398 ITR 584 (Bom.)(HC)
- 1582 **S.153A : Assessment – Search – Amalgamation of companies – Warrant of authorisation and panchnama in name of transferor company after it ceased to exist was held to be void ab-initio. [S.132] (AY. 2008-09)**
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- S.153A : Assessment – Search – Addition can be made only on the basis of material found in the course of search. [S.132] (AY.2000-01 to 2004-05)** 1583
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- S.153A : Assessment – Search – No notice was sent u/s. 143(2), hence the presumption is return was accepted, therefore notice was held to be bad in law [S.143(1), 143(2) (AY. 2008-09, 2009-10, 2010-11)** 1584
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- S.153A : Assessment – Search – Warrant of authorisation – Cash seized by police authorities from accused subsequent to murder of assessee – No information available with department as to what documents or books of account to be requisitioned – Order of requisition untenable and notices were quashed. [S.132A, 153C] (AY. 2005-06 to 2010-11)** 1585
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- S.153A : Assessment – Search – Additions can be made only if incriminating material is found – Additions were rightly deleted by the Tribunal. [S.14A, 68, 132, 153C](AY. 2002-03, 2004-05, 2005-06)** 1586
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CIT v. Govind Agarwal (2017) 398 ITR 586 / 299 CTR 62 / 251 Taxman 22 (Bom.)(HC)
CIT v. Manidevi Agarwal (2017) 398 ITR 586 / 299 CTR 62 / 251 Taxman 22 (Bom.)(HC)
PCIT v Govind Agarwal (HUF) (2017) 398 ITR 586 / 299 CTR 62 (Bom.)(HC)
- S.153A : Assessment – Search – Share application and share premium – Statement do not constitute incriminating material – If the statement is retracted and/or if cross-examination is not provided, the statement has to be discarded – The onus of ensuring the presence of the deponent cannot be shifted to the assesses – The onus is on the Revenue to ensure his presence – Without any incriminating materials found completed assessment additions cannot be made on presumptions. [S.68,132(4)] (AY. 2005-06 to 2009-10)** 1587
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PCIT v. Best Realtors (India) Pvt. Ltd. (2017) 397 ITR 82 / 159 DTR 257 (Delhi)(HC)
PCIT v. Best City Developers India P. Ltd. (2017) 397 ITR 82 /159 DTR 257 (Delhi)(HC)
PCIT v. City Projects (India) Pvt. Ltd.(2017) 397 ITR 82 / 159 DTR 257 (Delhi)(HC)
Editorial: SLP is granted to revenue, PCIT v. Best Infrastructure (India) Pvt. Ltd. (2018) 256 Taxman 63 (SC)

- 1588 **S.153A : Assessment – Search – Assessee can claim deduction for first time before Appellate authorities even if it was not raised before the Assessing Officer at the time filing of return or by filing revised return. [S.139, 254(1)] (AY. 2003-04, 2006-07 to 2008-09)**
CIT v. B.G. Shirke Construction Technology P. Ltd. (2017) 395 ITR 371 / 246 Taxman 306/ 293 CTR 505 / 149 DTR 33 (Bom.)(HC)
- 1589 **S.153A : Assessment – Search – Assessment was completed on the date of search, no incriminating material was found pertaining to earlier assessment years, assessment was held to be invalid – Material disclosed prior to search – Addition cannot be made. [S.69, 132, 133A] (AY. 2001-02 to 2004-05)**
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- 1590 **S.153A : Assessment – Search – No incriminating material was found, assessment completed on the date of search, assessment u/s.153A was held to be invalid. [S.80HHC, 132] (AY. 2000-2001, 2001-02)**
PCIT v. Ram Avtar Verma (2017) 395 ITR 252 (Delhi)(HC)
- 1591 **S.153A : Assessment – Search – Assessment must be on the basis of discovery of incriminating material during search. (AY. 2000-01 to 2004-05)**
PCIT v. Devangi Alias Rupa (2017) 394 ITR 184 (Guj.)(HC)
- 1592 **S.153A : Assessment – Search or requisition – Assessment u/s. 153A r.w.s. 143(3) for the year in which search took place bad in law as S.153A allows preceding 6 years and not the current year. [S.143(3)] (AY. 2007-2008)**
Dy.CIT v. Arora S.L. (2017) 186 TTJ 522 / 152 DTR 233 (Chd.)(Trib.)
Dy.CIT v. Karan Empire (P) Ltd. (2017) 188 / 186 TTJ 522 / 152 DTR 233 (Chd.)(Trib.)
- 1593 **S.153A : Assessment – Search – Unabated assessment – No addition can be made without any incriminating documents [S.132] (AY. 2007-08, 2011-12, 2012-13)**
Wind World India Infrastructure (P) Ltd. v. PCIT (2017) 167 ITD 438 (Mum.)(Trib.)
- 1594 **S.153A : Assessment – Search – Name of assessee subsidiary company was not mentioned in search warrant, issue of notice under section 153A and consequent assessment framed against assessee were void ab Initio. [S.132, 143(3)] (AY. 2004-05 to 2008-09)**
Dorf Ketal Chemicals LLC v. DCIT (2017) 167 ITD 25 (Mum.)(Trib.)
- 1595 **S.153A : Assessment – Search – When no incriminating material was found during search completed assessment cannot abate hence no addition cannot be made on the basis of books of account maintained. [S.132] (AY. 2009-10)**
Jai Lokenath Oil Extractions (P) Ltd. v. DCIT (2017) 166 ITD 161 (Kol.)(Trib.)
- 1596 **S.153A : Assessment – Search – No warrant of authorization on the assessee hence entire assessment proceedings was held to be bad in law. [S.132, 132A] (AY. 2004-05)**
ACIT v. K. G. Finvest P. Ltd. (2017) 57 ITR 62 (Delhi)(Trib.)

- S.153A: Assessment – Search – In order to initiate assessment proceedings u/S.153A of the Act, the premises of the assessee has to be searched and panchanama has to be specifically drawn in the name of the assessee. Further, availability of incriminating material is also a pre-requisite for framing an assessment [S.132] (AY.2008-09)** 1597
Unique Star Developers v. DCIT (2017) 57 ITR 463 / 187 TTJ 682 / 156 DTR 25 (Mum.) (Trib.)
- S.153A : Assessment – Search – Cost adopted by the assessee accepted in regular assessments for earlier years – Downward revision of cost of acquisition not justified where no incriminating material found during search. [S.45, 48] (AY. 2007-2008)** 1598
Dy. CIT v. Ramesh Batta (2017) 55 ITR 612 (Delhi)(Trib.)
- S.153A : Assessment – Search – Search being declared void, consequential assessment based on the void search was held to be in valid – Revenue was directed to pay cost of ₹ 10,000. [S.132] (AY. 2006-07 to 2011-12)** 1599
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- S.153A : Assessment – Search – Concluded assessment cannot be reopened in the absence of incriminating material found during the search – Statement cannot be construed as incriminating material. [S.132] (ITA Nos. 306, 307, 308, 309 & 310 of 2017, dt. 25.05.2017)(AY. 2001-01 to 2004-05)** 1600
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- S.153A : Assessment – Search – Absence of seizure of any new material during search, fresh examination was held to be unjustified. [S.132, 260A] (AY. 2008-2009)** 1601
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- S.153A : Assessment – Search – Though no incriminating material was found in the course of search, notice in pursuance of search and assessment thereafter was held to be valid. [S.132]** 1602
E.N. Gopakumar v. CIT (2017) 390 ITR 131 / 244 Taxman 21 / 148 DTR 296 (Ker.)(HC)
- S.153A : Assessment – Search – Statement in the course of search could be relied upon to make addition and rejection of books of account was held to be justified. [S.132(4), 145, 260A]** 1603
Ajay Gupta v. CIT (2016) 290 CTR 361 (2017) 390 ITR 496 / 245 Taxman 293 (Delhi)(HC)
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Editorial: SLP of assessee is admitted, Dayawanti v. CIT (2017) 250 Taxman 75 (SC)
- S.153A : Assessment – Search – Discovery of incriminating material during search not pre-condition to issue of notice. [S.132]** 1604
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- 1605 **S.153A : Assessment – Search – When the Addl. CIT records that he is granting “mechanical approval” u/s. 153D to the draft assessment order for want of time to have meaningful discussion, the assessment order is bad in law and has to be annulled. [S.153C, 153D] (ITA No. 167, 168, 321, 322 & 192/Lkw/2016, dt. 28.04.2017)(AY. 2010-11) AAA Paper marketing Ltd. v. ACIT (Lucknow)(Trib.); www.itatonline.org Sidhibhoomi Alloys Ltd. v. ACIT (Lucknow)(Trib.); www.itatonline.org DCI v. Appurva Goel (Lucknow)(Trib.); www.itatonline.org**
- 1606 **S.153A : Assessment – Search – Unexplained investment – Surrendered income during search and explanation thereafter, explaining the source – AO was directed to verify. (AY.2011-2012) P. Rama Devi v. DCIT (2017) 54 ITR 30 (Hyd.)(Trib.)**
- 1607 **S.153A : Assessment – Search – No incriminating material found at time of search and when original assessment was completed – Additions cannot be made in pursuance of search proceedings. [S.143(3)] (AY. 2003-2004 to 2011-2012) Electrosteel Castings Ltd. v. DCIT (2017) 53 ITR 5 (Kol.)(Trib.)**
- 1608 **S.153A : Assessment – Search – On money – Noting in seized papers – Additions cannot be made as undisclosed income- Additions cannot be made on the basis of estimate and extrapolation theory – Accounting Standard-7 is not applicable when sale of flats on ownership basis – Receipt is taxable only in the year when possession of flats or occupation certificate is given where assessee follows projection certificate. [S.132, 145A] (AY.2004-2005 to 2011-2012) ACIT v. Layer Exports P. Ltd. (2017) 53 ITR 416 / 184 TTJ 469 (Mum.)(Trib.)**
- 1609 **S.153A : Assessment – Search – Assessing officer has no jurisdiction to assess the long term capital gains as income from other sources as no incriminating material *qua* long term capital gain was found during search. [S.132] (AY. 2002-03 to 2006-07) Anjali Pandit (Smt) v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.) Dharmesh Pandit (HUF) v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.) Dharmesh Pandit v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.) Rajendra Pandit v. ACIT (2016) 188 TTJ 645 / 157 DTR 17 (Mum.)(Trib.)**
- 1610 **S.153B : Assessment – Search – Time limit – Assessment order passed beyond the time limit prescribed was barred by limitation and therefore, liable to be quashed. [S. 153A, 158BC, 158BE] (AY. 2003-04 to 2008-09) Anil Agarwal and Sons (HUF) v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.) Kamlesh Rani (Smt.) v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.) Kulwant Rai v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.) Rani Yogita (Smt.) v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.) Shakuntala Devi (Smt.) v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.) Suman Agarwal (Dr.) v. ITO (2017) 57 ITR 491 (Jaipur)(Trib.)**

- S.153C : Assessment – Income of any other person – Search – Seized documents must have co-relation, document wise ,with assessment year and money bullion or jewellery or other valuable articles or things etc requisitioned belong to other person – Assessment was held to be bad in law. [S.153A] (AY. 2000-01 to 2003-04)** 1611
CIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 / 156 DTR 161 / 297 CTR 441 / 250 Taxman 225 (SC)
Editorial: Decision in CIT v. Sinhgad Technical Education Society (2015) 378 ITR 84 / 278 CTR 144 / 120 DTR 79 (Bom.)(HC) is affirmed
- S.153C : Assessment – Search – Assessment of third person – Documents which were disclosed cannot be considered as incriminating documents hence assessment was held to be bad in law. [S.153A] (AY. 2007-08 to 2012-13)** 1612
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- S.153C : Assessment – Income of any other person – Search – Before issue of notice the Assessing Officer is required to arrive at a conclusive satisfaction, mere mention of satisfaction or I am satisfied is not sufficient. [S.132] (AY. 2006-07 to 2011-12)** 1613
Pepsi Foods (P.) Ltd. v. ACIT (2015) 231 Taxman 58 (Delhi)(HC)
Editorial: SLP of revenue was dismissed, ACIT v. Pepsi Foods (P.) Ltd. (2018) 252 Taxman 372 (SC)
- S.153C : Assessment – Income of any other person – Search – Trial balance and balance sheet seized, could not be said to be incriminating – Therefore assumption of jurisdiction was held to be not justified. [S.132]** 1614
PCIT v. Index Securities (P) Ltd. (2017) 157 DTR 20 / 86 taxman.com 84 (Delhi)(HC)
- S.153C : Assessment – Income of any other person – Search – When there is no nexus between additions made and seized material, order is unsustainable. [S.132, 153A] (AY. 2007-08 to 2009-10)** 1615
PCIT v. Rajeev Behl (2017) 398 ITR 615 (Delhi)(HC)
- S.153C : Assessment - Income of any other person – Search – Satisfaction notes recorded by Assessing Officer of assessee and Assessing Officer of searched person were identically worded- Proceeding initiated against assessee was unjustified. [S.132(4A), 292C] (AY. 2006-07 to 2011-12)** 1616
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Editorial: SLP of revenue was dismissed ITO v. Canyon Financial Services Ltd. (2018) 253 Taxman 341 / 254 Taxman 124 (SC)
- S.153C : Assessment – Income of any other person - Search – Date to be reckoned from date of handing over of assets and documents to assessing officer of third person – Amendment with effect from April 1, 2017 that six previous years to be reckoned from date of search is prospective. [S.153A]** 1617
PCIT v. Sarwar Agency P. Ltd. (2017) 397 ITR 400 (Delhi)(HC)

- 1618 **S.153C : Assessment – Income of any other person – Search – Survey – Merely on the basis of statement in the course of survey addition was held to be not justified, however if the maker of the statement himself reaffirm the statement addition was held to be justified. [S.132, 133A]**
Kottakkal Wood Complex v. DCIT (2017) 154 DTR 259 / 297 CTR 323 (Ker.)(HC)
- 1619 **S.153C : Assessment – Income of any other person – Search – No proceedings can be initiated against a person unless the seized material belongs to that person – Satisfaction recorded must also refer the documents seized. [S.132] (AY. 2002-03)**
CIT v. Renu Constructions Pvt. Ltd. (2017) 399 ITR 262 / 298 CTR 11 / 157 DTR 86 (Delhi)(HC)
CIT v. Ankit Gupta (2017) 399 ITR 262 / 298 CTR 11 / 157 DTR 86 (Delhi)(HC)
CIT v. Ankit Gupta, L/H Manoj Kumar (2017) 399 ITR 262 / 298 CTR 11 / 157 DTR 86 (Delhi)(HC)
- 1620 **S.153C : Assessment – Income of any other person – Search – Person from whom the documents were seized denied that the documents belongs to the assessee – Precondition was not satisfied – Hence assessment was held to be bad in law – Burden is on department – Addition was held to be on conjectures and held to be bad in law. [S.132, 153A] (AY. 2010-11)**
PCIT v. Vinita Chaurasia (2017) 394 ITR 758 / 248 Taxman 172 / 154 DTR 145 (Delhi)(HC)
- 1621 **S.153C : Assessment – Income of any other person – Search – Satisfaction – Statement of director constitute material for issue of notice. [S.132(4)] (AY. 2008-09)**
PCIT v. Nau Nidh Overseas (P) Ltd. (2017) 293 CTR 567 / 148 DTR 381 (Delhi)(HC)
- 1622 **S.153C : Assessment – Income of any other person – Search – Statement and seizure of cash constitutes sufficient satisfaction. [S.132(4), 153A]**
CIT v. Nau Nidh Overseas Pvt. Ltd. (2017) 394 ITR 753 (Delhi)(HC)
- 1623 **S.153C : Assessment – Income of any other person – Search – Same Assessing Officer having jurisdiction over persons in respect of whom search conducted and assessed – Satisfaction of Assessing Officer recorded – Finding of Appellate Tribunal that proper satisfaction not recorded unsustainable – Matter remanded. [S.132, 153A]**
PCIT v. Satkar Fincap Ltd. (2017) 393 ITR 378 (Delhi)(HC)
- 1624 **S.153C : Assessment – Income of any other person – Search – The requirement that the documents found during search should “belong” to the assessee is a condition precedent and a jurisdictional issue – The non-satisfaction of the condition renders the entire proceedings was held to be null and void. [S.69C, 132] (AY.2007-08, 2008-09)**
CIT v. Arpit Land Pvt. Ltd. (2017) 393 ITR 276 / 154 DTR 241 / 297 CTR 200 (Bom.)(HC)
CIT v. Ambit Reality Pvt. Ltd. (2017) 393 ITR 276 / 154 DTR 241 / 297 CTR 200 (Bom.)(HC)

- S.153C : Assessment – Income of any other person – Search – Satisfaction note – Quashing of order on hyper technical ground was held to be invalid – Matter remanded. [S.132, 133A] (AY. 2005-06 to 2010-11)** 1625
PCIT v. Super Malls (P) Ltd. (2016) 76 taxmann.com 267 / (2017) 291 CTR 142 / (2017) 393 ITR 557 (Delhi)(HC)
- S.153C : Assessment – Income of any other person – Search – Re-assessment proceedings initiated on a third person on the basis of the information received based on the material found during the course of search from the premises of a medical college run by a trust are invalid and void ab initio [S.143(3), 147, 148] (AY. 2007-08)** 1626
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- S.153C : Assessment – Income of any other person – Search – In absence of any document belonging to assessee having been seized during search, assumption of jurisdiction by AO by referring to seized documents, was unjustified. [S.132, 153A] (AY. 2005-06 to 2010-11)** 1627
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- S.153C : Assessment – Income of any other person – Search – Mere mentioning of wrong section 153A, instead of S.153C would not invalidate assessment. [S.292B] (AY. 2005-06 to 2007-08)** 1628
DCIT v. K.M. Nagaraj (2017) 166 ITD 53 / 189 TTJ 598 (Bang.)(Trib.)
- S.153C : Assessment – Income of any other person – Search – Delay of 200 days in filing the appeal on jurisdictional issue was condoned – Satisfaction to be recorded only by the AO of the person against whom search was conducted at the time of analysing the document seized and found during the course of search, accordingly initiation of proceedings u/s. 153C was held to be without jurisdiction. [S.153A, 254(1)] (AY. 2003-04 to 2008-09)** 1629
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- S.153D : Assessment – Search and seizure – Approval – No such requirement of granting an opportunity of hearing to the assessee by the JCIT prior to giving the approval as per S.153D of the Act – Hence the order is valid. [S.153A] (AY 2005-06 to 2009-10)** 1630
Gopal S. Pandith v. DCIT (2017) 153 DTR 253 / 186 TTJ 64 (Bang.)(Trib.)
- S.154 : Rectification of mistake – Limitation – Assessee cannot take advantage of extension of limitation to seek rectification of order passed by assessing officer pursuant to remand. [S.154(7)] (AY. 2003-04)** 1631
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- 1632 **S.154 : Rectification of mistake – Review petition was rejected – Order cannot be rectified by the AO. [S.10(23C)(vi), 253(1)] (AY.2010-11, 2011-12)**
PKD Trust v. ITO (2017) 163 ITD 502 / 57 ITR 214 (Chennai)(Trib.)
- 1633 **S.158BB : Block assessment – Undisclosed income – Merely on the basis of valuation report addition was held to be not justified. [S.132]**
CIT v. Naresh Kumar Agarwal (2017) 397 ITR 355 (Guj.)(HC)
- 1634 **S.158BB : Block assessment – Undisclosed income – Addition only on the basis of disclosure was held to be not permissible.**
DCIT v. Ghanshyam M. Tamakuwala (2017) 153 DTR 99 (Guj.)(HC)
- 1635 **S.158BC : Assessment – Block assessment – Once return is filed the AO is bound to issue a notice u/s. 143(2) [S.143(2)]**
PCIT v. Devendranath G. Chaturvedi (2017) 249 Taxman 49 / 155 DTR 125 (Guj.)(HC)
- 1636 **S.158BC : Block assessment – Medical practitioner – Deduction of relief of 42% on gross receipt without any evidence was held to be not proper. [S.132] (AY. 1997-98, 2002-03)**
CIT v. Dr. Hakeem S.A. Sayed Sathar (2017) 398 ITR 345 / 250 Taxman 208 (Mad.)(HC)
- 1637 **S.158BC : Block assessment – Natural justice – Contention was not raised before any authority – Assessee was aware of the document, there is no violation of principle of natural justice – Unaccounted receipts and assets were found – Validity of search cannot be questioned – Order cannot be held to be biased only because the Assessing Officer was part of search party. [S.132] (BP.1985-95)**
Anuj Chawla v. CIT (2017) 395 ITR 52 / 247 Taxman 264 / 295 CTR 235 / 151 DTR 33 (Delhi)(HC)
- 1638 **S.158BC : Block assessment – Foreign fund transfer – Failure to furnish credible evidence, addition was held to be justified. [S.69A, 132] (BP. 1985-95)**
Anuj Chawla v. CIT (2017) 395 ITR 52 / 247 Taxman 264 / 295 CTR 235 / 151 DTR 33 (Delhi)(HC)
- 1639 **S.158BC : Block assessment – Amounts neither disclosed in the return nor in the block return, additions which are based on documents seized was held to be justified. [S.132] (BP. 1985-95)**
Anuj Chawla v. CIT (2017) 395 ITR 52 / 247 Taxman 264 / 295 CTR 235 / 151 DTR 33 (Delhi)(HC)
- 1640 **S.158BC : Block assessment – Loose papers – Revaluation of property – Addition was held to be not justified. [S.132] (BP. 1985-95)**
Anuj Chawla v. CIT (2017) 395 ITR 52 / 247 Taxman 264 / 295 CTR 235 / 151 DTR 33 (Delhi)(HC)

- S.158BC : Block assessment – Cash and jewellery seized from bank lockers – Family members claiming ownership – Failure to prove the capacity to earn income, addition was held to be justified – Deletion of agricultural income as income from undisclosed source was held to be justified. [S.69A] (BP. 1-4-97 to 24-4-2003)** 1641
CIT v. G. G. Dhir. (Dr.) (2017) 394 ITR 164 / 247 Taxman 121 / 295 CTR 291 / 151 DTR 171 (All.)(HC)
- S.158BC : Block assessment – Issue of notice under section under section 143(2) is mandatory for the purpose of assessment under Chapter XIV-B. [S.143(2)]** 1642
CIT v. Monga Steels Pvt. Ltd. (2017) 146 DTR 1134 (All.)(HC)
- S.158BC : Block assessment – No incriminating material found during search – Additions made on basis of evidence gathered from extraneous source and on basis of statement or document received subsequent to search – Assessing Officer has no jurisdiction to make additions. [S.132, 158BB(1)]** 1643
CIT v. Pinaki Misra (2017) 392 ITR 347 / 148 DTR 219 / 293 CTR 377 (Delhi)(HC)
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- S.158BC : Block assessment – Tribunal quashing notice on ground that warrant of authorisation not issued in name of assessee – Findings required to be revalued and reappraised after verifying documents – Matter remanded. [S.132, 176(3)]** 1644
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- 1649 **S.158BC : Block assessment – Commissioner (Appeals) upholding assessment relying on Supreme Court decisions on different subjects and holding decision in ACIT v. Hotel Blue Moon [2010] 321 ITR 362 per incuriam – On writ the court held that order of CIT(A) was held to be untenable, order was set aside. [S. 143(2), Art. 226]**
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- 1652 **S.158BD : Block assessment – Undisclosed income of any other person – Recording of satisfaction by AO is mandatory – Order is held to be bad in law – The notice was issued beyond two years hence the order was held to be barred by limitation. [S.158BC, 158BE] [BP. 1991-92 to 4th Nov, 2000]**
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- 1662 **S.163 : Representative assesseees – Agent – Appellate Tribunal – Damages awarded to Carib jet was held to be taxable in India by holding that it was representative assessee – Order was passed without affording an opportunity of being heard was set aside. [S.254(1)] (AY.2000-01)**
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- 1663 **S.164 : Representative assesseees – Charge of tax – Beneficiaries unknown – Where names of beneficiaries / contributors were not available in the trust deed and also, individual share of such beneficiaries / contributors was not ascertainable on date of institution of trust, in such case, benefit of determinative trust would not be available and income would be taxable in the hands of trust as representative assessee. 50% of maintenance fee was held to be allowable. [S.10(23FB), 37(1)] (AY. 2009-10)**
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- 1664 **S.164 : Representative assesseees – Charge of tax – Beneficiaries unknown – Whether shares are determinable even when even or after the Trust is formed or may be in future when the Trust is in existence, the income is to be taxed of that respective sharer or the beneficiaries and not in the hands of the trustees. [S.161] (AY. 2008-09)**
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- 1665 **S.164 : Representative assesseees – If the trust deed provided that benefits amongst beneficiaries were to be shared proportionate to their investments, shares of beneficiaries were determinate and levy of tax on trustees at maximum marginal rate treating them as AOP was not proper – Order of the Tribunal was not perverse [S.260A]**
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- 1681 **S.194A : Deduction at source – Interest other than interest on securities – Since payee – University’s application for retrospective registration under section 12AA was pending before CBDT, assessee bank could not be regarded as assessee-in-default. [S.10(23C), 12AA, 119(2)(b), 201] (AY. 2011-12 to 2015-16)**
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- 1693 **S.194C : Deduction at source – Fees for technical services – Floating tender, tax was to deducted under section 194J whereas for maintenance work tax was to deducted u/ s. 194C [S.194J] (AY. 2008-2009, 2011-2012)**
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- 1694 **S.194C : Deduction at source – Contractors – Payments for production of films liable to deduction at source as contractor and not as fees for professional or technical services. [S.194J]. (AY. 2008-09)**
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- 1697 **S.194H : Deduction at source – Commission or brokerage – Discount to broad caster is no liable to deduct tax at source. (AY. 2011-12, 2012-13)**
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- 1706 **S.194J : Deduction at source – Fees for professional or technical services – Licence fee paid to IRCTC was not liable to deduct tax at source.**
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- 1708 **S.194J : Deduction at source – Fees for professional or technical services – Cargo Handling Charges is not technical in nature and hence tax ought not to be deducted. (AY. 2012-13)**
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- 1709 **S.194J : Deduction at source – Fees for professional or technical services – Payments made to doctors for availing services was rightly deducted the tax at source u/s. 194J, provisions of S.192 cannot be applicable [S.192, 201(1) 201(IA)] (AY. 2007-08 to 2012-13)**
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- 1710 **S.194J : Deduction at source – Fees for professional or technical services – Provision for ‘payments to be made to artists’, assessee company couldn’t ascertain identity of payees and amount to be paid to them was also not crystallised and was subject to negotiation, assessee had no liability to deduct tax at source in respect of provision so made. [S.201(IA)] (AY.2008-09)**
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- S.195 : Deduction at source – Non-resident – Other sums – Assessee remitted certain amount to its member concerns which was in the nature of reimbursement of cost to enable them in discharging its function within the terms of membership agreement – Held same would not be subjected to TDS on the basis of doctrine of mutuality – DTAA-India-Switzerland. [Art.12.(2)] (AY.2001-2002)** 1714
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- S.195 : Deduction at source – Income deemed to accrue or arise in India – Royalty – Payment to google Ireland is taxable as royalty hence liable to deduct tax at source – DTAA-India-Ireland. [S.9(1) (vi), 201(1), Art, 12] (ITA No. 1511/Bang/2013, dt. 23.10.2017)(AY. 2007-08 to 2012-13)** 1715
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- S.195 : Deduction at source – Non-resident – Failure to deduct tax at source from fee for technical services, assessee was held liable to pay interest. [S.91(1)(vii) 201(1), 201(1A)] (A.Y. 2008-09)** 1716
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- 1718 **S.195 : Deduction at source – Since payment made was held to be liable to be taxed in India as salaries, there was no liability to deduct tax at source – DTAA-India-USA. [S.9(1)(ii), 195 Art.5, 12] (AY. 2008-09 to 2011-12)**
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- 1719 **S.195 : Deduction at source – Income deemed to accrue or arise in India – Mere credit of royalty is not liable to deduct tax at source – DTAA-India-Italy [S.201(IA), Art. 13] (AY. 2011-2012)**
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- 1720 **S.195 : Deduction at source – Non-resident – Advance tax – If payer who made payments to non-resident has defaulted in deducting TDS on such payments payment of advance tax does not arise. [S.201, 234B] (AY. 1992-93)**
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- 1721 **S.195 : Deduction at source – Non-resident – Royalty – Adoption of lower rate under domestic law non-resident is not liable to pay interest, when as per DTAAA provisions, non-resident could not have been taxed, in respect of accrual of said income, in India. – DTAA-India-Italy [S.201(IA), Art. 12(3)] (AY. 2011-12)**
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- 1722 **S.195 : Deduction at source – Non-resident – Person making payment to a non-resident would be liable to deduct tax only if such sum was chargeable to tax in India and not otherwise – DTAA-India-Canada. [S.40(a)(ia), 197, Art.7, 12] (AY. 2003-04, 2004-05, 2005-06)**
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- 1723 **S.197 : Deduction at source – Certificate for lower rate – Assessee not having made an application for a certificate under section 197(1) cannot be precluded from contending that it is not bound to deduct tax at source and to pay over same in assessment proceedings – Agricultural land is not defined under Income-tax Act hence has to be considered as they are normally understood. [S.2(14) (iii)(a), 194L, 194LA]**
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- 1724 **S.197 : Deduction at source – Certificate for lower rate – Statutory provision of deduction of tax at source at lower rate is ‘person specific’ and cannot be restricted to amount specified by recipient of payment while making an application for grant of certificate. [S.194A, 201(IA)] (AY. 2008-09, 2009-10)**
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- S.199 : Deduction at source – Credit for tax deducted – Hindu undivided family entitled to benefit of tax deducted at source – Erroneous mention of permanent account number of karta of family – Revenue has discretion to grant benefit to family. [S.201, 264] (AY. 2012-13)** 1725
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- S.199 : Deduction at source – Credit for tax deducted – Since other co-owners had not availed any tax credit out of TDS on rental income, assessee-company would be entitled to enjoy benefit of tax deducted at source in its entirety. [S.194I] (AY. 2005-06)** 1726
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- S.199 : Deduction at source – Credit for tax deducted – Matter was remanded to AO-DTAA-India-USA. [Art. 10] (AY. 2009-2010)** 1728
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- S.199 : Deduction at source – Credit for tax deducted – Identity of the payee was not possible while making the provision for expenditure under several heads of income, assessee was not required to deduct tax at source. [S.194C] (AY.2010-11, 2011-12)** 1729
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- S.199 : Deduction at source – Credit for tax deducted – Once certificate for deduction at source is issued, only deductee can claim benefit of deduction of tax at source and in no circumstances deductor can claim any refund out of excess amount of tax deducted at source on behalf of deductee – Surcharge and educational cess was held to be not leviable – Excess paid was liable to be refunded - DTAA-India-USA. [S. 206A, Art, 12] (AY. 2014-15)** 1730
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- S.201 : Deduction at source – Shortfall in payment – Interest – There was no short fall hence levy of interest was not justified. [S.206] (AY. 2007-08)** 1732
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- 1733 **S.201 : Deduction at source – Failure to deduct or pay – Payment to non-resident – Limitation – Department was continuously pursuing matter giving effect to order of appellate tribunal – Delay in issuing notices of demand and penalty was held to be not barred by limitation- Writ was held to be not maintainable. [S.201(IA), 271C, Art, 226] (AY. 2003-04 to 2006-07)**
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- 1734 **S.201 : Deduction at source – Failure to deduct or pay – No liability to deduct tax when amount held not taxable by appellate authorities and court, assessee cannot be held in default. [S.194, 201(1), 201(IA)] (AY. 2006-07)**
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- 1735 **S.201 : Deduction at source – Failure to deduct or pay – Collection at source – Toll Plaza – Licensor is not absolved of liability for interest even if concessionaire has paid tax or filed nil return. [S.201(IA), 206C(7), 271C] (AY.2008-09 to 2010-11)**
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- 1736 **S.201 : Deduction at source – Failure to deduct or pay – Tax paid by recipients of interest hence failure to deduct tax deductor is liable only to interest confined to period from date on which tax deductible to date of payment of tax. [S.201(1), 201(IA), 221] (AY. 2001-02, 2002-03)**
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- 1737 **S.201 : Deduction at source – Failure to deduct or pay – Interest – Penalty – Even if the deductee assessee has paid the tax dues, it would not alter the liability to charge interest under Section 201(1A) till the date of payment of taxes by the deductee / assessee. Further, the same would not even affect the liability for penalty under Section 271C. [S.2(43), 194C, 201(IA), 271C] (AY. 2007-08)**
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- 1738 **S.201 : Deduction at source – Failure to deduct or pay – Issue of notice after expiry of four years – Limitation – Petition was allowed. [S.195] (AY. 2002-2003 to 2011-2012)**
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- 1739 **S.201 : Deduction at source – Failure to deduct or pay – Matter was set aside to verify, whether recipient assessee had directly paid tax or has no liability of tax. [S.191] (AY. 2003-04 to 2007-08)**
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- S.201 : Deduction at source – Failure to deduct or pay – Interest on account of delay in payment of tax deducted at source cannot be levied if such delay is due to system and connectivity issues at the Banker’s end. [S.201(1), 201(IA)] (AY. 2010-11)** 1741
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- S.201 : Deduction at source – Failure to deduct or pay – Explanation for delay in depositing the tax deducted at source must be considered, matter was set aside. [S.133A] (AY. 2012-2013)** 1742
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- S.201 : Deduction at source – Failure to deduct or pay – Without deducting TDS payee had offered receipt as income and paid, assessee could not be treated as an assessee in default. [S.194J] (AY. 2011-2012)** 1743
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- S.201 : Deduction at source – Failure to deduct or pay – When the ITO (TDS) had not ascertained as to whether taxes had been paid or not by recipient of income, he could not initiate proceedings to declare deductor as assessee-in-default [S.10(10AA), 191, 192, 201(IA)] (AY. 2015-16)** 1744
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- S.201 : Deduction at source – Failure to deduct or pay – Shortfall in remittance on interest payments to term depositors to government account – Assessee using CBS software – No liability if assessee able to establish shortfall in remittance. (AY.2012-13)** 1745
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- S.201 : Deduction at source – Failure to deduct or pay – Recipient having no taxes payable and claiming refund – Question of “withholding any tax money” belonging to Department did not arise – Levy of interest not warranted. [S.197, 201A] (AY.2005-2006 to 2009-2010)** 1746
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- S.201 : Deduction at source – Person to whose account credit for such tax deducted at source to be given is not identifiable, provisions of tax deduction at source not applicable – Assessing Officer to verify whether payee identifiable and amount payable to him ascertainable. [S.201(1A)] (AY. 2010-2011, 2011-2012)** 1747
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- 1748 **S.206 : Collection of tax at source – Difference between toll and octroi – No obligation to collect tax at source from agent who collected octroi. (AY. 2006-07, 2007-08)**
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- 1749 **S.206AA : Requirement to furnish Permanent Account Number – Limiting correction to four digits of permanent account number of deductee is held to be not justified. [S.200]**
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- 1750 **S.206AA : Requirement to furnish Permanent Account Number – Non-resident – Provision cannot override the provision of DTAA – Assessee is not liable to deduct tax at higher rate, i.e., 20 per cent, when DTAA benefit is available to the assessee – DTAA-India-France. [S.4,5, 90, 195 Art. 13] (AY. 2011-2012)**
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- 1751 **S.206AA : Requirement to furnish Permanent Account Number – Tax has to be deducted at source at fixed rate of 20 per cent, surcharge and education cess cannot be levied. (AY. 2014-15)**
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- 1752 **S.206AA : Requirement to furnish Permanent Account Number – AO rightly raised demand on deductor on its failure to apply 20 per cent TDS rate when payee had furnished wrong PAN. (AY.2011-12)**
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- 1753 **S.206AA : Requirement to furnish Permanent Account Number – Deduction at source-In case where payments have been made to deductees on the strength of the beneficial provisions of S.115A(1)(b) of the Act or as per DTAA rates r.w.s.90(2) of the Act, the provisions of S.206AA cannot be invoked by the AO insisting to deduct tax @ 20% for non-availability of PAN. [S.90(2), 115A(1)(b), 195, 200A] (ITA No. 1204/Ahd/2014, dt. 04.01.2017)(AY. 2011-12)**
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- 1754 **S.206AA : Requirement to furnish Permanent Account Number – Section does not have an overriding effect over the other provisions of the Act. Consequently, the payer cannot be held liable to deduct tax at higher of the rates prescribed in S.206AA in case of payments made to non-resident persons in spite of their failure to furnish the PAN. [S.90(2)] (AY. 2011-12, 2012-13)**
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- 1755 **S.206C : Collection at source – Section does not cover octroi collected within its ambit**
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- S.206C : Collection at source – Trading – Forest produce – Where assessee was engaged in importing timber and thereupon selling it to registered dealers in the country, assessee was required to collect tax at source from purchasers in terms of S.206C at the time of sale. (AY.2009-10 to 2013-14)** 1756
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- S.206C : Collection at source – Toll Plaza – Build – Operate – Transfer agreement between assessee and third party – liability is to be determined only in light of contract, matter remanded to Tribunal. (AY.2009-10 to 2011-12)** 1757
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- S.206C : Collection at source – Cotton wastage – Writ is not maintainable, as the buyers can seek refund by filing returns. [Constitution of India, Art. 226]** 1758
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- S.206C : Collection at source – Scrap – Sale of old machinery under buy back arrangement scheme cannot be categorised as scrap sale hence not liable to deduct tax at source. [S.201, 201(IA)] (AY. 2007-08 to 2012-13)** 1759
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- S.206C : Collection of tax at source – Ship breaking – Liable to deduct tax at source – Declaration at appellate stage in prescribed format by disclosing all information under Form 27 read with rule 37 of rules, for non-collection of TCS, benefit of declaration was to be given to assessee [R.37, Form 27] (AY.2008-09, 2009-10)** 1760
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- S.215 : Advance tax – Interest – Liable to pay interest for short or non payment of advance tax. (AY. 1976-77)** 1761
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- S.220 : Collection and recovery – Assessee deemed in default – High Court was directed to dispose the petition at the earliest.** 1762
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- S.220 : Collection and recovery – Stay of proceedings – Pendency of appeals before CIT(A) – Direction to Commissioner (Appeals) to decide pending appeals within one month and Department not to attach any other accounts of assessee or take coercive steps till disposal of appeal by Commissioner (Appeals) – Matter was remanded. [S.225, 226] (AY. 2007-2008 to 2012-2013)** 1763
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- 1764 **S.220 : Collection and recovery – Assessee deemed in default – Stay was granted till the disposal of appeal by CIT(A) as the order of the Assessing Officer was ex parte order. [S.252]**
GMV Projects & Systems v. ACIT (2017) 249 Taxman 468 (Mad.)(HC)
- 1765 **S.220 : Collection and recovery – Assessee deemed in default – Non compliance of Rule, sale and the sale certificate was held void, the appeal filed by the defaulter as against the revenue is fully maintainable impugning the sale and further proceedings. [R.57(1)]**
Somasundaram v. CCIT (2017) 159 DTR 121 / 299 CTR 272 (Ker.)(HC)
- 1766 **S.220 : Collection and recovery – Stay – When first appeal is pending the AO cannot ask to pay more than 15% of disputed demand.**
Jagdish Gandabhai Shah v. P CIT (2017) 247 Taxman 414 (Guj.)(HC)
- 1767 **S.220 : Collection and recovery – Assessee deemed in default – waiver of interest – Held, since in comparison to profitability of the assessee over years, amount paid by it towards interest u/s. 220(2) was very low, conclusion arrived at by CIT that no ‘genuine hardship’ had been caused to petitioner could not be said to be erroneous – Held, accordingly, CIT rightly dismissed the application for waiver of interest. (AY. 1997-98)**
Pioneer Overseas Corporation USA (India Branch) v. CIT (IT) (2017) 153 DTR 337 / 248 Taxman 186 (Delhi)(HC)
- 1768 **S.220 : Collection and recovery – Assessee deemed in default – Stay of demand was granted subject to 15% of amount demanded after adjusting it from refund of previous year. (AY. 2012-13)**
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- 1769 **S.220 : Collection and recovery – Assessee deemed in default – Priority of claim -Secured creditor had priority over the demands of tax department as per provisions of SARFAESI Act. [S.220, 293, SARFAESI Act, 2002. [S.2(1)(zd), 13, 35]**
State Bank of India & Anr v. ITO (2017) 147 DTR 187 /292 CTR 438 (Orissa) (HC)
- 1770 **S.220 : Collection and recovery – Assessee deemed in default – Where TRO stayed the recovery of demand raised by the AO, subject to the petitioner making a monthly deposit till the date of CIT(A) Order, the HC directed to make the monthly deposit only till the date of CIT(A) Order or 31st March 2017, whichever was earlier. (WP No. 1515 of 2017) (AY. 2008-09 to 2014-15)**
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- S.220 : Collection and recovery – Assessee deemed in default – Curtailment of period for payment of tax, order giving effect to grant refund was not passed amount to abuse of power. [S.44, 271(1)(c)] (AY. 2011-12)** 1771
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- S.220 : Collection and recovery – Waiver of interest – Enforcement of law not a hardship – Assessee not co-operating in assessment or recovery proceedings, interest cannot be waived. [S.220(2A), 222]** 1772
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- S.220 : Collection and recovery – Assessee deemed in default – stay – The AO and CIT cannot straightaway demand payment of 15% of the dues but have to grant complete stay if the assessment is “unreasonably high pitched” or the demand for depositing 15% of the disputed demand leads to “genuine hardship” to the assessee”. [S.220(6)] (AY. 2014-15)** 1773
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- S.220: Collection and recovery – Assessee deemed in default – If the AO demands 15% to be paid, the assessee is entitled to approach the Pr CIT for review of the AO's decision. [S.220(6)]** 1774
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- S.220 : Collection and recovery – Stay – Assessed income more than seventy times the returned income – Stay was granted. [S.14A] (AY. 2012-2013)** 1775
Vodafone India Services (P.) Ltd. v. DCIT (2017) 164 ITD 402 (Ahd.)(Trib.)
- S.220 : Collection and recovery – Stay – Assessee's income assessed was ten times more than the returned income, demand is to be stayed till the disposal of appeal. (AY. 2011-12)** 1776
Dimension Data Asia Pacific Pte. Ltd. v. Dy. CIT (IT) (2017) 146 DTR 89 (Mum.)(Trib.)
- S.221 : Collection and recovery – Penalty – Tax in default – Delay in depositing amount on account of lack of proper understanding of Indian tax laws and compliance required thereunder, hence deletion of penalty was held to be justified [S.200, 201, 260A] (AY. 2009-10)** 1777
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- S.221 : Collection and recovery – Penalty – Tax in default – Tax in arrears would not include the interest payable. [S.2(43), 156 220(2), 234A, 234B, 234C] (ITA No. 01 of 2015, dt. 01.06.2017)** 1778
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- 1779 **S.221 : Collection and recovery – Penalty – Tax in default – Self assessment tax – Failure to pay self assessment tax while filing the return though taxes are paid while filing the revised return, the assessee is liable to pay the penalty. [S.140A] (AY. 2008-09)**
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- 1780 **S.221 : Collection and recovery – Penalty – Tax in default – Failure to pay self assessment tax due to Financial crunch, levy of penalty was held to be not justified. [S.140A, 221(1)] (AY. 2010-11)**
Life Time Realty (P) Ltd. v. DCIT (2017) 163 ITD 553 / 187 TTJ 7 (UO)(Mum.)(Trib.)
- 1781 **S.221 : Collection and recovery – Penalty – Tax in default – Financial difficulties – Levy of penalty was held to be not justified, matter remanded. [S.140A] (AY. 2011-2012)**
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- 1782 **S.222 : Collection and recovery – Certificate to Tax Recovery Officer – TRO was not permitted to bring property for sale because of limitation period, it would be assessee's duty to pay tax. [Schedule II Rule 68B]**
T. Subramanian v. TRO (2107) 249 Taxman 170 (Mad.)(HC)
- 1783 **S.222 : Collection and recovery – Certificate to Tax Recovery Officer – When application for extension of time for payment of demand is pending before Settlement Commission, order is not conclusive, hence time limit specified under rule 68B for sale of attached property of tax defaulter can be computed only from date when order of Settlement Commission becomes conclusive. [S.245C, 245D, 245-I, Schedule II, Rule 69B] (AY. 2002-03, 2008-09)**
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- 1784 **S.222 : Collection and recovery – Certificate to Tax Recovery Officer – Attached property was not sold within three years, attachment order of said property would be deemed to be vacated [Second Schedule, Rule 68B]**
K. Venkatesh Dutt v. TRO (2017) 244 Taxman 1 (Karn.)(HC)
- 1785 **S.222 : Collection and recovery – Attachment of property – Property jointly owned by four co-owners including assessee – Sale of property during pendency of recovery proceedings-Assessee paying entire amount of tax due along with interest – Transaction of sale cannot be declared null and void. [S.220(2), Sch. II, RR. 16, 48, 60]**
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- S.222 : Collection and recovery – Certificate to Tax Recovery Officer – Since entire tax liability of assessee was wiped off pursuant to order of Tribunal, in such a case, even if revenue’s appeal was entertained by High Court, that by itself would not make assessee as an assessee-in-default – Tax recovery Officer was directed to lift the attachment of the immovable property. [S.225] (AY. 2009-10 to 2011-12)** 1786
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- S.225 : Collection and recovery – Stay of proceedings – Direction to pay the demand with in period of four weeks does not suffer from any illegality or perversity. [S.226] (AY. 2011-12, 2008-09 to 2013-14)** 1787
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Madhya Pradesh Audhyogik Kendra Vikas Nigam Ltd v. Addl. CIT (2017) 299 CTR 75 / 158 DTR 75 (MP)(HC)
- S.225 : Collection and recovery – Stay – When appeal is pending before CIT(A) demand for more than 15 % of tax in dispute only in exceptional cases. Before rejecting the stay application principle of natural justice must be followed.** 1788
Ladhabhai Damjibhai Panara v. PCIT (2017) 399 ITR 539 / 250 Taxman 502 / (2018) 161 DTR 364 (Guj.)(HC)
- S.225 : Collection and recovery – Stay – Pending appeals before CIT(A) would not by itself in may manner fetter the rights of the revenue to adopt such proceedings as are available to it in law, to recover its taxes in terms of the impugned orders. (AY. 2007-08 to 2010-11, 2012-13)** 1789
Maharashtra Industrial Development Corporation v. CIT (2017) 154 DTR 299 / 297 CTR 21 / 81 taxmann.com 171 (Bom.)(HC)
- S.225 : Collection and recovery – Stay – Guidelines – Stay of demand pending appeal – Order of rejection was held to be not valid. [S.226]** 1790
Punjab Institute of Medical Sciences v. Dy. CIT (2017) 397 ITR 273 / 248 Taxman 162 / 297 CTR 535 / 154 DTR 285 (P&H)(HC)
- S.225 : Collection and recovery – Stay of proceedings – Tribunal directed assessee to deposit 50% of tax demand – On writ, High Court directed assessee company to deposit 30% of total tax demand disputed before Tribunal. [S.220] (AY. 2013-14)** 1791
Google India (P) Ltd. v. ACIT (2017) 155 DTR 185 / 297 CTR 434 / 252 Taxman 27 (Karn.)(HC)
- S.225 : Collection and recovery – Stay of proceedings – Coercive tax recovery by the Assessing Officer was stayed by the Tribunal. [S. 220, 254(2A)] (AY. 2009-10, 2013-2014)** 1792
Greater Mohali Area Development Authority v. DCIT (2018) 161 DTR 341 / 191 TTJ 594 (Chd.)(Trib.)

- 1793 **S.226 : Collection and recovery – Recovery of the amount in disputes as soon as the order passed by the Appellate Authority, though the limitation period for filing an appeal was not over cannot be said to be illegal, though it may not be proper. [S. 226(3), 237, 240] (AY. 2009-10, 2010-11, 2013-14)**
Chennai Central Cooperative Bank Ltd. v. ACIT (2017) 248 Taxman 366 / 158 DTR 294 / 299 CTR 44 (Mad.)(HC)
LIC Employees Co-Operative Bank Ltd v. ACIT (2017) 248 Taxman 366 / 158 DTR 294 / 299 CTR 44 (Mad.)(HC)
- 1794 **S.226 : Collection and recovery – Modes of recovery – Requirement of garnishee proceedings is that only that copy of notice should be forwarded to assessee and need not be served on assessee in advance or simultaneously. [S.156, 220, 226(3)] (AY. 2014-15)**
GECAS Services India P. Ltd. v. ITO (2017) 396 ITR 305 / 249 Taxman 615 / 154 DTR 265 / (2018) 303 CTR 276 (Delhi)(HC)
- 1795 **S.226 : Collection and recovery – State government with which non-resident entered into contract not party to earlier proceedings is not entitled to seek rectification of order of Tribunal or file writ petition. For consistency of law parties should be continuously joined all throughout proceedings.[S.254(2), Art. 226]**
Chief Engineer I D And R Irrigation Department v. ACIT (2017) 394 ITR 720 / 151 DTR 297 / 295 CTR 442 (Raj.)(HC)
State of Rajasthan v. ACIT (2017) 394 ITR 720/ 151 DTR 297/ 295 CTR 442 (Raj.) (HC)
- 1796 **S.226 : Collection and recovery – Modes of recovery – Assessing Officer cannot review previous order, order to the extent it revived earlier order and issued directions to pay unsustainable – However adjustment of refund upheld. [S.237, 245] (AY. 2014-15)**
Telenor (India) Communications Pvt. Ltd. v. ACIT (2017) 394 ITR 153 / 150 DTR 155 / 295 CTR 202 (Delhi)(HC)
- 1797 **S.226 : Collection and recovery – Modes of recovery – Argument of the assessee that seeking relaxation, 15% of pre-deposit of tax must be considered by the Assessing Officer and should pass appropriate order. (AY.2014-15)**
Telenor (India) Communications Pvt. Ltd. v. ACIT (2017) 150 DTR 153 / 295 CTR 118 / 88 taxmann.com 585 (Delhi)(HC)
- 1798 **S.226 : Collection and recovery – Auction – Purchaser was held to be deemed defaulter – Person in possession of property permitted to retain title to property after making due payment with interest – Department entitled to proceed for auction and sale of properties if person in possession of property fails to deposit amount. [Sch. II, r. 58]**
Mohammed Niyas v. CIT (2017) 390 ITR 13 (Ker.)(HC)
- 1799 **S.226 : Collection and recovery – Garnishee proceedings – Seizure of fixed deposit receipt from the bank was held to be illegal, order was quashed.**
Kalupur Commercial Co-op Bank Ltd v. UOI (2017) 390 ITR 115 (Guj.)(HC)

- S.226 : Collection and recovery – Mortgaged property – Dispute between bank and the Revenue will not affect the purchaser of the property.** 1800
Prajakta M. Shah v. TRO (2017) 244 Taxman 183 / 148 DTR 101 / 293 CTR 197 (Guj.) (HC)
- S.234A : Interest – Default in furnishing return of income – Advance tax – Waiver of interest- Taxes were paid after reassessment – Condition prescribed as per circular is not satisfied hence waiver cannot be made. [S.234B, 234C] (AY. 1997-98 to 2000-01, 2003-04)** 1801
CCIT v. Rajanikant and Sons (2017) 396 ITR 171 / 249 Taxman 122 / 298 CTR 479 / 155 DTR 337 (Mad.)(HC)
- S.234A : Interest – Failure to file return and failure to pay advance tax – Levy of interest is mandatory [S.132(5), 139, 234B]** 1802
Mahabeer Prasad Jain v. CIT (2017) 399 ITR 600 / (2018) 161 DTR 223 / 253 Taxman 152 (All.)(HC)
- S.234B : Interest – Justified in directing to compute the interest u/s. 234B(2A) of the Act – Interest is mandatory – Relevant date is when the settlement Commission determining and passing the order u/s. 245D(4)-S.234B(2A) is applicable to all pending proceedings as on 1-6-2015. [S.245C(1), 245D(4)] (AY.2010-11 to 2014-15)** 1803
Devdip Malls Developers (P) Ltd. v. ITSC (2017) 158 DTR 161 / 85 taxmann.com 47 (2018) 301 CTR 85 (Guj.)(HC)
- S.234B : Interest – Advance tax – Interest cannot be charged beyond date of order passed by Settlement Commission under section 245D(1). [S.245D(1)] (AY.1989-90 to 1996-97)** 1804
Hotel Hamilton Complex v. ITSC AB (2017) 251 Taxman 339 (Karn.)(HC)
- S.234B : Interest – Advance tax – Book profit – Subsequent retrospective amendment – Interest cannot be levied – Rectification order levying interest was held to be not levied. [S.115JB, 154, 234B] (AY. 2004-05)** 1805
CIT v. NHPC Ltd. (2017) 399 ITR 275 (P&H)(HC)
- S.234B : Interest – Book profits – Interest under sections 234B and 234C cannot be charged, if total income is assessed to tax under section 115J. [S.115J, 234C]** 1806
Dy. CIT v. Sabarmati Paper Udyog Ltd. (2017) 250 Taxman 415 (Guj.)(HC)
- S.234B : Interest – Advance tax – Assessee was under no obligation to pay advance tax and the liability arose only on account of retrospective amendment to the law after the conclusion of the previous year relevant to the subject assessment year. (AY. 2008 09)** 1807
CIT v. Glenmark Pharmaceuticals Ltd. (2017) 398 ITR 439 /85 taxmann.com 349 (Bom.) (HC)
Editorial : SLP is granted to the revenue CIT v. Glenmark Pharmaceuticals Ltd. (2017) 397 ITR 30(St.)/ 250 Taxman 391 (SC)

- 1808 **S.234B : Interest – Advance tax – Assessee becoming liable to pay advance tax subsequent to amendment in statute with retrospective effect – No shortfall according to provisions prevailing at relevant point of time, interest cannot be charged. [S.43(6), 234C] (AY. 2008-09)**
CIT v. National Dairy Development Board (2017) 397 ITR 543 / 249 Taxman 61 (Guj.)(HC)
- 1809 **S.234B : Interest – Advance tax – Income computed under section 115J prior to section 115JA, 115JB assessee is not liable to pay interest. [S.115], 115JA, 115JB, 234C] (AY. 1989-90)**
J.K. Synthetics Ltd v. CIT (2017) 395 ITR 647 / 82 taxmann.com 23 (All.)(HC)
- 1810 **S.234C : Interest – Advance tax – Shortfall due to unanticipated income – Interest is leviable. (AY. 2007-2008)**
MRF Ltd. v. DCIT (LTU) (2016) 76 taxmann.com. 282 / (2017) 390 ITR 18 / 293 CTR 151 / 148 DTR 58 (Mad.)(HC)
- 1811 **S.234C : Interest – Advance tax – Interest is not leviable if the income was not predictable and the assessee could not have anticipated its receipt e.g. the receipt of a gift. (AY. 2012-13)**
Kumari Kumar Advani v. ACIT (Mum.)(Trib.); www.itatonline.org
- 1812 **S.234C : Interest – Advance tax – Interest is applicable in respect of income returned under section 139 as well as income returned in response to notice under section 148. [S. 139, 148] (AY. 2009-10)**
V. Umayal v. ITO (2017) 163 ITD 278 (Chennai)(Trib.)
- 1813 **S.234E : Fee – Default in furnishing the statements – Provision is valid – As multiple agencies are involved in every transaction in Government offices, longer period for Government to file a return of deduction of tax at source is neither unreasonable nor discriminatory. [S.200A]**
Rajesh Kourani v. UOI (2017) 249 Taxman 402 / 297 CTR 502 / 156 DTR 129 (Guj.)(HC)
- 1814 **S.234E : Fee – Default in furnishing the statements – Section cannot be said to be unreasonable and arbitrary inasmuch as it is on account of additional work burden which has fallen upon department due to fault of deductor to file statement within time, that a fee has been levied. [Art. 226]**
Sree Narayana Guru Smaraka Sangam Upper Primary School v. UOI (2017) 392 ITR 457 / 147 DTR 108 / 245 Taxman 312 / 292 CTR 296 (Ker.)(HC)
- 1815 **S.237 : Refunds – Delay in granting refund, department was directed to pay cost to assessee.**
Arjun Das v. ITO (2017) 251 Taxman 526 (Delhi)(HC)

- S.237 : Refunds – If the assessee is entitled for any other benefits the same must be granted though he has not claimed, similarly the Assessee is entitled to have refund of excess amount as State could not recover tax more than what was due to it.** 1816
Kalindee Rail Nirman (Engineers) Ltd. v. CIT (2017) 150 DTR 239 (Raj.)(HC)
- S.237 : Refunds – Non availability of record cannot be the ground to reject the claim of refund – The CIT(A) is required to conduct a discreet inquiry – Matter was restored to the file of CIT(A)** 1817
Roop Chand Ram Narain HUF v. ITO (2017) 59 ITR 98 (Delhi)(Trib.)
Roop Chand Laxmi Narain HUF v. ITO (2017) 59 ITR 98 (Delhi)(Trib.)
- S.241A : Refunds – With holding of refund in certain cases – Issuance of notice under S.143(2) claiming extended period for processing refund under S.143(1), would not be sufficient to withhold refund. [S.143(1), 143(ID), 143(2)] (AY. 2015-16, 2016-17)** 1818
Corrtech International (P.) Ltd. v. Dy. CIT (2017) 251 Taxman 48/401 ITR 355 (Guj.)(HC)
- S.244 : Refunds – Party depositing sum after deduction of tax at source – Company claiming and receiving refund of tax and utilising it – violation of order – direction to secure amount and not to operate account without leave of court is proper. (AY. 2013-14)** 1819
Baranagore Jute Factory Plc. Mazdoor Sangh (BMS) v. Baranagore Jute Factory Plc. (2017) 394 ITR 6 (SC)
- S.244A : Refunds – Interest on refunds – Partial waiver of interest by Settlement Commission the assessee was entitled to interest – When the amount is due to the assessee, there is statutory obligation of the department to refund the amount with interest. [S.234A, 234B, 234C, 245D(4)] (AY. 1993-94 to 1994-95)** 1820
K. Lakshmanya and Co. v. CIT (2017) 399 ITR 657 / 299 CTR 97 / 159 DTR 289 / (2018) 252 Taxman 13 (SC)
Editorial: Decision in CIT v. K. Lakshmanya and Co. (2010) 323 ITR 617 (Karn.)(HC) was reversed.
- S.244A : Refunds – Interest on refunds – Self assessment tax – Decision of High court dissenting from decision of co-ordinate Bench – Order was set aside and matter to be decided by larger Bench. [S.14A] (AY. 2006-07)** 1821
Engineers India Ltd v. CIT (2017) 397 ITR 16 / 250 Taxman 19 / 298 CTR 115 / 157 DTR 235 (SC)
Editorial : Order in CIT v. Engineers India Ltd. (2015) 55 taxmann.com 1 (Delhi)(HC) was set aside.
- S.244A : Refunds – Interest on refunds – Delay in claim for refund condoned by CBDT – Assessee is entitled to interest on refund however the assessee is not entitled to interest on interest. [S. 193] (AY. 2000-01 to 2003-04)** 1822
Meghalaya Co-op. Apex Bank Ltd v. CBDT (2017) 396 ITR 459 / 249 Taxman 65 / 298 CTR 318 / 157 DTR 340 (Meghalaya)(HC)

- 1823 **S.244A : Refunds – Interest on refunds – The relief with interest which even otherwise was not due to the assessee could not be granted. [S.245, Art, 226] (AY. 1996-97)**
Ajanta Transistor Clock Mfg. CO. v. DCIT (2017) 394 ITR 436 (Guj.)(HC)
Editorial: SLP of assessee is dismissed Ajanta Transistor Clock Mfg. CO. v. DCIT, (2016) 389 ITR 8 (St.)
- 1824 **S.244A : Refunds – Waiver of interest – Refundable to assessee due to waiver of interest, the assessee is entitled to payment of interest on such refund. “In any other case” and “As the case may be” – wider interpretation of expression. [S.220(2), 220(2A)] (AY.1992-93, 1993-94 to 1996-97, 2002-03, 2004-05, 2006-07)**
Brisk Capital Market Services Ltd. v. CIT (2017) 394 ITR 557 / 248 Taxman 281 / 295 CTR 349 / 151 DTR 257 (Delhi)(HC)
Naresh Kumar Aggarwal v. CCIT (2017) 394 ITR 557 / 248 Taxman 281 / 295 CTR 349 / 151 DTR 257 (Delhi)(HC)
Preeti N.Aggarwal v. CCIT (2017) 394 ITR 557 / 248 Taxman 281 / 295 CTR 349 / 151 DTR 257 (Delhi)(HC)
- 1825 **S.244A : Refunds – Interest on refunds – Assessee is entitled to interest on unpaid interest. (AY. 2002-03)**
DCIT v. Peerless General Finance and Investment Co. Ltd. (2017) 57 ITR 536 (Kol.)(Trib.)
- 1826 **S.245 : Refunds – Set off of refunds against tax remaining payable – Tax dues for subsequent years can be adjusted. [S.237] (AY. 2012-13, 2013-14)**
Northern Coal Fields Ltd. v. ACIT (2017) 398 ITR 508 / 81 taxmann.com 9 (MP)(HC)
Editorial : SLP of the assessee was dismissed; Northern Coal Fields Ltd v. ACIT (2017) 396 ITR 75 (St.) / 250 Taxman 155 (SC)
- 1827 **S.245 : Refunds – Set off of refunds against tax remaining payable – Adjustment of refund without giving an opportunity of hearing was held to be breach of principles of natural justice hence bad in law. [Art. 226] (AY. 1994-95)**
S. Narayanan v. CIT (2017) 395 ITR 271 / 299 CTR 285 / 159 DTR 387 (Mad.)(HC)
- 1828 **S.245C : Settlement Commission – Law does not require that assessee to demonstrate that there is a fresh source of income which was not disclosed earlier.**
Unitech Wireless (Tamil Nadu) (P.) Ltd. v. PCIT (2017) 250 Taxman 265 / 157 DTR 268 (Delhi)(HC)
- 1829 **S.245C : Settlement Commission – Search and seizure – Off market commodity transactions – Hedging – Failure to prove that the assessee was acting only as broker, rejection of application was held to be justified. [S.69A, 245D]**
Manojkumar Babulal Agarwala v. CIT (2017) 159 DTR 219 / 83 taxmann.com 139 (Guj.)(HC)

- S.245C : Settlement Commission – Settlement of cases – Conditions – Search and seizure action was for ten group companies – Settlement Commission accepting six companies petitions and rejecting four companies Applications was held to be not proper, there was no rational criteria for distinguishing – Order of settlement Commission was set aside. [S.132, 153A, 245D] (AY. 2008-09, 2015-16)** 1830
Bindals Dupex Ltd. v. PCIT (2017) 395 ITR 128 / 153 DTR 321 (Delhi)(HC)
Brina Gopal Traders P. Ltd. v. PCIT (2017) 395 ITR 128 / 153 DTR 321 (Delhi)(HC)
Swabhiman Vyapaar P. Ltd. v. PCIT (2017) 395 ITR 128 / 153 DTR 321 (Delhi)(HC)
Tehri Pulp and Pape Ltd. v. Pr. CIT (2017) 395 ITR 128 / 153 DTR 321 (Delhi)(HC)
- S.245C : Settlement Commission – Settlement of cases – Conditions – Settlement Commission can admit application for settlement when additional income and additional tax liability is disclosed for some years and there is no additional income/ additional tax for remaining years as long as additional tax payable on income disclosed in application exceeds threshold limits specified in proviso to section 245C(1).** 1831
Neptune Developers & Construction (P) Ltd., In re (ITSC-Mum.) (2017) 248 Taxman 500 / 55 ITR 484 (SB)(ITSC) (Mum.)(Trib.)
- S.245C : Settlement Commission – Merely on the basis of confidential information disclosed in settlement application addition cannot be made only on the ground that the application was rejected at the stage of admission. [S.245D(1)] (AY. 2007-08, 2009-10)** 1832
Anantnadh Constructions and Farms (P) Ltd. v. DCIT (2017) 166 ITD 83 (Mum.)(Trib.)
- S.245D : Settlement Commission – Books of accounts – Entries in loose papers / sheets are irrelevant and inadmissible as evidence – Offences and prosecution – Settlement commission. [S.2(12A), 132, 143(3) 245D, Evidence Act, S.34]** 1833
Common Cause (A Registered Society) v. UOI (2017) 394 ITR 220 / 245 Taxman 214 (SC)
- S.245D : Settlement Commission – Failure to make full and true disclosure – Builder – On money estimate of income – Burden is on revenue to prove that non-disclosure of primary facts and not mere non-acceptance of certain claims by the assessee. [S.37(1),40(A) (3), 245C, 245D(4)] (WP No.2562 of 2016 dt. 12-2-2017)** 1834
PCIT v. ITSC (2017) 292 CTR 363 / 79 taxmann.com 186 (Bom.)(HC)
- S.245D : Settlement Commission – Failure to disclose fully and truly – Not considering the provision of S.37(1) and 40A(3) of the Act – Unless there was evidence found contrary to disclosure made, the statement made on oath by Applicant, could not be dis-believed on mere whim and fancy. Mere fact that Tribunal mistakenly records that respondent was not entitled to grant immunity from levy of penalty under S 271D and 271E would not make the order bad in law – Petition of the revenue is dismissed. [S.37(1), 40A(3), 245C](AY. 2005-06 to 2012-13)** 1835
PCIT v. ITSC (2017) 292 CTR 363 (Bom.)(HC)

- 1836 **S.245D : Settlement Commission – Cash credits – Real estate business – On money – Reassessment – Rejection of intervention application by the Settlement Commission was held to be valid – Reassessment was held to be justified. [S.68, 147, 148, 245C] (AY.2010-11, 2011-12)**
Goyal Developers v.ITSC(2017) 292 CTR 425/88 taxmann.com 519 (MP) (HC)
- 1837 **S.245D : Settlement Commission – Advance tax – Interest under S.234B to be charged only up to stage of order u/s. 245D(1). [S.220, 234B, 234C, 245D(4)] (BP.1990-91 to 2000-01)**
N. Chellakutty (HUF) v. ITSC (2017) 399 ITR 31 / 251 Taxman 388 (Mad.)(HC)
N. Chellakutty (Individual) v. ITSC (2017) 399 ITR 31 (Mad.)(HC)
Vignesh Real Estate v. ITSC (2017) 399 ITR 31 (Mad.)(HC)
- 1838 **S.245D : Settlement Commission – Undisclosed in vestment – Full and true disclosure was not made hence rejection of petition was held to be justified. [S.69B, 131, 245C] (AY. 2013-14)**
Baldevbhai Bhikhabhai Patel v. ITSC (2017) 250 Taxman 346 / (2018) 161 DTR 52 (Guj.) (HC)
- 1839 **S.245D : Settlement Commission – Currency notes were recovered hence peak theory could not be applied, however the matter was set side to Settlement Commission to decide the decoding issue. [S.69, 132(4A)]**
Prakash Chand Dhadda v. ITSC (2017) 249 Taxman 131 / 298 CTR 467 / 158 DTR 14 (Raj.)(HC)
- 1840 **S.245D : Settlement Commission – Declaration of additional income during pendency of settlement proceedings – Order of settlement commission is held to be valid. [S.245C] (AY. 2012-13 to 2014-15)**
PCIT v. ITSC (2017) 249 Taxman 54 (Guj.)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Shree Aadhyashakti Enterprises (2018) 256 Taxman 70 (SC)
- 1841 **S.245D : Settlement Commission – Rejection of petition was held to be not justified on account of failure to answer questionnaire issued by the Assessing Officer, minimal difference worked by the Assessing authority and the petitioner and Contradictory stand by the assessee before the Assessing Authority and settlement commission. [S.132, 153A, 245C, 245F(2)] (AY. 2005-06 to 2011-12)**
Radico NV Distilleries Maharashtra Ltd. v. CIT (2017) 398 ITR 410 (Delhi)(HC)
- 1842 **S.245D : Settlement Commission – Settlement Commission taking particular view to arrive at quantum of tax liability of assessee, order of settlement commission was held to be proper. [Art. 226] (AY. 2001-02 to 2006-07)**
Swamina International P. Ltd v. ITSC (IT & WT) (2017) 398 ITR 103 (Cal.)(HC)

- S.245D : Settlement Commission – Order of Settlement commission holding that transactions did not attract tax in India is based on appraisal of evidence hence writ petition of revenue was dismissed. [Art. 226] (AY. 2004-05 to 2009-10) (WP No. 742 of 2013 dt 12-9-2017)** 1843
DIT(IT v. ITSC (2017) 398 ITR 23 (Cal.)(HC)
- S.245D : Settlement Commission – As the Settlement Commission failed to disclose the reasons for arriving at the figures which to its best judgment were the figures to be added to the income of the assessee, the order of the Settlement Commission was to be set aside and the matter was to be remanded for fresh consideration.** 1844
ACIT v. Emta Coal Ltd. (2017) 398 ITR 1 / 250 Taxman 527 (Cal.)(HC)
- S.245D : Settlement Commission – Abatement of proceedings – Order was not passed with in six months as per direction of the Court – Court extended the time and directed to three more months to pass the order. [S.245D(4A), 245HA]** 1845
Kailash Chand Manoj Kumar Sarraf P. Ltd. v. ACIT (2017) 397 ITR 286 / 247 Taxman 233 (Raj.)(HC)
Kailash Chnd Jain v. ACIT (2017) 397 ITR 286 / 247 Taxman 233 (Raj.)(HC)
- S.245D : Settlement Commission – Order of settlement commission is being not perverse – Revenue has failed to prove in respect of illegal payments made to various officials and politicians hence no addition could be made. The Order is held to be valid. [S.132(4), 133A, 153A, Art. 226] (AY. 2000-01 to 2006-07)** 1846
CIT v. Radico Khaitan Ltd. (2017) 396 ITR 644 / 249 taxman 384 / 155 DTR 130 (Delhi)(HC)
- S.245D : Settlement Commission – When the assessee has not made full and true disclosure rejection of application was justified, there was no judicial error in the proceedings. Finding was not proved to be perverse. When the assessee participated in proceedings, procedural irregularities cannot be argued first time in writ petition. [S.245C, Art. 26]** 1847
ABC Dubash Mining v. ITSC (2017) 396 ITR 427 (Cal.)(HC)
- S.245D : Settlement Commission – Procedure – Limitation provided in section 245D(4A) is mandatory and, thus Settlement Commission has to pass order within time period specified in aforesaid section. [S.245D(4A)] (AY. 2006-07 to 2012-13)** 1848
RNS Infrastructure Ltd. v. ITSC (2017) 292 CTR 195 / 147 DTR 21 / (2017) 77 Taxman. com 103 (Karn.)(HC)
- S.245D : Settlement Commission – Applicant cannot be punished for inability of settlement commission to dispose of its application within period specified in section. [S.245D(4A), 245HA(1)(iv)]** 1849
Bajaj Polysat P. Ltd. v. UOI (2017) 394 ITR 316 (All.)(HC)

- 1850 **S.245D : Settlement Commission – Speed money – Suppression of facts – Petition challenging order passed by Commission was dismissed as non-disclosure was deliberate and possibly made with a view to present a picture different than what existed before Commission. [S.245C] (AY. 2007-08 to 2012-13)**
Rashmi Infrastructure Developers Ltd. v. ITSC (2017) 396 ITR 210 / 246 Taxman 342 / 156 DTR 84 (Bom.)(HC)
- 1851 **S.245D : Settlement Commission – Settlement Commission could not accept additional income declared by assessee at stage of hearing, merely on ground that it was difficult to ascertain nature of undisclosed income on basis of impounded documents. [S.133A, 245C] (AY. 2011-12 to 2013-14)**
PCIT v. Shree Nilkanth Developers (2016) 73 taxmann.com 76 (Guj.)(HC)
Editorial : SLP is granted to the assessee; Shree Nilkanth Developers v. PCIT (2017) 245 Taxman 74 (SC)
- 1852 **S.245D : Settlement Commission – Income disclosed did not belong to assessee – Rejection of application was held to be justified – Writ is not maintainable. [S.132, 245C, Art. 226]**
Vishwa Nath Gupta v. PCIT (2017) 395 ITR 165 / 249 Taxman 27 / 152 DTR 55 (Delhi) (HC)
- 1853 **S.245D : Settlement Commission – Survey – Revised enhanced offer made by the assessee must be considered in the nature of spirit of the settlement Commission, order of Settlement Commission was up held. [S.245C] (AY. 2011-12, 2012-13)**
CIT v. ITSC (2017) 244 Taxman 156 (Guj.)(HC)
- 1854 **S.245D : Settlement Commission – Finding that there had been no full and true disclosure of income and manner in which it was earned, rejection of applications was held to be justified, high court cannot interfere on finding of fact. [S.153A, 245D(2C), 245D (4), Art. 226]**
Bharat Singh v. UOI (2016) 76 taxmann.com 239 / (2017) 391 ITR 305 (Patna)(HC)
Kumbh Nath Singh v. UOI (2016) 76 taxmann.com. 239 / (2017) 391 ITR 305 (Patna)(HC)
Lal Bahadur Singh v. UOI (2016) 76 taxmann.com. 239 / (2017) 391 ITR 305 (Patna)(HC)
- 1855 **S.245D : Settlement Commission – Commissioner filing report before Settlement Commission does not have any adjudicatory role and is entitled to file writ petition against order of Settlement Commission – Settlement commission had not properly considered issue of addition or genuineness of claim of advances from others, matter was remanded to Settlement Commission. [S.245C, 245D(4), 245I, Art. 226]**
CIT v. ITSC (2017) 391 ITR 374 / 291CTR 433 / 146 DTR 97 / 77 taxmann.com 167 (Ker.)(HC)
- 1856 **S.245H : Settlement Commission – Payment of tax was made before filing special leave petition – Payment to be taken to have been made within time. [S.245C] (AY. 2004-05 to 2010-11)**
Sandeep Singh v. UOI (2017) 393 ITR 77 / 147 DTR 305 / 292 CTR 361 / 245 Taxman 336 (SC)

- S.245HA : Settlement Commission – Abatement of proceedings – Application would abate only with respect to years for which payment was not made and not for other years. [S.245C, 245D] (AY. 2001-02 to 2007-08)** 1857
Ashish Prafulbhai Patel. v. ISSC (2017) 251 Taxman 441 / (2018) 301 CTR 195 / 403 ITR 318 / 161 DTR 235 (Guj.)(HC)
- S.245HA : Settlement Commission – Abatement of proceedings – Assessing officer was not right in treating earlier assessment order as valid and serving demand notice ,earlier assessment order, there is no distinction between the assessment order passed earlier or pending on date of application before Settlement commission accordingly proceedings for recovery of demand to be set aside. [S.245C, 245HA(2)] (AY.1986-87 to 1989-90, 1992-93)** 1858
Chain Roop Bhansali v. UOI (2017) 394 ITR 703 / 248 Taxman 577 (Delhi)(HC)
- S.245HA : Settlement Commission – Abatement of proceedings – Sub-section (3) which allows AO to use all the material produced before the Commission in case of abatement has been earlier held to be constitutionally valid – Held, therefore, the direction of the Commission to complete the assessment in accordance with section 245HA(3) was valid. [S.245C, 245D] (AY. 1997-98 1998-99)** 1859
Vikas Shipping Corporation v. UOI (2017) 251 Taxman 258 / 161 DTR 253 / (2018) 301 CTR 213 (Guj.)(HC)
- S.246 : Appeal – Commissioner (Appeals) – Levy of interest – Where levy of advance tax was not disputed only levy of interest was held to be not maintainable. Appeal against levy of interest under S.215 is maintainable if liability to pay advance tax is denied. [S.215] (AY. 1976-77)** 1860
E. Marck (India) Ltd. v. CIT (2017) 393 ITR 91 / 155 DTR 201 (Bom.)(HC)
- S.249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – Tax on returned income was paid before passing of order by CIT(A), order refusing to admit appeal was set aside. [S.139(5)](AY. 2008-2009, 2009-2010)** 1861
Mohammed Farooque Sarang v. DCIT (2017) 164 ITD 573 (Mum.)(Trib.)
- S.251 : Appeal – Commissioner (Appeals) – Powers – CIT(A) can enhance an assessment but not assess a new source of income. [S.68] (AY. 1995-96)** 1862
CIT v. B.P. Sherafudin (2017) 399 ITR 524 / (2018) 161 DTR 265 / 252 Taxman 326 / 301 CTR 123 (Ker.)(HC)
- S.251 : Appeal – Commissioner (Appeals) – Powers – Additional evidences filed under rule 46A if it is relevant for calculation of real income same has to be admitted. [S.250, R.46A] (AY.2007-08)** 1863
PCIT v. Daljit Singh Sra. (2017) 247 Taxman 240 (P & H) (HC)
- S.251 : Appeal – Commissioner (Appeals) – Powers – Stay – Directed to pay 15% of tax in dispute and CIT(A) was directed to hear the appeal with in six months.** 1864
Teleradiology Solutions (P) Ltd. v. Dy. CIT (2017) 295 CTR 147 / 149 DTR 73 (Karn.)(HC)

- 1865 **S.251 : Appeal – Commissioner (Appeals) – Powers – When relevant material on record, the appellate authorities have to consider the claim though the claim was neither made in the return nor revised return was filed. [S.80IB(10), 254(1)] (AY.2011-12)**
CIT v. Abhinitha Foundation P. Ltd. (2017) 396 ITR 251 / 249 Taxman 37 / 154 DTR 57 (Mad.)(HC)
- 1866 **S.251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Cash credits – Deliberate attempt to defraud the revenue hence refusal to admit additional evidence was held to be justified. [R. 46A] (AY. 2009-2010)**
Rishi Sagar v. CIT (2017) 393 ITR 214 (P&H)(HC)
- 1867 **S.251 : Appeal – Commissioner (Appeals) – Powers – The CIT(A) has no power to enhance by discovering a new source of income which is neither discussed in the assessment order nor mentioned in the return of income filed by the assessee. [S.2(22(e), 250] (AY. 2009-10)**
Ram Infrastructure Ltd. v. JCIT (Pune) (Trib.); www.itatonline.org
- 1868 **S.251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – For admission of additional evidence, application under rule 46A is not mandatory. [R. 46A] (AY.2011-12)**
Padam Lal Dua v. ITO (2017) 162 ITD 524 (Delhi)(Trib.)
- 1869 **S.253 : Appellate Tribunal – Assessee can defend the order appeal against any grounds against him by CIT(A), whose order otherwise is in favour. [R. 27, Rule 22, Order XLI of the Civil Procedure Code] (AY. 2001, 2002-03)**
PCIT v. Sun Pharmaceuticals Industries Ltd. (2017) 251 Taxman 76 / 153 DTR 39 (Guj.) (HC)
- 1870 **S.253 : Appellate Tribunal – Delay of 1631 days – Chartered Accountant engaged in the matter, was unaware of the fact that an appeal could be filed against the order of the Commissioner to the Tribunal- Delay was condoned. [S.12AA, 254(1)]**
United Christmas Celebration Committee Charitable Trust v. ITO (2017) 249 Taxman 372 (Mad.)(HC)
- 1871 **S.253 : Appellate Tribunal – Delay of 1902 days – Non-advice on the part of professional and ignorance of law was held to be a reasonable cause hence the delay was condoned. Matter was remanded to Tribunal. [S.12AA]**
Hosanna Ministries v. ITO (2017) 152 DTR 8 (Mad.)(HC)
- 1872 **S.253 : Appellate Tribunal-Jurisdiction-With reference to the location of the Assessing Officer. [ITATR. 4(1)]**
CIT (E) v. Greater Noida Industrial Development Authority (2017) 395 ITR 18 / 152 DTR 105 / 298 CTR 127 (All.)(HC)
CIT (E) v. New Okhla Industrial Development Authority (2017) 395 ITR 18 / 152 DTR 105 / 298 CTR 127 (All.)(HC)
CIT (E) v. Yamuna Expressway Industrial Development Authority (2017) 395 ITR 18 / 152 DTR 105 / 298 CTR 127 (All.)(HC)

- S.253 : Appellate Tribunal – Withdrawal – Tribunal cannot refuse to give permission to withdrawal of appeal to the appellant. (AY. 2007-08)** 1873
Sainath Enterprises v. ACIT (TM) (Mum.)(Trib.); www.itatonline.org
- S.253 : Appeal – Condonation of delay – Reasonable cause – Delay was condoned [S.253(5)] (AY. 2003-04 to 2008-09)** 1874
Jay Dee Securities & Finance Ltd. v. ACIT (2017) 156 DTR 73 / 188 TTJ 593 (Delhi)(Trib.)
- S.253 : Appellate Tribunal – Amounts not deductible – Deduction at source – Disallowance of expenses for failure to deduct tax at source being revenue neutral as being entire income being exempt, such appeals need not be pursued by the revenue [S.10A, 40(a)(ia)] (AY. 2009-10)** 1875
DCIT v. Ascendum Solutions India (P) Ltd. (2017) 167 ITD 233 (Ahd.)(Trib.)
- S.253 : Appellate Tribunal – Delay of 300 days was condoned. (AY. 2011-12)** 1876
Pravin Viram Satra v. ACIT (2017) 164 ITD 533 (Mum.)(Trib.)
- S.253 : Appellate Tribunal – Cross objection – Cross objection cannot be filed against the order of Assessing Officer. [S.92B, 92C](AY. 2009-10 to 2011-12)** 1877
Hyundai Motor India Limited v. DCIT (2017) 153 DTR 41 / 187 TTJ 97 (Chennai)(Trib.)
- S.254(1) : Appellate Tribunal – Business expenditure – Year of allow ability – Matter remanded to Tribunal. [S.37(1)] (AY. 1992-93)** 1878
CIT v. Travancore Cochin Udyoga Mandal (2017) 156 DTR 25 / 297 CTR 329 / 250 Taxman 149 (SC)
- S.254(1) : Appellate Tribunal – Powers – Additional grounds – Tribunal was justified in admitting the additional grounds which as raised for the first time before the Tribunal on the issue of jurisdiction. [S.153A, 153C] (AY. 2001-01 to 2003-04)** 1879
CIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 / 156 DTR 161 / 297 CTR 441 / 250 Taxman 225 (SC)
Editorial: Decision in CIT v. Sinhgad Technical Education Society (2015) 378 ITR 84 278 CTR 144 / 120 DTR 79 (Bom.)(HC) is affirmed
- S.254(1) : Appellate Tribunal – Duties – Order passed on incorrect factual premises being foundation of order, such an order must be set aside [S.254(2)]** 1880
PCIT v. Chartered Logistics Ltd. (2017) 250 Taxman 385 (Guj.)(HC)
- S.254(1) : Appellate Tribunal – Duties – Unexplained expenditure – Order of Tribunal was set aside for not following the earlier year order. [S.69C] (AY 2007-08 to 2009-10)** 1881
True Zone Buildwell (P) Ltd. v. PCIT (2017) 251 Taxman 242 (Delhi)(HC)
- S.254(1) : Appellate Tribunal – Power – Additional evidence – Revision – Tribunal was justified in admitting the additional evidence placed by revenue while deciding the appeal of assessee against revision order. [S.263] (AY. 2010-11)** 1882
Virbhadra Singh (HUF) v. PCIT (2017) 158 DTR 66 / 251 Taxman 150 / 298 CTR 393 (HP)(HC)

- 1883 **S.254(1) : Appellate Tribunal – Powers – Cash credits – When subject matter of appeal before the Tribunal was whether gift received was to be assessable as cash credit, Tribunal could not have sustained the addition u/s. 69A. [S.68, 69A] (AY. 2001-02)**
Sarika Jain (Smt.) v. CIT (2017) 249 Taxman 625 (All.)(HC)
- 1884 **S.254(1) : Appellate Tribunal – Duties – Transfer pricing – Arms' length price – Tribunal was not justified in remanding the matter to TPO for re-determination. Matter was remanded. [S.92C] (AY. 2011-12)**
Bechtel India (P) Ltd. v. Dy. CIT (2017) 249 Taxman 594 / (2018) 161 DTR 453 (Delhi)(HC)
- 1885 **S.254(1) : Appellate Tribunal – Duties – Adopting a short-cut in rendering order, large portions were lifted verbatim from order of Assessing Officer as well as from remand order of High Court setting out facts, reasoning and conclusion was held to be not proper, matter was once again set aside to the Tribunal.**
Arun Malhotra v. P CIT (2017) 248 Taxman 317 (Delhi)(HC)
- 1886 **S.254(1) : Appellate Tribunal – Duties – New evidence produced before CIT(A), remand report was submitted after the order of CIT (A), matter was set aside. [S.10B] (AY. 2010-11)**
PCIT v. Vertex Infosoft Solutions P. Ltd. (2017) 398 ITR 704 (P&H)(HC)
- 1887 **S.254(1) : Appellate Tribunal – Powers – Revision – Tribunal has the power to consider alternative claim of the assessee. [S.10A, 263] (AY.2010-11)**
CIT v. Flytxt Technology P. Ltd. (2017) 398 ITR 717 (Ker.)(HC)
- 1888 **S.254(1) : Appellate Tribunal – Tribunal had not correctly appreciated the facts of the assessee's case, the order of the ITAT was quashed and matter sent back for fresh adjudication. [S.12A]**
CIT v. Bharadwaj Sewa Trust (2017) 295 CTR 566 / 152 DTR 1 (Jharkhand)(HC)
- 1889 **S.254(1) : Appellate Tribunal – Reassessment – Jurisdictional issue – Even in ex-parte order the Tribunal ought to have called the records and decided the issue. High court set aside order of ITAT as TAT failed to decide jurisdictional issue. [S.147, 148]**
Javed Akhtar (Dr) v. CIT (2017) 150 DTR 288 (All.)(HC)
- 1890 **S.254(1) : Appellate Tribunal – Additional evidence – Tribunal was not justified in rejection the revenue records as additional evidence. [S.2(14)(iii)(a), 195,197, ITR-Rule 46A]**
Land Acquisition Collector, Improvement Trust, Jalandhar v. Addl. CIT (2017) 396 ITR 410 / 152 DTR 40 / 295 CTR 548 (P&H)(HC)
- 1891 **S.254(1) : Appellate Tribunal – Principle of consistency – View accepted in earlier order, different view cannot be taken. [S.68] (AY. 2006-07)**
Zazsons Export Ltd v. CIT (2017) 397 ITR 40 (All.)(HC)

- S.254(1) : Appellate Tribunal – Additional grounds – Cross objection – Assessee can advance arguments before tribunal even though no cross objection filed against finding. [R. 27]** 1892
CIT v. Jindal Polyester Ltd. (2017) 397 ITR 282 (All.)(HC)
- S.254(1) : Appellate Tribunal – Delay of 1050 days – No sufficient cause was shown by the assessee, hence not condoning the delay was held to be justified. [S.260A] (AY. 2009-10)** 1893
Subodh Parkash v. Jt. CIT (2017) 397 ITR 384 (P&H)(HC)
- S.254(1) : Appellate Tribunal – Delay of 2984 days in filing the appeal due to wrong advice of Chartered Accountant was condoned – Cost was imposed of ₹ 50000. Strictures by ITAT against ICAI deprecated. [S.80-O, 253] (AY.1994-95, 1996-97)** 1894
Vijay Vishin Meghani v. DCIT (2017) 398 ITR 250 / 160 DTR 33 / 251 Taxman 270 / 299 CTR 463 (Bom.)(HC)
Editorial: Vijay V. Meghani v. Dy.CIT (2014) 35 ITR 320 / 165 TTJ 289 / (2015) 153 ITD 687 (Mum.)(Trib.) is reversed. Also refer Vijay V.Meghani v. ACIT (2015) 155 ITD 623 / 125 DTR 274 / 173 TTJ 502 (Mum.)(Trib.)
- S.254(1) : Appellate Tribunal – Order was set aside as the Tribunal has not passed a speaking order. [S.40(a)(ia), 40(ba), 194C] (AY. 2008-09)** 1895
CIT v. ITD CEM India JV (2017) 160 DTR 17 / (2018) 300 CTR 442 / 405 ITR 533 (Bom.)(HC)
- S.254(1) : Appellate Tribunal – Non application of mind – Remanding the matter to AO without any discussion is held to be not proper – The Tribunal failed to perform its duty of rendering a complete decision. It is obliged in law to examine the matter, reappraise and reappraise all the factual materials. Matter was remanded to Tribunal. (AY. 2009-10, 2010-11)** 1896
Thyrocare Technologies limited v. ITO (TDS) (2017) 398 ITR 443 / (2018) 162 DTR 193 (Bom.)(HC)
Thyrocare Technologies limited v. Asst. Registrar Representing The Income-tax Appellate Tribunal (2017) 398 ITR 443 / (2018) 162 DTR 193 (Bom.)(HC)
- S.254(1) : Appellate Tribunal – Powers – Deduction in respect of donation was not made in return or revised return, Tribunal has power to allow deduction [S.80GGB]. (AY. 2005-06)** 1897
CIT v. Britannia Industries Ltd. (2017) 396 ITR 677 / 83 taxmann.com 365 (Cal.)(HC)
- S.254(1) : Appellate Tribunal – Powers – Tribunal can grant refund. [S.237]** 1898
Kalindee Rail Nirman (Engineers) Ltd. v. CIT (2017) 394 ITR 684 / 150 DTR 239 / 297 CTR 514 (Raj.)(HC)

- 1899 **S.254(1) : Appellate Tribunal – During pendency of appeal before the Tribunal subsequent development of search conducted on the premises of the assessee was not brought to the notice of Tribunal, hence the order of Tribunal was set aside. [S.153A] (AY. 2002-03)**
Skyline Builders v. CIT (2017) 394 ITR 768 (Ker.)(HC)
Editorial : Refer ACIT v. Skyline Builders (2010) 4 ITR 48 (Cochin)(Trib.)
- 1900 **S.254(1) : Appellate Tribunal – Tribunal is justified in remanding case to Assessing Officer. [S.28(i)]**
ITO v. Maitry Exports (2017) 395 ITR 153 (Guj.)(HC)
- 1901 **S.254(1) : Appellate Tribunal – Tribunal has the power to direct the Commissioner to grant registration. [S.12A]**
CIT (E) v. Greater Noida Industrial Development Authority (2017) 395 ITR 18 (All.)(HC)
CIT (E) v. New Okhla Industrial Development Authority (2017) 395 ITR 18 (All.)(HC)
CIT (E) v. Yamuna Expressway Industrial Development Authority (2017) 395 ITR 18 (All.)(HC)
- 1902 **S.254(1) : Appellate Tribunal – Powers – Direction of Tribunal to CIT(A) to hear the appeal on merit as the admitted tax was paid by assessee later on was held to be justified. [S.249] (AY. 2005-06, 2007-08 to 2009-10, 2011-12)**
PCIT v. Abdul Zahid M. (2017) 394 ITR 727 (Karn.)(HC)
- 1903 **S.254(1) : Appellate Tribunal – A fresh claim can be made before the Appellate authorities even if such claim was not made in the original/revised return of income. [S.139, 153A] (AY. 2007-08, 2008-09)**
CIT v. B.G. Shirke Construction Technology (P) Ltd. (2017) 293 CTR 505 / 246 Taxman 300 (Bom.)(HC)
- 1904 **S.254(1) : Appellate Tribunal – Additional evidence – Natural justice – Sufficient opportunity was provided to argue the matter hence there is no violation of principle of natural justice – Not necessary to pass a separate order. [S.54F, R. 29] (AY. 2006-2007)**
Rasiklal M. Parikh v. ACIT (2017) 393 ITR 536 / 150 DTR 73 / 295 CTR 373 (Bom.)(HC)
- 1905 **S.254(1) : Appellate Tribunal – Powers – Matter remanded by Tribunal with directions at par with order for earlier year – Tribunal has no power to issue further orders regarding mode in which its directions are to be complied with. [S.92C]**
Fosroc Chemicals (India) P. Ltd. v. Dy. CIT (2017) 392 ITR 172 / 246 Taxman 278 (Karn.)(HC)
- 1906 **S.254(1) : Appellate Tribunal – Additional grounds – Assessee must satisfy the appellate authority that the ground now raised was bona fide and the same could not have been raised earlier for good reasons. [S.80IA] (AY. 2008-09)**
Ultratech Cement v. ACIT (2017) 81 taxmann.com 74 / 298 CTR 437 / 157 DTR 253 (Bom.)(HC)

- S.254(1) : Appellate Tribunal – Powers – Tribunal has no power to enhance assessment. (AY. 1989-1990)** 1907
Fidelity Shares and Securities Ltd. v. DCIT (A) (2017) 390 ITR 267 ITR (Guj.)(HC)
- S.254(1): Appellate Tribunal – Additional evidence – Question of fact [S.68, 69, 260A, ITR, 1962, r. 29.] (AY. 2008-2009)** 1908
Sanjeev Bajaj v. CIT (2017) 390 ITR 478 (P&H)(HC)
Editorial: SLP of assessee is dismissed; Sanjeev Bajaj v. CIT (2016) 389 ITR 39 (St.)
- S.254(1) : Appellate Tribunal – Additional evidence – Ordinarily an application seeking admission of additional evidence under Rules 18 and 29 of ITAT Rules requires an order to be passed. If the ITAT rejects the application, reasons thereof have to be stated. [ITATR.18, 29] (AY. 2006-07)** 1909
Rasiklal M. Parikh v. ACIT (2017) 391 ITR 395 / 80 taxmann.com 22 (Bom.)(HC)
- S.254(1) : Appellate Tribunal – Additional evidence – Transfer pricing – Matter was remanded back to TPO to decide it afresh. [S.92CA] (AY. 2007-08 to 2009-10)** 1910
DCIT v. Monster.Com India Pvt. Ltd. (2017) 56 ITR 1 (Hyd.)(Trib.)
- S.254(1) : Appellate Tribunal – Power – Interim order – Transfer cases – Tribunal directed the Department to produce records including copy of the order passed, department has to comply with the requisition [S.124, 127] (AY. 2008-09, 2009-10)** 1911
Consulting Engineering Services (India) Pvt. Ltd. v. ACIT (2017) 56 ITR 28 (Delhi)(Trib.)
- S.254(1) : Appellate Tribunal – Additional ground was admitted which was raised by way of covering letter (AY. 2005-06)** 1912
ITO v. Evalueserve.com (P) Ltd. (2017) 187 TTJ 317 (Delhi)(Trib.)
- S.254(1) : Appellate Tribunal – Additional ground – Transfer pricing – Selecting by comparable – Additional ground was admitted and the matter was set back for verification. [S.92C] (AY. 2006-07)** 1913
Evalueserve.com (P) Ltd. v. ITO (2017) 187 TTJ 331 (Delhi)(Trib.)
- S.254(1) : Appellate Tribunal – An additional ground with respect to additional evidence is admissible – Transfer pricing – If it is discovered that assessee is not liable to tax the revenue cannot have grievances [S.92C]. (AY. 2007-08)** 1914
Nivea India Private Ltd. v. DCIT (2017) 158 DTR 62 / 189 TTJ 422 (Mum.)(Trib.); www.itatonline.org
- S.254(1) : Appellate Tribunal – Additional evidence – The evidence was available at the stage of assessment proceedings, hence the evidence was not admitted. [ITATR. 29] (AY. 2011-2012)** 1915
Kanniappan Murugadoss v. ITO (2017) 164 ITD 260 (Chennai)(Trib.)

- 1916 **S.254(1) : Appellate Tribunal – Additional evidence – Tribunal has not admitted the additional evidence which was produced after two and half years. (AY.2009-10)**
Katikaneni Prem Kumar v. ITO (2017) 55 ITR 49 (SN) (Hyd.)(Trib.)
- 1917 **S.254(1) : Appellate Tribunal – The Respondent is entitled to raise an objection under Rule 27 even in respect of fresh issues. It is not necessary that the ground should have been decided against the by the CIT(A). [ITAT Rule, 27](ITA No. 167, 168, 321, 322 & 192/Lkw/2016, dt. 28.04.2017)(AY. 2010-11)**
AAA Paper marketing Ltd. v. ACIT (Lucknow)(Trib.); www.itatonline.org
Sidhibhoomi Alloys Ltd. v. ACIT (Lucknow)(Trib.); www.itatonline.org
DCI v. Appurva Goel (Lucknow)(Trib.); www.itatonline.org
- 1918 **S.254(1) : Appellate Tribunal – Additional evidence – Foreign allowance was received outside India – Additional evidence was filed before the Tribunal – Matter was send back to AO to decide a fresh – DTAA-India-UK. [S.5, 9(1)(ii), Art. 16] (AY. 2011-2012)**
Ravishankar Rajendran v. ITO (2017) 162 ITD 503 (Chennai)(Trib.)
- 1919 **S.254(1) : Appellate Tribunal – Admission of additional evidence by the CIT(A) was held to be justified. [R. 46A] (AY. 2009-10)**
ACIT v. Saraswati Builders (2017) 183 TTJ 13 (UO) (Asr.)(Trib.)
- 1920 **S.254(1) : Appellate Tribunal – Additional ground – Additional ground cannot be raised on a factual issues. (AY. 2008-09, 2009-10)**
ADIT v. Flt. Lt. Ranjan Dhall Charitable Trust (2017) 58 ITR 47 (Delhi)(Trib.)
- 1921 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Non consideration of paper book filed is a mistake apparent from the record, Tribunal was directed to hear the appeal of the assessee afresh on the basis of documents which have been already found to be filed by the assessee. (AY.1996-97)**
Nisha Synthetics Ltd. v. CIT (2017) 145 DTR 345 / 291 CTR 328 (SC)
Editorial: Judgment of Bombay High Court in Nisha Synthetics Ltd v. ITAT (2017) 145 DTR 346 / 291 CTR 329 (Bom.)(HC) is set aside.
- 1922 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Mutuality – While accepting an assessee’s rectification applications, Tribunal should not undertake elaborate consideration of very same issues and very same facts to come to a contrary conclusion. (AY. 2006-07 to 2011-12)**
CIT (E) v. Gujarat Institute of Housing Estate Developers (2017) 249 Taxman 586 / (2018) 162 DTR 253 (Guj.)(HC)
- 1923 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Where an application for rectification was rejected, second application cannot be made on same grounds. (AY. 2006-07, 2007-08)**
PCIT v. Navjivan Roller Flour and Pulse (2017) 398 ITR 62 (Guj.)(HC)

- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – For purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing of the order. [Central Excise Act, 1944, S.34C, 35C, 37C] (ITA No. 915 of 2016, dt. 25.01.2017)** 1924
Liladhar T. Khushlani v. Commissioner of Customs (Guj.)(HC); www.itatonline.org
- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation period – The amendment to S.254(2) w.e.f. 01.06.2016 to curtail the period available to file rectification applications from four years to six months cannot apply to appellate orders passed prior to that date because that would take away a vested right. [S.254(1)] (AY. 2010-11)** 1925
District Central Co-op. Bank Ltd. v. UOI (2017) 398 ITR 161 / 251 Taxman 122 (MP)(HC)
- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation – There was no averment in the petition when the order was served, hence the application was dismissed on the ground that the petition was filed beyond period of limitation. [ITAT R. 24, 25] (AY. 2007-08)** 1926
S. P. Balasubrahmanyam v. ACIT (2017) 394 ITR 366 / 245 Taxman 146 / 152 DTR 25 (Mad.)(HC)
Editorial : SLP of assessee is dismissed; S.P. Balasubrahmanyam v. ACIT (2017) 394 ITR 1 (St.)
- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – If the assessee voluntarily withdraws the appeal, he cannot seek restoration on the ground that the withdrawal was an apparent mistake.** 1927
Jayant D. Sanghavi v. ITAT (2017) 147 DTR 370 / 295 CTR 229 (Bom.)(HC)
- S.254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal is duty bound to pass necessary consequential orders even without alternative submission, if situation warrants – Tribunal is directed to allow miscellaneous application and consider alternative plea made by assessee. [S.254(1)] (AY. 1987-1988, 1988-1989)** 1928
Parmanand Builders P. Ltd. v. CIT (2016) 76 taxmann.com 283 / (2017) 390 ITR 40 / 292 CTR 382 / 147 DTR 248 (Bom.)(HC)
- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The mere placing of a case law in the paper book does not mean that it was cited before the ITAT and non-consideration thereof is not a mistake apparent from the record. [S.254(1)] (WP. 2844 of 2016, dt. 12.01.2017)(AY. 2002-03)** 1929
Ashish Gandhi Builders & Developers P. Ltd. v. ITAT (Bom.)(HC); www.itatonline.org
- S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Order was passed beyond period of 90 days – Tribunal was directed to pass fresh order. [S.254(1), ITATR, 34(5)(c), 34(8)] (AY. 2009-2010)** 1930
Otters Club v. DIT(E) (2017) 392 ITR 244 (Bom.)(HC)

- 1931 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Non-consideration of alternative contention and additional ground was held to be mistake apparent from record. [S.40(a)(ia), 194H, 201] (AY.2007-08)**
Bharti Airtel Ltd. v. ACIT (2017) 166 ITD 179 (Delhi)(Trib.)
- 1932 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Rectification petition filed beyond expiry of 6 months was held to be not maintainable. (AY. 2008-09)**
Padma K. Bhat (Smt.) v. ACIT (2017) 166 ITD 172 (Bang.)(Trib.)
- 1933 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Petition for recalling Tribunal’s order was filed beyond period of six months from date of Tribunal’s order was dismissed. (AY. 2008-09)**
Shamsunissa Begum (Ms.) v. DCIT (2017) 165 ITD 557 (Bang.)(Trib.)
- 1934 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation – The amendment to S.254(2) to curtail the limitation period for filing rectification applications to six months from four years is prospective and applicable to appeal orders passed after 01/06/2016 and not the orders passed prior to 01/06/2016. (MA No.411/Mum/2016 to 414/Mum/2016 (Arising out of ITA No.7001/Mum/2010), dt. 09.10.201) (AY. 2003-04)**
Lucent Technologies GRL LLC v. ADIT (Mum)(Trib.); www.itatonline.org
- 1935 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal cannot recall the entire order and pass a fresh order. [S.40(a)(ia)] (AY. 2004 -05, 2006-07)**
Technip India Ltd. v. ACIT (2017) 166 ITD 42 (Chennai)(Trib.)
- 1936 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The period of limitation for filing a rectification application is six months from the end of the month in which the “order is passed” and not from the date of “receipt of the order”. Liberal view is taken it can be considered from the date of uploading of the order. (M.A. No. 05/Hyd/2017, dt. 12.07.2017)(AY. 2007-08)**
Srinivas Sashidhar Chaganty v. ITO (Hyd.)(Trib.); www.itatonline.org
- 1937 **S.254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The amendment by the Finance Act 2016 w.e.f. 01.06.2016 to specify the time limit of 6 months to file a rectification application applies even to applications filed with respect to appeal orders passed prior to the date of the amendment. The Tribunal has no power to condone the delay in filing a Miscellaneous Application. (M.A.No.103 to 108/Mum/2017 Arising out of ITA NoS.8247, 8249, 8177, 8229, 8242 & 8228/Mum/2011, dt. 25.04.2017)(AY. 2009-10)**
DCIT v. Hita Land Private Limited (Mum.)(Trib.); www.itatonline.org

- S.254(2A) : Appellate Tribunal – Stay – Appeal for earlier years pending before High Court and the assessee proposing to file miscellaneous application cannot be the ground to stay the recovery. [S.220, 254(1)] (AY. 2013-14)** 1938
Google India (P) Ltd. v. DCIT (2017) 167 ITD 567 (Bang.)(Trib.)
- S.255 : Appellate Tribunal – Third member – Third member has to decode specific points referred for his opinion and he cannot sit in appeal over entire matter and take decision independently. [S.255(4)]** 1939
CIT v. Sahara India Ltd. (2017) 398 ITR 301 (All.)(HC)
- S.255 : Appellate Tribunal – Jurisdiction – Single Member Bench – Income of assessee computed under minimum alternate tax provisions above ₹ 50 lakhs. Amendment effective from 1-6-2016 on date of deciding appeal – Matter to be heard by division Bench of Tribunal, matter remanded. [S.255(2), 255(3)] (AY. 2008-09)** 1940
Ge e City Builders P. Ltd v. CIT (2017) 395 ITR 160 (P&H)(HC)
- S.255 : Appellate Tribunal – Precedent – Software payment – Royalty – Reference to special Bench – Taxability of software payments as royalty – If there are two possible views, the view favourable to the assessee must be adopted – Prayer of revenue to refer the matter to Special Bench was declined. [S.9(1)(vii), 255(3), Art. 12] (ITA No. 4672/M/2007, dt. 03.01.2018)** 1941
DDIT v. Reliance Communication Ltd. (2018) 161 DTR 281 / 191 TTJ 505 (Mum.)(Trib.)
DDIT v. Reliance BPO Ltd. (2018) 161 DTR 281 / 191 TTJ 505 (Mum.)(Trib.)
DDIT v. Reliance Communication Infrastructure Ltd. (2018) 161 DTR 281 / 191 TTJ 505 (Mum.)(Trib.)
DDIT v. Reliance Telecom Ltd. (2018) 161 DTR 281 / 191 TTJ 505 (Mum.)(Trib.)
- S.260A : Appeal – High Court – Additional evidence was raised before the Court, however which was not taken in to consideration hence the proper course is to seek review before the High Court. [S.251, R. 46A]** 1942
Mathur Marketing Pvt. Ltd. v. CIT (2017) 251 Taxman 3 / 299 CTR 461 / 160 DTR 377 (2018) 400 ITR 26 (SC)
- S.260A : Appeal – High Court – Mesne profits – High Court was directed to decide the issue on merits. [S.4]** 1943
CIT v. Goodwill Theatres Pvt. Ltd. (2017) 160 DTR 371 / 299 CTR 457 (SC)
Editorial: Order in CIT v. Goodwill Theatres Pvt. Ltd. (2016) 386 ITR 294 (Bom.)(HC) is set aside.
- S.260A : Appeal – High Court – Court fee – Right of appeal is not a matter of procedure. It is a substantive right. Court fee payable shall be the one which was payable on the date of such assessment order. [Kerala Court Fees and Suit Valuation Act, 1959, S.52A]** 1944
K. Raveendranathan Nair v. CIT(2017) 156 DTR 30 / 297 CTR 334 / 250 Taxman 401/ (2018) 403 ITR 180 (SC)
CIT v. A. M. Habeeb (2017) 156 DTR 30 / 297 CTR 334 / 250 Taxman 401 / (2018) 403 ITR 180 (SC)

- 1945 **S.260A : Appeal – High Court – Limitation – Delay of fourteen days condoned and High Court was directed to hear the appeal on merits.**
CIT v. Pheroza Framroze and Co. (2017) 392 ITR 626 / 247 Taxman 100 / 152 DTR 139 / 295 CTR 459 (SC)
- 1946 **S.260A : Appeal – High Court – Administrative reasons cannot be the ground for filing defective appeal – Repetitive notice of motions cannot be filed for recall of speaking orders – Dismissal of appeal was held to be justified. [Bombay High Court (Original side) Rules, 1980, R. 986]**
CIT (E) v. Maharashtra Industrial Development Corpn. (2017) 398 ITR 29 (Bom.)(HC)
Editorial: SLP of revenue is dismissed; CIT (E) v. Maharashtra Industrial Development Corpn. (2017) 397 ITR 1 (St)
- 1947 **S.260A : Appeal – High Court – When Chief Justice assigns judicial work to a Bench, it is not open to a litigant to call upon judges of said Bench to recuse themselves from judicial work, merely levelling allegation that he has no faith in integrity or partiality of one of judges of Division Bench.**
CIT v. M.H. Patel. (2017) 251 Taxman 248 (Bom.)(HC)
- 1948 **S.260A : Appeal – High Court – Review petition is not to be barred even when SLP preferred against order of which review is sought has been dismissed as withdrawn.**
Kanoria Industries Ltd. v. UOI (2017) 249 Taxman 267 (Delhi)(HC)
- 1949 **S.260A : Appeal – High Court – Question of law – Noting in the file of the revenue to challenge appeal on merits cannot be the reason for appellate Court to accept the question of law without hearing the parties. [S.145](AY. 2006-07)**
PCIT v. Bandekar Brothers (P) Ltd. (2017) 248 Taxman 251 / 151 DTR 248 / (2018) 403 ITR 309 (Bom.)(HC)
- 1950 **S.260A : Appeal – High Court – Ground which was neither raised before the Tribunal nor considered by the Tribunal, cannot be raised or considered by the High Court. (AY. 2005-06)**
DIT (IT) v. Vanenberg Facilities BV (2917) 397 ITR 425 / 297 CTR 291 (T&AP)(HC)
- 1951 **S.260A : Appeal – High Court – Issue not raised before Appellate Tribunal, cannot be raised for the first time before the High Court. [S.254(1)] (AY. 2005-06)**
DIT (IT) v. Vanenberg Facilities BV (2017) 155 DTR 153 (AP)(HC)
- 1952 **S.260A : Appeal – High Court – Delay of 1128 in filing the appeal was not condoned and Severe strictures passed against the department for filing a ‘patently false’ affidavit. (NM. No.1672 of 2017 in ITA No. 448 of 2014, dt. 28.08.2017)**
CIT v. Parle Biisleri Ltd. (Bom.)(HC); www.itatonline.org

- S.260A : Appeal – High Court – Monetary limit – Review petition – No cascading effect – Review petition was held to be not maintainable. (AY. 2000-01)** 1953
CIT v. Velingkar Brothers (2017) 396 ITR 659 / 150 DTR 281 (Bom.)(HC)
- S.260A : Appeal – High Court – Reassessment – Issue which was not raised before the Tribunal cannot be raised before High Court. [S.143(1), 147] (AY. 2002-03 to 2004-05)** 1954
PCIT v. Vikas Gutgutia (2017) 396 ITR 691 (Delhi)(HC)
- S.260A : Appeal – High Court – Business expenditure – Issue not raised before appellate tribunal cannot be raised in appeal before court. [S.37(1)] (AY. 1995-96)** 1955
CIT v. Raj Kumar Singh and Co. (2017) 396 ITR 569 (All.)(HC)
- S.260A : Appeal – High Court – Common order – Revenue is not permitted to refer records relating to assessment in the matter of withdrawal of registration. [S.12AA, 143] (AY. 2009-10)** 1956
DIT(E) v. Shree Nashik Panchvati Panjrapole (2017) 397 ITR 501 / 248 taxman 67 / 295 CTR 214 / 150 DTR 249 (Bom.)(HC)
- S.260A : Appeal – High court – Tax effect below prescribed limit hence the appeal is not maintainable.** 1957
CIT v. Unique Mercantile Services P. Ltd. (2017) 395 ITR 429 (Guj.)(HC)
- S.260A : Appeal – High court – Limitation – Delay of 190 days – Assessing officer busy in other assessments not ground for condonation, delay was not condoned.** 1958
PCIT v. Usha International Ltd. (2017) 395 ITR 151 (Delhi)(HC)
- S.260A: Appeal – High Court – Activities of gymnasium, cafeteria and pharmacy whether fall under the ambit of charity of hospital is question of law. [S.10(23C)(via)]** 1959
CIT (E) v. Saifee Hospital Trust (2017) 395 ITR 225 (Bom.)(HC)
- S.260A : Appeal – High Court – Deduction at source – Short deduction at source – Question of law is admitted. [S.40(a)(ia), 194C(2)] (AY. 2006-07)** 1960
CIT v. Hindustan Unilever Ltd.(2016) 72 taxmann.com 325 / (2017) 394 ITR 73 (Bom.)(HC)
- S.260A : Appeal – High Court – Tribunal has no power to review, against the dismissal of miscellaneous application to file writ petition and not appeal. [S.254(2), Art. 226]** 1961
CIT v. Singhal Industries (2017) 395 ITR 264 (Raj.)(HC)
- S.260A : Appeal – High Court – Transfer pricing – The contention that there is an error because mere mathematical calculation shows that the arm's length purchase price as worked out by the TPO falls beyond (+)/(-) 5% range and consequently falls outside the scope of the second proviso to S.92C(2) cannot be considered if it was not raised before the CIT(A) & ITAT. [S.92C]** 1962
CIT v. Mettler Toledo India Pvt. Ltd. (2017) 395 ITR 523 (Bom.)(HC)

- 1963 **S.260A : Appeal – High Court – Issue concluded by decisions of High Courts, appeal is not maintainable – No substantial question of law. (AY. 2009-2010)**
CIT v. Brindavan Beverages P. Ltd. (2017) 393 ITR 261 (Karn.)(HC)
- 1964 **S.260A : Appeal – High Court – Limitation – Appeal by department – Receipt of the order by any of the Officer of the department including Commissioner (Judicial) is to be considered for computing the period of limitation – Administrative instructions cannot override the statute. [S.260A(2)(a)]**
CIT v. Odeon Builders P. Ltd. (2017) 393 ITR 27 / 150 DTR 1 / 294 CTR 30 / 247 Taxman 184 (FB) (Delhi)(HC)
CIT v. Gulbarga Associates P. Ltd. (2017) 393 ITR 27 / 150 DTR 1 / 294 CTR 30 (FB) (Delhi)(HC)
- 1965 **S.260A : Appeal – High Court – Delay of 335 days in filing the appeal by 335 days was not condoned. (ITA No. 409/2017, dt. 19.05.2017)**
CIT v. Historic Infracon (Delhi)(HC); www.itatonline.org
- 1966 **S.260A : Appeal – High Court – Additional evidence – Amounts not deductible – Deduction at source – Documents showing payment of tax on sums in question by payee produced before court – Matter remanded to Assessing Officer to consider documents and dispose of matter. [S.40(a)(ia)]. (AY. 2006-2007)**
Gopal Cotton Industries P. Ltd. v. CIT (2017) 392 ITR 276 / 78 taxmann.com 266 (P&H) (HC)
- 1967 **S.260A : Appeal – High Court – Delay of 448 days in filing of appeal was not condoned and strictures passed regarding the “standard excuses” of the department for delay in filing appeals, namely, budgetary constraints, lack of infrastructure to make soft copies, change of standing counsel etc. (ITA No. 934 of 2016, dt. 17.04.2017)**
PCIT v. Diana Builders & Contractors Pvt. Ltd. (Delhi)(HC); www.itatonline.org
- 1968 **S.260A : Appeal – High Court – Substantial question of law – Share premium – Question admitted. [S.68] (AY. 2011-12)**
CIT v. Green Infra Ltd. (2017) 392 ITR 7 / 292 CTR 233 / 146 DTR 262 / 78 taxmann.com 340 (Bom.)(HC)
- 1969 **S.260A: Appeal – High Court – Territorial jurisdiction – Assessment was at Surat and Appeal was decided by Appellate Tribunal at Punjab – Punjab and Haryana High Court lacks territorial jurisdiction to adjudicate appeal from order of Tribunal. [S.254(1)] (AY. 2001-2002)**
CIT v. Balak Capital P. Ltd. (2017) 391 ITR 112 (P&H)(HC)
- 1970 **S.261 : Appeal – Supreme Court – Observation of the High Court against department was expunged. [S.260A, 262]**
CIT v. Deutsche Software Ltd. (2017) 399 ITR 570 (SC)
Editor: Decision in CIT v. DSL Software Ltd. (2013) 351 ITR 385 (Karn.)(HC) is affirmed

- S.261 : Appeal – Supreme Court – Substantial question of law – Appeal is maintainable though the revenue has not filed against orders of same point in favour of assessee. [S.260A]** 1971
CIT v. Modipon Ltd. (2017) 160 DTR 73 / 299 CTR 306 / (2018) 400 ITR 1 / 252 Taxman 123 (SC)
CIT v. Paharpur Cooling Towers Ltd. (2017) 160 DTR 73 / (2018) 400 ITR 1 (SC)
- S.261 : Appeal – Supreme Court – Argument not raised before authorities below or High Court, could not be entertained before Supreme Court. [S.262] (AY. 2001-02 to 2007-08)** 1972
ADIT v. E-Funds IT Solution Inc (2017) 399 ITR 34 / 298 CTR 505 (SC)
Editorial: Decision in DIT v. E- Funds IT Solution Inc (2014) 364 ITR 256 (Delhi) (HC) is affirmed
- S.261 : Appeal – Supreme Court – Delay-Supreme Court issues strictures against the income-tax department stating that it is “extremely unhappy” with the delay of 3381 days in refiling the SLP and demands that “The concerned authorities need to wake up”. (SLP No. 871/2017, dt. 16.01.2017)** 1973
CIT v. Krishan K. Agarwal (SC); www.itatonline.org
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Share capital – CIT is entitled to revise the assessment order on the ground that the AO did not make any proper inquiry while accepting the explanation of the assessee insofar as receipt of share application money is concerned cannot be interfered with. [S. 68] (SLP No. 23976/2017, dt. 10.04.2017)** 1974
Daniel Merchants Private Limited v. ITO (SC); www.itatonline.org
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Dissolution of firm – Valuation of closing stock at cost price – Assumption that business comes to an end is not applicable where the business is continued after dissolution of firm – View of the Assessing Officer is possible view, hence revision is not permissible [S. 145(4), 145] (AY. 1993-94)** 1975
CIT v. Kwalty Steel Suppliers Complex (2017) 395 ITR 1/ 157 DTR 1/ 297 CTR 553/ 250 Taxman 23 (SC)
Editorial: Kwalty Steel Suppliers Complex v.CIT (2004) 191 CTR 94 (Guj) (HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Additional depreciation – Estimated downward revision of sales – Revision on these two points set aside by High Court – Subsequent events obviating need to go into justification for revision. [S.32(1)(ia)] (AY. 2005-2006)** 1976
CIT v. NTPC Ltd. (2017) 392 ITR 426/ 153 DTR 296 / 297 CTR 18 (SC)

- 1977 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Initial assessment years – No requirement of maintaining separate books of account – Relevant material was placed before the AO – revision was held to be not valid. S.80IB(3)] (AY.2004-05)**
Cairn India Ltd. v. DIT (IT) (2017) 160 DTR 233/87 taxmann.com 310 / (2018) 300 CTR 366 (Mad)(HC)
- 1978 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Business expenditure – Capital gains – AO has applied his mind hence revision was reassessment was held to be not valid. [S. 50A] (AY. 2007-08)**
CIT v. Paville Fashions P. Ltd. (2017) 398 ITR 603 (Bom)(HC)
Editorial: Order in Paville Fashions Pvt Ltd v CIT (2014) 35 ITR 352 (Mum) (Trib) is affirmed.
- 1979 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Income from house property – Deductions of interest second borrowings – View of Assessing Officer being plausible, it was not open for Commissioner to take such order in revision. [S.24(b)] (AY. 2011-12)**
Aryan arcade Ltd. v. CIT (2017) 250 Taxman 138 (Guj.)(HC)
- 1980 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Agricultural income – AO had not conducted such inquiry, case in hand being that of no inquiry, Commissioner was right to pass an appropriate order of revision (AY. 2010-11)**
Virbhadra Singh (HUF) v. CIT (2017) 158 DTR 66 / 251 Taxman 150 / 298 CTR 393 (HP) (HC)
- 1981 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Gratuity – Assessee has not claimed any deduction during the relevant year hence revision was held to be not valid [S. 40A(7)] (AY. 2010-11)**
PCIT v. Gujarat State Fertilizers & Chemicals Ltd. (2017) 248 Taxman 566 (Guj.)(HC)
- 1982 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Order passed by the AO following the order of Tribunal cannot be revised. [S. 11, 12, 12A, 13]. (AY. 2001-02, 2003-04 to 2005-06)**
CIT (E) v. Allahabad Agricultural Inst. (2017) 397 ITR 655 (All)(HC)
- 1983 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Initial assessment year – Correct interpretation of the provision was open for debate, revision was held to be not justified [S.80IA] (AY. 1998-99, 2000-01 to 2002-03)**
CIT v. International Tractors Ltd. (2017) 397 ITR 696 (Delhi)(HC)
- 1984 **S.263 : Commissioner – Revision of orders prejudicial to revenue – CIT has power to revise the order of the AO where the AO had not conducted proper inquiries but had merely referred to the explanations given by the assessee**
CIT v. Bhawal Synthetics (India) (2017) 248 Taxman 127 / 152 DTR 273 / 297 CTR 104 (Raj) (HC)

- S.263 : Commissioner – Revision of order prejudicial to the interest of revenue – The failure to issue notice on any particular issue does not vitiate the exercise of power as long as the assessee is heard and given opportunity. The CIT has power to consider all aspects which were the subject matter of the AO's order, if in his opinion, they are erroneous, despite the assessee's appeal on that or some other aspect. (ITA 387/2017, dt. 08.11.2017) (AY. 2010-11)** 1985
BSEC Rajdhani Power Ltd. v. PCIT (2017) 399 ITRv 228 (Delhi)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Lack of inquiry vs. Inadequate inquiry – Revision on the ground that the AO did not conduct a detailed inquiry on account of paucity of time is unfair to the assessee and invalid. [S. 153A] (ITA No. 637/2017, dt. 21.08.2017) (AY. 2008-09 to 2011-12)** 1986
PCIT v. Mera Baba Reality Associates Pvt. Ltd. (Dehi)(HC) ; www.itatonline.org
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Sending entire matter back to Assessing Officer without making any inquiry is held to be bad in law. [S. 32] (AY. 2011-12)** 1987
PCIT v. Delhi Airport Metro Express Pvt. Ltd. (2017) 398 ITR 8 (Delhi)(HC)
Editorial: Order in Delhi Airport Metro Express Pvt. Ltd v PCIT (2017)54 ITR 358 / 146 DTR 189/ 184 TTJ 32 (Delhi)(Trib.) is affirmed .
- S.263 : Commissioner-Revision of orders prejudicial to revenue – Assessing officer not specifically mentioning particular claim does not mean that assessing officer passed assessment order without making enquiry in respect of allowability of claim – Order is not erroneous. [S. 37(1)](AY. 2009 -10)** 1988
MOIL Ltd. v. CIT (2017) 396 ITR 244/ 81 taxmann.com 420 (Bom.)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital gain – Specific queries in respect of transaction raised by assessing officer and replied by assessee – Order not erroneous or prejudicial to revenue [S. 45] (AY. 2010-11)** 1989
PCIT v. Ginger Properties P. Ltd. (2017) 396 ITR 496 (Guj)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Take over of proprietary concern by company – Sole proprietor could not borrow from his proprietary concern – Revision was held to be justified. [S. 45, 47(xiv), 55(1) (b), 55(2)(b)] (AY. 2001-02)** 1990
CIT v. K.V. Mohammed Zakir (2017) 396 ITR 180 /157 DTR 366 (Ker)(HC)
Editorial: SLP of assessee is allowed K.V. Mohammed Zakir v. CIT (2018) 254 Taxman 391(SC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Nothing on record to substantiate that Sales tax was excluded from sales – Revision was held to be not justified. [S.37(1)] (AY. 2004-05)** 1991
PCIT v. Vardhman Industries Ltd. (2017) 396 ITR 34 (P&H)(HC)

- 1992 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital Gain exemption for purchasing two flats and combining them in to one – Revision was held to be not valid. Alternative remedy is not absolute bar and writ is maintainable. [S. 54F, Art. 226.] (AY. 2008-09)**
Abhijit Bhandari v. PCIT (2017) 396 ITR 499/(2018) 161 DTR 349 (Mad.)(HC)
- 1993 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Gross profit ratio – Disallowance of purchase from one party – No further material to suggest other purchahses not genuine – Revision was held to be not valid. [S. 143(3), 147] (AY. 1993-94, 1995-96)**
Synbiotics Ltd. v. UOI(2016) 76 taxmann.com 280/(2017)394 ITR 179 (Guj) (HC)
- 1994 **S.263 : Commissioner – Revision of orders prejudicial to revenue – order covering issues not mentioned in show-cause notice is not permissible – Order passed by Assessing office after making enquiries cannot be said to be erroneous. [S.90, 143(3)] (AY. 2010-11, 2011-12)**
PCIT v. Krishak Bharati Co-op. Ltd. (2017) 395 ITR 572/ 247 Taxman 317/ 295 CTR 181 (Delhi)(HC)
- 1995 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Cash credits – Share capital premium – Lack of proper enquiry – Revision was held to be valid. [S.68, 147, 148] (AY. 2008-09)**
Success Tours & Travels P. Ltd. v. ITO (2017) / 394 ITR 37 /247 Taxman 109/295 CTR 430/ 150 DTR 185 (Cal.)(HC)
- 1996 **S.263 : Commissioner – Revision of orders prejudicial to revenue – AO after examination and enquiry allowed assessee’s claim for additional depreciation on windmills and write-off of obsolete spares and other items – Revision was held to be not justified. [S. 32(1)(iia), 37(1)] (AY 2009-10)**
PCIT v. Gujarat State Fertilizers & Chemicals Ltd. (2017) 246 Taxman 415 (Guj.)(HC)
- 1997 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Order of AO merged with that of CIT(A) and therefore revision is bad in law. [S. 11, 12, 12AA,13] (AY. 2001-02 to 2005-06).**
CIT (E) v. Allahabad Agriculture Institute (2017) 246 Taxman 252/ 152 DTR 193 (All.)(HC)
- 1998 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer assessed the income by making the addition, Commissioner cannot revise the order to increase the addition**
CIT v. Narottam Mishra (2017) 395 ITR 138 (MP) (HC)
- 1999 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Failure by Assessing Officer to examine actual price of land purchased by assessee – Revision by Commissioner was held to be justified. [S. 40A(3), 132]**
CIT v. Bharat Lub Industries (P) Ltd. (2017) 393 ITR 417 (Cal.)(HC)

- S.263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer allowing all related expenditure without applying provisions of section 40A(3) – Revision order setting aside assessment order restored. [S.40A(3), 132, 158BC] (BP. 1-4-1996 to 25-9-2002)** 2000
CIT v. Mohanlal Agarwal (2017) 393 ITR 402/ 154 DTR 129 (Cal)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Order of Commissioner enhancing disallowance was held to be unsustainable. [S.14A] (AY. 2009-2010)** 2001
PCIT v. State Bank of Patiala (2017) 393 ITR 476 (P&H)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Failure to make necessary enquiries, order of revision was held to be valid. [S.11, 13, 80G]** 2002
Imarat Shariah Educational and Welfare Trust v. CIT (2017) 392 ITR 301/ 245 Taxman 101 (Patna)(HC)
Shri Mahavir Sthan Nyas Samiti v. UOI(2017) 392 ITR 301 /245 Taxman 101 (Patna) (HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Commission payment to sister concern – No income escaped taxation – Revision was held to be not justified. (AY. 1998-1999)** 2003
CIT v. Micromatic Grinding Technologies Ltd. (2017) 392 ITR 268 (All)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Changing method of accounting in accordance with Accounting Standard 7 – Not erroneous and prejudicial to Revenue. [S.145] (AY. 2007-2008)** 2004
CIT v. A2Z Maintenance and Engineering Services Ltd. (2017) 392 ITR 273/ 246 Taxman 193 (Delhi)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Where the AO failed to consider the absence of any business activity for the purpose of treating an expenditure allowable for deduction, the order of AO was erroneous and prejudicial to Revenue and therefore, revision u/s. 263 by the CIT was sustainable.** 2005
Zuari Management Services Ltd. (2017) 146 DTR 177/ 292 CTR 327 (Bom.)(HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – CIT can revise an assessment order where an issue has not been examined by the AO. (AY. 1997-98)** 2006
Jeevan Investment & Finance (P.) Ltd. v. CIT (2017) 291 CTR 241 / 145 DTR 252 (Bom.) (HC)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Salary – Stay was more than 182 days at Iraq – Not resident in India hence income earned at Iraq cannot be taxable in India – Revision was held to be bad in law when on merit income cannot be assessed in India. [S. 5. 6] (AY. 2011-12)** 2007
Pramod Kumar Sapra v. ITO (2017) 167 ITD 596 (Delhi) (Trib.)

- 2008 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Revision order cannot be passed without affording an opportunity of being heard [S. 32] (AY. 2007-08, 2011-12, 2012-13)**
Wind World India Infrastructure (P) Ltd. v. PCIT (2017) 167 ITD 438 (Mum) (Trib.)
- 2009 **S.263 : Revision – Lack of proper enquiry – Revision was held to be bad in law. (AY. 2011-12)**
Riverbank Developers (P) Ltd. v. CIT (2017) 156 DTR 1 / 188 TTJ 569 (Kol.)(Trib.)
- 2010 **S.263 : Revision – Lack of enquiry – Revision was held to be not valid (AY. 2011-12)**
Shiv Lal Chaudhary v. Pr. CIT (2017) 188 TTJ 57 (UO) (Jd) (Trib.)
- 2011 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Roaming charges – Providing telecommunication services, not required to deduct tax at source while paying roaming charges to other telecom operators – Revision was held to be not valid [S. 194J] (AY. 2007-08 to 2009-10)**
Vodafone Digilink Ltd. v. CIT (TDS) (2017) 167 ITD 679 (Delhi) (Trib.)
- 2012 **S.263 : Commissioner – Revision of orders prejudicial to revenue – compensation for compulsory acquisition of agricultural land by State Government was to be regarded as agricultural income and not chargeable to tax as capital gain – Revision was held to be not justified. [S. 2(14) (iii) 10(1), 45] (AY. 2012-13)**
Anil Plantations (P) Ltd. v. PCIT (2017) 167 ITD 143 (Kol) (Trib.)
- 2013 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Income computed in terms of S.11, hence the Order passed by the AO was neither erroneous nor prejudicial to the interests of the revenue [S. 11] (AY. 2011-12).**
Shri Pragydham Trust v. CIT(E) (2017) 160 DTR 233 (Mum) (Trib.)
- 2014 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Investment in a residential house – Order of Commissioner was set aside and directed the AO to decide the issue as per ratio laid down by jurisdictional high Court [S. 45, 54F]. (AY. 2009-10)**
Babitha Kemparaje Urs (Smt.) v. CIT (2017) 167 ITD 125/ 160 DTR 217 / (2018) 191 TTJ 473 (Bang') (Trib)
- 2015 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Once proceedings were dropped, once again revision by, the successor Commissioner becomes functus officio in this regard after the exercise conducted by the predecessor Commissioner. Therefore the order was not sustainable on this ground alone. [S.54F] (AY. 2005-06)**
S. Baljit Singh Ryait v. ITO (2017) 59 ITR 289 (Chd.)(Trib.)
- 2016 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Unsubstantiated cash credits – Revision was held to be justified. [S.68] (AY. 2011-2012)**
Avathan Marimuthu v. ACIT (2017) 166 ITD 141 (Chennai) (Trib.)

- S.263 : Commissioner – Revision of orders prejudicial to revenue – CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of revenue without conducting an enquiry and recording a finding – Explanation 2 to s. 263 inserted w.e.f. 01.06.2015 does not override the law as interpreted by the various High Courts. (ITA No. 3205/Del/2017. Dt. 29.11.2017)(AY. 2014-15)** 2017
Amira Pure Foods Pvt. Ltd v. PCIT(2018) 63 ITR (Trib) 355 (Delhi)(Trib); www.itatonline.org
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Stock in trade – Land converted in to stock-in-trade and in same year entered into development agreement without handing over possession to developer – Revision was held to be not valid as the assessee has neither transferred capital asset nor handed over the possession. [S. 2(47)(v), 45(2)] (A.Y. 2011-12)** 2018
American Spring & Pressing Works (P) Ltd. v. PCIT (2017) 166 ITD 92 (Mum) (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer has passed the order after inquiry – Revision was held to be bad in law. (AY 2011 – 2012)** 2019
Jashn Beneficiary Trust v. ACIT (2017) 57 ITR 29 (Jab) (Trib)
- S.263: Commissioner – Revision of orders prejudicial to revenue – Assessment order was in line with the order of the Tribunal – Revision was held to be not valid. [S. 153A] (AY. 2006-07).** 2020
Radha Aggarwal (Smt.) v. PCIT (2017)56 ITR 509(Chd.) (Trib.)
Ruchi Singla (Smt.) v. PCIT (2017) 56 ITR 509 (Chd.) (Trib.)
Manish Singla v. PCIT (2017) 56 ITR 509 (Chd. (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Revision – Merely on the basis of in adequate enquiry revision was held to be not valid. [S44BB] (AY. 2008-09)** 2021
Technip UK Ltd. v. DIT of (IT) (2017) 187 TTJ 617/81 taxmann.com 311 (Delhi)(Trib.)
Braham Dev Gupta v. PCIT (2017) 187 TTJ 1 (Delhi)(Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – CIT must mention in his order as to what inquiries or verification ought to have been carried out by AO – If the CIT is not in agreement with a view taken by the AO, that would not justify revision of assessment order. (AY. 2013-14)** 2022
Systematix Consultants and Contractor (P) Ltd. v. PCIT (2017) 57 ITR 361 (Luck.)(Trib)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Bank guarantee commission paid is not in nature of interest expenditure hence nodisallowance can be made-Income from investments in foreign Joint Venture is not exempt hence investment was not needed to be considered for disallowance, loss in trading in shares cannot be considered as speculative ,Leave encashment, revision was held to be not valid. [S. 14A, R.8D] (AY. 2012-13)** 2023
Acumen Capital Marketing (I) Ltd. v. ITO (2017) 164 ITD 633 / 156 DTR 330 (Cochin) (Trib.)

- 2024 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Slump sale – Sale of Manufacturing Unit – Exclusion of intangible assets would still be covered under the section 50B in case the transferee in same line business as assessee – Revision was held to be not valid. [S. 45, 50B] (AY. 2009-10)**
Ambo Agro Products Ltd. v. PCIT (2017) 165 ITD 20 / 187 TTJ 648 / 160 DTR 25 (Kol) (Trib.)
- 2025 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Commissioner cannot direct the AO to initiate penalty proceedings. [S. 10B, 271(1)(c)] (AY. 2008-09 2010-11)**
Easy Transcription & Software (P) Ltd. v. CIT (2017) 185 TTJ 504 / 156 DTR 265 (Ahd.) (Trib.)
- 2026 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Lack of proper enquiry – Justified in setting aside assessment. [S.10B, 271(1)(c)] (AY. 2008-09 & 2010-11)**
Easy Transcription & Software (P) Ltd. v. CIT (2017) 185 TTJ 504 / 156 DTR 265 (Ahd.) (Trib.)
- 2027 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Possible view, hence revision was held to be not valid. (AY. 2010-11)**
Goldjyoti Polymers v. CIT (2017) 185 TTJ 366 (Ahd.)(Trib.)
- 2028 **S.263 : Commissioner Revision by commissioner, of orders prejudicial to revenue – Revisional jurisdiction cannot be invoked to correct each and every type of mistake or error committed by AO and it was only when order is erroneous that the section will be attracted. (AY 2007-08)**
Mukesh Jayantilal Kanakhara v. ACIT (2017) 49 CCH 238 / 148 DTR 314 / 184 TTJ 673 (Rajkot)(Trib.)
- 2029 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Income determined by AO not in excess of income shown in accounts of assessee even after disallowance of Provision for Gratuity – Order not prejudicial to the interest of revenue. [S.40A(7)] (AY. 2011-12)**
Malankara Orthodox Syrian Church Medical Mission Hospital v. DDIT (E) (2017) 55 ITR 53 (SN) (Cochin)(Trib.)
- 2030 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Sale of shares to non-resident and investment in residential property – Failure by AO to enquire into applicability of notification of RBI on sale of shares by resident to non-resident, revision was held to be justified. [S.54F] (AY. 2011-12)**
Ravi Kannan v. ACIT (2017) 55 ITR 38 (SN) (Chennai)(Trib.)

- S.263 : Commissioner – Revision of orders prejudicial to revenue – The fact that the AO is silent in the assessment order does not mean that he has not applied his mind so as to justify exercise of revisional powers by the CIT. (ITA No. 2464/Mum/2013, dt. 24.02.2017) (AY. 2009-10)** 2031
Small Wonder industries v. CIT (Mum.)(Trib.); www.itatonline.org
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Non submission of report of prescribed authority, revision was held to be not justified. [S.35(2AB)] (AY. 2009-10)** 2032
Sun Pharmaceutical Industries Ltd. v. PCIT (2017) 162 ITD 484 (Ahd.)(Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Investment in bonds – Transfer of shares to be considered on the date of execution transfer form and not the date of agreement or the date of receipt of consideration [S. 2(47), 45, 54EC, 54F, 263] (AY.2010-11)** 2033
Y.V. Ramana v. ADIT (2017) 162 ITD 662 / 183 TTJ 337 (Visakha)(Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Not earned any dividend during the relevant years – Revision was not justified for disallowance of expenses u/s. 14A. [S.14A] (AY. 2008-09 to 2012- 2013)** 2034
Dabwali Transport Co. Ltd. v. DCIT (2017) 163 ITD 579 (Asr.) (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Claim was allowed by the Assessing Officer without applicability of the notification, hence revision was held to be justified. [S. 54F] (AY. 2011-12)** 2035
Ravi Kannan v.CIT (2017) 163 ITD 640 (Chennai) (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Depreciable asset – Insurance claim – AO was directed to re do the assessment in accordance with law without influencing the observations of the Commissioner. [S.45 (IA)] (AY. 2009-10)** 2036
Hima Bindu Cold Storage (P) Ltd. v. CIT (2017) 163 ITD 487(Visakha) (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Provision for loss on assets – No enquiry was made by the Assessing Officer, revision was held to be justified. [S. 115]B] (AY. 2007-08)** 2037
Hitachi Home & Life Solution (India) Ltd. v. DCIT (2017) 163 ITD 1 (Ahd.) (Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Order was passed after detailed enquiry – Revision was held to be not valid. (AY. 2010-11)** 2038
G. V. R. Associates v. ITO (2017) 54 ITR 307 (Visakha)(Trib.)
- S.263 : Commissioner – Revision of orders prejudicial to revenue – Capital or revenue-Expenditure on modifying and improving leased property – Depreciation – Revision was held to be valid. [S. 32, 37(1)] (AY. 2011-2012)** 2039
MSA Motors v. ACIT (2017) 54 ITR 8 (Hyd.)(Trib.)

- 2040 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Works contract –AO has applied the mind – Revision was held to be not valid. [S.80IA] (AY. 2011-2012)**
Unipro Techno Infrastructure P. Ltd. v. PCIT (2017) 54 ITR 726 / 184 TTJ 205/ 153 DTR 195 (Chd.)(Trib.)
- 2041 **S.263: Commissioner-Revision of orders prejudicial to revenue – Revision based on special audit report and incorrect presumption hence revision was held to be not valid. [S. 2(22) (e)] (AY.2005-06 to 2007-08)**
Gurucharan Dass Arora v. CIT (2017) 53 ITR 364 (Delhi) (Trib.)
- 2042 **S.263: Commissioner – Revision of orders prejudicial to revenue – Cash credits – Share capital premium – Bogus share capital – Onus is on the assessee prove the creditworthiness of the subscribers – Revision was held to be justified [S. 56(2) (viib), 68] (AY. 2007-08 to 2009-10)**
Pragati Financial Management Pvt. Ltd. v. CIT (2017) 394 ITR 27 / 150 177 / 248 Taxamn 349/ 295 CTR 422 (Cal.)(HC)
Valley Towers Pvt Ltd v. CIT (2017) 394 ITR 27 (Cal.)(HC)
Axis Shoppers Pvt Ltd v. CIT (2017) 394 ITR 27 (Cal.)(HC)
Cape town Merchandise Pvt. Ltd v. CIT(2017) 394 ITR 27 (Cal.)(HC)
Sangini Vyapar Pvt. Ltd. v. CIT (2017) 394 ITR 27(Cal.)(HC)
Orbit Traders Pvt. Ltd. v. CIT (2017) 394 ITR 27 (Cal.)(HC)
Trinetra Vincom Pvt. Ltd. v. CIT (2017) 394 ITR 27 (Cal.)(HC)
Danila Commotrade Pvt. Ltd. v. CIT (2017) 394 ITR 27 (Cal.)(HC)
Kunj Behari Tie-Up Pvt. Ltd. v. CIT (2017) 394 ITR 27(Cal.)(HC)
Mangalgouri Vanijia Pvt. Ltd. v. CIT(2017) 394 ITR 27 (Cal.)(HC);
- 2043 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer arriving at decision after examination and enquiry, revision on the basis of audit objection was held to be bad in law. [S.154] (AY.2006-2007)**
Lotus Energy (India) Ltd. v. CIT (2017) 53 ITR 227(Mum.)(Trib.)
- 2044 **S.263 : Revision – Revision of orders prejudicial to revenue – Write off investment as revenue expenditure Excess deduction was allowed – Revision was held to be valid.**
ILC Industries Ltd. v. PCIT (2017) 53 ITR 342 (Bang)(Trib.)
- 2045 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Mutuality – CIT(A) allowed the exemption in earlier years, order cannot be regarded as erroneous [S. 11] (AY. 2011-12)**
Calcutta Cricket & Football Club v. ITO (2017) 183 TTJ 112 (Kol.)(Trib.)
- 2046 **S.264 : Commissioner – Revision of other orders – On enquiry it was found that there was no mistake hence rejection of application was held to be justified [S. 37(1), 139(4), 154] (AY. 2012-13)**
Bali Trading Pvt. Ltd. v. CIT (2017) 251 Taxman 228 / (2018) 402 ITR 271 / 162 DTR 215/ (Mad) (HC)

- S.264 : Commissioner – Revision of other orders – Civil contractor – Rejection of accounts and estimate of gross profit rate was held to be justified. [S. 144] (AY. 2010-11)** 2047
Sanjay Kundu v. CIT (2017) 397 ITR 371 (P&H)(HC)
- S.264 : Commissioner – Revision of other orders – Salary payable pursuant to recommendation of 5th Pay Commission – Claim, rejection of petition was held to be not justified, claim was directed to be allowed. [S.17, 37(1), 154] (AY. 1998-99)** 2048
Rites Ltd. v. CIT (2017) 249 Taxman 244 / 154 DTR 121 (Delhi)(HC)
- S.264 : Commissioner – Revision of other orders – Dismissal on the ground that the petition was time barred is held to be not proper he has to examine whether there was any justifiable reason for delay. [S.264(3)] (AY. 2012-13)** 2049
Hargovind Pandey v. P CIT (2017) 249 Taxman 528 (Delhi)(HC)
- S.264 : Commissioner – Revision of other orders – Quasi judicial power – Commissioner cannot abdicate his authority on the ground that a similar issue has arisen and is subject matter of appellate proceedings in other years. This would be clearly contrary to the provisions of the Act. (AY.2012-13)** 2050
Paradigm Geophysical Pty Ltd. v. DCIT(2017) 160 DTR 202 / (2018) 300 CTR 27 / 400 ITR 497 (Delhi)(HC)
- S.264 : Commissioner – Revision of other orders – Revised return – Intimation can be considered in revision application, Commissioner was directed to consider the revision application. [S.12A, 143(1)] (AY. 2013-14)** 2051
Agarwal Yuva Mandal (Kerala) v. UOI (2017) 395 ITR 502/246 Taxman 78 (Ker.)(HC)
- S.264 : Commissioner – Revision of other orders – Search and Seizure – Assessment of third person – Under writ jurisdiction the cannot examine whether documents seized were incriminating-Rejection of revision application was held to be justified. [S. 153C, Art. 226] (AY. 2004-05 to 2009-10)** 2052
Ganpati Fincap Services P. Ltd. v. CIT (2017) 395 ITR 692 / 82 taxmann.com 408/ 152 DTR 250/ 298 CTR 174 (Delhi) (HC)
Sushree Securities Pvt Ltd v. CIT (2017) 395 ITR 692/82 taxmann.com 408 /152 DTR 250/ 298 CTR 174 (Delhi) (HC)
Shrey Infradevelopers Pvt Ltd v. CIT (2017) 395 ITR 692/82 taxmann.com 408 / 152 DTR 250/ 298 CTR 174 (Delhi) (HC)
- S.264 : Commissioner – Revision of other orders – Record includes all records relating to any proceedings – Commissioner has the power to entertain the claim. [S. 144A, 263] (AY. 2003 -04, 2005 -06)** 2053
Sri Selvamuthukumar v. CIT (2017) 394 ITR 247 / 246 Taxman 185 / 149 DTR 38 (Mad.) (HC)

- 2054 **S.264 : Commissioner – Revision of other orders – Application for exemption after long delay – Commissioner has power to consider claim – Remuneration from foreign State under technical assistance agreement with Government of India – Salary received under agreement – Entitled to exemption – No collection of tax which is not authorised [S.10(8),art. 265] (AY. 1998-1999, 1999-2000, 2000-2001)**
Dr. Jyoti Vajpayee v. CIT (2017) 392 ITR 518/ 145 DTR 324/ 292 CTR 175 (All.)(HC)
- 2055 **S.264 : Commissioner – Revision of other orders – Salary received by a non-resident for services rendered abroad accrues outside India and is not chargeable to tax in India. The source of the receipt is not relevant. The CIT has wide powers u/s 264 and has to exercise them in favour of the assessee in terms of CBDT Circular No. 14 (XL-35) dated 11.04.1955. [S. 5(2), 15, 143(1)]**
Utanka Roy v. DIT (2017) 390 ITR 109 /291 CTR 501 / 146 DTR 27 (Cal)(HC)
- 2056 **S.264 : Commissioner – Revision of other orders – Application for revision is maintainable if appeal against assessment order withdrawn. [S. 246, 246A] (AY. 2011-12)**
M.T. Maersk Mikage v. DIT (IT) (2017) 390 ITR 427 (Guj)(HC)
- 2057 **S.268A : Appeal – Monetary limits – Central Board of Direct Taxes – CBDT has no power to issue circular with retrospective effect. [S. 119,260A]**
CIT v. Gemini Distilleries(2017) 398 ITR 343/ 299 CTR 27/ 159 DTR 63/251 Taxman 324 (SC)
- 2058 **S.268A : Appeal – Monetary limits – A beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. [S. 260A]**
DIT v. S. R. M.B. Dairy Farming (P) Ltd. (2017) 160 DTR 129 / 299 CTR 321 / (2018) 400 ITR 9 / 252 Taxman 1 (SC)
- 2059 **S.268A : Appeal – Application – Reference – Monetary limits – Instructions – Circulars would be binding on subordinate officers and Department cannot take a contrary view and insist for arguing matter in appeal filed by it on merits – CBDT was directed to modify the Circular. [S.119, 154, 260A,263, Art. 141]**
CIT v. GAD Fashion (2017) 299 CTR 333/160 DTR 141/(2018)401 ITR 1/ 252 Taxman 219 (FB) (Raj.)(HC)
- 2060 **S.268A : Appeal – If composite order is passed even if tax effect is less than prescribed monetary limits in any of years, appeal is maintainable. [S.254(1)] (AY. 2004-05)**
PCIT v. Devendranath G. Chaturvedi. (2017) 247 Taxman 210 (Guj) (HC)
- 2061 **S.269SS : Acceptance of loans and deposits – Bona fide belief that share application money was neither loans nor deposits, deletion of the penalty was held to be justified. [S. 271D] (AY. 2002-03 to 2004-05)**
CIT v. Object Frontier Software (P) Ltd. (2017) 244 Taxman 292 (Mad.)(HC)

- S.269UD : Purchase of immovable property by Central Government – Natural justice – Fresh order passed in compliance with principles of natural justice within two months, order was held to be valid – Re-vesting of property can be claimed only by transferor and not by transferee. [S269UG, 269UH]** 2062
Magadh Stock Exchange Association v. UOI (2017) 393 ITR 581/ 151 DTR 225/ 295 CTR 283 (FB)(Patna)(HC)
- S.269UD : Purchase of immovable property by Central Government – Subsequent auction sale of property – Sale on “as is where is and whatever there is” basis- Liability of auction purchaser to pay out standings pertaining to property not known at time of auction--Demand for unearned incremental charges in 1991 – Auction purchaser liable to pay charges. [Chapter XXI]** 2063
Ashwin Bhagwandas Choksey v. Appropriate Authorities (2017) 392 ITR 394 / 145 DTR 430 (Bom.)(HC)
- S.271(1)(b) : Penalty – Failure to comply with statutory notice – Insufficient time was given – Levy of penalty was held to be not justified. [S.132, 153A, 274] (AY. 2012-2013, 2013-2014)** 2064
Pillala Vishnu Vandana v. ACIT (2017) 54 ITR 458 (Visakha) (Trib.)
- S.271(1)(c) : Penalty – Concealment – where income disclosed by assessee in return and income assessed was nil, no penalty was leviable.** 2065
JCIT v. Classic Industries Ltd (2017) 247 Taxman 152 (SC)
- S.271(1)(c) : Penalty – Concealment – Omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation. (AY. 2009-10)** 2066
CIT v. SSA's Emerald Meadows (SC); www.itatonline.org
Editorial: Order in CIT v. SSA's Emerald Meadows ITA No 380 of 2015 dt 23-11-2015 (Karn)(HC) is affirmed.
- S.271(1)(c) : Penalty – Concealment – Income disclosed in return and income assessed is nil, penalty is not leviable.** 2067
JCIT v. Classic Industries Ltd. (2017) 393 ITR 20/ 152 DTR 235/ 295 CTR 589 (SC)
Editorial: Decision of Gujrat High Court is affirmed, JCIT v. Classic Industries Ltd. (TA No. 1798 of 2005 dt. 27-7- 2016) (Guj)(HC)
- S.271(1)(c) : Penalty – Concealment – The requirement to obtain previous approval of the IAC is mandatory as it is to safeguard the interests of the assessee against arbitrary exercise of power by the AO, however before approval opportunity must be given to explain the specific charge is not mandatory. [S. 274] (AY. 1987-88)** 2068
Maharaj Garage & Company v. CIT (2018) 400 ITR 292 (Bom)(HC)

- 2069 **S.271(1)(c) : Penalty – Concealment – In the absence of any overt act, which disclosed conscious and material suppression, invocation of Explanation 7 to s. 271(1)(c) in a blanket manner could not only be injurious to the assessee but ultimately would be contrary to the purpose for which it was engrafted in the statute. Deletion of penalty was held to be justified. [S. 92C, 271(1)(c), Expl. 7] (ITA 460/2016, C.M. Appl. 26591/2016, dt. 22.08.2016)(AY.2007-08)**
PCIT v. Verizon India Pvt. Ltd. (Delhi)(HC) ; www.itatonline.org
- 2070 **S.271(1)(c) : Penalty – Concealment – Mere claim of rebate cannot be considered as furnishing inaccurate particulars of income – Voluntary withdrawal of claim, levy of penalty was held to be not valid – DTAA-India – Canada [Art. 13] (AY. 2014-2015)**
Gopalratnam Santha Mosur v. ITO (IT) (2017) 399 ITR 155 (Mad)(HC)
- 2071 **S.271(1)(c) : Penalty – Concealment – Gifts received on occasion of marriage – Failure to prove genuineness of gift – Levy of penalty was held to be justified. [S. 56(2) (vi)] (AY. 2007 -08)**
Rajinder Mohan lal v. PCIT (2017) 399 ITR 223 (P&H) (HC)
- 2072 **S.271(1)(c) : Penalty – Concealment – Addition confirmed – Lender denied the advance of loan – levy of penalty was held to be justified. (AY. 2006-07)**
Basant Singh, Prop. Basant General Store v. CIT (2017) 399 ITR 247 (P&H) (HC)
- 2073 **S.271(1)(c) : Penalty – Concealment – The AO must specify whether the charge is of concealment of particulars of income or furnishing of inaccurate particulars thereof and which one of the two is sought to be pressed into service. He is not permitted to club both by interjecting an ‘or’ between the two – Levy of penalty was held to be not valid (AY. 2010-11)**
PCIT v. Baisetty Revathi (Smt) (2017) 398 ITR 88 (AP)(HC)
- 2074 **S.271(1)(c) : Penalty – Concealment – Inaccurate particulars of income – There was no excess stock in possession of assessee, stock was subject to central excise control and no proceeding for clandestine removal of goods etc. are initiated against assessee- Deletion of penalty was held to be justified. [S.145] (AY. 2007-08)**
ITO v. Ramsons Castings (P) Ltd. (2017) 159 DTR 306/85 taxmann.com 50 (Bom)(HC)
- 2075 **S.271(1)(c) : Penalty – Concealment – Assessee cannot be said to have furnished incorrect particulars in the return filed in search proceedings where a revised computation of income was filed after ITAT’s order in the course of parallel reopened assessments [S.153A]**
CIT v. Juhu Construction Co. (2017) 151 DTR 157/295 CTR 316 (Bom) (HC)
- 2076 **S. 271(1)(c) : Penalty – Concealment – Rectification of declaration was made on the advice of chartered Accountant – Deletion of penalty was held to be justified**
ITO v. Silk City Petrofiles Co. Ltd. (2017) 396 ITR 191 (Guj) (HC)
Editorial: SLP is granted to the revenue; CIT v. Silk City Petrofiles Co. Ltd. (2017) 393 ITR 84 (St)

- S 271(1)(c) : Penalty – Concealment – Draft discounting – Estimate of income – Basis upon which penalty proceedings initiated set aside by tribunal – Penalty cannot be imposed. (AY. 1982-83 to 1985-86)** 2077
Indermal Manaji v. CIT (2017) 396 ITR 573/157 DTR 114 / 299 CTR 390 (Bom) (HC)
- S.271(1)(c) : Penalty – Concealment – Notice should state specific grounds for levy of penalty – Printed form is not sufficient – Levy of penalty is held to be not valid. (AY. 2006-07)** 2078
Muninaga Reddy v. ACIT (2017) 396 ITR 398 (Karn)(HC)
- S.271(1)(c) : Penalty – Concealment – Capital gains – Disowning the document – Levy of penalty was held to be in valid. [S. 45, 143(3)] (AY. 2008-09)** 2079
Uppada Sarvani (Smt.) v. ITO (2017) 396 ITR 241 (T&AP) (HC)
- S.271(1)(c) : Penalty – Concealment – Compensation received for relinquishing right to sue – Levy of penalty was held to be not justified [S. 28(va), 260A] (AY. 2009-10)** 2080
PCIT v. Hemalatha Rajan (Ms.) (2017) 396 ITR 515/DTR 120 / 299 CTR 402 (Mad) (HC)
- S.271(1)(c) : Penalty – Concealment – Book profits – Penalty cannot be levied for concealment in normal assessment. [S. 115]B]** 2081
PCIT v. Multiplex Capital Ltd. (2017) 396 ITR 62 (Delhi)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Multiplex Capital Ltd (2017) 394 ITR 5 (St.)
- S.271(1)(c) : Penalty – Concealment – Protective assessment – Charge of concealment penalty cannot be levied where the order is passed on the basis of protective assessment [S.69, 132, 153C] (AY. 1994 -95)** 2082
S. Narayanan v. CIT (2017) 395 ITR 271/299 CTR 285 / 159 DTR 387 (Mad) (HC)
- S.271(1)(c) : Penalty – Concealment – Notice of penalty is not clear as to whether penalty is imposed for concealment or furnishing of inaccurate particulars of income, the order imposing penalty is not sustainable. [S.153A]** 2083
S. Chandrashekar v. ACIT (2017) 396 ITR 538 / 293 CTR 409/ 148 DTR 322 (Karn.)(HC)
- S.271(1)(c) : Penalty – Concealment – A deduction which is wrongly claimed on the advice of an accountant, would not invite levy of penalty. [S. 57]** 2084
CIT v. Anita Kumaran (Smt.) (2017) 293 CTR 454/ 148 DTR 281 (Mad.)(HC)
- S.271(1)(c) : Penalty – Concealment – Additions confirmed in quantum proceedings – Levy of penalty improper. (AY. 1994-1995)** 2085
Rama Natha Gadhavi v. ITO (2017) 393 ITR 590/ 79 taxmann.com 152 (Guj)(HC)
Editorial: SLP of revenue was dismissed CIT v. Rama Natha Gadhavi (2017) 392 ITR 44 (St.)

- 2086 **S.271(1)(c) : Penalty – Concealment – Assessing Officer initiating penalty proceedings for furnishing of inaccurate particulars of income and imposing penalty for concealment of income – Levy of penalty was held to be not valid. (AY. 2003-04 to 2006-07)**
CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom.)(HC)
- 2087 **S.271(1)(c) : Penalty – Concealment – When return filed was accepted there is no concealment of income. Assets seized relating to assessment years 2005-06 and 2006-07, penalty not leviable for assessment year 2007-08. [S. 132 , 153C] (AY. 2005-2006, 2006-2007)**
PCIT v. Ankur Aggarwal (2017) 393 ITR 1 | 293 CTR 298/ 79 taxmann.com 96/ 147 DTR 342 (Delhi)(HC)
PCIT v. Neeraj Jindal (2017) 393 ITR 1 | 293 CTR 298/ 79 taxmann.com 96/ 147 DTR 342 (Delhi)(HC)
- 2088 **S.271(1)(c) : Penalty – Concealment – Estimation of profit – Levy of penalty was held to be not justified. [S.153A] (AY. 2002-03, 2003-04)**
CIT v. Juhu Construction Co (2017) 151 DTR 157/ 295 CTR 316 (Bom)(HC)
- 2089 **S.271(1)(c) : Penalty – Concealment – Arm’s length price – Difference in method leading to rejection of loss claimed in respect of genuine new line of business – Penalty cannot be imposed. [S. 92CA] (AY. 2010-11)**
PCIT v. Mitsui Prime Advanced Composites India P. Ltd. (2017) 392 ITR 280/ 79 taxmann.com 283 (2018) 301 CTR 373 | 163 DTR 165 (Delhi)(HC)
Editorial: SLP of revenue is dismissed ; PCIT v. Mitsui Prime Advanced Composites India P. Ltd. (2017) 251 Taxman 1 (SC)
- 2090 **S.271(1)(c): Penalty – Concealment – Incorrect claim cannot amount to furnishing inaccurate particulars – Levy of penalty was held to be not justified. [S.68, 132, 245H] (AY. 1981-1982, 1983-1984)**
Ashirbad Enterprises v. CIT (2017) 392 ITR 289/ 78 taxmann.com 21 (Patna)(HC)
- 2091 **S.271(1)(c) : Penalty – Concealment – Opinion of chartered accountant – Set off under different head – Levy of penalty was held to be not justified. (AY. 2004-05)**
PCIT v. Atotech India Ltd. (2017) 391 ITR 117 (P&H) (HC)
- 2092 **S.271(1)(c) : Penalty – Concealment – Search and seizure – Disclosure in return filed under section 153A amounts to extension of disclosure made under section 132(4), hence penalty cannot be levied [S 132(4), 153A, 153C] (AY. 2002-03 to 2006-07)**
PCIT v. Gopal Das Kothari (HUF) (2017) 391 ITR 390 (Cal.) (HC)
- 2093 **S.271(1)(c) : Penalty – Concealment – Revised return – Amount disclosed in the revised return – Levy of penalty was held to be not valid. [S. 139(1), 153A] (AY. 2005-06, 2006-07)**
PCIT v. Neerj Jindal (2017) 393 ITR 1 (Delhi)(HC)
PCIT v. Ankur Aggarwal (2017) 393 ITR 1 (Delhi)(HC)

- S.271(1)(c) : Penalty – Concealment – If the quantum appeal is admitted by the High Court, it means that the issue is debatable and penalty cannot be levied. [S. 260A] (ITA No. 1498 of 2014, dt. 17.02.2017)(AY. 2006-07)** 2094
CIT v. Advaita Estate Development Pvt. Ltd. (Bom.) (HC); www.itatonline.org
- S.271(1)(c) : Penalty- Concealment – Disclosure of income after detection, levy of penalty was held to be justified. [S. 142(1), 143(2)] (AY. 2007-08)** 2095
Samson Maritime Ltd. v. CIT(2017) 393 ITR 102 (Bom)(HC)
- S.271(1)(c) : Penalty – Claim of depreciation at higher rate – Levy of penalty was held to be not valid (AY. 2012-13)** 2096
ITO v. Vaidangi Management Consultants (P) Ltd. (2017) 188 TTJ 49(UO) (Jp) (Trib.)
- S.271(1)(c) : Penalty – Concealment – Accommodation entries – Estimation of income- Penalty at 100% of tax sought to be evaded confirmed – Assessee providing accommodation entries and its income was computed on estimation basis. Penalty at 100% of tax sought to be evaded confirmed. (AY 2009-10)** 2097
Nexus Software Ltd. v. DCIT (2017) 59 ITR 177 (Ahd)(Trib)
- S.271(1)(c) : Penalty – Concealment – Capital or revenue – Fee paid to registrar of companies – Debatable – levy of penalty was held to be not justified. (AY. 2009-10)** 2098
ACIT v. Jotindra Steel and Tube Ltd. (2017) 59 ITR 66 (SN) (Delhi) (Trib)
- S.271(1)(c) : Penalty – Concealment- AO. has used conjunction “or”. There was ambiguity in recording of satisfaction and notice issued for the levy of penalty u/s. 274 read with section 271(1)(c). Since the charge for levy of penalty was not explicitly clear from the notice, the penalty was bad in law and hence, the penalty proceedings were liable to be set aside. [S. 274] (AY. 1998-1999)** 2099
Ashok Sahakari Sakhar Karkhana Ltd. v. ACIT (2017) 59 ITR 171 (Pune)(Trib.)
- S.271(1)(c) : Penalty – Concealment – Search and seizure – Failure by assessee to disclose additional income in return for relevant financial year the levy of penalty was held to be justified. As regards estimated interest earned on such additional income, levy of penalty was held to be not justified. [S.132, Expl.5]** 2100
Radha Govind Lashkariv. ACIT (2017) 59 ITR 578 (Jaipur)(Trib)
- S.271(1)(c) : Penalty – Concealment – Change of head – Losses were not allowed to be set off against business income treating the said loss as speculative nature – Penalty cannot be levied [S.43(5)] (AY. 2009 – 10)** 2101
DCIT v. Shree Ram Electro cast (P) Ltd(2017) 166 ITD 209 (Kol.)(Trib.)
- S.271(1)(c) : Penalty – Concealment – Claim of depreciation on furnace – Claim being held to be false levy of penalty was held to be justified [S. 32] (AY. 2004-05)** 2102
Sundaram Fasteners Ltd. v. ACIT (2017) 166 ITD 148 (Chennai) (Trib.)

- 2103 **S.271(1)(c) : Penalty – Concealment – Disallowance of claim – Levy of penalty was held to be not valid as the details were disclosed in the return [S.80IB] (AY.2004-05) Sundaram Fasteners Ltd. v. ACIT (2017) 166 ITD 148 (Chennai)(Trib.)**
- 2104 **S.271(1)(c) : Penalty – Concealment – Additional ground was raised before the Tribunal – Failure to specify the charge the levy of penalty was held to be invalid .The argument that the assessee was made aware of the specific charge during the proceedings is of no avail. S. 292BB does not save the penalty proceedings from being declared void. [S. 254(1), 274, 292BB] (ITA Nos. 1596 &1597/MUM/2014, dt. 01.09.2017) (AY. 2005-06, 2006-07) Orbit Enterprises v. ITO (Mum)(Trib), www.itatonline.org**
- 2105 **S.271(1)(c) : Penalty – Concealment – Notice not specifying the specific charge – Levy of penalty was held to be not justified (ITA No. 5006/Del/2013, dt. 21.11-.2017.) (AY. 1997-98) Aditya Chemicals Ltd. v. ITO (Delhi)(Trib); www.itatonline.org**
- 2106 **S.271(1)(c) : Penalty – Concealment – Notice not specifying specific charge – Concealment of income and furnishing of inaccurate particulars are distinct and separate charges. A nebulous notice which contains both charges is null and void ab initio. [S. 274] (ITA No. 118/Agra/2015, dt. 19.09.2017)(AY. 2008-09) Sachin Arora v. ITO (Agra)(Trib); www.itatonline.org
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- 2107 **S.271(1)(c) : Penalty – Concealment – Change of method of computation of ALP by TPO cannot be the ground for levy of concealment penalty. [S. 92C. 271(1)(c), Expl. 7] (ITA No. 2647/Del/2016, dt. 31.10.2017) (AY. 2010-11) Halcrow Consulting India Pvt. Ltd. (2018) 194 TTJ 329 (Delhi)(Trib) ; www.itatonline.org**

- S.271(1)(c) : Penalty – Concealment – Disallowance was confirmed by High Court – Penalty was deleted as assessee had disclosed all material facts before the AO and also there was no specific charge. (AY. 2006-07)** 2108
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- 2116 **S.271(1)(c) : Penalty – Concealment – Loss on capital asset – Debiting the loss to P&L account instead reducing from the block of asset was bonafide mistake, levy of penalty was held to be not justified. (AY. 2010-11)**
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- 2117 **S.271(1)(c) : Penalty – Concealment – Withdrawal of debatable claim and addition to income – Levy of penalty is held to be not justified. (AY. 2011-12)**
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- 2119 **S.271(1)(c) : Penalty – Concealment – Satisfaction – As per provisions of the Act, the satisfaction has to be recorded by the Assessing Officer before initiating penalty proceedings as to under which limb the case of assessee falls. (AY. 2003-04 to 2007-08)**
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- 2120 **S.271(1)(c) : Penalty – Concealment – Assessee liable to penalty as per Explanation 3 to s. 271(1)(c) on failure to file return of income vis-à-vis income disclosed in return filed u/s. 153A – As per Explanation 4(b) to s. 271(1)(c), penalty is to be computed after allowing credit of advance tax paid by the Assessee [S. 132 ,153A] (A.Y.2006-07)**
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- 2121 **S.271(1)(c) : Penalty – Concealment – As per Explanation 5A to s. 271(1)(c), Assessee liable to penalty on the sum offered as additional income as per return filed u/s. 153A [S. 153A] (A.Y.2006-07)**
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- 2122 **S.271(1)(c) : Penalty – Concealment – Deduction under wrong advice and incorrect understanding of law levy of penalty is held to be not valid. [S.80IA] (AY. 2006-07)**
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- 2123 **S.271(1)(c) : Penalty – Concealment Merely AO mentioned alternate charges at preliminary stage of issue of notice under section 274 – proceedings cannot be held vitiated – AO recording well-reasoned satisfaction before invoking provisions hence penalty was held to be justified. (AY. 2011-12)**
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- 2135 **S.271(1)(c) : Penalty – Concealment – Bogus purchases – Surrendered in the course of assessment – Levy of penalty was held to be not justified, however merely on the basis of defects in the notice penalty cannot be deleted. [S. 69C,274, 292BB] (AY. 2010-11)**
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- 2136 **S.271(1)(c) : Penalty – Concealment – Excess claim of interest under bona fide belief, levy of penalty was held to be not justified. (AY. 2010-11)**
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- 2137 **S.271(1)(c) : Penalty – Concealment – Additions deleted by Tribunal hence penalty levied was held to be not sustainable. (AY. 2007-08)**
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- 2138 **S.271(1)(c) : Penalty – Concealment – Bogus purchase and sale of shares – Additions deleted – Penalty was held to be not leviable [S. 45, 153A] (AY. 2003-04)**
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- 2139 **S.271AAA : Penalty – Search initiated on or after 1st June, 2007 – Additional condition of having to substantiate manner in which undisclosed income was earned, only if revenue raises question regarding manner in which undisclosed income was earned while recording assessee’s statement. The cancellation of penalty was justified [S. 132(4)] (AY. 2010-11)**
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- 2140 **S.271AAA : Penalty – Search initiated on or after 1st June, 2007 – No penalty can be levied in respect of undisclosed income found during a search if the AO did not put a specific query to the assessee by drawing his attention to S.. 271 AAA and asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived. Deletion of penalty was held to be justified .[S. 132] (AY. 2010-11)**
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- 2141 **S.271AAA : Penalty – Search initiated on or after 1st June, 2007 – Assessee entitled to adjustment of seized cash to advance tax – Penalty cannot be imposed – Explanation 2, to section 132B is not retrospective. [S.132B, 234B] (AY. 2011-2012)**
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- 2151 **S.271BA : Penalty – Failure to furnish reports – International transaction – Transfer pricing – Non furnishing of report without reasonable cause levy of penalty was held to be justified [S.92E] (AY. 2010-11, 2011-12)**
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- 2152 **S.271C : Penalty – Failure to deduct at source – Interest paid to sister concerns without deduction of tax at source, no reasonable cause was proved, held liable to pay penalty [S. 194A] (AY. 2004-05)**
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- 2153 **S.271D : Penalty – Takes or accepts any loan or deposit – Genuineness of the transaction was not in doubt – Levy of penalty was not justified. [S. 269SS] (AY. 1994-95)**
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- 2154 **S.271D : Penalty – Takes or accepts any loan or deposit – cash received from son for urgent necessary, penalty cannot be levied. [S. 269SS]**
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- 2157 **S.271G : Penalty – Documents – International transaction – Transfer pricing – Documents were filed in the course of assessment and assessment was made without making any adjustments, levy of penalty was held to be not justified [S.92D(3)] (AY. 2010-11, 2011-12)**
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- S.281 : Certain transfers to be void – Rejection of application for permission for transfer of asset, without any discussion on merits of any particular of application, proposed transfer of individual asset was held to be not valid matter to be decided on merits by the AO afresh.** 2175
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- S.293 : Bar of suits in Civil Courts – Subject matter of Income-tax proceedings cannot also be the subject matter of civil proceedings.** 2179
Anuj Chawla v. CIT (2017) 395 ITR 52/247 Taxman 264/295 CTR 235 / 151 DTR 33 (Delhi)(HC)

Finance Act, 2016 – Pradhan Mantri Garib Kalyan Yojana scheme

- 2180 **S.199A : Pradhan Mantri Garib Kalyan Yojna, 2016 – Legislative powers- Judicial review – Court declined to enter into or encroach upon policy making arena and suggest a different policy on ground that it was not within domain of Court – There is a distinction between assailment of the constitutional validity of a policy and conception of framing of a better policy. [S. 199E, 199F Art. 32]**
Siddharth Mehta v. UOI (2017) 393 ITR 312 / 244 Taxman 289/ 148 DTR 248/ 293 CTR 365 (SC)
- 2181 **S.199C : Unexplained Money – Where cash was seized from a person during demonetization 2016 and he was not tried under any provision of law, he would be eligible to deposit amount under Pradhan Mantri Garib Kalyan Yojana scheme on or before 31-3-2017 [S. 69C]**
Vishal Jain v. State of Punjab (2017) 246 Taxman 213 / 293 CTR 137 / 148 DTR 16 (P&H) (HC)

Finance Act, 2016 – Direct tax Dispute Resolution Scheme

S.208 : Finance Act, 2016 – Penalty for failure to collect tax at source – Person, who defaults penalties can claim benefit of amnesty in respect of penalties alone [S. 271D, 271E, 271(c), 272(2) (c)] 2182
Grihalakshmi Films v. JCIT (2017) 396 ITR 10/ 249 Taxman 237 / 296 CTR 11/ 153 DTR 297 (Ker)(HC)

Direct Tax Dispute Resolution Scheme, 2016 – Finance Act , 2016

S.208: Pendency of appeal – Survey – AO on basis of material seized during survey, reassessed assessee and also imposed penalty and during pendency of penalty appeal before CIT(A), assessee made declaration under Direct Tax Dispute Resolution Scheme, 2016 – declaration was not maintainable. [S.133A, 271(1)(c)] (AY. 2007-08) 2183
Parbatbhai J. Golakia HUF (2017) 158 DTR 289/299 CTR 84/85 taxmann.com 83 (Guj)(HC)

Income Declaration Scheme, 2016

– Finance Act, 2016

- 2184 **S.183 : Charge of tax and surcharge – Petitioner failed to pay 25 per cent of tax payable on undisclosed income declared under Income Declaration Scheme, 2016 before due date – Assessee filed a petition to direct revenue to accept the said payment after the due date – Held no provision under IDS which would permit revenue to accept payment after specified date. [S. 186] (AY. 2014-2015)**
Nandu Atmaram Wajekar v. UOI (2017) 247 Taxman 145 / 295 CTR 212 / 151 DTR 121 (Bom.)(HC)
- 2185 **S.184 : Credit for advance tax – There is no bar for an assessee or declarant to claim credit of advance tax and TDS paid previously relating to assessment years for which it seeks benefit under [IDS, 2016, S. 185, S 219]**
Kumudam Publications P. Ltd. v. CBDT (2017) 393 ITR 599 /247 Taxman 25/ 294 CTR 54 / 150 DTR 33 (Delhi)(HC)
- 2186 **S.187 : Payment of tax – Condonation of delay – Instruction of the Board dated 28th March, 2017 prescribes certain situations for condonation over which the declarant has no control – Held, the application was to be decided on merits particularly in light of the Board’s circular. [S. 119]**
Sadhana Rajendra Jain v. CBDT & Anr. (2017) 160 DTR 373 / 86 taxmann.com 4/(2018) 300 CTR 23 (Bom.)(HC)
- 2187 **S.196 : Disqualification to file declaration under Scheme – Search carried out after commencement of Scheme, assessee is not entitled to avail of benefit of Scheme – The Scheme of 2016 would not override the provisions of the 1961 Act [s. 132, 196 (e), (ii)]**
Surendra Pal Singh Sahni v. DGIT (Inv.) (2017) 398 ITR 505/248 Taxman 146 (Raj.)(HC)

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- S.86(m): Tax arrear – Computation of tax arrears – Advance tax paid prior to application – Cannot be adjusted while determining balance. [S.90]** 2188
Inter Craft Ltd v. CIT (2017) 390 ITR 409 / 147 DTR 95 / 295 CTR 360 (Delhi)(HC)
Old Village Industries Ltd. v. CIT (2017) 390 ITR 409 / 147 DTR 95/295 CTR 360 (Delhi)(HC)
- S.90 : Time and manner of payment of tax arrear – Certificate issued under the scheme is conclusive-Settlement Commission has no jurisdiction to pass the order after issue of certificate by competent authority. [S. 88, 95, 245C, 245D] (1987-1988 to 1989-1990)** 2189
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- S.91 : Immunity from prosecution and imposition of penalty in certain cases – Circulars are binding on the department – Protective assessment – Designated authority was justified granting the immunity from prosecution and penalty. [S. 132, 153C] (AY. 1994-95)** 2190
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Voluntary Disclosure of Income Scheme, 1997 – Finance Act, 1997

2191 **S.64 : Tax deduction at source – Tax payable under 1961 Act is not tax payable under 1997 Scheme – Tax deducted at source on income under 1961 Act cannot be taken into account to determine tax payable on voluntarily disclosed income under Scheme. [S. 65(3), 66, 67, IT Act, S.4, Art. 226] (AY. 1995-1996, 1996-1997, 1997-1998)**
Earnest Business Services P. Ltd. v. CIT (2017) 393 ITR 453/ 294 CTR 80 / 80 taxmann.com 11/ 149 DTR 1 (Bom.)(HC)

Wealth-tax Act, 1957

- S.3 : Asset – Valuation – Land was not used for business purposes for two years following purchase – Land constituted an asset for purposes of Wealth-Tax – Valuation under Rule 3 of Schedule III to Wealth-Tax Act was held to be justified. [S40, Finance Act, 1983, Sch. III, R. 3.] (AY. 1990-01 to 1993-94)** 2192
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- S.5(1)(xii) : Exemption – Work of art – Buggy was used on rare ceremonial occasions therefore, its personal use was incidental, therefore was better qualified as ‘work of art’ exemption was available. (AY 1972-73).** 2193
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- S.7 : Valuation of assets – Business asset – Valuation of immovable properties under the ‘rent capitalisation’ method – ‘land and building’ method – Valuation on the basis of land and building method was held to be justified. Interpretation that, when there are two method of valuation the method of valuation which is favourable to the assessee may be adopted was not to apply to valuation by two different methods. [S.16A] (AY. 1970-71 to 1974-75)** 2194
Bimal Kishor Paliwal v. CWT (2017) 398 ITR 553/ 298 CTR 540 /158 DTR 273 / 251 Taxman 312 (SC)
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- S.7 : Valuation of assets – Residential property in existence before 1996 – JDA Regulations not applicable [Jaipur Development Authority Act, 1982 and Regulations 1996 – (AY 1987-1988 to 2001-02)** 2195
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- S.7 : Valuation of assets – Rental income from property was assessed as income from house property for a long time – Value of property includible in net wealth. Amendment to section 40(3) of the Finance Act, 1983 by the Finance Act, 1988 was not retrospective and would not apply to a period prior to April 1, 1989. [Finance Act, 1983, S 40(3) (AY. 1984-85 to 1998-99)** 2196
CWT v. Atma Ram Properties (P) Ltd. (2017) 399 ITR 380 /158 DTR33 (Delhi)(HC)

- 2197 **S.16(3) : Assessment — Amalgamation-Scheme of Amalgamation specifying that legal proceedings against transferor could be continued against transferee – Assessment proceedings against transferee was held to be valid (AY. 1990-01 to 1993-94)**
Balaji Industries Ltd v. Dy. CWT (2017) 397 ITR 18 / (2018)163 DTR 94/ 301 CTR 686 (Mad)(HC)
- 2198 **S.27A : Appeal – High Court – “substantial question of law” The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so the orders are unsustainable. [I.T. Act, S.260A, Code of Civil Procedure, S.100] (AY. 1981, 82, 1982-83, 1983-84)**
Maharaja Amrinder Singh v. CWT (2017) 397 ITR 752/ 156 DTR 313/ 297 CTR 561/ 250 Taxman 341 (SC)
- 2199 **S.27A : Appeal – High Court – Tribunal not considering effect of section 42 – application for rectification to be made – Appeal is not maintainable. [S. 42, 260A] (AY. 2006 -07)**
CWT v.M.R.Jyaram (HUF) (2017) 394 ITR 233 (Karn.) (HC)
CWT v. M. R. Anandram (Individual) (2017) 394 ITR 233 (Karn.) (HC)
CWT v. M.R.Jayaraman (2017) 394 ITR 233 (Karn.) (HC)
CWT v. M.R.Kodanadram (2017) 394 ITR 233 (Karn.) (HC)
CWT v. M.R.Janakiram (HUF) (2017) 394 ITR 233 (Karn.) (HC)

Interpretation of taxing statutes

Exemption provisions – while interpreting exemption provisions liberal construction does not mean ignoring conditions of exemption

DCIT v. Ace Multi Axes Systems Ltd (2017) 160 DTR 353 /299 CTR 441(2018) 400 ITR 141 (SC)

CIT v Sunder Forging (2018) 400 ITR 141(SC)

Circulars are binding on the department – When two views are possible, one which favours the assessee has to be adopted

(CA. Nos. 2781-2790 OF 2010, dt. 10.11.2017.)

SRD Nutrients Private Limited v. CCE (SC), www.itatonline.org

Precedent – When there is conflict of views regarding provision, view of jurisdictional high court to be followed.

Gordhanbhai Nagardas Patel v. Dy. CIT (2017) 398 ITR 307/ 249 Taxman 604 (Guj)(HC)

Precedent – High Court – When Bench is disagreeing with decision of co-ordinate Bench, the matter to be referred to larger Bench. (AY, 2006 -07)

Engineers India Ltd. v. CIT (2017) 397 ITR 16 / 250 Taxman 19 / 298 CTR 115/157 DTR 235 (SC)

Editorial: Order in CIT v. Engineers India Ltd (2015) 55 taxmann.com 1 (Delhi) (HC) was set aside

Double taxation avoidance agreements – Context in agreement and any subsequent agreement to be taken into account.

DIT v. KLM Royal Dutch Airlines (2017) 392 ITR 218/ 245 Taxman 341/ 292 CTR 121 (Delhi)(HC)

DIT v. Lufthansa German Airlines (2017) 392 ITR 218/ 245 Taxman 341/ 292 CTR 121 (Delhi)(HC)

Precedent – Later decision by a Bench of equal strength is binding (AY. 2007-08, 2008 -09, 2009-10, 2010-11)

Uttam Value Steels Limited v. ACIT (Mum.)(Trib.), www.itatonline.org

Precedent – Dismissal of Special leave petition in limine – Not an affirmation of High Court. [S.40(a)(ia), 194C, 200]

Palam Gas Service v. CIT (2017) 394 ITR 300/ 247 Taxman 379 / 151 DTR 1/ 295 CTR 1 (SC)

Precedent – Law laid down by High Court is binding on all in State

CIT v. Raghuvir Synthetics Ltd(2017) 394 ITR 1/ 151 DTR 153/ 295 CTR 143 (SC)

Res judicata – Need for consistency and certainty

Godrej & Boyce Manufacturing Co. Ltd v. Dy. CIT (2017) 394 ITR 449 / 247 Taxman 361/ 151 DTR 89/ 295 CTR 121 (SC)

Precedent – Supreme Court decision

It is axiomatic that a decision of the Supreme Court does not make the law but it only declares the law as always existing since its inception

E. Mark (India) Ltd. v. CIT (2017) 393 ITR 91 (Bom)(HC)

Rule against retrospectivity

The Court held that, in the matter of taxation , unless things are very clear, no attempt shall be made to make a provision retrospective

CWT v. Lt. Padampat Singhania (2017) 390 ITR 86/148 DTR 301 / 293 CTR 420 (All)(HC)

Reasonable and purposive interpretation to be adopted

PCIT v. IDMC Ltd. (2017) 393 ITR 441 / 246 Taxman 6 (Guj)(HC)

Allied laws

Advocates Act, 1961

Advocate – Vakalatnama- NOC from Advocate to appoint new advocate- The Registry cannot insist on a NOC from the old advocate and refuse to take the new vakalatnama on record.

(ANo. 6525/2013, dt. 02.012.2016)

Karnataka Power Transmission Corp. Ltd. v. M. Rajashekar (Karn)(HC) : www.itatonline.org

Advocate – Strictures passed against Advocate for making frivolous arguments without having the file and wasting the valuable time of the Court. Costs imposed (A No. C/126/2007-DB) 17.01.2017)

Clarion Power Corp v. Commissioner of Customs (CESTAT) (Trib.), www.itatonline.org

S.8 : Term of office of members of State Bar Council – Supreme Court directed Bar Council of India and all State Bar Councils to conclude process of verification before 31-12-2017 to find out fake lawyers for purpose of elections to State Bar Council

Ajayinder Sangwan v. Bar Council of Delhi (2017) 250 Taxman 334 (SC)

S.24 : Persons who may be admitted as advocates on State roll - Practicing Chartered Accountant could not be enrolled as an Advocate with Bar Council of Gujarat in terms of rules framed by Bar Council under section 28. [S. 28, Chartered Accountant Act, 1949]

Mam Raj Goel v. Bar Council of Gujarat (2017) 250 Taxman 369 (Guj.)(HC)

Strike by Advocates: [Art . 141]

Court held that; giving a call to protest when the Bill is still at a draft stage is premature. Wisdom has to prevail on the Advocates in the light of the law laid down in Harish Uppal AIR 2003 SC 739. The law laid down by the Supreme Court is binding on the Advocates as well under Article 141 of the Constitution. The lawyers' community has to appreciate their responsibility in discharging the duties of their profession. (PIL No. 37 of 2017, dt. 30.03.2017)

Manoj Laxman Shirsat, Adv. v. Bar Council of India (Bom)(HC); www.itatonline.org

Chartered Accountants Act, 1949.

- 2200 **S.21 : Professional misconduct – When company made an allegation against Chartered Accountant stating that he did not act with due diligence during certification of its forms filed before ROC and same was done with mala fide intention by colluding its director for personal gain, ICAI should investigate the allegations.**
Sudhindran Parikkal & Chokkalingam v. East India Investment Holding P. Ltd. (2017) 246 Taxman 2 (NCLT) (Chennai)
- Chartered Accountants Act, 1949**
- 2201 **S.21 : Misconduct – Not allowed to re-agitate the issue albeit on basis of additional information received pursue the RTI application.**
Partha Ghosh v. ICAI (2017) 251 Taxman 326 (Delhi) (HC)
- 2202 **S.22 : Professional or other misconduct – High Court set aside findings of fact recorded by Disciplinary Committee as also Council – Supreme Court affirmed the order of High Court. [S. 21]**
Institute of Chartered Accountants of India v. M.S. Rathi (2017) 249 Taxman 565 (SC)
- 2203 **S.22 : Misconduct – Chartered Accountant had resigned as Director of a company before opening of public issue but had signed prospectus of said issue, Chartered Accountant was guilty of other misconduct. [S.21]**
Chartered Accountants Act, 1949, In re. (2017) 250 Taxman 35 (All) (HC)
- 2204 **S.22 : Misconduct – A Chartered Accountant who had resigned as Director of a company before opening of public issue but had signed prospectus of said issue despite his alleged resignation was held to be guilty of other misconduct [S. 21]**
Chartered Accountants Act, 1949, In re (2017) 250 Taxman 35 (All.)(HC)
- 2205 **S.22 : Professional misconduct – A practising Chartered Accountant carrying on business through companies, trusts and firms was guilty of professional misconduct and his name was to be removed from the Register of Members for a period of 2 years. [S. 21]**
Council of Institute of Chartered Accountants of India v. Subodh Gupta (2017) 246 Taxman 64 (Delhi)(HC)
- 2206 **S.22 : Professional misconduct – A statutory auditor of the company who failed to discharge his duty to enquire whether the transactions which were mere book entry were prejudicial to the interest of the company was guilty of professional misconduct and his name was to be removed from the Register of Members for a period of 5 years.**
Council of the ICAI v. CA. G. S.Johar (2017) 246 Taxman 156 (Delhi)(HC)

S.22 : Professional misconduct – Where a CA failed to cross check the certificates issued by him for listing of shares in stock-exchange, with the statement of accounts issued by Bank, he was guilty of professional misconduct and his name was to be removed from the Register of Members for a period of 5 years. 2207

Council of the ICAI v. Kailash Chander Agarwal (2017) 246 Taxman 165 (Delhi)(HC)

S.22 : Professional misconduct – Issue of certificate without verification was held to be professional misconduct. Action of disciplinary committee suspending the chartered Accountant, from practising as a Chartered Accountant for a period of three years as recommended by Institute was held to be justified . 2208

Institute of Chartered Accountants of India, In re (2017) 244 Taxman 59 (AP)(HC)

Institute of Cost and Works Accountants of India Regulations, 1959

- 2209 **S.41 : Restriction of three attempts to pass all the papers is appropriate to improve standard and conduct of examination, no fault could be found with such restriction**
Deep Singh v. Institute of Cost Accountants of India (2017) 248 Taxman 339 (Delhi)(HC)

Constitution of India

- 2210 **Art. 235 : Control over subordinate Courts – CCTV cameras are culture of the day and promotes good governance. All Tribunals including the ITAT should have CCTVs with audio recording. The footage of the CCTV Camera will not be available under the RTI and will not be supplied to anyone without permission of the concerned High Court. [Art.226, 227] (WP No. 99/2015, dt. 14.08.2017.)**
Pradyuman Bisht v. UOI (SC), www.itatonline.org

Hindu Law

- 2211 **Hindu law – HUF – The burden lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. (CA. No. 11220 of 2017, dt. 06.09.2017)**
Adveppa v. Bhimappa (SC); www.itatonline.org

Central Services (Conduct) Rules, 1964

- 2212 **Charge framed after lapse of 20 years was liable to be quashed.**
Nai Pal Singh. v. UOI (2017) 251 Taxman 352 (Bom) (HC)

Goods and Services Tax (GST)

GST systems not working – No coercive action -No penal interest late fee/prosecutions shall be levied – The composition Scheme is extended upto 30.9.2017. (D.B. C WPN0. 15239 / 2017, dt. 20.09.2017) 2213
Rajasthan Tax Consultants Association v. UOI (Raj)(HC) , www.itatonline.org

Finance Act, 1994 S.83 Central Excise Act, 1944 Service tax

S.11B : Refund – limitation – Construction services – Service tax was paid under protest – Claim of refund cannot be rejected on the ground of limitation. 2214
Mera Baba Reality Associate (P) Ltd v. CST (2017) 145 DTR 259 (Delhi) (HC)

S.85 : Appeal – Limitation – Condonation of delay – When the assessee made statement on oath that it received the order only on 11 th Sept., 2012, the same has to be accepted – Delay was condoned 2215
Ebilitz Inc v. Addl. CST & Anr. (2017) 145 DTR 284 (Karn.)(HC)

Indian Penal code, 1860

S.181 : Knowingly stating to a public servant on oath as true that which is false -Search and seizure – Unexplained investment -Contradiction statement against bank locker- Addition was deleted by Tribunal – Dismissal of criminal complaint by Chief Judicial Magistrate was held to be justified. [S. 69A, Cr.P.C. S. 313] 2216
ADIT v. Dr. Kaushal Goyal (2017) 250 Taxman 250/(2018) 400 ITR 320 (P&H)(HC)

Sales tax – VAT Tribunal – Qualification and appointment of Members of the Tribunal – Infrastructure – Transparency (WP. 2069 of 2015, dt. 29.09.2017) 2217
Sales Tax Tribunal Bar Association v. State of Maharashtra (Bom)(HC); www.itatonline.org

Code of Criminal Procedure, 1973

- 2218 **S.193: Punishment for false evidence – Offences and Prosecution – Giving false affidavits before court, making deliberate false statements on oath and suppressing material facts in pleadings are the grounds for prosecution. Registrar General was directed to forthwith file a written complaint before the concerned appropriate Court against the assessee. [S. 195, 197, 340]**
Strategic Credit Capital P. Ltd. v. Ratnakar Bank Ltd. (2017) 395 ITR 391/81 taxmann.com 408/ 153 DTR 1/ 297 CTR 341 (Delhi)(HC)
Veena Singh v. DI(Inv) (2017) 395 ITR 391/81 taxmann.com 408 / 153 DTR 1 / 297 CTR 341 (Delhi)(HC)
- 2219 **S.300 : Fodder scam- Delay – The Court has to ensure that owing to some delay on part of the machinery, miscarriage of justice should not take place. It is also contended that the power under Section 5 of the Limitation Act should be exercised to advance substantial justice – Delay was condoned – Severe strictures passed against the High Court for “inconsistent decision-making” and passing orders which are “palpably illegal, faulty and contrary to the basic principles of law” and by ignoring “large number of binding decisions of the Supreme Court” and giving “impermissible benefit to accused”. Law on condonation of delay explained. CBI directed to implement mechanism to ensure that all appeals are filed in time [Constitution of India, Art. 20(2), Limitation Act, S.5]**
(CA No. 394 of 2017, dt. 08.05.2017)
State of Jharkhand v. Lalu Prasad Yadav (SC), www.itatonline.org
State of Jharkhand v. Dr.Jagannath Mishra (SC), www.itatonline.org

Assam Value Added Tax Act, 2003 (8 of 2005),

S.81 : Revision – High Court – Revision before High Court – Value added tax – Limitation – Specific provision under Value Added Tax Act making sections 4 to 12, Limitation Act applicable. Amounts to exclusion of operation of section 5, Limitation Act by necessary implication [S. 84, Limitation Act (36 of 1963), S. 5, 29(2).] 2220

Patel Brothers v. State of Assam (2017) 391 ITR 244 (SC)

Editorial : Decision in Patel Brothers v. State of Assam [2016] 93 VST 230 (Gauhati) (HC) is affirmed.

Service of notice by Whatsapp – E-Mail & Whatsapp are not formally approved but if service is shown to be effected and is acknowledged it cannot be said that the Defendants had ‘no notice’. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion 2221

(Suit No. 162 of 2017, dt. 23.05.2017)

Kross Television India Pvt. Ltd. v. Vikhyat Chitra Production (Bom)(HC) : www.itatonline.org

Prevention of Corruption Act, 1988.

S.13 : A Chartered Accountant who is accused of offering a bribe to an Income-tax Officer for performing an official act can be tried under sections 7 and 13 (1)(d) of the Prevention of Corruption Act and s. 120-B of the IPC. Chartered Accountant is not a “public servant” is irrelevant. [S. 13, IPC, S. 120B, CRPC, S. 227] (CRP. No. 1040/2014, dt. 13.09.2017) 2222

H. Naginchand Kincha v. Superintendent of Police (Karn.)(HC), www.itatonline.org

S.13 : Government Servant – Prevention of corruption – Cash credits – Gifts – Assets was found disproportionate to known sources of income – Income-tax returns and orders passed in income-tax proceedings not by themselves proof that income was lawfully earned. Further scrutiny and analysis required to determine whether offence under 1988 Act made out. [S. 56, 68, 139, 143] 2223

State of Karnataka v. Selvi J. Jayalalitha and others (2017) 392 ITR 97/78 taxmann.com 161 (SC)

State of Karnataka v. Indo Doha Chemicals and Pharmaceuticals (2017) 392 ITR 97/78 taxmann.com 161 (SC)

K. Anbazhagan v. Indo Doha Chemicals and Pharmaceuticals (2017) 392 ITR 97 (SC)

K. Anbazhagan v. Selvi J. Jayalalitha (2017) 392 ITR 97/78 taxmann.com 161 (SC)

2017 – Circulars /Notifications, Articles

Finance Bill, 2017

Budget Speech of Minister of Finance for 2017-18:

Part A	(2017) 391 ITR 1 (St.)
Part B	(2017) 391 ITR 23 (St.)
Annexures	(2017) 391 ITR 32 (St.)
Finance Bill, 2017	(2017) 391 ITR 40 (St.)
Notes on clauses	(2017) 391 ITR 113 (St.)

Memorandum explaining the provision in the Finance Bill , 2017 (2017) 391 ITR 165 (St.)

Finance Bill, 2017 : Notes of amendments (2017) 392 ITR 50 (St)

Finance Act, 2017(7 of 2017) (Assent of the President on 31-03 2017) (2017) 393 ITR 1 (St)

Circulars /Notifications

41 of 2016 dated – Clarifications on indirect transfer provisions under the Income-tax Act, 1961 (2017) 390 ITR 7 (St.)

42 of 2016 dated 23rd December 2016 – Clarifications on the Direct Tax Dispute Resolution Scheme, 2016 (2017) 390 ITR 14 (St.)

1 of 2017, dated 2 nd January, 2017 – Income–tax deduction from salaries during the financial year 2016-17 under section 192 of the Income–tax Act, 1961 (2017) 390 ITR 33 (St)

2 of 2017, dated 18th January, 2017 – Clarifications on the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna, 2016 (2017) 390 ITR 125 (St)

3 of 2017, dated 26th January, 2017 – Explanatory notes to the provisions of the Finance Act, 2016 (2017) 391 ITR 253 (St.)

4 of 2017 dated 20th January, 2017 – Circular No. 41 of 2016 (FNo. 500/43 /2012–FT & TR) dated 21-12-2016 (Indirect transfer provisions)

5 of 2017, dated 23rd January, 2017 – Measures for reducing litigation – Clarification on Circular No 21 and 8 of 2016 –reg. (2017) 391 ITR 229 (St.)

6 of 2017, dated 24th January, 2017 – Guiding principles for determination of place of effective Management (POEM) of a company (2017) 391 ITR 243 (St)

7 of 2017, dated 27th January, 2017 – Clarifications on implementation of GAAR provisions under the Income-tax Act, 1961, (2017) 391 ITR 234 (St.)

8 of 2017, dated 23rd, February, 2017 – Clarification for determination of Place of Effective Management (POEM) of a company ,other than an Indian company – Reg. (2017) 392 ITR 7 (St.)

Circular No --- of 2017 dt. 28th March, 2017 – S.119 – Sub: Petition seeking condonation of delay in making payment of first installment under the Income disclosure Scheme (IDS), 2016 – reg . (2017) 393 ITR 77 (St.)

9 of 2017, dated 14th March, 2017 – Clarification of the Taxation and Investment Regime for the Pradhan Mantri Garib Kalyan Yojna, 2016 (2017) 392 ITR 59 (St.)

10 of 2017, dated 23rd March, 2017 – Clarifications of Income Computation and Disclosure Standards (ICDS) notification under section 145(2) of the Income-tax Act, 1961 (2017) 392 ITR 60 (St.)

11 of 2017, dated 24th March, 2017 – order under section, 119(2)(a) of the Income-tax Act, 1961 – Guidelines for waiver of interest charged under section 201(IA)(i) of the Income-tax Act, 1961 (2017) 392 ITR 68 (St.)

12 of 2017, dated 31st March, 2017 – Clarification on the Taxation and investment Regime for Pradhan Mantri Garib Kalyan Yojana , 2016 (2017) 393 ITR 79 (St.)

13 of 2017, dated 31st March, 2017 – Clarification regarding liability to income-tax in India for a non-resident seafarer receiving remuneration in NRE (Non-resident External) account maintained with an Indian bank (2017) 393 ITR 91 (St)

14 of 2007, dated 21st April, 2017 – Extension of time for filing declaration under the taxation and investment Regime for Pradhan Mantri Kalyan Yojana, 2016 (2017) 393 ITR 114 (St.)

15 of 2017 dated 21st April, 207 – Clarification on removal of Cyprus from the list of notified jurisdiction areas under section 94A of the Income-tax Act, 1961 (2017) 393 ITR 115 (St.)

16 of 2017, dated 25th April, 2017 – Lease rent from letting out building/developed space along with other amenities in an Industrial park/ SEZ – to be treated as business income (2017) 393 ITR 116 (St.)

17 of 2017 dated 26th April, 2017 – Corrigendum to Circular No 13 of 2017, dated April 11, 2017, on the clarification regarding liability to income tax in India for a non-resident seafarer receiving salary in NRE (Non-resident External) account maintained with an Indian Bank.

19 of 2017, dated 12th June, 2017 – Settled view on section 2(22)(e) of the Income-tax Act, 1961, trade advances – Reg. (2017) 395 ITR 20 (St).

20 of 2017, dated 12th June, 2017 – Applicability of Explanation 2 to section 132B of the Income-tax Act, 1961 – Reg. (2017) 395 ITR 21 (St)

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