2020
DIGEST OF CASE LAWS
DIRECT TAXES

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

(For Private Circulation)
Compiled by Research Team

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All disputes are subject to Mumbai Jurisdiction.

Compiled by Research team of AIFTP Journal Committee and KSA LEGAL CHAMBERS

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Editorial Team

Adv. Arati Vissanji
Adv. M. Subramanian
Adv Keshav Bhujle
Adv. Subhash S. Shetty

Research Team

Adv. Arati Sathe
CA Aliasger Rampurawala
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PREFACE

2020 – Digest of Case Laws on Direct Taxes

We are glad to present **"2020 – Digest of case laws on direct taxes"**. This year's digest is the 10th-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, 2607 cases which are reported in the year 2020 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 (2020) ITR, 420 to 429, Taxman 268 to 275, CTR 312 to 317, DTR 185 to 196, ITD, 179 to 185, ITR (Trib) 77 to 84, TTJ, 203 to 208, DTR (Trib) 185 to 196).

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.

Special thanks to Advocates Shri Subash S. Shetty, Shri. M. Subramamnian and Shri Shashi Bekal for editing the digest.

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:**
Doon Valley Foods (P.) Ltd	Doon Valley Foods (P.) Ltd. v. ITO
PCIT v. Vikas Oberoi	Vikas Oberoi; PCIT v. *
ITO v. Yashovardhan Tyagi	Yashovardhan Tyagi; ITO v. *
ACIT v. Gurdeep Singh	Gurdeep Singh; ACIT v. *
DDIT v. Ramesh Dang	Ramesh Dang; DDIT v. *

In the year 2012, we have 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 2020 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.

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 suggestion may be sent to ksalegal@gmail.com

For Research and Editorial team,

Yours sincerely,
Dr. K. Shivaram
Senior Advocate

Date : 01-11-2021

Abbreviations

Journals, Reports, Magazines and online

Ahmedabad Chartered Accountants Journal	– ACAJ
All India Federation of Tax Practitioners Journal	– AIFTPJ
All India Tax Tribunal judgements	– TTJ
All India Reporter	– AIR
The Bombay Chartered Accountant Journal	– BCAJ
The Chamber of Tax Consultants	– The Chamber's Journal
Company Cases	– Comp-Cas
Current Tax Reporter	– CTR
Direct Taxes Reporter	– DTR
Excise Law Times	– E.L.T.
Goods and Service 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

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Abbreviations – Authorities

Additional Commissioners of Income-tax	– Addl. CIT
Authority for Advance Rulings	– AAR
Assistant Commissioner of Income-tax	– ACIT
Assistant Directors of Income-tax	– ADIT
Assessing Officer	– AO
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 Commissioner 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

Courts

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

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

Tribunal Benches

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

Bilaspur	– (Bilaspur)
Calcutta	– (Kol.)
Chandigarh	– (Chd.)
Chennai	– (Chennai)
Cochin	– (Cochin)
Cuttack	– (Cuttack)
Delhi	– (Delhi)
Guwahati	– (Gau.)
Hyderabad	– (Hyd.)
Indore	– (Indore)
Jabalpur	– (Jabalpur)
Jaipur	– (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)

Case Laws Index

Section wise Index

Income-tax Act, 1961

S. 2(1A) : Agricultural income – Rubber manufacturer – Sale of rubber trees and timber cannot be brought to tax under rule 7A. [R. 7A] 1

Allowing the appeal of the assessee the Tribunal held that the Rule 7A is applicable to computation of income derived from sale of centrifuged Latex or Latex based crepes etc, only; proceeds on sale of rubber tred timber cannot be brought to tax under Rule 7A. (AY. 2006-07)

Aspinwall and Co. Ltd. v. ACIT (2020) 183 ITD 621 / 116 taxmann.com 851 (Cochin)(Trib.)

S. 2(1A) : Agricultural income – Income from mushroom spawn grown in nursery qualifies as agricultural income – Eligible for exemption – Issue restored to file of AO to determine whether spawn was actually grown by assessee – Reassessment is held to be valid. [S. 10(1), 147, 148] 2

Assessee is engaged in the business of sale of mushroom spawns and claimed income from same as exempt, as per provisions of S. 10(1) of the Act being in nature of agricultural income. AO disallowed the claim on the ground that the assessee has not produced any evidence to demonstrate any mycelium grown on the same as claimed by assessee. On appeal the Tribunal held that whether findings of revenue called into question very claim of assessee that it had grown spawn accordingly the matter was to be restored to file of AO. with direction to first determine fact whether spawn was actually grown by assessee, taking into consideration evidences filed by assessee, and if so by what process. If it was found that the assessee was indulging in activity of growing spawns, issue of the claim of exemption under S. 10(1), be thereafter decided in accordance with law. As regards reassessment the Tribunal held that the reassessment is held to be valid. (AY. 2011-12 to 2014-15).

Doon Valley Foods (P.) Ltd. v. ITO (2020) 181 ITD 18 / 113 taxmann.com 516 (Chd.)(Trib.)

S. 2(22)(e) : Deemed dividend – Loans and advances to shareholders – Amount received as share application money by companies from companies in both of which the assessee had beneficial interest, was not loan and advances – Addition cannot be made as deemed dividend. [S. 260A] 3

Dismissing the appeal of the revenue the Court held that, Tribunal was justified in holding that the amount received as share application money by companies from companies in both of which assessee had beneficial interest, was not loan and advances for purposes of invoking section 2(22)(e) of the Act. (AY. 2002-03, 2004-05, 2005-06, 2007-08)

PCIT v. Vikas Oberoi (2020) 115 taxmann.com 260 (Bom.)(HC)

Editorial : SLP of revenue is dismissed PCIT v. Vikas Oberoi (2020) 272 Taxman 188 (SC)

4 **S. 2(22)(e) : Deemed dividend – Advance received – Not able to establish for purchase of land – Assessable as deemed dividend.**

Dismissing the appeal of the assessee the Court held that the assessee could not show what efforts were made by the Company and which bankers were approached for the loan. Therefore, in view of the above peculiar facts it is apparent that Agreement to Sell dated 8/6/2009 and cancellation of such deed by Agreement dated 1/8/2009 for the purchase of property is merely cover up and a camouflage for giving loan to the assessee by the above Company to avoid contravention of the provision of section 2(22) (e) of the Act. Assessee also failed to give the adequate evidence and cogent, reliable, and credible evidences about the transaction. The CIT(A) has completely brushed aside the finding of the A.O. in remand report and the statement of the assessee and further has not applied his mind to find out the true nature of the transaction. Accordingly the addition as deemed divided was affirmed. (AY. 2010-11)

Vikram Krishnan v. PCIT (2020) 114 taxmann.com 196 (Delhi) (HC)

Editorial : SLP of assessee is dismissed Vikram Krishnan v. PCIT (2020) 269 Taxman 477/ 114 taxmann.com 197 (SC)

5 **S. 2(22)(e) : Deemed dividend – Loan by subsidiary company to holding company – Business purposes – Loan cannot be treated as deemed dividend – No question of law. [S. 260A]**

Dismissing the appeal of the revenue the Court held that the Loan by subsidiary company to holding company for business purposes cannot be treated as deemed dividend. No question of law.

Obiter dicta : The advance received by the assessee from its subsidiary has been shown in the balance – sheet of the assessee, relevant to the assessment years 2002 –03 and 2004–05. The Department had initiated two separate proceedings for the single transaction and the proceedings had been dragged up to the level of the court. Obviously, the Department would have been well aware of the fact that the amount of Rs 3 crores advanced by the subsidiary to its holding company, could not be taxed twice. When such is the position, had the Department applied its mind in a proper manner, they could have avoided these type of vexatious proceedings and it would have saved the precious time of the court as well as the Department. (AY.2002-03)

CIT v. ACCEL Ltd. (2020) 429 ITR 36 / 273 Taxman 424 (Mad.)(HC)

6 **S. 2(22)(e) : Deemed dividend – Share holder – Not a shareholder in a company from which loan was received – Loan amount cannot be assessed as deemed dividend.**

Dismissing the appeal of the revenue the Court held that since the assessee was not a shareholder in a company from which loan was received hence loan cannot be assessed as deemed dividend. (AY. 2009-10)

CIT v. Checkpoint Apparel Labelling Solutions (India) Ltd. (2020) 120 taxmann.com 125 (Mad.)(HC)

S. 2(22)(e) : Deemed dividend – Deposit for purchase of premises – Addition cannot be made as deemed dividend – No question of law. [S. 260A] 7

Dismissing the appeal of the revenue the Court held that deposit for purchase of premises cannot be assessed as deemed dividend.(AY. 2009-10)

PCIT v. Dina S. Shah (Smt.) (2020) 117 taxmann.com 100 (Bom.)(HC)

S. 2(22)(e) : Deemed dividend – Reassessment – Deemed dividend – Deferred liability – Not Shareholder of lender company – Loan not assessable as deemed dividend. [S. 147, 148] 8

Dismissing the appeals of the revenue the Court held that,the records placed before the Assessing Officer showed the nature of transaction between the assessee and the company. It was neither a loan nor an advance, but a deferred liability. The payment had been made to the assessee, a firm, which was not a shareholder in the company. These facts had been noted by the Assessing Officer. The Tribunal rightly reversed the order passed by the Commissioner (Appeals) affirming the order of the Assessing Officer. (AY.2012-13, 2014-15)

CIT v. T. Abdul Wahid and Co. (2020) 428 ITR 456 / 275 Taxman 101 / (2021) 199 DTR 515 (Mad.)(HC)

S. 2(22)(e) : Deemed dividend – Money lending business – Money lending formed substantial part of business – Loan not assessable as deemed dividend. 9

Dismissing the appeal of the revenue the Court held that, the Tribunal had rightly held that no addition could be made by way of deemed dividend to the income of the assessee. Although the assessee held more than 10 per cent. of the shares in the creditor companies, S. 2(22)(e) did not include any advances or loans to a shareholder by the company in the ordinary course of business where lending of money was substantial business of the company. It was not disputed that both the creditor companies had money lending as the substantial part of their business. (AY. 2015-16)

PCIT v. Mohan Bhagwatprasad Agrawal (2020) 425 ITR 119 / 270 Taxman 126 / 115 taxmann.com 69 / 270 Taxman 126 (Guj.)(HC)

S. 2(22)(e) : Deemed dividend – Accumulated profits – Loans from subsidiary – Assessable as deemed dividend. 10

Tribunal held that the fact that the loan or advance taken from the company might have been ultimately repaid or adjusted would not alter the fact that the assessee had received dividend from the company during the relevant accounting period. Relied *Miss P. Sarada v. CIT (1998) 229 ITR 444 (SC)*. (AY.2014-15)

Assetz Infrastructure Pvt. Ltd. v. Dy.CIT (2020) 84 ITR 59 (SN) (Bang.)(Trib.)

S. 2(22)(e) : Deemed dividend – Loans and advances – Commercial transactions – Addition cannot be made as deemed dividend. 11

Dismissing the appeal of the revenue the Tribunal held that amounts are advanced to an assessee by another company for business purpose wherein both entities are having common directors and if it is in nature of a commercial transaction hence addition cannot be as deemed dividend. (AY. 2011-12)

ITO v. Yashovardhan Tyagi (2020) 184 ITD 461 (Delhi)(Trib.)

12 **S. 2(22)(e) : Deemed dividend – Share holder – Transferred share holding on borrower company to lender company before advance of loan – Addition cannot be made as deemed dividend.**

Dismissing the appeal of the revenue, the Tribunal held that as per annual return filed before ROC, the assessee had already transferred its shareholding in borrower company to lender company before advancement of loan out of surplus funds hence addition as deemed dividend is held to be not valid. (AY. 2013-14)

ACIT v. Gurdeep Singh (2020) 183 ITD 317 / 117 taxmann.com 451 / 206 TTJ 872 / 80 ITR 14 (SN) (Chd.)(Trib.)

13 **S. 2(22)(e) : Deemed dividend – Business transaction – Common directors – Advance in the course of business as commercial transactions – Addition cannot be made as deemed dividend.**

Dismissing the appeal of the revenue, the Tribunal held that, advance in the course of business as commercial transactions, addition cannot be made as deemed dividend.(AY. 2011-12)

ITO v. Yashovardhan Tyagi (2020) 184 ITD 461 / 116 taxmann.com 899 (Delhi)(Trib.)

14 **S. 2(22)(e) : Deemed dividend – Redeemable debenture – Addition cannot be made as deemed dividend – Advance for purchase of machinery – In the course of business addition cannot be made as deemed dividend – Intercorporate deposit – Repaid before end of relevant year – Addition as deemed dividend is held to be justified.**

The Tribunal held that since assessee has issued redeemable debentures and M/s Jasubhai Business Services (P.) Ltd. has subscribed for the debentures and during this year, they have also exercised the options and assessee has redeemed the debentures and current outstanding amount is of Rs. 2,02,25,000/. This transaction involving issue of securities, even though it is a private placement but it cannot be considered as a loan transaction. The provisions of section 2(22)(e) of the Act are not attracted, it attracts only when loan and advances taken in place of direct issue of dividends. In order to avoid dividend tax, some of the assessee are resorting to taking loan instead of dividend being issued to the respective shareholders. The securities are separate scripts and having stand alone capital liability, which cannot be equated with loan, which is current liability. As regards the advance for purchase of machinery it being commercial transaction provision of deemed dividend is not attracted. As regards intercorporate deposit Tribunal held that merely because the intercorporate was repaid before end of the relevant year it cannot be held that deemed dividend provision is not attracted.(AY. 2013-14)

ACIT v. Jasubhai Engineering (P) Ltd. (2020) 184 ITD 388 / 118 taxmann.com 430 (Mum.) (Trib.)

15 **S. 2(22)(e) : Deemed dividend – Loans and advances to subsidiary – Not established the business purposes – Addition as deemed dividend is held to be valid – Reassessment is also held to be valid. [S. 147, 148]**

Dismissing the appeal of the assessee the Tribunal held that reassessment is held to be valid. The Tribunal also held that as the assessee has not established the advance of

loans to business purposes, addition as deemed dividend is held to be justified. (AY. 2005-06)
Empire Holdings Ltd. v. Dy.CIT (2019) 112 taxmann.com 319 (Chennai)(Trib.)

S. 2(22)(e) : Deemed dividend – Allotment of shares – Debited value of shares in the ledger account – Addition of debit balance as deemed dividend is held to be not be not justified. 16
Dismissing the appeal of the revenue the Tribunal held that there was neither any payment nor company made any advance or loan. The AO has notionally worked the debit balance on the basis of ledger Account, which is not in accordance with the provisions of the Act hence addition is held to be not justified. (AY. 2013-14)
Dy.CIT v. Veena Goyal (Smt.) (2020) 119 taxmann.com 362 / 186 ITD 298 (Jaipur)(Trib.)

S. 2(22)(e) : Deemed dividend – Advances given for business purpose – Not assessable as deemed dividend. 17
Tribunal held that the advances were given for business purposes, and the provisions of section 2(22)(e) were not attracted in the case of the assessee. Further in order to tax the receipt, it had to be proved that the amounts received could have been distributed as dividend by the lending company. (AY.2012-13)
Dy.CIT v. International Land and Developers P. Ltd. (2020) 79 ITR 441 (Delhi)(Trib.)

S. 2(22)(e) : Deemed dividend – Trading transactions – Cannot be assessed as deemed dividend. 18
Tribunal held that the transactions between the assessee and those companies were in the nature of trading transactions which were beyond the ambit of deemed dividend. Followed, *Dy. CIT v. Gaurav Arora 2019 (3) TMI 1289* (AY. 2013-14)
Dy. CIT v. Futurz Next Services P. Ltd. (2020) 80 ITR 58 (Delhi) (Trib.)

S. 2(22)(e) : Deemed dividend – Deeming provision should be construed strictly – Advances given for purely temporary financial accommodation for business purposes does not attract the deeming fiction. 19
Allowing the appeal of the assessee, the Tribunal held that the section uses the expression "by way of advances or loans" which shows that all payments received from the sister company cannot be treated as deemed dividend but only payments which bear the characteristics of loans and advances. Under the law, all loans and advances are debts, but all debts are not loans and advances. The term 'loans and advances' is not defined & has to be understood in the commercial sense. Advances given for purely temporary financial accommodation for business purposes does not attract the deeming fiction. (AY. 2013-14)
Exotica Housing & Infrastructure Company Pvt. Ltd v. ITO (2020) 82 ITR 46 / 207 TTJ 992 (Delhi)(Trib.)

20 **S. 2(22)(e) : Deemed dividend – In balance sheet of Kumar urban development corporation Ltd amount in question was not shown as loan to assessee – Addition was deleted.**

AO held that proprietary concern of assessee had received a loan from Kumar urban development corporation Ltd in which assessee was having substantial interest hence added as deemed dividend. Tribunal held that in balance sheet of Kumar urban development corporation Ltd amount was not shown as loan to assessee. Accordingly when no loan or advance had been given to assessee, then section 2(22)(e) could not be triggered. Accordingly the addition was deleted. (AY. 2012-13)

Lalitkumar Kesarimal Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 113 taxmann.com 387 / 190 DTR 424 / 205 TTJ 753 (Pune)(Trib.)

Kruti Lalit Kumar Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 113 taxmann.com 387 / 190 DTR 424 / 205 TTJ 753 (Pune) (Trib.)

Pranay Lalit Kumar Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 113 taxmann.com 387 / 190 DTR 424 / 205 TTJ 753 (Pune) (Trib.)

21 **S. 2(28) : Inspector of Income-tax – Service matters – Technical Assistant – Equal pay scale – In absence of any recommendations of an expert body like Central Pay Commission or Anomalies Committee, CAT could not grant parity in pay scales – Order of CAT is set aside. [Art. 226, 227]**

On application, the Central Administrative Tribunal (CAT) held that an anomaly was created by not increasing the pay scale of the Technical Assistants when pay scale pf Inspectors and Assistants of CSS had been increased. The CAT directed that upgraded pay scale was to be granted to the Technical Assistants. On writ by the Director of Income-tax (HRD),before the High Court, held that, since it was not a case of rectifying an anomaly but of demand for equating pay scales of two dissimilar posts, in absence of any recommendations of an expert body like Central Pay Commission or Anomalies Committee, CAT could not grant parity in pay scales. In absence of any recommendations of an expert body like Central Pay Commission or Anomalies Committee, CAT could not grant parity in pay scales. Order of CAT is set aside.

DDIT v. Ramesh Dang (2020) 269 Taxman 110 (Delhi)(HC)

22 **S. 2(35) : Principal officer – Burden is on revenue to demonstrate that the assessee is key management personnel – Notice served is held to be bad in law. [S. 2(35)(b), Art. 226]**

The assessee challenged by writ the notice issued by the revenue to treat the assessee as principal Officer. Allowing the petition the Court held that in the present case, neither in show cause notice nor in order, such connection of petitioner with management or administration of company was established. Court observed that phrase 'Key Management Personnel' of the company had a wide connotation and same had to be supported with certain material unless such connection was established, no notice served on petitioner would empower revenue to treat assessee as Principal Officer. Writ petition was allowed. (AY. 2010-11 to 2013-14)

A. Harish Bhat v. ACIT (2020) 317 CTR 957 / 195 DTR 105 / 317 CTR 957 / 269 Taxman 218 (Karn.)(HC)

S. 2(42A) : Short-term capital asset – Shares of unlisted company – Holding shares for more than 12 months and transferring them prior to 31-3-2014 – Entitled to benefit of shorter period of holding – Gains to be Treated as long-term. [S. 2(29A), 2(29B), 45] 23

The assessee bifurcated income from capital gains on sale of shares into short-term capital gains and the long-term capital gains. The assessee purchased the shares in the financial year 2012-13 and sold them in the assessment year 2014-15, she computed the indexed cost of acquisition of those shares. These shares were sold on March 21, 2014 and thus she claimed long-term capital gains. The AO held that the shares were held for less than 36 months and they were short-term capital assets. According to the provisions of S. 2(42A) of the Act the AO held that shares of an unlisted company, if held for less than 36 months, were not a long-term capital asset but a short-term capital asset. The CIT(A) gave partial relief. On appeal the Tribunal held that the benefit of the shorter period of holding of 12 months to qualify as long-term capital asset in respect of unlisted shares had been removed prospectively from the AY. 2015-16 and not for earlier years. The benefit of the shorter period for holding of unlisted shares would be available when such shares were transferred during the period beginning on April 1, 2014 and ending on July 10, 2014. Post-July 11, 2014 the benefit of the shorter period of unlisted shares could not be applicable. The shares had been transferred by the assessee prior to March 31, 2014. Therefore, the newly amended S. would not be applicable and the assessee would get the benefit of the shorter period, i. e., period of less than 36 months as given in S. 2(42A) read with the proviso thereto in terms of the provision as it existed for the assessment year 2014-15. Thus, the authority was not justified in reclassifying the long-term capital gains as short-term capital gains. Accordingly, the gains on transfer of shares of Shares would be taxable as long-term capital gains as the assessee had held those shares for more than 12 months. (AY.2014-15)

Neelu Analjit Singh (Mrs.) v. Add. CIT (2020) 77 ITR 220 / 189 DTR 163 / 204 TTJ 540 (Delhi)(Trib.)

S. 2(42C) : Slump sale – Capital gains – Exchange – Assets transferred to subsidiary Company in accordance with scheme approved by High Court – No slump sale for purposes of capital gains tax [S. 45, 50, 50B, Sale of Goods Act, 1930, S.2(10), Transfer of Property Act, 1882, S. 54, 118, Companies Act, 1956, 391, 394] 24

Allowing the appeal of the assessee the Court held that The mere use of the expression consideration for transfer was not sufficient to describe the transaction as a sale. The transfer, pursuant to approval of a scheme of arrangement, was not a contractual transfer, but a statutorily approved transfer and could not be brought within the definition of the word sale. The word sale is not defined under the Income-tax Act hence the definition of sale as defined under other statute to be considered such as sale of Goods Act,1930, Transfer of Property Act, 1882. Accordingly the Court held that the Exchange is not covered. (AY.2006-07)

Areva T & D India Ltd. v. CIT (2020) 428 ITR 1 / 317 CTR 633 / 195 DTR 361 (Mad.)(HC)

Editorial : SLP is granted to the revenue, CIT v. Areva T & D India Ltd (2021) 281 Taxman 217 (SC), Finance Act, 2021 inserted, Explanation 3.—For the purposes of this clause, "transfer" shall have the meaning assigned to it in clause (47);

25 **S. 3 : Previous year – Compensation under settlement agreement – Calendar year as previous year – Date of settlement on 1-1-1984 – Receipt was taxable in the assessment year 1985-86 and not in Assessment year 1984-85. [S. 3(1)]**

Tribunal held that for the assessment years 1981-82 to 1984-85 the books of account of the assessee were prepared on calendar year basis with the year ending on December 31. From the assessment year 1985-86 onwards the assessee had changed its method of presentation of annual accounts and opted for the financial year ending 31st March, as the cut-off date. Section 3 of the Act, gave an option to the assessee to select a previous year different from the financial year provided its annual accounts were drawn up in line with the option selected by the assessee. Therefore, the previous year of the assessee should be taken as the period starting from January 1, 1983 to December 31, 1983 and the effective date of the settlement agreement was January 1, 1984. The assessee's previous year would end on December 31, 1984 and hence, the receipt if at all had to be taxed in the assessment year 1985-86 and not 1984-85. The additional ground was allowed and the issues were restored to the file of the Assessing Officer to be decided afresh. (AY. 1984-85)

IAC (Assessment) v. Hydrocarbons India Ltd. (2020) 83 ITR 1 (Delhi)(Trib.)

26 **S. 4 : Charge of income-tax – Mutuality – Contributions both from members and non-members and one member was vested with powers to control functioning and interests of other members, such an assimilation could not be termed as a social intercourse devoid of commerciality – Assessee, being not a mutual concern, could not be entitled to tax exemption – Exemptions are to be put to strict interpretation – Principle of mutuality is held to be not applicable – Order of AO is affirmed. [S. 2 (24)]**

Assessee-company was incorporated by YRIPL as its fully owned subsidiary after having obtained approval from the Secretariat for Industrial Assistance for purpose of economisation of the cost of advertising and promotion of YRIPL franchisees as per their needs. Approval was granted subject to certain conditions as regards functioning of assessee, whereby it was obligated to operate on a non-profit basis on principles of mutuality. However, assessee-company undertook a commercial venture wherein contributions were accepted both from members as well as non-members. The assesse filed its returns stating the income to be "Nil" under the pretext of the mutual character of the company. The same was not accepted by the AO Order of AO is up held by the CIT(A) Tribunal and also High Court. On appeal the Supreme Court held that the doctrine of mutuality bestows a special status to qualify for exemption from tax liability. It is a settled proposition of law that exemptions are to be put to strict interpretation. If the assessee fails to fulfil the stipulations and to prove the existence of mutuality, the question of extending exemption from tax liability to the assessee, that too at the cost of public exchequer, does not arise. Taking any other view would entail in stretching the limits of construction. (AY.2001-02)

Yum! Restaurants (Marketing) Pvt. Ltd. v. CIT (2020) 424 ITR 630 / 189 DTR 1 / 313 CTR 37 / 271 Taxman 217 / 116 taxmann.com 374 (SC)

S. 4 : Charge of income-tax – Advance received – Chargeable to tax – Failure to produce evidence – Matter remanded. [S. 2(24), 56(2)(ix), 131, 145] 27

The Assessing Officer made addition of advance received as income of the assessee as the utilisation of advance was not furnished. The addition was deleted by the CIT(A) and appellate Tribunal. On appeal by the revenue the Court held that the assessee successfully by with-holding the information which was in his possession, avoided the scrutiny. The agreement of authorization was not produced during the assessment proceedings or in the appellate proceedings thereby avoiding further investigation, the same has now been produced before this Court in such circumstances, the deletion of addition of 74,46,75,000/-cannot be sustained. However, as now the agreement has been produced, the matter is remitted back to the assessing officer to decide the issue afresh after providing opportunity to the assessee. It is clarified that anything recorded herein above shall not be construed by the assessing officer as expression on merits of the issue while deciding the remand. (AY. 2009-10)

PCIT v. Randhir Sood (2020) 192 DTR 43 / (2021) 318 CTR 344 (Pat.)(HC)

S. 4 : Charge of income-tax – Mesne profits – Interest – Derived from tenant – Assessable as revenue receipts – Insertion of section 25B is clarificatory in nature. [S. 22, 23(1), 25B, Code of Civil Procedure, 1908 S. 2(12)] 28

Dismissing the appeal of the assessee the Court held that mesne profit and interest on mesne profits received under direction of Civil Court for unauthorised occupation of immovable property by erstwhile tenant were liable to be taxed as revenue receipts. Court also held that Section 25B of the Income-tax Act, 1961, was introduced in the Act by the Finance Act, 2001, with effect from April 1, 2001. The consequence thereof is to treat mesne profits, and interest thereon received by the assessee in the previous year relevant to the assessment year in question, as income from house property in respect of the previous year, even though the receipt pertains to earlier financial years. Section 25B is clarificatory in nature as it encapsulated the law existing, namely, that the receipts towards mesne profits should be taxed in the year of their receipt. Applied the ratio in *CIT v. Saurashtra Cement (2001) 192 Taxman 300/ 325 ITR 422 (SC)* wherein the Court held that the answer to the question whether a receipt is a capital receipt or a revenue receipt must ultimately depend on the facts of a particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a conclusion. It is not possible to lay down any single test as infallible, or any single criterion as decisive, in the determination of this question, which must ultimately depend on the facts of the particular case. (AY. 1999-2000)

Skyland Builders P. Ltd. v. ITO (2020) 429 ITR 255 / 121 taxmann.com 251 / 276 Taxman 395 / 317 CTR 489 / 195 DTR 305 (Delhi)(HC)

S. 4 : Charge of income-tax – Accrual of income – Overdue interest on loans classified as non-performing asset – Not assessable. [S. 145] 29

Dismissing the appeal of the revenue the Court held that a co-operative bank is bound by the Reserve Bank of India guidelines. The Assessing Officer is bound to follow the Reserve Bank of India directions so far as income recognition is concerned. The interest

on principal loan amount which has been classified as non performing asset cannot be held to have accrued so as to tax it under the Income-tax Act, 1961. (AY. 2007-08)
CIT v. Tiruchirapalli District Central Co-Operative Bank Ltd. (2020) 429 ITR 127 / 275 Taxman 628 (Mad.)(HC)

30 **S. 4 : Charge of income-tax – Subsidy – Electricity subsidy – Export incentive to cover cost of Indian market – Technology Upgradation Fund Scheme – Held to be capital receipt. [S. 2(24)(xvii), 28 (i)]**
Dismissing the appeal of the revenue the Court held that, electricity subsidy, export incentive to cover cost of Indian market, technology upgradation fund Scheme is held to be capital receipt. (AY. 2010-11)
PCIT v. Nitin Spinners Ltd. (2020) 116 taxmann.com 26 (Raj.) (HC)

31 **S. 4 : Charge of income-tax – Capital or revenue – Non-Compete fee – Prior to 1-4-2003 – Restraining it from entering into insurance business on its own – Capital receipt. [S. 28(i)]**
Amount received, restraining it from entering into insurance business on its own is capital receipt. (AY. 2001-02)
Sundaram Finance Ltd. v. ACIT [2020] 119 taxmann.com 288 (Mad.)(HC)
Editorial: SLP of revenue is dismissed, ACIT v. Sundaram Finance Ltd. (2020) 119 taxmann.com 289 / 274 Taxman 217 (SC)

32 **S. 4 : Charge of income-tax – Capital or revenue – NBFC – Waiver of principal component of deposits and debentures – Capital receipts not liable to tax. [S. 28 (i)]**
Allowing the appeal of the assessee the Court held that, waiver of principal component of deposits and debentures is capital receipts hence not liable to tax. (AY. 2007-08, 2008-09)
Manipal Sowbhagya Nidhi Ltd. v. Dy.CIT (2019) 112 taxmann.com 325 (Karn.)(HC)
Editorial : SLP of revenue is dismissed Dy.CIT v. Manipal Sowbhagya Nidhi Ltd (2019] 112 taxmann.com 326 / (2020) 268 Taxman 329 (SC)

33 **S. 4 : Charge of income-tax – Compensation – Acquisition of non-Agricultural land – Corporation of Kochi – Compensation received is held to be not taxable. [Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 96, Land Acquisition Act, 1894]**
Allowing the appeal of the assessee the Court held that compensation received from Corporation of Kochi for acquisition of non-Agricultural land is held to be not taxable. Referred circular No. 36/2016 dt 25-10-2016 (2016) 388 ITR 38 (St).
M. Vishwanathan v. CCIT (2020) 116 taxmann.com 894 / 274 Taxman 411 (Ker.)(HC)

34 **S. 4 : Charge of income-tax – Accrual of income – Mercantile System of accounting – Retention money on contract – Cannot be included as income. [S. 5, 145]**
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the retention money on contract could not be included in the assessee's income. (AY. 2009-10)
CIT v. Voltech Projects Pvt. Ltd. (2020) 428 ITR 270 (Mad.)(HC)

S. 4 : Charge of income-tax – Interest – Surplus of Government grant – Interest earned – Not assessable as income. [S. 2(24) (i)] 35

The assessee received grants from the State of Punjab for certain purposes which included the construction of houses for police officials. The unutilized amount of the grant remained in the bank and earned interest. The AO assessed the interest as income. CIT(A) affirmed the order of the AO. Appellate Tribunal deleted the addition. On appeal dismissing the appeal held that the findings of the Assessing Officer were conjectural. The contention of the Department that the absence of any stipulation in the letter releasing the grant to the assessee to the effect that the interest was to be returned to the Government could not lead to the conclusion that the interest was the income of the assessee. It was not the case of the Department that the books of the assessee ever revealed the diversion of any interest income.

PCIT v. Punjab Police Housing Corporation Ltd. (2020) 422 ITR 244 / 116 taxmann.com 400 / 107 CCH 0457 / 195 DTR 150 / 317 CTR 838 (P&H)(HC)

S. 4 : Charge of income-tax – Subsidy – Capital or revenue – Technology Upgradation Fund – Focus Market Scheme – Electricity Duty Subsidy – Held to be capital receipts. [S. 28(i)] 36

Dismissing the appeal of the revenue the Court held that the subsidy received by the respondent under the head technology upgradation fund, Focus market scheme, Electricity duty subsidy is held to be a capital receipts. (AY. 2013-14)

PCIT v. Nitin Spinners Ltd. (2020) 185 DTR 110 / 312 CTR 540 (Raj.)(HC)

S. 4 : Charge of income-tax – Statutory collection – Amount paid to Government as per bye – laws of assessee – society – Held to be not taxable, even though assessee was not registered under section 12AA nor its income was exempt under any of provisions of Act. [S. 12AA] 37

Tribunal held that income of assessee which was paid to Government as per bye-laws of assessee-society, was not taxable, even though assessee was not registered under S.12AA nor its income was exempt under any of provisions of Act. High court up held the order of the Tribunal. Followed *PCIT v. H.P. Excise & Taxation Technical Service Agency (ITA No. 85 of 2018 dt 17-12-2018) (HP)(HC)*. (AY. 2012-13)

PCIT v. H. P. Excise And Taxation Technical Service Agency (2020) 113 tamann.com 86 / 269 Taxman 21 (HP)(HC)

Editorial: SLP of revenue is dismissed; PCIT v. H. P. Excise And Taxation Technical Service Agency (2020) 269 Taxman 20 (SC)

S. 4 : Charge of income-tax – Capital or revenue – Business of accepting deposits from members and lending the same to non members – Waiver of deposit – Waiver of principal component of deposits and debentures – Capital receipts. [S. 28(i)] 38

The assessee is carrying on the business of accepting deposits from members and lending the same to non members. The assessee treated the waiver of principal component of deposits and debentures. The AO treated the same as revenue receipts. Tribunal confirmed the order of the AO. On appeal high Court held that waiver of

principal component of deposits and debentures constituted capital receipt. Followed ITA No 99 of 2009. (AY. 2007-08, 2008-09)
Manipal Sowbhagya Nidhi Ltd. v. Dy.CIT (2019) 112 Taxman.com 325 / (2020) 268 Taxman 330 (Karn.)(HC)
Editorial: SLP of revenue is dismissed Dy. CIT v. Manipal Sowbhagya Nidhi Ltd. (2020) 268 Taxman 329 (SC)

39 **S. 4 : Charge of Income-tax – Capital or revenue – Liquidated Damages for intangible assets – Liquidated damages received are capital receipts. [S. 28 (iv)]**
During the year the assessee received liquidated damages of Rs.3,22,94,880 and claimed exclusion thereof from the taxable income on the ground that it was a capital receipt, since it had been received from the suppliers of capital goods in relation to delayed supply of such capital goods. The Assessing Officer charged the sum under section 28(iv) of the Act as a revenue receipt further observing that the assessee had failed to submit necessary details of the parties and other documentary evidence to substantiate that liquidated damages were connected with supply of capital goods. On the basis of the remand report on additional evidence furnished by the assessee, the additions were confirmed by the Dispute Resolution Panel. On appeal the Tribunal held that the entire basis of the assessee's contention was that agreements were not for supply of any machinery, but of design, transfer of technology know-how, patent, etc., which were in the nature of intangible assets. Even intangible assets are capital goods and a specific rate of depreciation is provided in the Act. The damages were for intangible assets and intangible assets were also capital goods. Therefore, any liquidated damages received are capital receipts. The Assessing Officer was to delete the addition of Rs.32,29,40,880. (AY.2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

40 **S. 4 : Charge of income-tax – Capital or revenue – Refundable security and membership fee – Capital receipt.**
Assessing Officer treated the refundable security deposit and membership fee as revenue receipt which is charged to tax. Tribunal held that refundable security deposit received from members of assessee was a capital receipt and could not be charged to tax as income. (AY. 2013-14, 2014-15, 2016-17)
Landbase India Ltd. (2020) 80 ITR 580 / 185 ITD 40 (Delhi) (Trib.)

41 **S. 4 : Charge of income-tax – Hindu undivided family – Capital gain – Individual or HUF – Remanded for fresh decision. [S. 139(5)]**
Tribunal held that Since fundamental Issue whether property was HUF or that of assessee had not been decided by Commissioner (Appeals), order was set aside and remanded for decision afresh. (AY. 2006-07)
Dr. K.R. Rajashekar Reddy v. DCIT (2020) 182 ITD 121 (Bang.) (Trib.)

42 **S. 4 : Charge of income-tax – Sales tax subsidy – For enabling to expand or modernize its existing unit – A capital receipt not taxable.**
Dismissing the appeal held that the Tribunal had considered and adjudicated the same issue in the assessee's own case for the assessment year 1995-96. It held that

the purpose of the subsidy scheme was to attract people to invest and take part in industrialization of certain areas in the State. The Tribunal held that if the object of the scheme was to enable the assessee to set up a new unit or to expand the unit the receipt of subsidy was on capital account and that this was the case with the assessee as the U. P. Government subsidy scheme was for enabling the assessee to expand or modernize its existing unit. The sales tax subsidy received by the assessee being a capital receipt is not taxable. (AY.1999-2000 to 2003-04)
Dy. CIT v. Grasim Industries Ltd. (2020) 83 ITR 1 (SN) (Mum.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Mesne profits – Income from house property – Compensation for wrongful possession by its erstwhile tenant – Capital receipt. [S. 22, 25AA, 25B] 43
The assessee was awarded a sum of Rs 2 crores as compensation for wrongful possession by its erstwhile tenant. The AO held that the comparable market rent the amount received by the assessee in the form of compensation was to be treated as arrears of rent under section 25B and under section 25AA of the Income-tax Act, 1961 inserted by the Finance Acts 2000 and 2001 with effect from April 1, 2000 and April 1, 2001 respectively. Accordingly, he brought to tax the compensation received in the sum of Rs. 2 crores as arrears of rent chargeable under the head "Income from house property" and granted 30 per cent standard deduction thereon under section 24 and assessed the remaining Rs. 1.40 crores as taxable income from house property. The Commissioner (Appeals) held that mesne profits were taxable as a revenue receipt. On appeal the Tribunal held that the compensation (i.e. mesne profits) of Rs. 2 crores was a capital receipt. Followed *ACIT v. Goodwill Theaters Pvt. Ltd.* (ITA No. 8185/Mum/2011 dt. June 19, 2013) followed. (AY. 2014-15)
Trans Freight Containers Ltd. v. Dy. CIT (2020) 78 ITR 5 (SN) (Mum.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Real estate development – Compensation for relinquishment of right to sue societies for breach of contract capital is receipt not taxable as capital gains or business income. [S. 2(24), 28(i), 45] 44
The Tribunal held that the character of the compensation would not change merely on the ground that the development agreement, termination of agreement and the sale of the property happened in different financial years. It was because there were different parties involved in the transactions and the assessee had no control whatsoever on these parties. When the societies terminated the agreement with the assessee, it acquired the right to sue and for relinquishment of such right it received the compensation. The compensation amount was not liable to be treated as income under section 2(24) nor was the amount taxable as capital gains or business income being in the nature of a capital receipt. Accordingly the amount of the compensation received by the assessee from the societies for relinquishment of its right to sue to avoid the litigation could not be treated as a colourable device. Hence, the amount received as compensation in view of the right was not chargeable to tax. Followed *Popular Estate Management Ltd. v. ITO (ITA. No. 212/Ahd/2014 dt. 29-8-2017).* (AY.2012-13)
Popular Estate Management Ltd. v. Dy. CIT (2020) 78 ITR 261 (Ahd.)(Trib.)

45 **S. 4 : Charge of income-tax – Capital or revenue – Interest subsidy – Technology upgradation fund scheme – Encourage capital investment by eligible unit in form of specified machinery – The AO is directed to verify issue of utilisation of amount of subsidy. [S. 28(i), 254(1)]**

The Tribunal held that the purpose of giving the incentive in the form of interest subsidy under the technology upgradation fund scheme was to encourage capital investment by the eligible unit in the form of specified machinery in order to induct State-of-the-Art or Near-State-of-the-Art Technology or at least a significant step up from the present technology level to a substantially higher one. The amount of interest subsidy received by the assessee was a receipt of capital nature. The Assessing Officer was to verify the issue of utilisation of the subsidy if the purpose of meeting the interest Liability on loans and advances taken by it to set up its plant and machinery, the subsidy incentive could be considered as a capital receipt not chargeable to tax, otherwise, it had to be treated as a revenue receipt. (AY. 2008-09)

Dy. CIT v. BSL Ltd. (2020) 78 ITR 348 / 183 ITD 675 / 117 taxmann.com 661 (Kol.)(Trib.)

46 **S. 4 : Charge of income-tax – Application of income – Sale consideration received for sale of shares – Taxable as income. [S. 28(i), 37(1), 60, 61, 62, 63, 64]**

Tribunal held that the assessee was not entitled to deduction from taxable income the amount paid to the bank to discharge the liability of the company. Further, the payments made to the bank by the assessee to the tune of Rs 4.25 crores was merely an application of income. Held also, that if the period of the first national lock-down from March 25, 2020 to April 19, 2020, when offices were not allowed to be physically opened, was excluded the period within which this order was pronounced was within 90 days.(AY.2001-02)

K. Srikanth v. ACIT (2020) 80 ITR 272 / 195 DTR 17 / 206 TTJ 273 (Chennai)(Trib.)

47 **S. 4 : Charge of income-tax – Capital or revenue receipt – Non-compete fee – Capital receipt – Cannot be assessed as income. [S. 28(i)]**

Tribunal held that the non compete fee is capital receipt hence not chargeable to tax. Followed, *Gufic Chem. Pvt. Ltd. v. CIT (2011) 332 ITR 602 (SC)* (AY.2001-02)

K. Srikanth v. ACIT (2020) 80 ITR 272 / 195 DTR 17 / 206 TTJ 273 (Chennai)(Trib.)

48 **S. 4 : Charge of income-tax – Diversion of income by overriding title – Revenue sharing agreement – Holding company – Expenditure incurred towards services obtained from its holding company allowable as deduction.**

The assessee entered into a revenue sharing agreement with its holding company under which the holding company would provide end to end support in planning, development, construction, marketing and sale of its projects and the assessee was liable to pay 24 per cent of the gross revenue earned by it through sale proceeds of buildings and structures proposed to be constructed. Accordingly, the revenue for the year in the books of the assessee Rs. 12.99 crores of gross revenue was shared with the holding company. The AO disallowed the sum. The CIT(A) deleted the addition but disallowed the expenditure incurred by the assessee towards services obtained from its holding company at 25 per cent. of the revenue. On appeal by the revenue the Tribunal held that the assessee was under the obligation to part with the source of income to the

holding company and it was not its volition to give away the revenue that could have been otherwise accrued to it. The flats to be constructed by the assessee-company were the source of income and the holding company had created a lien over 25 per cent for a quid pro quo and took away 25 per cent share from the sale proceeds. It was not a case that the entire sale proceeds of flats accrued to the assessee and 25 per cent thereof had been applied or given away by the assessee to the holding company. The assessee acted as a collector of revenue for the holding company of the receipt to the extent of 25 per cent. of the sale proceeds. The 25 per cent belonged to the holding company by virtue of the contributions made and the agreement entered into. The assessee was obligated by virtue of the agreement to divert the income at source and also for the contributions made by the holding company. Thus, this was a case of diversion of income by overriding title. The Department's contention that the entire transaction was sham and aimed at diverting the income to Emaar MGF Land Limited was not based on the facts. Tribunal also held that keeping in view the contribution made by the holding company and the amounts that had been already offered for taxation in the hands of the respective entities, the expenditure was allowable in the hands of the assessee. (AY. 2012-13)

ACIT v. Emaar MGF Construction P. Ltd. (2020) 81 ITR 30 (Delhi)(Trib.)

S. 4 : Charge of income-tax – Subsidy – Sales tax exemption, subsidy was to be treated as capital receipt. [S. 28(i)] 49

Assessee had setup a new industry under Industrial policy, 1993 of Government of Karnataka and package of incentives and concessions given by State of Karnataka was to accelerate industrial development in State of Karnataka. Purpose of subsidy was to reimburse cost of expenditure incurred for setting up new industry. Accordingly since subsidy was given with an object to effect new industries in backward area of State in terms of sales tax exemption, said subsidy was to be treated as capital receipt. (AY. 2006-07)

ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 / (2019) 112 taxmann.com 505 (Mum.)(Trib.)

S. 5 : Scope of total income – Liaison office of the non-resident – A liaison office which is only carrying on such activity of a "preparatory or auxiliary" character is not a PE in terms of Article 5 of the DTAA – The deeming provisions in Sections 5 and 9 of the 1961 Act can have no bearing whatsoever – Not liable to tax in India – DTAA-India-UAE. [S. 2(24), 4, 9(1)(i), Art. 5, 7] 50

Dismissing the appeal of the revenue the Court held that, the activities carried on by the liaison office of the non-resident in India as permitted by the RBI, demonstrate that the liaison office must steer away from engaging in any primary business activity and in establishing business connection as such. It can carry on activities of preparatory or auxiliary nature only. A liaison office which is only carrying on such activity of a "preparatory or auxiliary" character is not a PE in terms of Article 5 of the DTAA. The deeming provisions in Sections 5 and 9 of the 1961 Act can have no bearing whatsoever. (AY.2000-01 to 2003-04)

UOI v. U.A E. Exchange Centre (2020) 425 ITR 30 / 315 CTR 129 / 273 Taxman 122 / 190 DTR 79 (SC)

51 **S. 5 : Scope of total income – Accrual of income – Advance on discounting of bills – Method of accounting – Not taxable as income of the relevant year. [S. 4, 145]**
Assessee has excluded interest income received in advance, on discounting of bills against letter of credit, while filing the return of income. The AO assessed the same as income of the relevant year which was affirmed by the Tribunal. On appeal to the Court allowing the appeal of the assessee the Court held that income received in advance in nature of interest income on discounting of bills against letter of credit was to be subjected to taxation on accrual basis and not on receipt basis. (AY. 2003-04)
Karur Vysya Bank Ltd. v. Add.CIT (2020) 196 DTR 168 / (2021) 276 Taxman 463 / 318 CTR 94 (Mad.)(HC)

52 **S. 5 : Scope of total income – Accrual of income – Cash compensatory assistance and duty drawback – Not sanctioned to assessee during relevant year by customs authorities – Income did not accrue – Not taxable. [S. 145]**
Court held that the Tribunal held that the assessee would get a right to receive the amount only when it was sanctioned to the assessee by the customs authorities and not when the assessee made a claim therefor and that since the amount of cash compensatory assistance and duty drawback during the relevant year were not sanctioned to the assessee the income had not accrued to the assessee. Thus, in fact the Tribunal had allowed the deduction on accrual basis only. Therefore, the Tribunal was justified in holding that the cash compensatory assistance and the duty drawback were allowable as deduction. (AY.1995-96), (AY.1998-99)
CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 272 Taxman 224 / 192 DTR 376 (Karn.)(HC)
CIT (LTU) v. ABB Ltd. (2020) 429 ITR 355 (Karn.)(HC)

53 **S. 5 : Scope of total income – Accrual of income – Time of accrual – Year of taxability – Developer of land – Part of sale consideration was payable by purchaser on completion of assessee's obligation under MOU – Not liable to tax relevant assessment year. [S. 4, 145]**
Assessee-developer, sold a land under MOU dated 2-2-2012 for consideration of Rs 120 crore. The assessee offered only a sum of Rs 100 crore for tax for assessment year 2012-13 as MOU provided that a sum of Rs 20 crore would be paid by purchaser on execution of sale-deed after getting plan sanctioned and on inclusion of name of purchaser in 7/12 extract and assessee was not able to meet conditions of MOU during subject assessment year. AO taxed the entire sum of Rs 120 crore in the relevant assessment year. Tribunal deleted the addition. On appeal by the revenue the Court held that on facts, it was found that amount of Rs 20 crore was not payable in relevant assessment year as assessee had not completed its obligation under MOU entirely, and that Rs 20 crore were offered to tax in subsequent assessment year and also taxed. Accordingly the Tribunal was justified in holding that the sum of Rs 20 crore was not taxable in subject assessment year. Followed *Morvi Industriees Ltd v. CIT (1971) 82 ITR 835 (SC) CIT v. Shoorji Vallabadas & Co (1962) 46 ITR 144 (SC) CIT v. Nagri Mills Co. Ltd (1958) 33 ITR 681 (Bom.) (HC)* (AY. 2012-13)
PCIT v. Rohan Projects. (2020) 269 Taxman 212 (Bom.)(HC)

S. 5 : Scope of total income Accrual of income – Dispute in project work and reconciliation – Award of Interest – Not enforceable award or decree – Not acquiring any vested right to receive interest – Notional amount not assessable. [S. 4, 145] 54

Tribunal held that the Assessing Officer did not bring on record any cogent documentary evidence or material to support his findings that in terms of any legally enforceable award or decree of the court or arbitral tribunal, the assessee had acquired any vested right to receive such interest. The CFO of the assessee had unilaterally made calculations of expected interest without there being a demand from the assessee. Accordingly, since no real income had accrued or was received in the relevant year, the interest computed and added by the Assessing Officer on mercantile basis could not be brought to tax in the hands of the assessee. Before imposing tax on any sum it is necessary for the Department to establish that the income assessable is real income which legally accrued during the relevant year. Unless, in fact, an assessee earns income in the real sense there cannot be charge of tax. (AY. 2013-14 to 2017-18)

MANI Square Ltd. v. ACIT (2020) 83 ITR 241 (Kol.)(Trib.)

S. 5 : Scope of total income – Real estate business – Income which has not accrued cannot be taxed – Addition was deleted. [S. 145] 55

A collaboration agreement was entered between assessee landowner and developer DLF to develop a commercial projects with DLF's own investment and super area will be distributed between them. According to supplementary agreement for purchase of 200225 sq. ft. of developed area from appellant, DLF would reimburse to assessee landowner proportionate revenue proceeds after adjusting proportionate expenses on account of advertising and Marketing and other expenses whether actually incurred or to be incurred in future. Out of total cost of Rs. 103.40 crores, DLF deducted Rs. 13.92 crores and paid assessee Rs. 89.50 crores Tribunal held that since income accrued was only Rs. 89.50 crores which was also supported by an audited certified statement, further addition of Rs. 13.92 crores was not in accordance with law. (AY. 2015-16)

Shivsagar Builders (P.) Ltd. v. ACIT (2020) 185 ITD 684 (Delhi) (Trib.)

S. 5 : Scope of total income – Transfer of development rights – Joint venture agreement – Partial payment as advance – Failure to perform obligation – Not assessable as income. [S. 145] 56

Assessee, engaged in business of builder and developer, had entered into a joint venture agreement with a company against certain consideration on account of transfer of development rights in respect of a property. Amount received was to be treated as an advance till 25 per cent of slum dwellers occupying said property would vacate premises and balance was to be received upon all slum dwellers vacating said property and shifting to alternate temporary transit accommodation and as it could not get vacant possession, it had to refund said sum and said sum could not be treated as income of assessee. The AO held that the assessee followed mercantile method of accounting and, therefore, income was earned when transfer was complete, i.e., in relevant previous year, and, thus, proceeded to bring entire consideration to tax in relevant previous year. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that it was found that it was a composite agreement, and all terms of agreement were to be read in conjunction with each other and this payment could not be read in isolation. Since

obligations under agreement had not been performed till date, income in question never accrued to assessee. (AY. 2009-10)
ITO v. Newtech (India) Developers. (2020) 184 ITD 451 / 189 DTR 31 / 205 TTJ 12 (Mum.) (Trib.)

57 **S. 5 : Scope of total income – Accrual income – Retention money – Taxable in the year of receipt. [S. 115JB, 145]**
Dismissing the appeal of the revenue the Tribunal held that retention money retained by contractee was deferred payment and was contingent upon satisfactory completion of contract work and assessee had no vested right to receive same in assessment year in which it was retained. Since right to receive retention money would accrue only after obligations under contract would be fulfilled, it would not amount to an income of assessee in year in which it was retained and income was to be booked in the year of actual receipt. (AY. 2014-15)
DCIT v. EMC Ltd. (2020) 183 ITD 380 / (2021) 209 TTJ 518 (Kol.) (Trib.)

58 **S. 5 : Scope of total income – Sale of property – Amount represented outstanding receivable from buyer in respect of property sold in earlier assessment year – Addition is held to be not valid. [S.145]**
Assessing Officer added sale of property as income of the assessee. On appeal the Tribunal held that assessee brought on record its books of account which established that the assessee had duly offered entire sale consideration to tax in earlier assessment year and, thus, bringing amount in question to tax in relevant assessment year as well, would amount to double taxation. Accordingly the addition was to be deleted. (AY. 2014-15)
Supreme Build Cap (P.) Ltd. v. ACIT (2020) 183 ITD 728 (Delhi) (Trib.)

59 **S. 5 : Scope of total income – Accrual – Membership fees – Mercantile system of accounting – Pertaining to subsequent years – Taxable in year to which it pertains. [S. 28(i), 145]**
Tribunal held that the entrance fee and membership fees received by the assessee should be accounted for as income only when they accrued to the assessee. Merely because the income, which pertained to subsequent years, was received by the assessee in earlier years it did not become the income of the earlier years under section 5 of the Income-tax Act, 1961 in the case of either business income or under section 28. Hence, the membership fee income of the assessee was chargeable to tax in the year to which it pertained. (AY.2013-14, 2014-15, 2016-17)
Landbase India Ltd. v. ACIT (2020) 80 ITR 580 / 185 ITD 40 / 116 taxmann.com 574 (Delhi)(Trib.)

60 **S. 6(1) : Residence in India – Individual – Period of stay in India – Staying in India for 151 days – Salary received for period in respect of services rendered abroad – Not taxable in India – DTAA-India-Australia.[S. 15, Art.15]**
Tribunal held that the benefit of the Agreement shall be applicable to persons, who are residents of both India as well as Australia. Hence, the contention of the Department that the assessee being a non-resident and hence treaty benefit could not be extended to the assessee was incorrect. Article 15 categorically mentioned that salary income

shall be taxable only in Australia, in the case of an individual, who is a resident of Australia. The assessee was a resident of Australia and non-resident of India during the year 2014-15. Hence, the assessee would be entitled to the benefit of article 15 of the Agreement under which salary income of a resident of Australia is taxable only in Australia. Therefore the salary earned by the assessee in respect of services rendered in Australia for the period August 31, 2014 to March 31, 2015 was taxable only in Australia (this is also duly offered to tax by the assessee in Australia as evident from Australian tax return filed by the assessee) and not in India. Circular No. 13 of 2017 dt. 11-4-2017 (2017) 393 ITR 91(St) (AY.2015-16)
Paul Xavier Antonysamy v. ITO (2020) 183 ITD 453 / 78 ITR 48 (SN) (Chennai)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Income attributable to permanent establishment – Project office in India cannot be construed as fixed place hence cannot be considered as permanent establishment – Deletion of addition by the High Court is affirmed – DTAA-India-Republic of Korea. [Art. 5(1), 7] 61
The assessee, a Korea based company, entered into a contract with O.N.G.C. and L&T as consortium partners. The Assessee set up a Project Office in Mumbai, India, which, as per the Assessee, was to act as "a communication channel" between the Assessee and ONGC in respect of the Project. Pre-engineering, survey, engineering, procurement and fabrication activities which took place abroad, all took place in the year 2006. Commencing from November, 2007, these platforms were then brought outside Mumbai to be installed at the Vasai East Development Project. The Project was to be completed by 26.07.2009. The AO held that the work relating to fabrication and procurement of material was very much a part of the contract for execution of work assigned by ONGC. The work was wholly executed by PE in India and it would be absurd to suggest that PE in India was not associated with the designing or fabrication of materials. Accordingly attributed 25% of gross receipts of the assessee outside India was attributable to the business carried out by the Project Office of the assessee revenue. The DRP and also Appellate Tribunal confirmed the order of the AO. On appeal by the assessee the High Court held that the question as to whether the Project Office opened at Mumbai cannot be said to be a permanent establishment within the meaning of Article 5 of the DTAA would be of no consequence. The High Court then held that there was no finding that 25% of the gross revenue of the Assessee outside India was attributable to the business carried out by the Project Office of the Assessee. According to the High Court, neither the AO nor the ITAT made any effort to bring on record any evidence to justify this figure. Accordingly the appeal of the assessee was allowed. On appeal by the revenue the Supreme Court held that, project office in India cannot be construed as fixed place hence cannot be considered as permanent establishment. The condition precedent for applicability of "fixed place" permanent establishments under Article 5(1) of the Double Taxation Avoidance Treaties is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. Further, the profits of the foreign enterprise are taxable only where the said enterprise carries on its core business through a permanent establishment. The maintenance of a fixed place of business which is of a preparatory or auxiliary character in the trade or business of the enterprise would not be considered to be a permanent establishment under Article 5. Also, it is

only so much of the profits of the enterprise that may be taxed in the other State as is attributable to that permanent establishment. (AY. 2007-08)
DIT(IT) v. Samsung Heavy Industries Co. Ltd. (2020) 426 ITR 1 / 192 DTR 1 / 315 CTR 622 / 272 Taxman 366 (SC)
Editorial : Samsung Heavy Industries Co. Ltd. v. DIT (IT) & Anr. (2014) 221 Taxman 315 / 265 CTR 109/98 DTR 89 (Uttarakhand)(HC), affirmed

62 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business income – Royalty – Lease line charges – Reimbursement – Not liable to be assessed as business income or royalty – DTAA-India-UK. [S. 9(1)(vi), Art. 7,12]**
Dismissing the appeal of the revenue the Court held that reimbursement of lease line charges received by the assessee, a U.K company from Indian company is not liable to be assessed as business income or royalty. (AY. 2007-08)
CIT(IT) v. WNS Global Services (UK) Ltd. (2020) 117 taxmann.com 143 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. WNS Global Services (UK) Ltd (2020) 272 Taxman 431 / 117 taxmann.com 144 (SC)

63 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Survey fees paid outside India – Service rendered outside India – Not liable to deduct tax at source. [S. 195]**
Dismissing the appeal of the revenue survey fees paid for non-resident outside the country, the assessee is not liable to deduct tax at source since entire services of the surveyors were rendered outside India. (AY. 2011-12)
CIT v. United India Insurance Co. (2019) 111 taxmann.com 217 (Mad.)(HC)
Editorial : SLP is granted to the revenue, CIT v. United India Insurance Co. (2020) 117 taxmann.com 849/ 273 Taxman 187 SC)

64 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Non-Resident – Permanent Establishment – Telecasting Sports Events – Principal to principal basis – Income earned not assessable in India – DTAA-India-Mauritius. [Art. 5]**
The assessee was a company registered in Mauritius and was a tax resident of that country. The assessee was engaged in telecasting sports channel. The AO held that the income earned in terms of the agreement was assessable in India. This order was reversed by the CIT(A) on a finding of fact that the assessee had obtained the right of distribution of the channel for itself and subsequently, had entered into contracts with other parties in its own name in which the assessee was not a party, that the distribution of the revenue. The Tribunal held that none of the conditions as stipulated in article 5(4) of the Double Taxation Avoidance Agreement was applicable to constitute agency permanent establishment therefore, it held that the distribution income earned by the assessee could not be taxed in India. On appeal dismissing the appeal held that there was a concurrent finding of fact by the CIT(A) and the Tribunal. There was no evidence that the finding of fact was perverse. Hence the income from distribution earned by the assessee was not taxable in India. (AY. 2004-05, 2005-06)
CIT (IT) v. TAJ TV Ltd. (2020) 425 ITR 141 / 196 DTR 177 / 317 CTR 860 / (2021) 277 Taxman 75 (Bom.)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Non-resident – Goods for export – Amount received as demurrage charges from seller in India – Held to be not taxable. [S. 5(2)(b), 40(a)(i), 172] 65

Court held that that the demurrage paid to the non-resident buyers of iron ore in terms of the relevant sales contract was not income that accrued or arose to the non-resident buyers in India within the meaning of section 5(2)(b) read with Explanation 1(b) to section 9(1)(i) (AY.2008-09, 2009-10)

Sesa Goa Ltd. v. JCIT (2020) 423 ITR 426 / 117 taxmann.com 96 / 193 DTR 41 / 316 CTR 446 (Bom.)(HC)

S. 9(1((i) : Income deemed to accrue or arise in India – Business connection – Fees for professional or technical services – Deduction at source Amount paid to surveyors to settle the amount on cost to cost basis – No permanent Establishment in India – Not liable to deduct tax at source – DTAA-India-UK. [S. 9(1)(vii), 90, 194J] 66

Dismissing the appeal of the revenue the Court held that the payments made to the U. K. company to settle the amounts of surveyors on cost-to-cost basis and the surveyors did not make available any technical knowledge which could be independently applied by the assessee and hence the payment made by the assessee would not be taxable as fees for technical services in the hands of the recipient. In the absence of a permanent establishment, the income in the hands of the recipient was not taxable in India. The Tribunal was right in holding that the assessee was not liable to deduct tax at source on the survey fees paid. (AY.2005-06 to 2010-11)

CIT v. Royal Sundaram Alliance Insurance Co. Ltd. (2020) 423 ITR 122 (Mad.)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Challenging the show cause notice seeking to tax entire income earned by its parent German Company in India – Factual issues are involved – Directed to file objection before DRP – Matter remanded. [S. 144C, Art. 226] 67

The assessee claimed that it is a Branch of its German Company viz. EOS Gmbh. For the relevant assessment year the assessee filed its return in capacity of PE of EOS Gmbh. AO is of the view that the assessee is involved in identifying potential customers and marketing of business by explaining product profile, product feature, its utility and application in India. Since all activities like purchase, sales operations, services were carried out by assessee in India a show cause notice was issued as to why 100 per cent of global profits earned from sales in India by EOS Germany should not be attributed to assessee and brought to tax. Assessee filed the writ petition challenging the said notice stating that it was operating as PE in India because profits from sales in India by EOS Germany through critical functions such as R& D, manufacture, sales strategy, pricing, negotiation etc, were performed by EOS Germany and not Indian Branch. Court held that many factual disputes went to root of matter viz. nature of activities carried on by assessee, existed between the parties, therefore unless and until aforesaid factual disputes were settled by appreciation of factual aspects of matter by a fact finding authority, question whether income at hands of assessee was to be treated as income earned in India and liable to tax could not be decided in writ proceedings. Accordingly the court directed the petitioner file objections before DRP. (AY. 2016-17)

EOS GmbH-India Branch v. Dy.CIT(IT) (2020) 420 ITR 119 / 269 Taxman 223 / 187 DTR 222 / 313 CTR 755 (Mad.)(HC)

68 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Supervisory activities should be more than 183 days in a fiscal year – No part of income from transaction is assessable in India – DTAA-India-Singapore. [Art. 5, 12]**
Dismissing the appeal of the revenue the Court held that on the facts supervisory activities is not more e than 183 days in a fiscal year, hence no part of income from transaction is assessable in India. Followed *Nortel Network India International Inc. v. DIT (2016) 386 ITR 353 (Delhi) (HC)*
CIT(IT) v. Nortel Network Singapore (Pte) Ltd. (2019) 111 taxmann.com 222 / 269 Taxman 24 (Delhi)(HC)
Editorial: SLP is granted to the revenue ; CIT (IT) v. Nortel Network Singapore (Pte) Ltd (2019) 111 taxmann.com 222/ 269 Taxman 24 (Delhi) (HC)

69 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Fixed place of business-liable to be assessed in India – DTAA-India-UK [Art. 5(1), 5(2), 5(4)]**
Dismissing the appeal of the assessee the Court held that,the finding by the ITAT that RRIL constituted the PE of the assessee is primarily a finding of fact based on the appreciation of evidence. No change in the factual matrix is pointed out by the assessee, and the finding returned does not raise a substantial question of law. While determining the issue whether RRIL constituted the PE of the assessee, the authorities have not relied upon the second explanation in S. 9(1) at all, and the determination of the said issue was undertaken dehors the said explanation, upon appreciation of the evidence unearthed during the survey. The explanation may, or may not, be prospective. In any event, the same would certainly not have the effect of nullifying the determination made on the issue of PE on the basis of the evidence collected and the pre-existing law as prevalent prior to the amendment of S. 9(1) with effect from 1st April, 2019. That, clearly, is not the purport of the substituted Clause (a) of Explanation-2 to S. 9(1) of the Act, with effect from 1st April, 2019. (AY. 2004-05 to 2009-10)
Rolls Royce Plc v. Dy.CIT (2020) 185 DTR 113 / 312 CTR 158 (Delhi) (HC)

70 **S.9(1)(i) : Income deemed to accrue or arise in India – Business connection– Explanation 7 to section 9(1)(i) has a retrospective effect – Sale proceeds of shares of foreign company which held investment in India is not taxable. [S. 5]**
It was held that Explanation 7 to section 9(1)(i) has retrospective effect, as Explanation 6 & 7 were inserted in furtherance of object of inserting explanation 5 and Explanation 5 was given the retrospective effect. As per Explanation 7 transactions that involves sale of shares of foreign company, which held investment in India would not be taxable, because it has a retrospective effect which includes the assessment year in consideration. (AY. 2015-16)
Augustus Capital Pte Ltd v. Dy. CIT (2020) 196 DTR 289 / 208 TTJ 1177 (Delhi) (Trib.)

71 **S.9(1)(i) : Income deemed to accrue or arise in India – Business connection – Shipping business – Invocation of article 24 of India-Singapore DTAA not justified – Exemption under article 8 is allowed – DTAA-India-Singapore [S. 44B, 172, Art. 8, 24, Singapore Income-tax Act, S 13F]**
Where exemption under article 8 of India-Singapore DTAA in terms of which, global income of a tax resident of Singapore from shipping operations, even though earned

outside Singapore is taxable only in Singapore on accrual basis. Thus, it was held that article 24 of India-Singapore DTAA could not be invoked to deny benefit of exemption under article even though such income was exempt in Singapore by virtue of separate exemptions provided under Singapore Income- tax Act. (AY. 2015-16)
Bengal Tiger Line PTE Ltd v. Dy. CIT (2020) 196 DTR 305 / 208 TTJ 1125 (2021) 188 ITD 397 (Pune) (Trib.)

S.9(1)(i) : Income deemed to accrue or arise in India – Business connection – Indian representative office and the bank itself are one unit – They are taxed only once – DTAA-India-German [S. 2(31), 253, Art.7, 11] 72
Where AO justified the taxability of related interest income in the hands of assessee, on the ground that Indian representative office of the bank and the bank itself are two separate entities under Article 11 of Indo-German treaty. It was held that the bank and representative office were only one taxable unit, thus the same income shall not be taxed twice. (AY. 2014-15)
DZ Bank AG – India Representative v. Dy. CIT (2020) 196 DTR 209 / 208 TTJ 1081 (Mum.) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – No Permanent Establishment during relevant assessment year for activities relating from which Assessee had earned revenue could not be taxed as business profit carried out through PE in India – Appeal Allowed – DTAA-India-Spain [S.90, Art. 13(4)] 73
Only activities through which the assessee had earned income is with respect to DPIR and engineering services which was carried from outside India and if none of the other activities of clause as given agreement have come into force during this year, then holding that entire income earned during the year was from any hypothetical fixed placed of business of PE would be erroneous. It is in the nature of FTS which is to be taxed in accordance with Article 13(4) of India-Spain DTAA (AY. 2007-08)
Idiada Automotive Technology v. Dy. CIT (2020) 206 TTJ 114 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Independent personal services – Two foreign scientists for Independent scientific services – No fixed permanent establishment in India nor had they stayed in India for 183 days or more – Not liable to deduct tax at source – DTAA-India-Switzerland [Art. 12(5) (b), 14, 15] 74
Assessee-company was engaged in business of manufacturing of master batches and engineering plastics compounds. It made payment to two foreign scientists for professional services rendered by them. The AO has held that the assessee was liable to deduct tax at source. Tribunal held that services had been provided by individuals which were in nature of Independent scientific services covered under article 14; that according to article 12(5)(b) meaning of term fees for technical services specifically excludes income covered under articles 14 and 15; and that two scientists had no fixed PE in India and both had not stayed in India for 183 days or more. Accordingly no tax was required to be deducted at source by assessee while making payment to two scientists. (AY. 2014-15)
Poddar Pigments Ltd. v. ACIT (2020) 185 ITD 463 (Delhi) (Trib.)

75 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Sole distributor of cars in India – Principal-to-Principal basis – DTAA-India-German. [Art. 5]**

Assessee, a tax resident of Germany, was engaged in business of manufacturing and selling of cars. Assessee appointed an entity as a sole distributor of cars in India. AO held that in view of section 9(1)(1) read with Art 5 of DTAA between India and German held that taxable in India. Tribunal held that as the business was done Principal to Principal basis provision of section 9(1)(i) read with Article 5 of India German Treaty is held to be not applicable. (AY. 2014-15)

AUDI AG v. DCIT(IT) (2020) 185 ITD 149 (Mum.)(Trib.)

76 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Earning from branch offices in UAE and Qatar are to be included in assessee's taxable income in India – DTAA-India-Qatar. [S. 90(3), 297(2)(k), Art. 7]**

The assessee was an Indian company with branch offices in UAE and Qatar. The assessee had earned profits aggregating to Rs. 11.91 crores in these branches, which, for the purposes of the provisions of the respective tax treaties, constituted permanent establishments. The AO included the aggregate of profits earned by assessee's branches in UAE and Qatar in the total income of the assessee. On appeal the assessee contended that that the Assessing Officer ought to have excluded profits earned by assessee's branches in UAE and Qatar from total income chargeable to tax in the hands of the assessee in India on the ground that once an income of an Indian assessee is taxable in the treaty partner source jurisdiction under a treaty provision, the same cannot be included in its total income taxable in India as well i.e. the residence jurisdiction. Tribunal held that earnings of assessee, an Indian company from branch offices in UAE and Qatar are to be included in assessee's taxable income in India. (AY. 2014-15)

Technimont (P.) Ltd. v. ACIT (2020) 184 ITD 474 / (2021) 197 DTR 121 / 209 TTJ 287 (Mum.)(Trib.)

77 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Dependent Agent – Arm's length remuneration – DTAA-India-UK. [Art. 7]**

Allowing the appeal of the assessee the Tribunal held that agent of assessee, a UK based company in India, had been paid arm's length remuneration, and income embedded in such remuneration had been taxed in India, no further profits could be taxed in hands of DAPE (AY. 2005-06)

OT Africa Line Ltd. v. DIT(IT) (2020) 183 ITD 159 / 192 DTR 241 / 206 TTJ 716 (Mum.) (Trib.)

78 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Wholly owned subsidiary in India – Entering into subscription agreement with various travel agents, it could be regarded as assessee's fixed PE in India – DTAA-India-Singapore. [Art. 5, 8]**

Assessee, a Singapore based company, was engaged in the business of promotion, development, marketing and maintenance of Computerized Reservation System (CRS). Primary business of assessee was to make reservations for and on behalf of participating

airlines using CRS. Assessee licensed rights to market CRS in India to its wholly owned subsidiary company ADSIL as its National Market company in India-Assessee claimed that it did not have any PE in India, and, hence, fees received from providing airline reservations services to various airlines was not taxable in India. Assessing Officer held that ADSIL was functioning as a controlled subsidiary of assessee and was exclusively performing marketing and distribution of CRS for assessee and also found that ADSIL was securing business for assessee by entering into subscription agreements with travel agents and as said activity was habitually, wholly and exclusively performed for assessee, ADSIL could be regarded as agency PE of assessee in India The Tribunal up held the order of the Assessing Officer. Followed order of Tribunal for earlier year. (AY. 2013-14)

Sabre Asia Pacific Pte. Ltd. v. DCIT (2020) 183 ITD 832 (Mum.) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Non-Resident – Contract for development of gas fields – Construction activity continued in India for a period of six months only – No Permanent Establishment in India – DTAA-India-Cyprus. [Art. 5(a)(g)] 79

Assessee is a company incorporated and a tax resident of Cyprus. The assessee was awarded a contract in relation to development of gas fields located offshore in East Coast of India. The AO held that the assessee had a PE in India. Tribunal held that since assessee's activities in India continued for a period of six month only, it did not constitute any PE in India. (AY. 2009-10)

Bellsea Ltd. v. DIT(IT) (2020) 182 ITD 420 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Supply of Microwave transmission equipments – Sister concern could not be assessed as Permanent Establishment or Agency PE – DTAA-India-Italy. [Art. 5] 80

During relevant years, assessee supplied microwave transmission equipment (including both hardware and software components) to its customers in India, being independent telecom operators. The AO held that a portion of profit earned by assessee attributable to aforesaid activities was taxable in India. On appeal the Tribunal held that since transactions of sale of equipments was on principal to principal basis on assessee's own account, unaffected by services rendered by SPCNL, said transactions would fall outside purview of section 9(1)(i). Accordingly the addition made by the AO was deleted. (AY. 1998-99 to 2002-03)

Siemens Mobile Communications SPA. v. CIT (2020) 182 ITD 479 / 208 TTJ 576 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Transfer of shares – Gains derived from alienation of any property taxable only in contracting state of which alienator is resident – Provisions of Act cannot override provisions of agreement – Gains from transfer of shares taxable in Belgium and not in India – DTAA-India-Belgium. [Art. 13(5) 13(6)] 81

Tribunal held that provisions of the Act cannot override provisions of agreement. Gains derived from alienation of any property taxable only in contracting state of which

alienator is resident. On facts the assessee, transferor of shares, a resident of Belgium accordingly the gains from transfer of shares taxable in Belgium and not in India therefore addition of short-term capital gain is held to be not justified (AY.2015-16)
Sofina S. A. v. ACIT(IT) (2020) 79 ITR 489 / 185 ITD 650 (Mum.)(Trib.)

82 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Contracts for supply and service of machinery in connection with setting up of plant – Thirty-five per cent of profit attributed to permanent establishment – Accepting existence of permanent establishment – Liable for interest DTAA-India-Austria. [S. 234B, Art. 5(2)]**

The Tribunal held that the contracts could not be seen independently. The dominant purpose or intention of the buyer from the very beginning was installation of multilayer packaging coated board plant under the supervision of the assessee. The business activities in India were not isolated instances but represented real and intimate relationship between activities of the assessee done outside India and those done inside India. The business operations in India were revenue generating as these operations were required to earn the contract and to meet the contractual obligations. Therefore, all parameters of business connection were satisfied in the case of the assessee. Accordingly, the income was deemed to accrue or arise in India in terms of section 9(1)(i) from the offshore supply of goods. Tribunal also held that in addition to the marketing activities or engineering survey pre or post-awarding of contract for which no information had been filed by the assessee the service permanent establishment had played a role in assembling and bringing the equipment to a deliverable state as agreed under the supply agreement. In such facts and circumstances 35 per cent. of the profits could be attributed to the permanent establishment. That the assessee had accepted the existence of the permanent establishment before the Assessing Officer and it could not contend that it was the responsibility of the deductor to deduct tax at source. Thus, the assessee was liable for interest under section 234B.(AY.2010-11)
Voith Paper Gmbh v. Dy. DIT (2020) 80 ITR 589 (Delhi)(Trib.)

83 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Royalty – Fees for technical services – Reimbursement of expenses – Held to be not taxable – DTAA-India-Singapore. [Art. 5(2), 12]**

Assessee Entering Into Technology Licence agreement for licence of Technology and system with Indian entity. Indian Entity Appointing various franchisees for operating restaurants in India. Deputation of employee of non-resident to Indian company. Reimbursement of salary by Indian company in respect of deputation of employee of non-resident to Indian company. Assessee had no permanent establishment in India and no business undertaking in India reimbursement of salary is not income and not taxable (AY.2008-09)
Dy.DIT v. Yum! Restaurants (Asia) Pte. Ltd. (2020) 81 ITR 440 / 192 DTR 372 / 206 TTJ 657 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Cannot be considered as constituting Agency PE of that assessee – DTAA-India-Mauritius. [Art. 5(5), 8] 84

Tribunal held that the effective management of the assessee is neither in Mauritius nor in India following the with the views of Mr. Klaus Vogel, who is an eminent authority of International Taxation, that if the effective management of an enterprise is not in one of the contracting state, but is situated in the third state, the benefit of article-8, cannot be extended. Accordingly Freight Connection India Pvt. Ltd. is an agent of independent status and hence it cannot be considered as constituting Agency PE of that assessee. (AY. 2014-15)

ARC Line (Mauritius) v. Dy. CIT(IT) (2020) 180 DTR 659 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Apportionment of income – MAP proceedings – Appropriate to adopt 7.5 % as adjusted commercial linehaul charges (CLC) / total linehaul charges (TLC) ratio for computing taxable income – DTAA-India-USA. [Art.8] 85

Tribunal held that since the AO has adopted the adjusted commercial linehaul charges to total linehaul charges ratio of 7.5% in respect of user of third party aircrafts for transportation of shipments by the assessee, a US company as a result of MAP proceedings in earlier years, it is appropriate to adopt the same ratio for computing for relevant assessment years taxable income. (AY. 2014-15)

Federal Express Corporation v. Dy.CIT(IT) (2020) 186 DTR 209 / 203 TTJ 984 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Liaison office – Involved in preparatory and auxiliary activities but also involved in ascertaining customer requirements, price negotiations obtaining of purchase orders etc – Constituted PE in India and profit attribution has to be done – DTAA-India-Singapore. [S. 92, Art. 5] 86

The assessee company, incorporated under laws of Singapore is engaged in trading operations of various products and equipment's in India. Assessee established a liaison office in India for preparatory and auxiliary services, including market research and liaison activities. AO held that liaison office Involved in preparatory and auxiliary activities but also involved in ascertaining customer requirements, price negotiations obtaining of purchase orders etc therefore constituted PE in India in terms of Art 5 of India-Singapore DTAA. On appeal the Tribunal held that from the records that employees of assessee liaison office were engaged in marketing, sales promotion and market research activities which were sine qua for trading business. Tribunal also held that liaison office is also involved in ascertaining customer requirements, price negotiations obtaining of purchase orders etc Accordingly the Tribunal affirmed the order of AO and held that liaison office constituted PE in India and profit attribution has to be taxable in India. (AY. 2002-03 to 2007-08)

Hitachi High Technologies Singapore Pte Ltd. (2019) 202 TTJ 273 / (2020) 180 ITD 861/ 187 DTR 223 (Delhi)(Trib.)

87 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Providing support services – Taxable at the rate of 20% on gross basis – DTAA-India -USA. [S. 9(1)(vii), 44AD, 115A, 195(2), Art. 12]**

The Assessing Officer held that even if the installation related work is taken out of the scope of contract, the fee received by the assessee company was the fee for the services included in Article 12 of the DTAA under consideration. The Assessing Officer after considering attending facts of the case and agreement dated 01.04.1998 and subsequent amended agreement, held that the fee received by the assessee was in the nature of technical services and taxable as business income and allowed 30% of fee received for expenses incurred out of the total amount of Rs.1,18,93,073/-and determined the taxable income at Rs.83,25,151/-On appeal CIT(A), held that there is PE in India and consideration received is a fee for included services and held that as per section 44D read with 9(1)(vii) and section 115A of the Act that the fee for technical services are earned in pursuance to agreement made after May, 1997, the same would be taxable @ 20% on gross basis. On appeal the Tribunal up held the order of the CIT(A) (AY. 2002-03)

HNS India VSAT Inc v. Add. DIT (2020) 188 DTR 317 / 205 TTJ 113 (Delhi)(Trib.)

88 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Amount received/receivable by applicant under equipment supply contract awarded by an Indian company for off shore supply of Coke Dry Quenching (CDQ) units would not be chargeable to tax in India – DTAA-India-Japan. [Art. 7]**

Applicant a Japanese company is engaged in business of steel & environmental plants and has delivered a number of Coke Dry Quenching (CDQ) units world wide. It entered into two contracts with purchaser JSW an Indian company, for supply of CDQ equipment for Japan portion and for China portion. It sought advance ruling. Authority held that Amount received /receivable by applicant under equipment supply contract awarded by an Indian company for off shore supply of Coke Dry Quenching (CDQ) units would not be chargeable to tax in India as the applicant did not have any fixed place through which its business was wholly or partly carried on to be considered as PE.

Nippon Steel Engineering Co. Ltd. (2020) 269 Taxman 243 / (2019) 112 taxmann.com 243 (AAR)

89 **S. 9(1)(v) : Income deemed to accrue or arise in India – Interest – Foreign Institutional Investor – Foreign currency loans and debt securities – Exempt from tax – DTAA-India-Mauritius. [Art. 11(3)(c)]**

Assessee, a Foreign Institutional Investor (FII) and tax resident of Mauritius had e-filed its return of income declaring its total income at Rs. Nil. The AO held that the assessee had failed to substantiate the material aspect that it was beneficial owner of interest income and not a conduit company. The Assessee submitted that interest income of Rs. 273 crores on foreign currency loans and Rs. 1225 crores on debt securities was exempt under article 11(3)(c). Tribunal held that beneficial provisions envisaged in article 11(3)(c) would be applicable to interest income received by assessee rendering said receipts as not exigible to tax in India. Followed the order for earlier year. (AY. 2015-16)

DCIT(IT) v. HSBC Bank (Mauritius) Ltd. (2020) 84 ITR 360 / 185 ITD 452 (Mum.)(Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India – Interest – Commercial Convertible Debentures (CCDs) – Transfer pricing – Method of accounting – Interest income can be brought to tax only on satisfying twine conditions of accrual as well as actual receipt – DTAA-India-Mauritius. [S. 4, 90, 92C, 145, Art. 11(1)] 90

The Board of directors of the assessee company passed a resolution waiving interest on CCDs considering the slow down in real estate sector. The AO held that since assessee was following mercantile system of accounting and as per terms and conditions of CCDs, interest at rate of 12 per cent per annum was payable to assessee, interest income had accrued to assessee and determination of arm's length price of interest income had to be made. On appeal the Tribunal held that addition made on account of transfer pricing adjustment was unsustainable as assessee had actually not received any interest income and hence, it would be protected by article 11(1) and treaty provision being more beneficial to assessee as per section 90(1), will override all other provisions of Act. (AY. 2008-09, 2011-12, 2012-13)

Gurgaon Investment Ltd. v. DIT(IT) (2020) 182 ITD 424 (Mum.) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Fees for technical services – Court had not answered question of payment of royalty on merits – Matter should be restored to High Court – OECD Model convention, 12. [S. 9(1)(vii), 260A] 91

The High Court answered the question formulated against the assessee relying on the decision in *CIT v, Samsung Electronics Co. Ltd (2009) 320 ITR 209 (Karn) (HC).* However in the subsequent decision in *GE India Technology Center (P.) Ltd. v. CIT (2010) 327 ITR 45 (SC)* the Court held that the question of payment of royalty ought to be determined by the High Court on merits and for that reason, it relegated the parties before the High Court. Accordingly ordered to relegate the parties before the High Court by restoring the concerned appeal to its original number, to be decided expeditiously on its own merits and in accordance with law.

Intel Technology India (P.) Ltd. (2020) 275 Taxman 592 / (2021) 197 DTR 455 / 319 CTR 68 (SC)

S. 9(1(vi) : Income deemed to accrue or arise in India – Royalty – Satellite communication services – Not taxable in India – DTAA-India-USA. [Art. 12] 92

Dismissing the appeal of the revenue the Court held that consideration received by a US company for providing Satellite communication services is not taxable as royalty. (AY. 2013-14)

CIT(IT) v. Intelsat Corpn (2020) 119 taxmann.com 282 / 113 taxmann.com 596 (Delhi)(HC)

Editorial : SLP is granted to the revenue, CIT(IT) v. Intelsat Corpn (2020) 274 Taxation 216/ 119 taxmann.com 283 / 269 Taxman 369 / 113 taxmann.com 597 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Licence embedded software – Not royalty – Assessable as business income. [S. 28(i)] 93

Dismissing the appeal of the revenue the Court held that the amount received for licence of product which was embedded software is not royalty and it is assessable as business income.

CIT(IT) v. Bently Nevada LLC (2020) 114 taxmann.com 101 (Delhi)(HC)

Editorial : SLP of revenue is dismissed CIT (IT) v. Bently Nevada LLC (2020) 270 Taxman 95 / 114 taxmann.com 102 (SC)

94 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Interpretation of statutes and DTAA – DTAA-India-Singapore. [S. 9(1)(vii), 90, 195, Art. 12]**
The AO held that the software supplied by the assessee is chargeable to income tax from royalty and technical services. CIT(A) affirmed the order of the AO. Tribunal decided in favour of the assessee. On appeal the revenue The question before the High Court was " Whether the Tribunal was correct in holding that the assessee is liable to be taxed at 10% in view of replacement of 5% with 10% of tax in Article 12 of the DTAA without taking into consideration that the modification of rate of tax by way of notification dated 18.07.2005 was with effect from 01.08.2005 and recorded a perverse finding?" The Court held that the substitution of a provision results in repeal of earlier provision and its replacement by new provision. When a new rule in place of an old rule is substituted, the old one is never intended to keep alive and the substitution has the effect of deleting the old rule and making the new rule operative. Though Notification dated 18.07.2005 (which substitutes paragraph 12 of Article 12 of the DTAA to provide for levy of tax on the royalties or fees for technical services at a rate not exceeding 10%) issued u/s 90 came into force with effect from 01.08.2005, it applies to the entire fiscal year.
DIT v. Autodesk Asia Pvt. Ltd. (2020) 275 Taxman 319 / 120 taxmann.com 324 (Karn.)(HC)

95 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty Payments made for import of software for imparting of information concerning technical industrial commercial or scientific knowledge etc. – Assessable as royalty – Liable to deduct tax at source. [S. 9(1)(vii), 195]**
Payments made for import of software for imparting of information concerning technical industrial commercial or scientific knowledge, experience or skill as per clause (iv) of Explanation 2 to section 9(1) (vi) of the Act. Liable to deduct tax at source. Followed *CIT (IT) v. Samsung Electronics Co. Ltd. (2011) 345 ITR 494 (Karn)(HC).(AY. 2007-08).*
Infineon Technologies (P) Ltd. v. Dy.CIT (2019) 112 taxmann.com 401 / 269 Taxman 53 (Karn.)(HC)
Editorial : SLP is granted to the assessee Infineon Technologies (P) Ltd v. Dy CIT (2020) 269 Taxman 52 / 113 taxmann.com 167 (SC)

96 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Subscription revenue received by the assessee to be in the nature of royalty and bringing it to tax in India. – DTAA-India-UK. [S. 90, 115A, Art. 13(6)]**
Following the asseesee's own case for the Assessment year 2012-13 in DC*IT v Reuters Transaction Services Ltd [2018] 96 taxmann.com 354* the Tribunal held that the amount received by the assessee from the customers in India is in the nature of royalty as per Article-13(3) of the India-UK Tax Treaty as well as the provisions of the Act. (AY. 2014-15)
Reuters Transaction Services Ltd. v. Dy.CIT (2020) 187 DTR 268 / 204 TTJ 624 (Mum.) (Trib.)

97 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software – Not assessable as royalty – DTAA-India-Ireland. [Art. 12]**
Assessee was a company incorporated in Ireland and during the year under consideration, it was in receipt of certain sum towards Sale of Software from its Indian

Distributors. AO assessed the receipt as royalty. On appeal the Tribunal held that distinction between transfer of a copyright and transfer of a copyrighted product is prominent and there being no transfer of copyright in computer software by assessee to its customers, receipt from sale of software would not be in the nature of Royalty as per article 12. (AY. 2014-15)
Mentor Graphics Ireland Ltd. v. ACIT(IT) (2020) 185 ITD 572 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Data access/link charges from its Indian subsidiary was neither for scientific work nor any patent, trademark, design, plan or secret formula or process, thus, it could not be held to be royalty – Copyrighted/shrink – wrapped software, which could not be treated as consideration for transfer of any copyright, thus, same could not be treated as royalty – Professional and consultancy services provided by assessee, a USA based company to an Indian company, did not 'make available' any technical knowledge, experience, skill, know-how or process or consist of any development and transfer of any design, receipt on account of said services was not taxable as fee for included services – DTAA-India-USA. [Art. 12(4)]. 98

Assessee, a USA based company, was engaged in the business of managing, providing and developing billing information and software. It received certain amount on account of data access/link charges also known as International Private Leased Circuits (IPLC) charges from its Indian subsidiary. Assessing Officer made an addition on account of said data access/link charges being of view that same constituted royalty under section 9 read with article 12 of India-US DTAA. Tribunal held that payment was neither payment for scientific work nor any patent, trademark, design, plan or secret formula or process the said receipt was not royalty under article 12 Assessee received certain amount from sale of off-the shelf/shrink-wrapped software and, support and maintenance fee in connection with said software. Assessing Officer made an addition on account of receipt from sale of software and maintenance fee holding that same were taxable under article 12 and article 12(4) respectively. Tribunal held it held that since taxability of support and maintenance fee was dependent on taxability of software supplied, therefore, same was also not taxable under article 12(4). Professional services did not 'make available' any technical knowledge, know-how or process or consist of any development and transfer of any design, therefore, receipt on account of said services was not taxable as FIS under article 12. (AY. 2012-13)
Netcracker Technology Solutions LLC v. DCIT (2020) 184 ITD 701 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Transfer of use or right to use computer – Software was inseparable part of imaging equipments/MRI machines sold, payment made to foreign AE on purchase of software would not be in nature of royalty – DTAA-India-Belgium. [Art. 12] 99

Assessee-Belgian company provided information and communication services to one of its AE in India. The AO held that amount received was in relation to computer software and/or for use of process or for rendering services in relation to those items and such transfer of right to use a computer software would come within purview of royalty as per Explanation 4 to section 9(1)(vi) which was introduced with retrospective effect from 1-6-

1976. On appeal Tribunal held that in view of fact that no corresponding amendment was made to definition of royalty in India-Belgium DTAA that was similar to Explanation 4 to section 9(1)(vi), payment for transfer of use or right to use of computer software could not be treated as royalty under impugned tax treaty. Tribunal also held that software was inseparable part of imaging equipments/MRI machines sold, payment made to foreign AE on purchase of software would not be in the nature of royalty. (AY. 2015-16)
Agfa Healthcare NV v. DCIT (IT) (2020) 182 ITD 398 (Mum.)(Trib.)

100 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Charges for web – hosting, cloud hosting and cloud space rentals being utilised for foreign business – Failure to deduct tax at source – Article 7 of the OECD Model Tax Convention – Matter remanded. [S. 9(1)(i), 9(1)(vi), 195]**
The Assessee contended that the payments to non-residents were in respect of right, property or information used or services utilized in a business or profession carried on by assessee outside India or for purposes of making or earning any income from any source outside India and that such payments to non-residents were not deemed to accrue or arise in India and, consequently, not liable for TDS under S. 195 of the Act. The AO and CIT(A) held that such payments to non-resident as payment of royalty and, thus, liable to TDS. On appeal the tribunal held that since there was no specific observation made with respect to section or provisions and there was no finding on disputed issue, matter was to be adjudicated afresh. Matter remanded. (AY. 2015-16, 2016-17)
Edgeverve Systems Ltd. v. ACIT(IT) (2020) 182 ITD 526 (Bang.) (Trib.)

101 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Master service agreement (MSA) – Information technology support – Payments for said services could not be assessed as fees for Technical services – DTAA-India-Netherland [S. 9(1)(vii), Art. 12(4), 13]**
Tribunal held that,master service agreement to provide IT services to various entities and provided restricted software/network access and access to software was not for use of any copyright albeit for copyrighted articles during course of providing service, payments received by assessee in pursuance to MSA could not be treated as royalty. Similarly information technology support services entered into a Master Service Agreement to provide technical and advisory services to various clients in India, however, services did not make available any technical knowledge, skill, experience etc. to service recipients, payments for said services could not be treated as fee for technical services. (AY. 2015-16)
Shell Information Technology International BV v. DCIT (2020) 182 ITD 294 (Mum.)(Trib.)

102 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Computer software – Grant of non-exclusive non – transferable license in computer software with no right to sub-lease or transfer would fall within purview of Royalty – Chargeable to tax – Liable to deduct tax at source – DTAA-India-Italy. [S. 40(a)(i), 195, Art. 13(3)]**
Assessee-company was engaged in the business of engineering and procurement assistance services. It had purchased certain software licenses from Saipem SPA, Italy,

which were used by assessee for providing services to customers for various support functions in accounting, reporting, etc.. Assessing Officer made disallowance of payment by invoking provisions of section 40(a)(i) as assessee had not deducted tax at source as required under section 195 while making payment to Saipem SPA, Italy, by holding that aforesaid payments were royalty payment under section 9(1)(vi) and article 13(3). CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that assessee had made payments to Saipem SPA, Italy towards software licenses/purchase of software, a personal, non-exclusive, non-transferable license with a right to make unlimited copies, however, said software can only be used for internal purposes. Tribunal further held that grant of non-exclusive non-transferable license in computer software with no right to sub-lease or transfer would fall within purview of Royalty both under DTAA as well under section 9(1)(vi) and would be chargeable to income-tax under provisions of Act. Followed *CIT v. Synopsis International Old Ltd (2013) 212 Taxman 454 (Karn) (HC), Zylog Systems Ltd v. ITO (IT) 415 ITR 311 (Mad) (HC)* (AY. 2014-15)
ACIT v. Saipem India Projects P. Ltd. (2020) 181 ITD 724 (Chennai)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Web hosting services – Royalty – Providing IDC service to its Indian group companies from Singapore – Mail box/website hosting services – Not assessable as royalty – Management fees – Not assessable as fees for technical services – Fees for management services is not assessable as fees for technical services – Referral services/other services – Revenue received under referral agreement was not taxable as royalty under Act DTAA-India -Singapore. [S. 9(1)(vii), 90, Art. 12]. 103

Appellant had an infrastructure data centre at Singapore Under Infrastructure Data Centre (IDC) agreement, assessee Singapore company provided IT infrastructure management and mail box/website hosting services to its India group companies from Singapore. Websites/applications/softwares hosted by Indian group companies on data centre in Singapore were web ordering application, corporate website, websites created for customers of Edenred India entities while making a loyalty program for them. Indian group companies neither accessed nor used CPU of appellant. All that Indian group companies received were standard IDC services. Bandwidth and networking infrastructure was used by appellant to render IDC services. Tribunal held that Indian companies only got output of usages of such bandwidth and network. Appellant only provided service by using its hardware/security devices/personnel and there was no use of any Software; no embedded/secret software was developed by appellant-Further, consideration was for IDC services and not any specific program-Whether revenue under IDC agreement ought not to be taxed in hands of appellant as royalty under Act and/or India-Singapore DTAA Assessee received management fee from Indian company SurfGold for consultancy services to support sales activities of SurfGold, legal services, financial advisory services and human resource assistance-Such management services were provided only to support SurfGold in carrying on its business efficiently and in line with business model, policies and best practices followed by assessee's group. Tribunal held that these services did not make available any technical knowledge, skill, know-how or processes to SurfGold Accordingly Assessing Officer as well as DRP was not justified in holding management services to be fees for technical services. Referral

services/other services were provided by assessee Singapore company to support Indian company Surf Gold in carrying on business. These services did not make available any technical knowledge, skill, know-how or processes to SurfGold because there was no transmission of technical knowledge, experience, skill etc. from assessee to SurfGold or its clients. Tribunal held that revenue received under referral agreement was not taxable in hands of assessee as royalty under Act and/or India-Singapore DTAA or FTS under India-Singapore DTAA. (AY. 2010-11 to 2012-13)
Edenred Pte. Ltd. v. DIT (2020) 207 TTJ 271 / (2021) 186 ITD 605 (Mum.)(Trib.)

104 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Export of garments – Inspecting garments, ensuring quality and export – Income received by non – resident not taxable in India – DTAA-India-Hong Kong. [S. 260A, Art. 12]**
Dismissing the appeal of the revenue the Court held that the non-resident company was nowhere involved either in identification of the exporter or in selecting the material and negotiating the price. The quality of material was also determined by the assessee and the non-resident company was only required to make physical inspection to see if it resembled the quality specified by the assessee. For rendering this service, no technical knowledge was required. No question of law. (AY.2007-08)
DIT(IT) v. Jeans Knit Pvt. Ltd. (2020) 428 ITR 285 / 317 CTR 1 / 194 DTR 265 / 119 taxmmann.com 305 (Karn.)(HC)

105 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Technology collaboration and technical assistance agreement – Assessed as fees for technical services – DTAA-India-Sweden. [S. 9(1)(vi), Art. 12]**
Assessee entered into two agreements with its AE, i.e. technology collaboration and technical assistance agreement and service agreement as regards various services. Said agreements were in force till assessment year 2011-12. During year, said agreements were broken into three agreements i.e. trademark license agreement, technology license agreement and IT service delivery agreement. Assessee, in light of IT service delivery agreement, contended that same was a separate and distinct agreement from main royalty agreement (Technology collaboration and technical assistance agreement) and, thus, it did not come under definition of FTS provided under India-Sweden tax treaty. Assessing Officer held that IT services rendered by assessee were subservient to royalty agreement and were ancillary and subsidiary to main royalty agreement entered into by both parties. The Assessee filed an appeal before the DRP. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal affirmed the order of the Assessing Officer and held that services rendered by assessee would be treated as fee for technical services. (AY. 2013-14, 2014-15)
Aktiebolaget SKF v. Dy.CIT (2020) 181 ITD 695 / 207 TTJ 520 (Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Employees of Non-Resident assessee deputed to manage affairs of its associated enterprise in India and provide technical Knowledge – Employees continuing to make social security contributions in their country and their salaries distributed to their bank accounts – There – Revenue received by assessee by way of reimbursement constitutes fees for included services – DTAA-India-USA. [Art.7] 106

Tribunal held that the employees of the assessee had been deputed to manage the affairs of the Indian entity and provide technical knowledge. Though the employees worked at the premises of Indian entity for all practical purposes they remained employees of the assessee. The employees continued to make their social security contributions in the U. S. A. and their salaries were also distributed to their bank accounts in the U. S. A. The finding of the authorities on the issue of existence of permanent establishment of the assessee in India in terms of the Double Taxation Avoidance Agreement between India and the U. S. A. was upheld. *Relie Centrica India Offshore P. Ltd. v. CIT (2014) 364 ITR 336 (Delhi) (HC)*. That the issue relating to relocation expenses was to be remanded to the Assessing Officer for deciding after verification of each and every item of expense of Rs. 4,10,60,108 with a direction to include only the items of the expenses pertaining to the seconded employees. That the issue regarding non-consideration of the global profit of the assessee for applying mark-up on the cost base and adopting an ad hoc 25 per cent. as profit attributable to the permanent establishment was remanded to the Assessing Officer, who, after verification of the documents along with the audited statements filed by the assessee in support of its claim of the global profits, was to decide the attribution of profits in accordance with article 7 of the Double Taxation Avoidance Agreement between India and the U. S. A. That the issue of credit for tax deducted at source for amount of Rs.22,721 was to be verified by the Assessing Officer from the records of the assessee and of the Department. The assessee was directed to produce all the evidence in support before the Assessing Officer for verification and he would then after examination of the documents and evidence and data base of the Department, allow the credit for tax deducted at source in accordance with law.(AY. 2014-15)

Teradata Operations Inc. v. Dy. CIT (2020) 82 ITR 338 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Patent Attorney in India – Services of Foreign Attorney – Patent registration outside India – Held to be consultancy and technical services – Liable to deduct tax at source – Matter remanded to the file of CIT(A) to consider applicability of DTAA of respective countries – OECD Model Tax Convention – Art. 12. [S.195] 107

Assessee was a patent attorney who rendered legal services in his capacity as an Advocate in India. His services were engaged by Indian clients for obtaining registration of patents and IPRs owned by them in foreign jurisdictions. In order to comply with legal formalities associated with registration of IPRs with patent authorities of respective countries, assessee got assistance of IP attorneys carrying on similar professional activities in respective countries where IP registrations were sought to be obtained and paid fees for such services. The AO held that payment was liable to deduct tax at source Before the Tribunal the Assessee contended that services performed by foreign attorneys were merely clerical or executionary in nature which did not involve any specialized

knowledge, nor it involved rendering of any advisory service and as such payments made to foreign patent attorneys would not come within ambit of fees for technical services. Tribunal held that since laws conferring IP rights on parties are complex in nature, rendering of service in this field would constitute a specialised branch in field of legal services. and since foreign attorneys not only advised assessee in preparing documentation necessary for submission of applications but also represented, applicants before Patent/IP authorities and provided clarifications and explanations necessary for grant of registration, services rendered by foreign attorney to assessee would come within ambit of section 9(1)(vii) of the Act.
However, matter was to be restored to Commissioner (Appeals) to examine the assessee's plea that payments were non-taxable in India because of beneficial provisions of DTAAs with respective countries. (AY. 2011-12)
ACIT v. Subhatosh Majumder (2020) 185 ITD 716 (Kol.)(Trib.)

108 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Matter remanded – DTAA-India-Singapore. [Art. 12]**
Assessee-company and Singapore based company had entered into architectural design services agreement in respect of residential projects in Chennai. Assessing Officer held that the assessee had availed technical knowledge, skill, know-how and, therefore, payments made to non-resident company in Singapore were in nature of Fees for Technical Services (FTS) and was taxable. Tribunal remanded the matter to AO for verification. (AY. 2014-15)
Mantri Technology Constellations (P.) Ltd. v. DCIT (2020) 185 ITD 300 / 82 ITR 4 (SN) (Bang.)(Trib.)

109 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Reimbursement of cost for rendering administrative services – Not taxable in India as fee for technical services – DTAA-India-Denmark. [S. 9(1))(vi), Art.13]**
Assessee, a Denmark based company, was engaged in the business of shipping and logistics. During relevant year assessee received reimbursement of cost from its Indian group concern towards business support charges which was claimed as not liable to tax due to absence of assessee's PE in India Assessing Officer held that support services were ancillary and subsidiary to providing access to IT Network Systems of goods, brought amount in question to tax as fee for technical services under article 13 of India-Denmark DTAA. Tribunal held that reimbursement of cost was towards administrative services, same could not be held to be in nature of technical, managerial and consultancy services and, thus, amount received by assessee was not taxable as fee for technical services. (AY.2012-13, 2013-14)
Damco International A/S v. DCIT(IT) (2020) 184 ITD 194 / 208 TTJ 858 (Mum.)(Trib.)

110 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Business profits – Royalty – Fees for technical services – Absence of permanent establishment – Technical services fees cannot be taxed in India – DTAA-India-Philippines. [S. 9(i)(i), Art. 7]**
Assessee, a foreign company, having expertise in mining activity, was engaged by an Indian company, to recruit skilled and experienced employees for mining at mines situated at Rajasthan. It received retainer fee from said Indian company at rate of

10 per cent of salary of certain specified employees. AO treated said payment as Fee for Technical Services (FTS) and held that thee same was taxable under section 9(1)(vii) of the Act. Tribunal held that in absence of provision in DTAA between India and Philippines for taxing FTS separately, same was required to be taxed as business profits under article 7 and, further, in absence of PE in India, said payment received by assessee could not to be taxed in India as business profits. (AY. 2013-14, 2014-15)
Paramina Earth Technologies Inc. v. DCIT(IT) (2020) 182 ITD 45 (Vishakha)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Management services to associated enterprise – Matter remanded to the Assessing Officer – Services of corporate guarantee not services of managerial, technical or consultancy services – Education cess and secondary and higher education Cess – Not applicable while taxing income on gross basis under tax treaty – DTAA-India-France – Reimbursement of expense – Matter remanded to the Assessing Officer. [S. 92C, Art. 13(3)] 111

Tribunal held that the assessee has not provided entire correspondence regarding services rendered by it to its associated enterprise. Matter remanded to the assessing Officer to decide a fresh. Tribunal also held that services of corporate guarantee not services of managerial, technical or consultancy. Corporate guarantee fee received by assessee not fees for technical services. The Tribunal held that the assessee raised the issue that education cess and secondary and higher education cess was not applicable while taxing the income on gross basis under the Double Taxation Avoidance Agreement between India and France Held, that in view of the provisions of the India-France Agreement on the issue being similarly worded as the provisions of the India-U. K. Agreement, the Assessing Officer was directed to delete the education cess and secondary and higher education cess levied on the Income-tax on gross basis under the India-France Agreement. As regards reimbursement of expense, matter remanded to the Assessing Officer. (AY.2011-12, 2012-13)
Jcdecaux S. A. v. ACIT (2020) 79 ITR 222 (Delhi)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Taxable at 10% – DTAA-India-Switzerland. [Art. 5(2)(1), 12(2)] 112

Tribunal held that a combined reading of the provision of article 5(2)(l) read with related protocol clause clearly shows is that the service PE being triggered on account of rendition of services by a Swiss entity in India, or vice versa, can never make the assessee worse off so far as the tax liability in source jurisdiction is concerned. Unless the assessee has a lower tax liability on taxability of PE on net basis under article 7 vis-a-vis taxability of FTS on gross basis under article 12(2), the PE being triggered is in fact tax neutral. Nothing, therefore, turns in favour of the income tax department on account of service PE being triggered by the rendition of services. The words "at the request of the enterprise" appear in the above protocol provision but when the assessee is all along pleading for taxability under article 12(2), it's implicit in the contention that the assessee wants to be taxed at that rate. Accordingly the AO directed to tax the assessee, in respect of the receipts as fees for technical services, i.e. Rs 1,00,14,582, @ 10% on gross basis and under article 12(2) of the Indo Swiss tax treaty. (AY. 2015-16)
AGT International Gmbh v. Dy.CIT (2020) 186 DTR 193 / 203 TTJ 793 (Mum.)(Trib.)

113 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Technology collaboration and technical assistance agreement – Assessed as fees for technical services – DTAA-India-Sweden. [S. 9(1)(vi), Art. 12]**

Assessee entered into two agreements with its AE, i.e. technology collaboration and technical assistance agreement and service agreement as regards various services. Said agreements were in force till assessment year 2011-12. During the year, said agreements were broken into three agreements i.e. trademark license agreement, technology license agreement and IT service delivery agreement. Assessee, in light of IT service delivery agreement, contended that same was a separate and distinct agreement from main royalty agreement (Technology collaboration and technical assistance agreement) and, thus, it did not come under definition of FTS provided under India-Sweden tax treaty. Assessing Officer held that IT services rendered by assessee were subservient to royalty agreement and were ancillary and subsidiary to main royalty agreement entered into by both parties. The Assessee filed an appeal before the DRP. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal affirmed the order of the Assessing Officer and held that services rendered by assessee would be treated as fee for technical services. (AY. 2013-14, 2014-15)

Aktiebolaget SKF v. Dy.CIT (2020) 181 ITD 695 / 207 TTJ 520 (Mum.)(Trib.)

114 **S. 10(1) : Agricultural income – Capital asset – Agricultural land – Land in Village within Municipality – Village having population less than specified ten thousand – Land was agricultural – Profits from sale of land is exempt. [S. 2(14)(iii)(a), 45]**

Dismissing the appeal of the revenue the Court held that the land which was sold was situated in a village. Late collection of tax by the Municipal Corporation or mentioning or recording in the revenue record that the village continued to be a separate entity till May 31, 2011 would not make any material difference to the legal position that the village became part of the larger urban area on and from July 3, 2009. However, the Tribunal returned a finding of fact that at the time of sale, the land in question was situated at the village the population of which was 5,912 which was less than the statutory requirement of 10,000. Accordingly the profit from sale of the land was not assessable as capital gains. (AY. 2011-12)

PCIT v. Anthony John Pereira (2020) 425 ITR 134 / 195 DTR 168 / 317 CTR 920 / 272 Taxman 138 (Bom.)(HC)

115 **S. 10(1) : Agricultural income – Coconut Trees and Mango orchard on land – Income derived is assessable as agricultural income.**

Tribunal held that just because the assessee owned a fleet of vehicles, it did not mean that the assessee may not have agricultural income. The Assessing Officer accepted that the assessee had produced the patta in respect of 87.57 acres of land. The other pattas which had been produced were in respect of lands in the name of the assessee's married daughter and his son and others. The Assessing Officer further accepted the fact that there were 501 coconut trees on the land. He also accepted that there was a mango orchard on the land. Thus the agricultural income declared by the assessee did not need any interference. The Assessing Officer was directed to accept the agricultural income as disclosed by the assessee.(AY.2011-12, 2012-13)

Varusai Mohammed Rowther Kazakamal v. ITO (2020) 79 ITR 1 (SMC)(SN) (Chennai) (Trib.)

S. 10(1) : Agricultural income – Capital asset – Agricultural land – Valuation – Matter remanded to the Assessing Officer with a direction to find out as to whether agricultural land fell within the meaning of capital asset. [S. 2(14)(iii, 45, 56(2)(vii)(b)] 116
Assessee purchased a piece of agricultural land. In course of assessment, Assessing Officer on basis of valuation report given by Sub-Registrar, made certain addition to purchase consideration under section 56(2)(vii)(b) of the Act which was confirmed by the CIT(A). On appeal the assessee contended that agricultural land purchased by him did not fall under definition of capital asset as per section 2(14) and, thus, provisions of section 56(2)(vii)(b) could not be invoked to his case. Tribunal held that there were no findings of lower authorities in said regard accordingly the addition was to be set aside and, matter was to be remanded back to Assessing Officer to ascertain as to whether agricultural land fell within meaning of capital asset under section 2(14)(AY. 2014-15)
Prem Chand Jain v. ACIT (2020) 82 ITR 522 / 183 ITD 372 / 194 DTR 37 / 207 TTJ 629 (Jaipur)(Trib.)

S. 10(4) : Non-resident – Stayed in India for 283 days for taking up employment – Not entitled to exemption. [S. 6, 10(14(iii), Foreign Exchange Management Act, 1999, S. 2(v)] 117
The assessee had an NRE account in an Indian bank. The assessee claimed exemption under S 10(4)(ii) on the interest income earned from NRE FD account amounting to Rs. 1.10 crores. The AO rejected the claim and taxed the interest amount on the grounds that though the assessee was a non-resident earlier he became a person resident in India during the current year as per section 2(v) of the FEMA Act, 1999. CIT(A), up held the order of the AO. On appeal the Tribunal held that, since the assessee has come and stays in India during the financial year 2014-15 for 283 days, his residential status under FEMA is a person resident in India only. Therefore, the assessee is not entitled for the deduction under S. 10(4)(ii) of the Act. (AY. 2015-16)
Baba Shankar Rajesh v. ACIT (2020) 180 ITD 160 (Chennai) (Trib.)

S. 10(10AA) : Leave salary – Government employee – Leave salary – Employee of the Central Government or State Government – Retired employees of PSUs and nationalised bank cannot be treated as Government employees – Not entitled to get full tax exemption on leave encashment after retirement/superannuation. [Art. 12, 226] 118
The petitioners, who were the employees of the Public Sector Undertaking and Nationalised Banks, filed writ contending that they were discriminated against Central Government and State Government employees. The Central Government and State Government employees are granted complete exemption in respect of the cash equivalent of the leave salary for the period of earned leave standing to their credit at the time of their retirement. Dismissing the petition the Court held that merely because Public Sector Undertaking and Nationalised Banks are considered as 'State' under article 12 of the Constitution of India for the purpose of entertainment of proceedings under Article 226 of the Constitution and for enforcement of fundamental right under the Constitution, it does not follow that the employees of such Public Sector Undertaking, Nationalised Banks or other institutions which are classified as 'State' assume the status of Central Government and State Government employees. Accordingly the petition is rejected.
Kamal Kumar Kalia v. UOI (2020) 268 Taxman 398 / 187 DTR 433 / 313 CTR 779 (Delhi) (HC)

119 **S. 10(10D) : Life insurance policy – Keyman insurance policy – Assignment of policy – Amendment brought in by Finance Act 2013 in Explanation 1 to section 10 (10D) is prospective in nature and it shall only apply to keyman insurance policy assigned after 1-4-2014 – Policy assigned in hands of assessee in year 2013 would continue to be an ordinary policy and sum received by her on maturity would not be taxable – Revision of order is held to be not valid. [S. 263]**

A company namely 'BIC' took keyman insurance policy in name of its keyman i.e. assessee's husband. Assessee's husband further assigned said policy to his wife i.e. assessee herein on 30-1-2013 which was duly recorded by LIC of India. Policy was prematured in February 2015 and amount was received by assessee from LIC of India. Assessee claimed said amount as an exempted receipt Assessing Officer completed assessment under section 143(3) accepting assessee's claim. Commissioner opined that amendment brought in by Finance Act 2013, effective from 1-4-2014, in Explanation 1 to section 10(10D) was clarificatory in nature having retrospective effect. Accordingly he passed a revisional order bringing the entire amount received by assessee on maturity of policy to tax. On appeal the Appellate Tribunal held that amendment brought in by Finance Act 2013 in Explanation 1 to section 10 (10D) is prospective in nature and it shall only apply to keyman insurance policy assigned after 1-4-2014. Accordingly instant case, policy assigned in hands of assessee in year 2013 would continue to be an ordinary policy and sum received by her on maturity would not be taxable by virtue of amended section 10(10D). (AY. 2015-16)

Harleen Kaur Bhatia (Smt.) v. PCIT (2020) 181 ITD 294 / 203 TTJ 859 (Indore)(Trib.)
Gurvinder Kaur Bhatia (Smt.) v. PCIT (2020) 181 ITD 294 / 203 TTJ 859 (Indore)(Trib.)

120 **S. 10(13A) : House rent allowance – Performance bonus does not form part of 'salary' as defined in clause (h) of Rule 2A for the purpose of computing exemption. [S. 15]**

The assessee is salaried individual. The assessee had filed Form 16 in support of the salary offered to tax in the return of income. The AO asked the assessee to explain the manner in which the exemption under S. 10(13A) in respect of house rent allowance was calculated. In response the assessee filed detailed working explaining that term 'salary' for the purposes of S. 10(13A) includes only 'basic salary' and 'dearness allowance' and nothing more. The AO held that the 'performance bonus' received by the assessee also formed part of 'salary' for the purposes of S. 10(13A) and accordingly re-computed the exemption available under S. 10(13A) thereby resulting in disallowance of the entire exemption claim of Rs. 8.48 lakhs. On appeal to the Tribunal the Tribunal held that the basic salary for the purpose of computation of house rent disallowance is Rs. 3 lakhs (10 per cent of Rs. 30 lakhs being basic salary). Therefore the excess of rent paid over 10 per cent of salary comes at Rs. 5.20 lakhs (Rs. 8.20-Rs. 3 lakhs). Accordingly the assessee is entitled for house rent allowance at Rs. 5.20 lakhs. Followed *CIT v. B. Ghosal [1980] 125 ITR 744 (Karn) (HC).* (AY. 2011-12)

Sudip Rungta v. DCIT (2020) 181 ITD 165 / 77 ITR 63 (SN) (Kol.)(Trib.)

S. 10(15) : Interest payable – Interest on Foreign currency loan Specified securities – Loan utilised for repayment of domestic loan taken towards working capital – Exemption cannot be denied. S. 10(15)(iv)(f) 121

Dismissing the appeal of the revenue the Court held that, even though the foreign loan was utilised by the assessee to repay the loan taken from Indian entity towards its working capital requirement, the purpose of section 10(15)(iv)(f) of industrial development stood satisfied. The words in the provision are not "for industrial development", but "having regard to the need for industrial development in India" and were wide enough to cover within their ambit and scope even the indirect utilisation of the funds for industrial development in India.(AY.2000-01)

CIT v. Seven Seas Distillery (Pvt.) Ltd. (2020) 422 ITR 229 / 185 DTR 105 / 312 CTR 272 / 271 Taxman 188 (Mad.)(HC)

S. 10(17A) : Awards and rewards in cash or kind – Award for meritorious service in Public Interest – Approval of State Government or Central Government is not mandatory – Approval is implied. 122

The assessee had been recognised by the Central Government on several occasions for meritorious and distinguished services and from the information available in the public domain, it could be seen that he was awarded the Jammu and Kashmir Medal, Counter Insurgency Medal, Police Medal for Meritorious Service (1993) and the President's Police Medal for Distinguished Service (1999). Specifically for his role in nabbing Veerapan, he was awarded the President's Police Medal for Gallantry on the eve of Independence Day, 2005. The assessee was entitled to exemption on the awards received from the State Government. Court held that, approval of State Government or Central Government is not mandatory. Approval is implied.

K. Vijaya Kumar v. PCIT (2020) 422 ITR 304 / 274 Taxman 503 / 107 CCH 467 / 191 DTR 179 / 315 CTR 572 (Mad.)(HC)

S. 10(23AA) : Funds established for welfare of employees – Failed to prove income on behalf of regimental fund or non – Public fund established by the armed forces of the Union – Denial of exemption is held to be justified – Marginal rate to be applied to total income. [S. 11, 13, 148, 164] 123

Allowing the appeal of the revenue, the court held that as the assessee has failed to prove income on behalf of regimental fund or non-public fund established by armed forces of Union. Accordingly not entitled for exemption. Marginal rate to be applied to total income and not only addition made under section 13 of the Act.

CIT v. Army Wives Welfare Association, Lucknow (2020) 185 DTR 395 / 312 CTR 375 / 271 Taxman 139 (All.)(HC)

S. 10(23AAA) : Funds established for welfare of employees – No renewal was required once a Pension fund set up by assessee approved by concerned authority. [S. 10(25), 12A] 124

Assessee-trust set up an Employees Pension Fund which was approved u/s 10(23AAA) in 1996 and was also registered under S. 12A of the Act. It claimed exemption under S. 10(25)(iii) of income received by it on behalf of employee pension fund. AO held that S. 10(23AAA) required renewal of approval after three year and since said approval was

not renewed, assessee was not entitled to exemption. Tribunal allowed the claim of the assessee. On appeal the court held that there was no such requirement of renewal of approval granted by concerned authority as contemplated under S. 10(23AAA) in case of trust fund which was entitled to exemption under section 10(25)(iii). Since assessee's trust fund was duly approved by competent authority, entire income as claimed by assessee would be exempted under S. 10(25)(iii) of the Act. (AY.2001-02, 2003-04)
CIT v. United India Insurance Company Employees Pension Fund (2020) 268 Taxman 13 / 186 DTR 217 / 313 CTR 65 (Mad.)(HC)

125 **S. 10(23C) : Educational institution – Eligible to exemption though no claim was made in the return – Educational purposes. [S. 10(22), 10(23C)(iiiab)]**
Dismissing the appeal of the revenue the Court held that preparation, printing publication and distribution of school text books as well as to supply or otherwise being text books note books and other books and literature on all subjects indifferent languages and to make them available at reasonable price before commencement of the academic session, is considered as educational purposes and entitle to registration. Relied on *Assam Text Book Production and Publication Corporation Ltd v. CIT (2009) 319 ITR 317 (SC)* (AY. 2007-08)
DIT v. Karnataka Text Book Society (2020) 192 DTR 230 / 316 CTR 88 (Karn.)(HC)

126 **S. 10(23C) : Educational Institution – Surplus utilized for educational purposes – Entitled to exemption – Revenue should have withdrawn the petition when identical issue was decided in favour of assessee in earlier year. [S. 10(23C)(iiiab), 254(1)]**
Court held that it was not in dispute that the assessee was established for educational purposes. It was wholly and substantially financed by the Government. Judicial notice could be taken on the fact that in the State of Bihar, the assessee-Corporation was distributing books free of cost to children studying in various Government schools. Accordingly the assessee was entitled to exemption.
Obiter dicta : The court, with respect to the very same assessee, under identical circumstances, had quashed and set aside the order passed by the Revenue, as confirmed by the Tribunal. There was no reason why the Assessing Officer ignored this fact, by not taking cognizance thereof, particularly when attention was invited to it. There was also no reason why the Revenue persisted in opposing the petition and not withdraw its action, particularly when the view of the court was known but had never been assailed, and had attained finality. (AY. 2006-07)
Bihar State Text Book Publishing Corporation v. CIT (2020) 428 ITR 143 / 317 CTR 354 / 121 taxmann.com 143 / 195 DTR 134 / (2021) 276 Taxman 173 (Pat.)(HC)

127 **S. 10(23C) : Educational Institution – Trust deed disclosing profit motive – Not entitled to exemption. [S. 10(23C)(vi)]**
Court held that the fact that there was no clause for providing free education for children coming from different social and educational backgrounds and scholarship to underprivileged children showed that there was only profit motive and the institutions were to be run only out of fees collected by admitting children to their schools. The trust deed also seemed to indicate that the source of funds of the assessee-trust was only from the school fees to be collected during these financial years. Therefore, it could not

be construed that the assessee-trust's schools were not for the purpose of profit. The assessee was not entitled to exemption. (AY.2011-12 to 2013-14)
Rajah Sir Annamalai Chettiar Foundation v. CCIT (2020) 426 ITR 539 / 271 Taxman 84 (Mad.)(HC)

S. 10(23C) : Educational institution – School – Exemption cannot be denied for lack of independent memorandum, article, bye laws etc. [S. 10(23C)(vi)] 128
Dismissing the appeal of the revenue the Court held that, exemption cannot be denied for lack of independent memorandum, article, bye laws etc so long as assessee adheres to parameters required to be satisfied as per the section. (AY. 2014-15)
CIT v. Sengunthar Matriculation Higher Secondary School (2020) 121 taxmann.com 338 (2021) 277 Taxman 252 (Mad.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Sengunthar Matriculation Higher Secondary School (2021) 281 Taxman 367 (SC)

S. 10(23C) : Educational institution – Rejection of application – Limitation – Directed to decide on merit. [S. 10(23C)(vi), Art. 226] 129
Allowing the petition the Court held that revenue erroneously read year 2018-19 as assessment year instead of financial year and rejected application of assessee on ground of being barred by limitation, impugned order was to be set aside and application of assessee was to be considered on merit for assessment year as 2019-20. (AY. 2019-20)
Rajamahendri Educational Society v. UOI (2020) 121 taxmann.com 236 (AP)(HC)

S. 10(23C) : Educational institution – Burden of proof on revenue to show income of trust was not spent for educational purposes – Matter remanded. [S. 10(23C(vi), 254(1)] 130
Court held that the Chief Commissioner had not brought on record any evidence for holding that the expenditure incurred did not relate to the educational activities of the assessee-trust, which ran a school. The expenditure incurred to the extent of Rs. 6,00,763 for awareness on agriculture, Rs.55,000 for medical camps and Rs. 27,480 for eye camp activity could very well be part of the activities carried out in the school itself. A mere reference to the expenditure incurred and the head of expenditure in question while rejecting the application under section 10(23C)(vi) was not enough to reject the application under the provisions of the Act. The Tribunal was wrong in confirming the order. Matter remanded to the Chief Commissioner.
Kamaraj Educational Trust v. Chief CIT (2020) 427 ITR 74 / 118 taxmann.com 273 (Mad.) (HC)

S. 10(23C) : Educational institution – Not doing any activity other than education nor hospital run for commercial purpose or any purpose other than teaching – Withdrawal of exemption is not justified – Notice is signed by the AO which was approved by the CIT and which was corrected by him in his own hand writing Notice signed by the AO on behalf of the CIT is held to be valid – Revision notice is valid. [S. 10(23C(vi), 12AA, 263, 292BB] 131
Allowing the appeal the Tribunal held that the assessee is not doing any activity other than education nor hospital run for commercial purpose or any purpose other than

teaching. Accordingly the withdrawal of exemption is not justified. As regards the notice which is signed by the AO which was approved by the CIT and which was corrected by him in his own hand writing Notice signed by the AO on behalf of the CIT is held to be valid. (AY.2009-10, 2013-2014)
Singhania University v. CIT(E) (2020) 77 ITR 501 / 184 ITD 487 (Jaipur)(Trib.)

132 **S. 10(23FB) : Venture capital fund – Exemption – Distributed income from venture capital fund – Entitled to exemption. [S. 115U, 147, 148, 260A]**
Dismissing the appeal of the revenue the Court held that the securities transaction tax on such transaction was borne by the assessee and was debited to his account by the venture capital fund. The assessee had claimed that he was entitled for exemption under section 10(38), that under section 115U(5) the income received by the venture capital fund was taxable on accrual basis, whether distributable or not to the investor and therefore, the exemption under section 10(38) was not claimed on the distribution as stated by the Assessing Officer in his order. Order of Tribunal is affirmed. No substantial question of law. (AY.2008-09)
PCIT v. Gopal Srinivasan (2020) 429 ITR 593 / 275 Taxman 412 (Mad.)(HC)

133 **S. 10(24) : Association of trade unions – Amount received on settlement of dispute between company and its workers – Amount disbursed to workers – Amount not assessable in hands of trade union.**
Allowing the appeal of the assessee the Tribunal held, that once the factum of settlement was not disputed coupled with the factum of receipt of a particular amount from the company, and the amount had been distributed amongst the employees, the case would squarely stand covered under S. 10(24) of the Act. Though the contribution from the employer was received as per the settlement agreement, it was only incidental to the activities of the services of the assessee in resolving the dispute between the member workers and the employer with the intention of advancement of welfare of the members. The amount was not assessable as income of the assessee. (AY. 2009-10)
Gujarat Rajya Kamdar Sabha Union Machiwadi v. ITO (2020) 421 ITR 341 / 312 CTR 313 / 185 DTR 336 / 269 Taxman 596 / 114 taxmann.com 570 (Guj.)(HC)

134 **S. 10(34) : Dividend – Domestic companies – Tax on distribution of profits – Venture Capital Company – Entitled to exemption. [S. 10(38), 115O]**
Tribunal held that the conditions laid down under section 115-O to avail of the exemption under section 10(34), were to be complied with at the level of venture capital undertaking and not at the stage when the investor, the assessee, received the dividend income from venture capital undertaking. The assessee's share of dividend income was out of dividend income received by the Apex Fund and so, it was entitled to the exemption under section 10(34) of the Act. When the company with which the Apex Fund had been invested, had already paid additional Income-tax on the earned dividend as required under section 115-O of the Act, the Apex Fund was not required to pay additional Income-tax a second time on the same income. The person who made investment in the venture capital company or venture capital fund, the assessee in this case, earned the income out of such investment which income was to be treated firstly as investment directly in the venture capital undertaking and the venture capital fund

or venture capital company was only a pass through vehicle. So, in these circumstances, the assessee-company was entitled to book expenditure incurred by the Apex Fund as if it had been incurred by the assessee directly in the venture capital fund. The assessee had furnished complete details of computation which had not been disputed by the Department. Therefore, the Assessing Officer and the Commissioner (Appeals) were not justified in disallowing the exemption on dividend income and long-term capital gains. Consequently the levy of interest and initiation of penalty proceedings were liable to be quashed. (AY. 2012-13)
Japan International Co-Operation Agency v. ACIT(IT) (2020) 84 ITR 25 (SN) (Delhi)(Trib.)

S. 10(37) : Capital gains – Agricultural land – With in specified urban limits – Enhanced compensation – Entitled to exemption. [Land Acquisition Act, 1894, S. 28] 135
Tribunal held that neither the Assessing Officer nor the Commissioner (Appeals) had given any finding that the assessee had not received interest under section 28 of the Land Acquisition Act, 1894. On agricultural land no tax was payable when the compensation or enhanced compensation was received by the assessee. The compensation was received in respect of agricultural land belonging to the assessee which had been acquired by the State Government.(AY.2014-15)
Sumesh Kumar v. ITO (2020) 79 ITR 2 (SN) (Delhi)(Trib.)

S. 10(37) : Capital gains – Agricultural land – Interest received on enhanced consideration as per Land acquisition Act, 1894 is held to be not taxable. [S. 4, 56(2)(viii) Land Acquisition Act, 1894, S 4, 28, 34] 136
Allowing the appeal of the assessee the Tribunal held that Interest received on enhanced consideration as per Land acquisition Act, 1894 is held to be not taxable. Followed *CIT v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC)* (ITA No. 7589/Del/2018 dt 27-4-2020). (AY. 2013-14)
Surender v. ITO (2020) BCAJ-June-P 43 (Delhi)(Trib.)

S. 10(37) : Capital gains – Agricultural land – With in specified urban limits – Interest received on enhanced compensation – Eligible for exemption. [Land Acquisition Act, 1894, S. 28] 137
Allowing the appeal of the assessee the Tribunal held that interest received on enhanced compensation awarded in terms of S. 28 Of Land Acquisition Act, 1894 is exempt. (AY. 2015-16)
Lakshmamma (Smt.) v. ITO (2020) 182 ITD 408 (Bang.)(Trib.)

S. 10(38) : Long term capital gains from equities – Penny stocks – Produced contract notes, demat statements etc & discharged the onus of proving that the shares were bought and sold – Merely relying upon the statement of investigation wing, the transaction cannot be treated as bogus – Denial of exemption is held to be not valid – Reassessment is held to be valid. [S. 45, 68, 147, 148] 138
Allowing the appeal of the assessee the Tribunal held that,the assessee has produced contract notes, demat statements etc & discharged the onus of proving that he bought & sold the shares. The AO has only relied upon the report of the investigation wing alleging the transaction to be bogus. He ought to have examined a number of issues

such as online trading, statement of the parties were not provided, shares of the company are still traded in the stock exchange etc. The AO has simply relied upon the report of the investigation wing. The capital gains are genuine and exempt from tax, however the reassessment is held to be valid. (AY. 2011-12)
Suresh Kumar Agarwal v. ACIT (2020) 117 taxmann.com 678 (Delhi)(Trib.)

139 **S. 10A : Free trade zone – Split of existing business – Site development of software at client premises – New unit – Entitled to exemption.**
Assessee was a design engineering company. It filed its return of income claiming exemption under section 10A in respect of its new unit. Assessing Officer held that changes were made to existing unit and no new unit was set-up by assessee and the assessee had not purchased the land. Tribunal held the assessee was engaged in on site development of software program. Programs were delivered at premises of client at work site in foreign country. Activities of assessee finally culminated at work site of clients outside India and there was no need for full fledged infrastructure facilities in India. Accordingly new industrial undertaking of assessee was independent of all undertakings which it was already possessing and allowed the exemption. On appeal by the revenue High Court affirmed the view of the Appellate Tribunal (AY. 2007-08)
CIT v. L & T Valdel Engineering P. Ltd. (2020) 275 Taxman 115 / (2021) 199 DTR 28 (Karn.)(HC)

140 **S. 10A : Free trade zone – Splitting up or reconstruction – Three units at different locations – Approval from Authority of Software Technology Park of India (STPI) – Entitled to deduction.**
Dismissing the appeal of the revenue the Court held that all three units were separate, independent, production units and not mere expansions of existing unit. Order of Tribunal is affirmed. (AY. 2009-10)
PCIT v. IGate Computer Systems Ltd. (2020) 114 taxmann.com 680 (Bom.)(HC)

141 **S. 10A : Free trade zone – On back office work and preparation of applications for patent in USA – Entitled to exemption [S.80HHE]**
Dismissing the appeal of the revenue the Court held that the amount assessee received, on back office work and preparation of applications for patent in USA is entitle to exemption. Notification No. S.O. 890(E), dated September 26, 2000 (2000) 245 ITR (St.) 102) (AY.2009-10, 2010-11)
CIT v. Narendra R. Thappetta (2020) 428 ITR 485 / 275 Taxman 40 (Karn.)(HC)

142 **S. 10A : Free trade zone – Deemed export made to another STP unit – Denial of deduction is not justified – Entitled to deduction. [S.10B]**
The assessee included a sum of Rs.1,23,66,641/-as export receipt, which was stated to be a deemed export towards software development to another Software Technology Park (STP) Unit. The contention of the assessee was that if software was supplied to an STP Unit, it should be a deemed export as per the Foreign Trade Policy vis-a-vis the Income Tax Act, 1961. The Assessing Officer held that as per the contract agreement between the assessee and the principal, the work had to be carried out in India. Further, he found that the receipt for such work was received in Indian rupees only, as the payment was routed through

the Hyderabad office of the principal. Accordingly, the export turnover of the assessee was recomputed and reduced to Rs.6,84,25,755/-and the Assessing Officer disallowed the deduction under Section 10A of the Act amounting to Rs.1,23,57,188/-after holding that the supply would not fall within the scope of the word 'export' as defined under the provisions of the Income Tax Act. The order of Assessing Officer was affirmed by the CIT(A) and Appellate Tribunal. Referred *Tata Elxsi Ltd. v. ACIT (2015) 94 CCH 0202] (Karn) (HC)* PCIT, Bangalore. *International Stones India (P) Ltd. in (2018) 95 Taxmann.com 287 (Karn)(HC) Tulsyan Nec Ltd. v. Assistant Commissioner (CT)(2015) 82 VST 63* (AY. 2009-10)
Preludesys India Ltd. v. ACIT (2020) 194 DTR 346 / (2021) 318 CTR 287 (Mad.)(HC)

S. 10A : Free trade zone – Profits of business – Total turnover – Export turnover – Claiming deduction u/s. 80HHE earlier cannot be bar to claim deduction u/s. 10A of the Act. [S. 80HHE] 143
Dismissing the appeal of the revenue the Court held that in relation to the computation of benefit of section 10A of the Act, this issue is squarely covered by the judgement of Supreme Court in the case of *CIT v. HCL Technologies Ltd (2018) 404 ITR 719 (SC)* in which the Court held that the total turnover for the purpose of section 10 of the Act cannot be understood as defined for the purpose of section 80 HHE. It was further held that thus the expenses which are to be excluded from the export turnover, would also have to be excluded for the purpose of computing total turnover. (AY. 2005-06)
CIT v. Tata Consultancy Services (2020) 317 CTR 124 (Bom.)(HC)

S. 10A : Free trade zone – Carry forward losses of technology park unit and current year loss of non – Software technology park unit – Before allowing the deduction – Reimbursement of expenditure towards telecommunication expenses and foreign travel expenses incurred in foreign currency are to be excluded from total turnover and for computation of deduction. 144
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in directing the assessing authority not to set off the carried forward business losses of software technology parks of India unit and the current year's loss of non-software technology parks of India unit against the profits of business before allowing deduction under S. 10A of the Act. (AY.2005-06)
CIT v. Symphony Services Corporation (I.) Pvt. Ltd. (2020) 429 ITR 26 (Karn.)(HC)

S. 10A : Free trade zone – Providing human resources services – Entitled to deduction. 145
Dismissing the appeal of the revenue the Court held that the role of the assessee company was to create an electronic database of qualified personnel and transmit data through electronic means to the client. The Commissioner (Appeals) had found that the assessee was in the business of supply of manpower from India to its foreign clients after their recruitment in India. Thus, irrespective of whether or not the assessee provided training to its employees or to the employees who were recruited by its clients, since, the assessee was engaged in providing human resource services, its case was squarely covered by notification dated September 26, 2000. Entitled to deduction. (AY.2007-08)
CIT v. NTT Data Global Advisory Services Pvt. Ltd. (2020) 429 ITR 546 / (2021) 277 Taxman 1 / 198 DTR 133 / 319 CTR 13 (Karn.)(HC)

146 **S. 10A : Free trade zone – Separate accounts need not be maintained – Undertaking starting manufacture on or after 1-4-1995 must have 75 Per Cent. of sales attributed to export – Apportionment of expenses is held to be reasonable – Sub-contractors giving software support to assessee on basis of foreign inward remittance – Claim by sub-contractors would not affect assessee's claim. [S. 80HHE]**

Dismissing the appeal of the revenue the Court held that, undertaking starting manufacture on or after 1-4-1995 must have 75 Per Cent. of sales attributed to export. Apportionment of expenses is held to be reasonable. Sub-contractors giving software support to assessee on basis of foreign inward remittance. Claim by sub-contractors would not affect assessee's claim. (AY. 2000-01)

CIT(LTU) v. IBM Global Services India Pvt. Ltd. (2020) 429 ITR 386 / (2021) 278 Taxman 72 (Karn.)(HC)

147 **S. 10A : Free trade zone – Interest on bank deposits includible while computing profits. [S. 10B]**

The Court held that the Interest On Bank Deposits is eligible to be included in the profits of 100 Per Cent. Export oriented units for the purpose of claiming deduction under Section 10A/10B of the Income-Tax Act, 1961. (AY. 2003-04)

CIT v. Sankhya Technologies Pvt. Ltd. (2020) 427 ITR 318 / (2021) 276 Taxman 254 (Mad.) (HC)

148 **S. 10A : Free trade zone – Export oriented undertakings – Remission or cessation of trading liability – Profits derived from export – Reversal of the entry with regard to the stock option given to the employees was in the nature of export income – Entitled to exemption. [S. 10B, 41(1)]**

The assessee reversed the entry with regard to the stock option given to the employees and claimed exemption treating the said the income was in the nature of export income. The Tribunal decided against the assessee. On appeal the Court held that the income brought to tax under S. 41 by reversal of the entry with regard to the stock option given to the employees was in the nature of export income and therefore, the assessee was entitled to exemption. Under S. 10A / 10B of the Act.

California Software Co. Ltd. v. CIT (2020) 422 ITR 514 / 107 CCH 458 / 275 Taxman 158 (Mad.)(HC)

149 **S. 10A : Free trade zone – Deduction to be computed before adjusting business loss or depreciation. [S. 10B, 70, 71, 72, 74, 80IA(5), 80IA(6)]**

Dismissing the appeal of the revenue the Court held that, the Tribunal is justified in holding that deduction to be computed before adjusting business loss or depreciation. Referred, Circular No 7/DV/2013 dt 16-07 2013, Followed *CIT v. Yokogawa India Ltd (2017) 77 taxmann.com 41 (SC), CIT v Galaxy Sufactants Ltd ITA No. 3465 of 2010 dt 7-02 2012-(ITA No. 1356 /PN/2014 dt 5-5-2016)* (ITA No. 1368 of 2017 dt 27-01 2020) (AY. 2007-08)

PCIT v. Aesseal India Pvt. Ltd. (Bom.) (HC) (UR)

(Editorial : Refer CIT v. Shantivijay Jewels Ltd (ITA No 1336 of 2013 dt 7-04-2015 (Bom.)(HC).

S. 10A : Free trade zone – Turnover – Expenses to be reduced from export turnover as well as from total turnover. 150

Tribunal held that while computing the turnover expenses from export turnover as well as from total turnover has to be reduced. (AY. 2009-10)

Akamai Technologies India P. Ltd. v. Dy.CIT (2020) 83 ITR 393 (Bang.)(Trib.)

S. 10A : Free trade zone – Charges/expenses relating to telecommunication, insurance charges and foreign exchange loss should be excluded both from export turnover and total turnover while computing deduction. 151

Dismissing the appeal of the revenue the Tribunal held that Charges/expenses relating to telecommunication, insurance and foreign exchange loss should be excluded both from export turnover and total turnover while computing deduction under section 10A. (AY.2010-11)

ITO v. Sabre Travel Technologies (P.) Ltd. (2020) 185 ITD 617 (Bang.)(Trib.)

S. 10A : Free trade zone – Turnover – Providing technical services outside India – Expenditure incurred towards date link charges/telecommunication charges etc – Excluded both from export turnover and total turnover for purpose of computation of deduction – Profit enhanced on account of disallowance entitled for deduction – Subsequent realized export income which was claimed by filing revised return is entitled for deduction. [S. 40(a)(ia)] 152

Dismissing the appeal of the revenue the Tribunal held that expenditure incurred towards date link charges/telecommunication charges and foreign travel expenses attributable to delivery of computer software for providing technical services outside India was to be excluded both from export turnover and total turnover for purpose of computation of deduction. When profit was enhanced on account of disallowance made by Assessing Officer under section 40(a)(ia), it was entitled for deduction. Subsequent realized export income which was claimed by filing revised return is entitle for deduction. Followed, *CIT v. HCL Technologies Ltd. (2018) 404 ITR 719 (SC) CIT v. Gem plus Jewellery India Ltd. (2011) 330 ITR 175 (Bom.) (HC), ITO v. PCL Exports* (ITA. No. 3563/Delhi/2009 dt. 22-3-2011) (AY. 2009-10)

Yahoo Software Development (P.) Ltd. v. Dy.CIT (2020) 80 ITR 528 / 184 ITD 305 /196 DTR 241 / 208 TTJ 1072 (Bang.)(Trib.)

S. 10A : Free trade zone – Profits of the business – Export revenue subsidy – Miscellaneous income – Entitled for exemption. [S. 10A(4), 10B] 153

Tribunal held that in view of the statutory formula available for determination of quantum of deduction, the expression derived from used In Section 10A(1) fades into insignificance and the quantum of deduction is required to be determined as per the formula provided in section 10A(4) of the Act. The assessee was entitled to exemption in respect of the incidental profits along with the export Profits for the purposes of section 10A. The Assessing Officer was directed to compute the quantum of deduction, as per the formula provided in S. 10A(4) of the Act. (AY. 2005-06)

TTEC India Customer Solutions P. Ltd. v. ITO (2020) 82 ITR 26 (SN) (Ahd.)(Trib.)

154 **S. 10A : Free trade zone – Total turnover – While computing deduction expenditures excluded from export turnover were also to be excluded from total turnover.**
Dismissing the appeal of the revenue the Appellate Tribunal held that while computing deduction expenditures excluded from export turnover were also to be excluded from total turnover. (AY. 2008-09)
ITO v. Agile Software Enterprises (P.) Ltd. (2020) 181 ITD 817 (Bang.)(Trib.)

155 **S. 10A : Free trade zone – Special economic zones – Conversion of Export processing zone unit into special economic zone unit – Exemption cannot be denied.**
Tribunal held that period of ten consecutive AYs shall be reckoned from AY relevant to previous year in which unit begins to manufacture or produce or process such articles or things or service in such free trade zone or export processing zone. Entitled to exemption for period of ten consecutive AY. and S. 10A(1) is continuously applicable to unit even after being converted into special economic zone unit keeping in view the second Proviso to S. 10A (1). (AY.2011-12)
Classic Linens International P. Ltd. v. Dy.CIT (2020) 77 ITR 1 (Chennai)(Trib.)

156 **S. 10AA : Special Economic Zones – Export turnover – Expenses incurred in foreign currency not meant for rendering any services outside India, could not be excluded from export turnover.**
Assessee was an undertaking registered as a SEZ. It filed return claiming deduction under section 10AA In course of assessment, Assessing Officer excluded certain expenses such as travel expenses, IT and technical support services etc. incurred in foreign currency from 'export turnover' for purpose of computing deduction under section 10AA. Tribunal confirmed order passed by Assessing Officer. On appeal High Court held that since expenses in question had not been incurred for rendering any services outside India, impugned disallowance made by authorities below was to be set aside. (AY. 2009-10)
Renault Nissan Technology & Business Centre India (P) Ltd. v. CIT (2020) 273 Taxman 414 (Mad.)(HC)

157 **S. 10AA : Special Economic Zones – Export turnover – Expenditure incurred in foreign exchange is to be excluded from export turnover for purpose of computing deduction.**
Court held that expenditure incurred in foreign currency by assessee was to be excluded from export turnover for the purpose of computing deduction under section 10AA. (AY. 2010-11)
Polaris Consulting and Services Ltd. v. PCIT (2020) 275 Taxman 121 (Mad.)(HC)

158 **S. 10AA : Special Economic Zones – Manufacture – Activity of sieving to separate dust particles. [Special Economic Zones Act, 2005. S. 2(r)]**
The Tribunal held that a process of "manufacture" as defined under the 2005 Act had taken place in the assessee's special economic zone unit and that the Assessing Officer himself had accepted that the assessee's unit, processed the raw materials by removing 10 to 20 per cent. impurities, that the cost comparison of the semi-finished product with that of the raw material was also referred to and that the Department had not proved that the certificate issued by the Assistant Development Officer of the Special Economic

Zones was not genuine. Accordingly the activity of sieving to separate dust particles. is held to be manufacturing activity. On appeal by the revenue the Court held that the Tribunal is right in holding that the assessee carried on manufacturing activity even though a new product having a distinctive name, character or use was not brought into existence at its special economic zone unit by it and that the assessee was eligible for deduction under section 10AA. (AY.2013-14)
CIT v. Vetrivel Minerals (2020) 428 ITR 75 / 274 Taxman 405 / 196 DTR 469 (Mad.)(HC)

S. 10AA : Special Economic Zones – Approval – Medallion – Manufacture of gold jewellery – Entitled for exemption. 159
Dismissing the appeal of the revenue the Court held that medallion is also classified as pendent hence there is no violation of condition of letter of approval by SEZ hence the assessee is eligible for benefits of exemption. (AY. 2011-12, 2012-13)
PCIT v. Jewels Magnnum (2020) 120 taxmann.com 316 / 275 Taxman 134 (Mad.)(HC)
Editorial : Order in Jewels Magnnum v. ACIT (2016) 158 ITD 185 (Chennai)(Trib.) is affirmed.

S. 10AA : Special Economic Zones – Expenses incurred in foreign exchange for providing technical services not includible – Profits and gains derived from onsite development of computer services outside India deemed to be derived from export of computer software outside India. [S.10B] 160
Court held that the Commissioner (Appeals) had recorded a categorical finding that the assessee was engaged in the development of computer software, which was exported outside India. The finding had not been set aside by the Tribunal. Therefore, in view of Explanation 2(iii) to section 10B, the expression export turnover would not include any expenses incurred in foreign exchange in providing technical services outside India. Similarly, telecommunication charges attributable to delivery of computer software outside India could not have been excluded from the export turnover in view of Explanation 1(i) to section 10AA.(AY.2008-09)
Mindtree Ltd. v. ACIT (2020) 427 ITR 338 / 193 DTR 289 (Karn.)(HC)

S. 10AA : Special Economic Zones – Transfer pricing adjustment – Deduction allowable. [S. 92C] 161
The assessee, a subsidiary of a Netherlands based company, was engaged in the business of providing back office support services, in the nature of information technology enabled services to its associated enterprises. The assessee was remunerated at "cost plus" basis for the services provided to its associated enterprises. For the assessment year 2012-13, the assessee had made a transfer pricing adjustment voluntarily and added it to the total income. The assessee also claimed deduction under section 10AA of the Income-tax Act, 1961 on the profits of business arrived at after inclusion of transfer pricing adjustment. Tribunal held that deduction is available in respect of transfer pricing adjustment made by the assessee. (AY. 2011-12)
Eygbs (India) LLP v. Dy.CIT (2020) 84 ITR 48 (SN) (Bang.)(Trib.)

162 **S. 10AA : Special Economic Zones – Free Trade Zone – Declaration on Software Technology Parks of India forms sufficient – No Requirement to maintain separate books of account – Entitle to exemption on incremental income arising pursuant to advanced Pricing Agreement (APA).**

Tribunal held that the condition regarding the formation was required to be established in the initial year alone. Thus, the satisfaction of the conditions in section 10AA(4) are required to be satisfied in the year of formation. The assessee was eligible to claim deduction on the incremental income arising pursuant to the advanced pricing agreement. The Panel was to grant deduction under section 10AA to the extent of sale proceeds received from the export of software services brought into India in convertible foreign exchange within the stipulated period. (AY. 2013-14)

IBM India Pvt. Ltd. v. ACIT (2020) 83 ITR 24 (Bang.)(Trib.)

163 **S. 10AA : Special Economic Zones – Trading covered by Services under Special Economic Zones Act, 2005 – Entitled to deduction – Special Economic Zones Act, 2005 has overriding effect over provisions contained in any other Act. [Special Economic Zones Act, 2005, S. 2(z), 51]**

The claim of deduction u/s 10AA of the Act was denied on the ground that the assessee was not engaged in manufacture or production of articles or goods. The definition of service as provided in clause 2(z) of the Special Economic Zones Act, 2005 in the opinion of the Assessing Officer could not be imported into section 10AA and therefore, the deduction as claimed by the assessee would not be allowable. The Commissioner (Appeals) allowed the claim of the assessee. On appeal the Tribunal held that virtue of section 51 of the 2005 Act, the provisions of the 2005 Act and the Rules will have overriding effect over the provisions contained in any other Act. Thus, the provisions of the 2005 Act would be applicable and since the trading was covered by services and services include trading under the 2005 Act. Therefore, trading done by the assessee was a service and, therefore, deduction under section 10AA was allowable.(AY.2014-15)

Dy.CIT v. Duty Free Distribution Services Pvt. Ltd. (2020) 80 ITR 32 (SN.) (Mum.)(Trib.)

164 **S. 10AA : Special Economic Zones – Service – Trading activity – Import of diamonds for re – export from SEZ Unit, same being trading activity falling within ambit of Service as per SEZ Rules – Entitled to deduction. [SEZ Act, 2005, S.51, Special Economic Zones Rules, 2006 R. 76]**

Assessee is a trading firm, engaged in business of importing diamonds for purpose of re-export after sorting and grading from SEZ Unit which claimed deduction u/s 10A of the Act. The AO disallowed the claim on ground that no manufacturing activity was undertaken by hence not eligible to claim the exemption. On appeal the Tribunal held that in absence of definition of services under section 10AA,Services as defined under SEZ Act and rules framed thereunder would be relevant. As per definition of Services under Rule 76 of SEZ Rules, trading activity also comes within its ambit, therefore, import of diamonds for re-export would be in the nature of Services, accordingly, assessee would be entitled to deduction. (AY. 2012-13)

Solitaire Diamond Exports v. ITO (2020) 182 ITD 474 (Mum.) (Trib.)

S. 10AA : Special Economic Zones – Profit of eligible unit should be allowed without set off of loss of other units. [S. 72] 165

Allowing the appeal of the assessee the Tribunal held that profit of eligible unit should be allowed without set off of loss of other units. Followed *CIT v. Yokogawa India Ltd (2017) 391 ITR 274(SC) (ITA No. 7574 /Mum/ 2019 dt 4-3-2020)*. (AY. 2011-12)

Genesys International corporation Ltd. v. DICIT (2020) BCAJ-April-34 (Mum.)(Trib.)

S. 10AA : Special Economic Zones – Free trade zone – Not having exhausted deduction under S. 10A for ten consecutive assessment years on date of introduction of S. 10AA, entitled for additional period of deduction for five years as is allowed to SEZ units. [S. 10A] 166

In the return of Income for A.Y. 2011-12, the assessee company claimed deduction u/s.10AA for a sum of Rs.47,19,678/-. The assessee claimed deduction under section 10A for ten consecutive assessment years from AY 2000-01 till AY 2010-11 and in the A.Y 2011-12 the assessee claimed deduction under section 10AA.AO held that the assessee is not eligible for deduction u/s.10AA at all since, as per section 10AA(1), the unit is eligible for deduction, only if the unit begins to manufacture or produce articles or things or provide any services during the previous year relevant to A.Y. 2006-07 onwards. In the present case the assessee has began manufacture in previous year relevant to A.Y. 2001-02. Therefore, the assessee is not eligible to claim deduction under section 10AA. CIT(A) confirmed the order of the AO. On appeal the Appellate Tribunal held that assessee not having exhausted deduction under S. 10A for ten consecutive assessment years on date of introduction of S. 10AA as was available to him under S. 10A on commencement of SEZ Act, 2005 will be entitled for additional period of deduction for five years as is allowed to SEZ units by provisions of S. 10AA(1)(ii), subject to fulfilment of other conditions. (AY. 2011-12)

Classic Linens International (P.) Ltd. v. Dy.CIT (2020) 181 ITD 765 / 77 ITR 1 / 189 DTR 1 / 204 TTJ 794 (Chennai)(Trib.)

S. 10B : Export oriented undertakings – Entitled to claim exemption on interest income earned from inter – corporate loans and deposits lying in EEFC account. 167

Dismissing the appeal of the revenue the Court held that in view of substitution of sub-section (4) of section 10B by Finance Act, 2001, with effect from 1-4-2001, assessee was entitled to claim exemption on interest income earned from inter-corporate loans and deposits lying in EEFC account. Followed *CIT v. Motorola India Electronics (P.) Ltd (2014) 265 Taxman 11/ 265 CTR 94 (Karn.)(HC).*

PCIT v. Rajesh Exports Ltd. (2020) 114 taxmann.com 93 (Karn.) (HC)

Editorial : SLP is granted to the revenue, PCIT v. Rajesh Exports Ltd. (2020) 270 Taxman 172 (SC)

S. 10B : Export oriented undertakings – Brought forward unabsorbed depreciation and losses – Not eligible unit – Cannot be setoff against current profit of eligible unit for computing deduction. 168

Dismissing the appeal of the revenue the Court held that the Tribunal was correct in holding that the brought forward unabsorbed depreciation and losses of the unit, the income of which is not eligible for deduction under section 10B of the Act cannot be

set off against the current profit of the eligible unit for computing the deduction under section 10B of the Act. (AY. 2007-08)
CIT v. Ganesh Polychem Ltd (2020) 120 taxmann.com 270 (Bom.) (HC)
Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, CIT v. Ganesh Polychem Ltd (2020) 274 Taxman 455 (SC)

169 **S. 10B : Export oriented undertakings – Deemed export – Export undertaken through third party who had exported goods to foreign country and had fetched foreign currency for India would still remain deemed export in hands of assessee – Entitled to deduction. [S.10A, Form No. 56G, Rule 16E]**
Assessee, a 100 per cent EOU, was engaged in business of manufacture and export. The Assessing Officer allowed deduction for only direct exports and disallowed sale made through third parties i.e. export houses and inter-unit transfers. The parties who have exported have not claimed any exemption and the assessee had furnished report of accountant in Form No. 56G as per rule 16E. Appellate Authorities have affirmed the order of the Assessing Officer. On appeal allowing the appeal the Court held that the assessee was entitled to benefit of deduction under section 10B in respect of export done by third party export houses and inter-unit transfers. (AY. 2005-06 to 2009-10)
Granite Mart Ltd. v. ITO (2020) 193 DTR 231 / 315 CTR 714 (Karn.)(HC)

170 **S. 10B : Export oriented undertakings – Loss – Set off – Export oriented units – Deduction cannot be thrust – Entitled to set off losses from export oriented units against profits of domestic tariff area unit. [S. 10B(6)(ii), 70, 72, 74]**
The assessee was a private limited company engaged in the business of manufacture and export of readymade garments. The assessee had three units, two of which were export oriented units, and showed profit and loss from all of them. The assessee had set off losses of the units against the profits of the unit making profits and offered the balance to tax under the head Income from business. The Assessing Officer held that losses of the export oriented units could not be allowed to set off against the profits of unit No. I. This was upheld by the Commissioner (Appeals) and the Tribunal. On appeal allowing the appeal the Court held that the assessee was entitled to set off the loss from export oriented unit against the income earned in the domestic tariff area unit in accordance with section 70. Referred CBDT Circular dated July 16, 2013 ([2013] 356 ITR (St.) 7) (AY.2008-09)
Karle International Pvt. Ltd. v. ACIT (2020) 196 DTR 473 / 274 Taxman 461 / (2021)430 ITR 74 / 318 CTR 478 (Karn.)(HC)

171 **S. 10B : Export oriented undertakings – Expansion of existing processing capacity – Eligible deduction. [S.10B(7), Industrial, (Development and Regulation) Act, 1951, S. 14]**
Dismissing the appeal of the revenue the Court held that there is no requirement of law that there has to be separate permission for each unit. Just because the Government granted permission by amending the original permission letter it does not affect the eligibility for deduction under section 10B of the Act. (AY. 2006-07)
CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 1) (2020) 429 ITR 207 / 276 Taxman 90 / 196 DTR 377 / (2021) 318 CTR 38 (Bom.)(HC)
Editorial : Notice issued in SLP filed against order of High Court, CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2021) 281 Taxman 297 (SC)

S. 10B : Export oriented undertakings – Export turnover – Expenditure in foreign exchange for provision of technical services outside India is includible Amortisation expenses – Matter remanded to Tribunal. [S. 37(1), 254(1)] 172

Court held that expenditure incurred by the assessee in foreign currency will be includible in the definition of export turnover for the purpose of computing deductions. As regards amortisation of expenses, matter remanded to the Tribunal. (AY.2006-07, 2007-08)

CIT v. Zylog Systems Ltd. (No. 2) (2020) 429 ITR 88 / (2021) 276 Taxman 164 (Mad.)(HC)

S. 10B : Export oriented undertakings – Export turnover – Expenses incurred in foreign exchange to provide technical services outside India and for product development – Expenditure cannot be excluded from export turnover. 173

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the expenditure incurred by the assessee in foreign exchange to provide technical services outside India could not be excluded from the export turnover for computation of deduction and also the product development expenses incurred in foreign exchange could not be reduced from the export turnover for computation of deduction.

CIT v. Zylog Systems Ltd. (No. 1) (2020)429 ITR 82 (Mad.)(HC)

S. 10B : Export oriented undertakings – Interest on delayed payment for goods exported and goods sold Locally – Exemption available only for interest on delayed payment for Exports. [S.10B(4)] 174

Court held that the Tribunal was right in allowing interest relating to export sales. The Assessing Officer should assess the interest received on delayed payments as per provisions of S. 10B(4) (AY.2001-02)

Vardhman Holdings Ltd. v. CIT (2020) 425 ITR 253 (P&H)(HC)

S. 10B : Export oriented undertakings – Total turnover – Foreign currency expenditure incurred for providing software development services outside India cannot be excluded from export turnover for purpose of computing deduction – When expenditure incurred in foreign currency on account of telecommunication expenses is excluded from export turnover, said expenditure has to be excluded from total turnover also for purpose of computation of deduction. [S. 80HHC, 80HHE] 175

Dismissing the appeal of the revenue, the High Court held that foreign currency expenditure incurred for providing software development services outside India cannot be excluded from export turnover for the purpose of computing deduction. High Court also held that when expenditure incurred in foreign currency on account of telecommunication expenses is excluded from export turnover, said expenditure has to be excluded from total turnover also for the purpose of computation of deduction. Followed *CIT v. Tata Elxsi Ltd (2012) 349 ITR 98 (Karn) (HC),* affirmed in *CIT v. HCL Technologies Ltd (2018) 404 ITR 719 (SC)*. (AY. 2003-04, 2004-05)

CIT v. Mphasis Ltd. (2016) 74 taxmann.com 274 (Karn.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Mphasis Ltd. (2020) 269 Taxman 3 (SC)

176 **S. 10B : Export oriented undertakings – Manufacture – Conversion of copper clad glass epoxy laminate into smaller pieces – Processes amounted to manufacture – Entitled to exemption.**

Dismissing the appeal of the revenue the Court held that, the assessee was a hundred per cent export oriented undertaking which was exporting copper clad glass epoxy laminate sheets after cutting them into smaller sheets. The raw material was first sent to the shearing department. The shearing machine was set for the desired size and the laminates were cut into the specified sizes as required by the customer. The laminates were, thereafter, checked for the oxidation effect. A thorough surface clearing was done to remove the oxidation. The quality control department, thereafter, would verify the quality parameters like the thickness of the material, thickness of copper using elcometer, etc. At the end of the entire process, the final product was called copper clad glass epoxy laminate. The change or the series of changes brought about by the application of the process, the commodity in the form of copper clad glass epoxy laminates no longer be regarded as the original commodity but was, instead, recognized as a distinct and new article that emerged as a result of the process. The Tribunal was justified in allowing the deduction. (AY. 2004-05)

CIT v. Fine Line Circuits Company (2020) 421 ITR 225 / 189 DTR 301 / 317 CTR 929 (Guj.)(HC)

177 **S. 10B : Export oriented undertakings – Sale of scrap – Entitled to deduction.**

Tribunal held that the receipt from sale of scrap being part and parcel of the activity and having proximate relationship, would fall within the ambit of gains derived from the industrial undertaking and therefore the deduction under section 10B was to be granted. The Assessing Officer had treated this income from sale of scrap as business. Followed *EXL Service.Com (India) Pvt. Ltd. v. Dy CIT (ITA. No. 302/Delhi/2015 dated January 3, 2017)* (AY.2011-12)

Dy. CIT(LTU) v. EXL Service.Com (India) Pvt. Ltd. (2020) 83 ITR 11 (SN) (Delhi)(Trib.)

178 **S. 10B : Export oriented undertakings – Books of account – No requirement to maintain separate books of account – Exemption allowable at source and not after computation of gross total income.**

Tribunal held that that exemption under section 10B of the Act had to be independently computed in relation to the profits of the eligible unit without adjusting the profits against the unabsorbed depreciation relating to the other unit. There is no requirement of maintaining a separate books of account. (AY.2007-08, 2008-09)

ACIT v. Niit Technologies Ltd. (2020) 79 ITR 60 (Delhi)(Trib.)

179 **S. 11 : Property held for charitable purposes – Trade association – Object of promoting awareness and information dissemination with respect to automobile industry – Fees for conducting seminars – Entitle to exemption. [S. 2(15)]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that assessee which was incorporated with the object of promoting awareness and information dissemination with respect to automobile industry, exemption

cannot be denied on the ground that the association has collected fees for conducting seminars.

CIT(E) v. Society of Indian Automobile Manufactures (2020) 117 taxmann.com 129 (Delhi) (HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT(E) v. Society of Indian Automobile Manufactures (2020) 272 Taxman 99 (SC)

S. 11 : Property held for charitable purposes – Return was not filed with in the period specified in the notice – Assessment completed denying the exemption and demand was raised – Application for condonation of delay in filing the return was pending before CBDT – Directed to decide the application for condonation of delay and the demand was stayed till the disposal of application. [S. 12AA, 119, 139, 142(1), Form No. 10B, Art. 226] 180

Assessee-society was issued a certificate of registration under section 12AA. On account of non-filing of return within prescribed time, a notice was issued under section 142(1). However the assessee failed to file return of income even within time granted in said notice / In such background, exemption under section 11 was denied and a notice was issued in respect of income assessed. Assessee thus filed an application seeking condonation of delay as per Circular F.No 197/55/2018, dated 22-5-2019 Though the application was pending before the CBDT the assessment order was passed and demand was raised. On a writ allowing the petition the Court held that assessee having registration under section 12AA to recall of denied exemption in Form 10B and to seek condonation of delay. Directed the revenue authorities should decide application seeking condonation of delay in filing return by assessee; till then demand was to be kept in abeyance. Matter remanded. (AY. 2007-18)

Sree Narayana Educational and Charitable Society v. CIT (2020) 274 Taxman 160 (Ker) (HC)

S. 11 : Property held for charitable purposes – Primary aim and objective to promote habitat concept – Registered as Charitable Trust – Principle of mutuality not required to be gone in to – Entitle to exemption. [S. 2(15), 12, 13] 181

Assessee trust was established inter alia with primary aim and objective to promote habitat concept. Assessee filed its return declaring nil income. Assessing Officer held that activities of assessee were hybrid in nature and; partly covered by provisions of section 11 read with section 2(15) and partly by principle of mutuality and since assessee was not maintaining separate books of account, income could not be bifurcated under principle of mutuality or otherwise,therefore, entire surplus was treated as taxable income of assesseee. Tribunal allowed the exemption. On appeal dismissing the appeal of the revenue the Court held that, since assessee had not generated any surplus from either members or non-members, it was not correct to say that assessee had claimed relief partly as charitable organisation and partly as mutual association. Further, since assessee was registered as a charitable trust, principle of mutuality for computation of its income was not required to be gone into as income was to be computed as per sections 11, 12 and 13. Order of Tribunal is affirmed. (AY 2012-13)

CIT(E) v. India Habitat Centre (2020) 269 Taxman 401 (Delhi)(HC)

182 **S. 11 : Property held for charitable purposes – Salary paid to secretary – 50% of salary was allowed as reasonable – No substantial question of law. [S. 260A]**
Assessee-society paid 10 per cent of amount earmarked for charitable purposes to its Secretary as salary. The Assessing Officer disallowed the amount. Commissioner (Appeals) confirmed disallowance of only 50 per cent of salary paid to Secretary. Tribunal up held the order of the CIT(A). On appeal the High Court up held the order as there is no substantial question of law. (AY. 2012-13)
Avani Village Welfare Society v. ITO (2020) 275 Taxman 618 (Mad.)(HC)

183 **S. 11 : Property held for charitable purposes – Museum – Transfer of amount to Punjab State war heroes – Donee trust was not registered – Violation of provision – Addition is held to be justified [S. 11(2), 11(3), 12AA]**
Assessee-society was running a Museum by name of Maharaja Ranjit Singh War Museum and was registered under section 12AA of the Act. During the relevant year, Rupees one crore was given to Punjab State War Heroes Memorial & Museum Society 'PSWHMMS' on directions of Government of Punjab. Donee-Society was not registered under section 12AA at the relevant time. The Assessing Officer held that the amount transferred to PSWHMMS was considered as income of assessee, holding that there was violation of section 11(2) and section 11(3)(d). Order of the Assessing Officer was affirmed by the Tribunal. On appeal the Court held that since it was not the claim of assessee that amount was being accumulated for payment to PSWHMMS, there was a clear violation of conditions referred in sub-section (2) and sub-section (3) of section 11. Accordingly the addition of the amount transferred to PSWHMM is up held. (AY. 2014-15)
Maharaja Ranjit Singh War Museum Society, Ludhiana v. CIT (2020) 275 Taxman 640 / 191 DTR 368 / 315 CTR 423 (P&H)(HC)

184 **S. 11 : Property held for charitable purposes – Engaged in running educational institutions and providing medical relief to poor – Running community hall – Entitle to exemption [S. 2(15), 11(4A)]**
Dismissing the appeal of the revenue the Court held that the income derived from letting out of Kalyana Mandapam, Community Hall and Gnanavapi owned by the assessee, the income from the house property or business income since utilization of the surplus income from the running of Kalyana Mandapam, Community Hall and Gnanavapi are for the objects of the trust, it is exempted from tax. (AY. 2010-11, 2011-12)
Sri Ram Samaj v. JCIT (2020) 275 Taxman 309 / 194 DTR 177 (Mad.)(HC)

185 **S. 11 : Property held for charitable purposes – Statutory Board under control of State Government – Entitled to exemption. [S. 2(15)]**
Dismissing the appeal the Court held that the assessee was a statutory body, established and incorporated under section 5 of the Karnataka Industrial Area Development Act, 1966. The assessee had been constituted to make provision for orderly establishment and development of industries in suitable areas in the State of Karnataka. It was virtually controlled by the State Government. It had been constituted to carry out the activities towards public purpose, namely, orderly establishment and development of industries

in suitable areas in the State. It was a charitable institution entitled to exemption. (AY. 2009-10)
DIT(E) v. Karnataka Industrial Area Development Board (2020) 429 ITR 249 / (2021) 277 Taxman 36 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Town Planning Authority Constituted Under State Law – Entitled to exemption. [S. 2(15), Gujarat Town Planning Act, S. 22] 186
Dismissing the appeal of the revenue the Court held that the assessee, was an urban development authority constituted under section 22 of the Gujarat Town Planning Act. It undertook the task of framing and implementing the town planning scheme in areas which did not fall within any other local authority as defined under the Town Planning Act. The functions of the assessee were for charitable purposes and for general public utility and therefore, the assessee was entitled to exemption under section 11 of the Act. (AY. 2011-12)
PCIT(E) v. Surat Urban Development Authority (Suda) (2020) 429 ITR 474 / 275 Taxman 295 (Guj.)(HC)

S. 11 : Property held for charitable purposes – Preservation of environment is charitable purpose – Institution engaged in management of liquid and solid wastes of industrial area – Entitled to exemption. [S. 2(15)] 187
Dismissing the appeal of the revenue the Court held that preservation of environment is charitable purpose. Institution engaged in management of liquid and solid wastes of industrial area is entitled to exemption. (AY.2014-15)
CIT(E) v. Naroda Enviro Projects Ltd. (2020) 429 ITR 376 / 190 DTR 228 / (2021) 276 Taxman 50 (Guj.)(HC)

S. 11 : Property held for charitable purposes – Authority constituted under State Town Planning Act – Entitled to exemption. [S. 2(15)] 188
Dismissing the appeal of the revenue the Court held that the assessee was an urban development authority constituted under the Gujarat Town Planning Act. The functions of the authority were akin and similar to the powers and function of the urban development authority as provided under section 22 of the Town Planning Act. The assessee also undertook the task of framing and implementing the town planning scheme in the area which did not fall within any other local authority as defined under the Town Planning Act. The assessee could be said to be providing general public utility services and hence the assessee was entitled to exemption under section 11 of the Income-tax Act, 1961.(AY.2009-10)
CIT(E) v. Jamnagar Area Development Authority (2020) 429 ITR 412 / (2021) 276 Taxman 36 (Guj.)(HC)

S. 11 : Property held for charitable purposes – Accumulation of income – Error in claiming under wrong head – Denial of exemption not justified – Matter remanded. [S. 11(2), 12AA, 119(2)(b), 139(4A), Form No.10] 189
The CIT(E) rejected the application filed by the assessee for condonation of delay in filing form 10 on the grounds that the assessee did not claim the benefit of

accumulation under section 11(2) in its return of income and that no cogent reason was given for the condonation of delay. On a writ allowing the petition the Court held that there was an error in making the claim under a wrong head was a question of fact and needed to be considered by the CIT(E).Accordingly the application filed by the assessee for condonation of delay stood restored for consideration of the CIT(E) Matter remanded.
St. Thomas Orthodox Syrian Church v. CIT(E) (2020) 428 ITR 30 / 185 DTR 326 / 312 CTR 430 (Bom.)(HC)

190 **S. 11 : Property held for charitable purposes – Serving prasadam" without probing into their caste, creed, religion or nationality – Entitle to exemption – Bad debt – Income to be computed in commercial manner. [S. 2(15, 36(2)]**
Court held that all the pilgrims who visited assessee's temple were served with "prasadam" without probing into their caste, creed, religion or nationality. Thus, the expenditure had definitely been incurred on a section of society and therefore, was tantamount to expenditure for a charitable purpose. Accordingly the Tribunal is justified in granting exemption. Court also held that the income of a trust has to be computed in a normal commercial manner and only the real income has to be taken into account. While determining the commercial income, a trust is entitled to expenditure in respect of provision for doubtful debts (AY.2004-05, 2005-06)
DIT(E) v. Iskcon Charities (2020) 428 ITR 479 (Karn.)(HC)

191 **S. 11 : Property held for charitable purposes – Statutory Corporation Constituted by State Government with charitable objects – Entitled to exemption – Fees collected held to be not taxable – Depreciation is held to be allowable – Contribution to pension fund is held to be allowable as deduction. [S. 2(15) 32, 36]**
Dismissing the appeal of the revenue the Court held that the assessee was constituted under the Gujarat Maritime Board Act, 1981 and was engaged in the activity of administering, controlling and managing minor ports in the State of Gujarat . It is further held to be entitle to exemption in respect of fees collected for attainment of the main object for the development of minor ports in the State of Gujarat. Relied on *CIT v. Gujarat Industrial Development Corporation [2017] 83 taxmann.com 366 (Guj) (HC) and Ahmedabad Urban Development Authority v. ACIT(E) [2017] 396 ITR 323 (Guj) (HC).*
Court also held that the income of a trust was required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust. Contribution to pension fund also is held to be allowable as deduction (AY.2009-10 to 2013-14)
CIT(E) v. Gujarat Maritime Board (NO.3) (2020) 428 ITR 177 (Guj.)(HC)

192 **S. 11 : Property held for charitable purposes – Accumulation of income – Specific purpose of usage of accumulated surplus funds not specified – Matter remanded to Tribunal. [S. 11, 11(2), 254(1) Form No. 10, Art, 226]**
Tribunal held that though the Tribunal had referred to the resolution dated September 1, 2008 passed by the assessee, without finding it to be defective, it had not given any benefit thereof to the assessee. Whether the surplus fund had been really spent by the assessee for such construction or not for charitable purposes contained in its trust deed

or not might be a subsequent fact, which might be relevant for the Tribunal to consider, coupled with the fact that the assessee had been assessed as such in exempted category for the subsequent assessment years as stated by the assessee. Therefore, in the light of these facts, the Tribunal should re-examine form 10 furnished by the assessee with the resolution and additional evidence, which might be produced by the assessee before it. Matter remanded.(AY.2008-09, 2009-10)
CNN Educational Trust v. ITO (2020) 428 ITR 312 (Mad.)(HC)

S. 11 : Property held for charitable purposes – Application of income – Commercial principles – Adjustment of excess expenditure of earlier year against income of current year amounts to application of income. [S. 2(15), 11(1)(a)] 193
Court held that the income derived from the trust property has to be computed on commercial principles and adjustment of expenses incurred by the trust for charitable and religious purposes in earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment is made having regard to the benevolent provisions contained in S 11 of the Act, and such adjustment will have to be excluded from the income of the trust under S. 11(1)(a). (AY.2012-13)
PCIT(E) v. Green Wood High School (2020) 426 ITR 364 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Charging certain goods and services – Not commercial activities – Onus on department to prove profit motive – No change in nature of activities from earlier years – Principle of consistency is applicable – Entitle to exemption. [S. 2(15) 12, 13, 80G(5)(v)] 194
The primary aim and objective of the assessee according to its memorandum of association, inter alia, was to promote the habitat concept. The AO held that since the assessee did not maintain separate books of account, its income could not be bifurcated under the principle of mutuality. The AO taxed the entire surplus in the income and expenditure account. The CIT(A) allowed the appeal relying upon the judgment of the court in the assessee's own case for the assessment years 1988-89 to 2006-07. The Tribunal held that there was no material change in the fundamental facts for several years and the income of the assessee was to be computed under sections 11, 12 and 13 and dismissed the appeal filed by the Department. On appeal dismissing the appeal of the revenue the Court held that it was imperative for the Department to establish that there was an element of profit motive in the activities of the assessee, to deny the benefit. If any surpluses had been generated on account of some of the activities of the assessee, it would not ipso facto be determinative of the fact that there was an element of profit motive. No error had been pointed out by the Department with respect to such finding of fact which would disentitle the assessee the benefit under S .2(15) of the Act. (AY.2012-13)
CIT(E) v. India Habitat Centre (2020) 424 ITR 325 (Delhi)(HC)

195 **S. 11 : Property held for charitable purposes – Depreciation – Allowable as deduction. [S. 32]**
The income of a charitable institution is required to be computed under S 11 of the Act, on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the institution. (AY. 2009-10)
DIT(E) v. Krupanidhi Education Trust (2020) 423 ITR 616 (Karn.)(HC)

196 **S. 11 : Property held for charitable purposes – First proviso – Event of Garba organised to raise money – Amount earned entitled to exemption. [S. 2(15), 12]**
Dismissing the appeal of the revenue the Court held that the main object of the assessee could not be said to be organising the event of Garba. The assessee had been supporting 120 non-Government organisations. The assessee was into health and human services for the purpose of improving the quality of life in society. All its objects were charitable. The activities like organising the event of Garba including the sale of tickets and issue of passes, etc., cannot be termed as business. The two authorities had taken the view that the profit making was not the driving force or the objective of the assessee. The assessee was entitled to exemption under S. 11 and 12. (AY. 2014-15)
CIT(E) v. United Way of Baroda (2020) 423 ITR 596 / 194 DTR 105 / 317 CTR 558 / 275 Taxman 328 (Guj.)(HC)

197 **S. 11 : Property held for charitable purposes – Imparting spiritual education through lectures and congregation and on television channels – Established a temple to Hindu gods and goddesses for the general public. [S. 2(15), 12A, 13(1)(c)(ii)]**
Dismissing the appeal of the revenue the Court held that,imparting spiritual education through lectures and congregation and on television channels is charitable in nature. Established a temple to Hindu gods and goddesses for the general public the activities undertaken by the assessee could be included in the broad conspectus of religious activities and in the context of the Hindu religion, such activities could not be confined to activities incidental to a place of worship such as a temple. The observations of the Tribunal vis-a-vis disallowances of one third expenditure for telecast of samagams, were reasonable and they did not warrant any interference. Court also held that there was no evidence on record to construe that the founder had derived any personal benefit which would justify the Revenue to invoke the provisions of section 13(1)(c)(ii) to deny the assessee the benefit of the expenditure. Referred *CIT(E) v. Bhagwan Shree Laxmi Narain Dham Trust (2015) 378 ITR 222 (Delhi) (HC)* (AY. 2011-12)
CIT v. Bhagwan Shree Laxmi Narain (2019) 106 CCH 0176 / (2020) 421 ITR 476 (Delhi)(HC)

198 **S. 11 : Property held for charitable purposes – Exemptions – Trust was not engaged in running the restaurant, bar etc. – Exemption is held to be allowable.**
The Assessee trust was nowhere engaged in running the restaurant, bar etc, and therefore, the question of maintaining separate books of accounts for such activities did not arise. No violation of provision of S. 11. (Arising out of ITA No.3114/Mum/2012 dt.26/10/2015)(ITA No. 1680 of 2016, dt.11/02/2019)
CIT(E) v. Matoshri Arts & Sports Trust. (Bom.)(HC) (UR)
Editorial: SLP of revenue is dismissed (SLP No.17828 of 2019 dt.26/07/2019)(2019) 416 ITR 127 (St.)(SC)

S. 11 : Property held for charitable purposes – Charitable purpose – Activities of relating to providing services of relief to poor, education and medical relief would fall within scope of general public utility – Entitle to exemption. [S. 2(15,) 12,12A, 80G] 199

Assessee-society was engaged in providing services of relief to poor, education and medical relief.-It was registered under S. 12A and was granted approval under S. 80G(5) of the Act. Tribunal held that the activities of assessee could in no way be termed as trade and commerce etc as assessee was not charging any fee from beneficiaries who belonged to poor communities. Tribunal also held that NGOs like WHO, UNICEF etc. which have engaged assessee are themselves charitable instructions and revenue was not able to show that any part of profit or gains had been transferred to any member of assessee-society. Accordingly the exemption was granted. Order of Tribunal is affirmed by the High Court. (AY. 2010-11)

CIT v. Praxis Institute For Participatory Practices (2020) 113 taxmann.com 148 / 269 Taxman 39 (Delhi) (HC)

CIT v. Praxis Institute For Participatory Practices (2020) 113 taxmann.com 147 / 269 Taxman 39 (Delhi)(HC)

Editorial : SLP is granted to the revenue; CIT v. Praxis Institute For Participatory Practices. (2020) 269 Taxman 38 (SC)

S. 11 : Property held for charitable purposes – Carry forward of deficit – Allowed to be set off against income of the subsequent year. [S. 12, 32, 72] 200

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in setting off of the earlier loss against the setting off of income of the subsequent year. Followed *CIT(E) v. Subros Educational Society (2018) 7 SCC 548. (ITA No. 5391 / Mum/2016 dt 1-02 2017 (AY. 2012-13). (ITA No 1761 of 2017 dt 22-01-2020)*

CIT(E) v. Rustomjee Kerawalla Foundation (Bom.)(HC) (UR)

S. 11 : Property held for charitable purposes – Income applied for the object of the Trust – Promotion of sports, games and providing recreation facilities to the public at large and to the members in particular and therefore receipts on account of compensation from decorator against gymkhana function, miscellaneous income and compensation from caterer (restaurant) cannot be construed as activities in the nature of trade, commerce or business for the purpose of the proviso to S. 2(15) of the Act – Capital expenditure allowed as application of income – Depreciation is allowable [S. 2(15), 12, 13, 32] 201

Dismissing the appeal of the revenue the Court held that, promotion of sports, games and providing recreation facilities to the public at large and to the members in particular and therefore receipts on account of compensation from decorator against gymkhana function, miscellaneous income and compensation from caterer (restaurant) cannot be construed as activities in the nature of trade, commerce or business for the purpose of the proviso to S. 2(15) of the Act. Followed *CIT v. Bombay Presidency Golf Club Ltd ITA No.235 of 2017. dt. 2-04-2019 (Bom.) (HC), DIT(E) v. Shri Vile Parle Kelavani Mandal, (2015) 378 ITR 593 (Bom.) (HC) DIT(E), DIT(E) v. Shree Nashik Panchvati Panjrapole, (2017) 397 ITR 501 (Bom.) (HC), Add.CIT v. Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1 (SC).* As regards capital expenditure is

allowed as application of income and also entitle to depreciation. The appeal of the revenue is dismissed following the judgements in *CIT v. Rajasthan and Gujrat Charitable Foundation, Poona, (2018) 402 ITR 441 (SC)* (ITA No.4468/Mum/2013 dt 30-11-2016) (ITA No 1767 of 2017 dt 22-01-2020). (AY.2009-10)
CIT(E) v. Matunga Gymkhana (2020) 189 DTR 392 / 314 CTR 818 (Bom.)(HC)

202 **S. 11 : Property held for charitable purposes – Voluntary contributions – Transaction with related party at arm's length – Exemption cannot be denied [S. 2(15), 12, 13(2)(g)]**
The exemption was denied by the AO u/s 11 and 12 on the ground that a purchase from related party was carried out. In absence of any further or extra payment made by the assessee to such related party, the transaction was held to be at arm's length. The denial of exemption is held to be not justified. Appeal of revenue was dismissed. (AY. 2012-13)
Dy.CIT v. Shri Ramdoot Prasad Sewa Samiti Trust (2020) 189 DTR 323 / 205 TTJ 435 (Jaipur)(Trib.)

203 **S. 11 : Property held for charitable purposes – Non filing of audit report online – The requirement is directory not mandatory – Exemption u/s 11 is allowed [S. 12A, 154, Form No 10B]**
Where the assessee had claimed the exemption u/s 11 but failed to comply with the requirement of filing the audit report from 10B online (electronic mode). AO denied the exemption. It was observed that the requirement of law that the assessee shall have its account audited has been complied within the time prescribed by the statute as the audit report has been obtained before the return of income was filed. It was held that the filing of furnishing the audit report along with the return of income is directory and not mandatory. Thus, the exemption claimed was allowed. Appeal of revenue was dismissed. (AY. 2014-15)
ITO v. Society for Education Conscietisation Awareness & Training (2020) 190 DTR 370/ 205 TTJ 981 (Jodhpur)(Trib.)

204 **S. 11 : Property held for charitable purposes – Holding exhibition – Trust having surplus in one year did not change character of trust to business or profit making entity – Entitle to exemption [S. 2(15)]**
The holding of exhibition by the assessee trust is only furtherance of the charitable activity of the trust wherein, the healthy environment is provided for businessmen so that all the stake holders i.e. businessmen and customers are benefited which were in the nature of charitable activities and these certainly reached out to the greater number of people of the society. It was not disputed that clause in the Memorandum of objects was one of the pertinent object of the assessee trust and fulfillment of such object benefited the public at large by holding the exhibition and therefore, was a part of charitable activity conducted by the assessee trust. (AY. 2011-12, 2012-13)
Credai-Pune Metro v. ITO (2020) 207 TTJ 1028 (Pune) (Trib.)

S. 11 : Property held for charitable purposes – Educational institution – Additional evidence admitted – Matter remanded to the Assessing Officer for re-examination [S. 2(15), 10(23C)(iiiab)] 205

The proviso to S. 2(15) applies only to the activity of the advancement of any other object of general public utility. The AO must provide reasonable opportunity of being heard to the assessee before deciding the issue through a speaking order. Matter remanded. (AY. 2011-12, 2012-13)

Institute of Chemical Technology v. ITO (2020) 203 TTJ 590 (Mum)(Trib.)

S. 11 : Property held for charitable purposes – Registration granted prior to the initiation of reassessment proceedings – Exemption cannot be denied. [S. 12A, 147, 148] 206

Allowing the appeal of the assessee the Tribunal held that when the registration was granted prior to the initiation of reassessment proceedings exemption cannot be denied. Tribunal also observed that even if reassessment is held to be valid when there is no change in the objects and activities of the Trust exemption under section 11 cannot be denied. (AY. 2008-09, 2009-10)

Badhte Kadam v. Dy.CIT (2020) 187 DTR 36 / 203 TTJ 597 (Raipur)(Trib.)

S. 11 : Property held for charitable purposes – Corpus donations – Capital receipts – Not taxable – Direction of the CIT(A) is held to be valid. [S. 2(24(iia), 12AA] 207

Dismissing the appeal held that there was no evidence regarding specific direction given by the donor that the amount was given towards corpus fund of the assessee. It was nobody's case that donors had collected any donation on behalf of the assessee from the students or from parents for giving the admission in the institutions run by the assessee. The Assessing Officer without looking into this issue, straightaway treated the donations as income of assessee. He had failed to carry out the necessary enquiry with regard to the sources from which the donors had donated the amount to the assessee. In the absence of such findings by the lower authorities, the order of the Commissioner (Appeals) could not be reversed. Relied *CHANDRAPRABHU Jain Swetamber Mandir v. ACIT (2016) 50 ITR (Trib.) 355 (Mum.), ITO(E) v. Smt. Basanti Devi and Shri Chakhan Lal Garg EEducation Trust (I. T. A. No. 5082/Delhi/2010 dated January 19, 2011), Indian Society of Anaesthesio Logists v. ITO (2014) 32 ITR (Trib.) 152 (Chennai), ITO v. Gaudiya Granth Anuved Trust (2013) 28 ITR (Trib.) 161 (Agra) and ITO v. Vokkaligara Sangha [2015 44 CCH 509 (Bang) (Trib.)*. (AY.2015-16)

ACIT v. A. Shama Rao Foundation (2020) 84 ITR 49 (SN) (Bang.) (Trib.)

S. 11 : Property held for charitable purposes Charitable Purpose – Amended objects – Enabled to exploit infrastructure for commercial purposes – Not entitled to exemption. [S. 2(15)] 208

Tribunal held that the Assessing Officer after verification of the accounts of the assessee was to ascertain which part of the club income and catering services had been generated from the members of the assessee-association and which part of the income was earned from non-members. He had also to look into whether the income from the club house

and other facilities was generated generally from the members only and receipt from the non-members was an exception or the income was generated from members and non-members in the normal course of business. Whether the catering services were limited to the members and their guests or were also provided to non-members also on commercial basis was to be seen. The Assessing Officer after thoroughly examining would decide if the principle of mutuality applied to the club income including catering contracts in accordance with law.(AY. 2009-10, 2011-12 to 2013-14)
Punjab Cricket Association v. ITO (2020) 83 ITR 116 / 194 DTR 11 / 207 TTJ 476 (Chd.) (Trib.)

209 **S. 11 : Property held for charitable purposes – Corpus donations – Capital receipt – Market rent – Rent received far more than valuation of Municipal Corporation of Delhi – Rent increased to 10% every three years as per Delhi Rent Control Act, 1958 – Exemption cannot be denied. [S. 11(1)(d), 13(2)(b), 13(3)]**
Tribunal held that the objects of the assessee clearly established that it was providing education, medical relief and relief to the poor and no evidence was available on record to say that the assessee had been providing services in the nature of business. Therefore, the corpus donation was considered as a capital receipt irrespective of whether the institution enjoyed the benefit of section 11 or not. The Tribunal also held that the annual rent received by the assessee was far above the valuation in accordance with the Municipal Corporation of Delhi. For every three years there was an enhancement of rent received by the assessee in respect of both properties. The property had been let out to a charitable institution and even if the benefit was assumed, it was not derived by any individual but by another charitable institution. The Department had accepted all these years the agreement between the HNF and HLI without drawing any adverse view. No change of facts and circumstances had been brought on record and no independent evidence with a specific relation to the property in dispute was available on record. Therefore, the addition made by the Assessing Officer unsustainable. (AY. 2013-14)
Hamdard National Foundation (India) v. ACIT(E) (2020) 82 ITR 164 (Delhi)(Trib.)

210 **S. 11 : Property held for charitable purposes – Object of promoting growth of Automobile Industry In India and also to improve and protect environment – Entitled to exemption – Corpus fund – Amount transferred is not application of income – Foreign grants – Pending for approval – Characterisation of receipt as taxable income only at time of appropriation and not at time of receipt – Not income of assessee – No quantum additions – Penalty not leviable. [S. 2(15), 12, 12A, 271(1)(c), Foreign Contribution (Regulation) Act of 2010, S.11 (1)]**
Tribunal held that the Object of promoting growth of Automobile Industry In India and also to improve and protect environment-Entitled to exemption. Followed, *Society of Indian Automobile Manufacturers v. ITO (E) (I. T. A. No. 4837/Delhi/2012 dated June 6, 2016).*
Tribunal also, that the assessee while drawing up the excess of expenditure carried forward the amounts and the balance as excess income over expenditure. In the schedule to the balance-sheet the amount of Rs. 90 lakhs was transferred to corpus funds with the narration "transfer from income and expenditure account, i. e., for Rs.

90 lakhs". Similarly, amounts were transferred to different funds. The assessee had very clearly pointed out that all these amounts which were transferred to funds were not to be considered as application of income and accordingly, the income had been computed in the hands of the assessee. There was no merit in the exercise undertaken by the Assessing Officer, which had been confirmed by the Commissioner (Appeals). The Assessing Officer was directed to delete the addition made in the hands of the assessee. As regards Foreign Contribution the Tribunal held that section 11(1) of the Foreign Contribution (Regulation) Act of 2010 very clearly provides that no person shall accept foreign contributions unless such person has obtained a certificate from the Central Government. Further, sub-section (2) provides that foreign contribution is to be utilised for specific purpose only after obtaining appropriate permission of the Central Government. Thus, the assessee did not have the authority to utilise the sum received by it as foreign contribution though it was credited to its bank account. Similarly, the bank interest earned on such deposits was in the form of foreign contribution and specific approval for utilisation thereof had to be given by the Central Government. The characterisation of a receipt could taxable only at the time of appropriation and not at the time of receipt which at best was advance received, which did not bear any particular characterisation for the purpose of treating it as income. The foreign grant as pending approval could not be included as income of the assessee. Relied on *CIT v. Om Prakash Khaitan (201) 376 ITR 390 (Delhi)(HC)*. As no addition was confirmed levy of penalty was deleted for the AY. 2009-10.(AY. 2009-10, 2010-11)
Society for Indian Automobile Manufacturers v. ITO(E) (2020) 82 ITR 279 (Delhi)(Trib.)

S. 11 : Property held for charitable purpose – A Statutory body established for acquisition of land for Industrial Infrastructure – Operating on non profit basis – Entitle to exemption. [S.2(15), 32] 211
Tribunal held that a statutory body established for acquisition of land for Industrial Infrastructure operating on non profit basis is entitle to exemption. Tribunal also held that if the amount had been spent on acquiring assets and had been treated as application of income in the year in which such assets were acquired that did not mean that in subsequent years depreciation could not be taken into account.(AY.2012-13)
ACIT v. Karnataka Industrial Areas Development Board (2020) 80 ITR 1 (SN) (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Trust entitled to carry forward deficit of current year and to set it off against income of subsequent years. [S. 11((1)(a), 12A] 212
Dismissing the appeal of the revenue the Tribunal held that the assessee is entitled to carry forward deficit of current year and to set off same against income of subsequent years.(AY.2013-14)
ITO(E) v. Dr. Bhai Mohan Singh Foundation (2020) 80 ITR 27 (SN) (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Excess spending Deficit or shortfall could be allowed to be carried forward in full for set off against incomes generated in subsequent years. [S. 11(1)(a)] 213
Assessee, a public charitable trust, was engaged in educational activities. It had claimed carry forward of deficit for year under consideration together with deficits of other

assessment years contending that it had incurred excess expenditure over voluntary contributions received by it. Assessing Officer denied said relief. CIT(A) granted relief to assessee but reduced quantum of deficit to extent of 15 per cent of income as entitled to be accumulated by a trust under section 11(1)(a) to be eligible for carry forward and set-off in subsequent years. Tribunal held that method of computation as suggested by CIT(A) was totally devoid of any logic since statutory postulations towards accumulation of 15% of income for indefinite period is an entitlement or a right of absolute nature vested upon assessee but, it cannot be regarded as an obligation envisaged in law. Impugned order of CIT(A) was to be quashed. (AY. 2015-16)
Gnyan Dham Vapi Charitable Trust v. DCIT (2020) 185 ITD 543 (Ahd.)(Trib.)

214 **S. 11 : Property held for charitable purposes – Accumulation of income – 15 per cent accumulation for application in future has to be calculated on gross receipt and not on net receipt after deduction of revenue expenditure – suo motu observation of the CIT(A) that assessee trust's activities were not covered under section 2(15) was per se bad – Application of income – Donation to charitable organisation – Held to be application of income. [S. 2(15) 12A]**
Tribunal held that, 15 per cent accumulation of income for application in future for charitable purpose has to be calculated on gross receipt and not on net receipt after deduction of revenue expenditure. Tribunal held that where assessee was enjoying section 12A registration which was granted by competent authority after satisfying himself that assessee was engaged in charitable activities as contemplated under section 2(15) and registration granted had not been withdrawn or revoked as on date and even Assessing Officer had not raised any adverse view against assessee in respect to its activities under section 2(15), CIT(A) suo motu observation that assessee trust's activities were not covered under section 2(15) was per se bad for non-observation of principles of natural justice. Tribunal also held that donation to charitable organisation which is established for taking care of pregnant women/ladies would be allowed as application of income.
Kanehialall Lohia Trust v. ITO (2020) 185 ITD 498 (Kol.)(Trib.)

215 **S. 11 : Property held for charitable purposes – National issues – Real estate sector – conventions, exhibitions etc – Charitable purpose – Eligible for exemption. [S. 2(15)]**
Assessee-trust was set up with an objective to address national issues relating to the real estate sector and better standard for its all member associations. Assessing Officer held that trust was existing for a specific group of persons, i.e., real estate professionals/ finance companies/investors, etc., and not for public at large and was carrying out activities, i.e., holding conventions, seminars, etc., which were clearly in nature of trade, commerce or business, involving no element of charity and, therefore, it could not be held to be a trust set up for advancement of any other object of general public utility and, consequently, he denied benefit of exemption under section 11 to assessee by applying proviso to section 2(15) of the Act. Tribunal held that holding of convention by assessee-trust, and resultant receipts therein generated by it, i.e., participant fees, sponsorship fees were clearly in nature of activities that were carried out by assessee

with sole intent of attaining object for which trust was established. Accordingly denial of exemption is held to be not valid. (AY. 2014-15, 2016-17)
Confederation of Real Estate Developers Association of India v. ACIT (2020) 185 ITD 90 / (2021) 209 TTJ 160 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Non-profit entity – Contract of construction of a museum by RBI – Commercial activities – Not eligible for exemption. [S. 2(15)] 216
The assessee is a non profit organisation. The assessee was awarded contract of construction of a museum by RBI. The assessee has claimed exemption u/s 11 of the Act. The AO held that the assessee was engaged in full fledged commercial activity during year and applying 6th limb of definition of charitable purpose under 1st proviso to section 2(15), he denied the exemption. The Tribunal held since actual work done by assessee was not charitable in nature and said project did not reflect a formal and systematic education rather the same was indicative of commercial activities hence the assessee was not eligible for exemption. (AY. 2013-14, 2014-15, 2015-16)
Creative Museum Designers v. ITO (2020) 185 ITD 137 / (2021) 198 DTR 87 / 209 TTJ 943 (Kol.)(Trib.)

S. 11 : Property held for charitable purposes – Society constituted by Ministry of Textiles, Government of India to promote handloom sector – Exhibitions in different parts of country for display and sale of handloom fabrics/cloth manufactured by handloom weavers and handloom society – Motive was to provide a platform for handloom weavers – Not carrying on any business, trade or commerce – Eligible for benefit. [S. 2(15)] 217
Assessee society was constituted by Ministry of Textiles, Government of India to promote handloom sector by organising exhibitions in different parts of country for display and sale of handloom fabrics/cloth manufactured by handloom weavers and handloom society claimed exemption u/s 11 of the Act. AO held that activities of assessee did not fall under section 2(15) of the Act. CIT(A) allowed the exemption. On appeal by the revenue the Tribunal held that since motive of assessee was to provide a platform for handloom weavers of country for marketing and displaying their products through exhibitions and activities were not for any private gain or profit and receipts were used for activities of society and activities were monitored by Government of India, assessee could not be said to be involved in carrying on any business, trade or commerce and Assessing Officer was directed to allow benefit of section 11 of the Act. (AY. 2012-13)
ITO v. Association of Corporation & Apex Societies of Handlooms (2020) 185 ITD 63 (Delhi)(Trib.)

218 **S. 11 : Property held for charitable purposes – Application of income – Income applied outside India for educational purpose – Specific approval from CBDT for said purpose – Claim of exemption was allowed – Rectification order passed by the Assessing Officer allowing the claim – Rectification order merged with Assessment order – Commissioner (Appeals) cannot hold that original order will survive. [S. 11(1)(c), 12A, 250]**

Assessee was a charitable institution registered under section 12A of the Act. In relevant years, assessee claimed amount remitted to educational universities outside India as application of income under section 11(1)(c) of the Act. Assessing Officer held that since no approval for aforesaid purpose was granted by CBDT as required under proviso to section 11(1)(c), assessee's claim for exemption of income could not be allowed. During pendency of appellate proceedings, CBDT granted approval sought by assessee by passing an order which was specifically 'stated to have effect for period covered by assessment years 2009-10 to 2016-17. Based on said approval by CBDT, Assessing Officer rectified assessment order under section 154 whereby impugned addition made in assessment order passed under section 143(3) was deleted. Commissioner (Appeals), however, took a view that the rectification order under section 154 did not merit consideration as appeal had been filed against order of Assessing Officer passed under section 143(3). He further held that CBDT's approval dated 10-11-2015, was not retrospective in nature and, thus, said approval could not apply to assessment years in question. Commissioner (Appeals) thus restored the addition made by Assessing Officer in original assessment order. On appeal the Tribunal held that once disallowance of exemption was deleted by Assessing Officer, by way of a rectification order which stood merged with assessment order, it was not open to Commissioner (Appeals) to still examine merits of such a disallowance of exemption and declare his legal opinion on same. Tribunal also held that so far as second objection taken by Commissioner (Appeals) was concerned, in view of fact that even though approval granted by CBDT was not specifically stated to be retrospective in nature, yet it was clarified that it would have effect for period covered from assessment years 2009-10 to 2016-17, there was no escape from position that said approval covered assessment years in question, therefore the order passed by Commissioner (Appeals) was set aside. (AY. 2011 12, 2012-13)

Tata Education and Development Trust v. ACIT (2020) 184 ITD 234 / 192 DTR 313 / 206 TTJ 777 (Mum.)(Trib.)

219 **S. 11 : Property held for charitable purposes – Primary objective was to administer payment settlement system for larger benefit of general public and not to run clearing system in a commercial manner or on a commercial basis, assessee's activities were charitable – Exemption cannot be denied. [S. 2(15), 12, 13(3), Companies Act, 1956, S. 25]**

Assessee NPCI was incorporated under section 25 of the Companies Act, 1956. Promoter banks were mere subscriber to assessee's share capital and not entities who made substantial contributions of exceeding Rs.50,000 in assessee entity. Clearing functions of RBI were divested to assessee with emergence of PSS, Act 2007. Electronic payment infrastructure created by assessee would enable a larger section of society to enjoy

unparelled secure and convenient payment systems. Systems being developed by assessee would bring down cost of clearing transactions which would ultimately benefit public at large availing banking services. Greater penetration of e-payments would encourage larger participation of citizens in banking system and help in meeting larger objective of cashless economy. Tribunal held that since primary objective of assessee was to administer payment settlement system for larger benefit of general public and not to run clearing system in a commercial manner or on a commercial basis, assessee's activities were not hit by proviso to section 2(15) of the Act. Since the assessee is engaged in providing technology intensive infrastructure facilities at national level and would obviously require funds to meet operational cost which would necessitate charging of fees by assessee and certain surplus was generated, said fact alone, would not disentitle assessee to claim exemption under sections 11 and 12 of the Act. Further since facilities/services being provided by assessee were uniformly available to user of system against same fee and no concession in fee was given to promoter entities , it could not be said that assessee directly or indirectly applied its income for benefit of persons as specified in section 13(3) of the Act.

National Payments Corporation of India v. DCIT (2020) 183 ITD 412 / 192 DTR 161 / 206 TTJ 681 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Regulatory body – Development Authority – Implementation of development measures – Charitable in nature – Entitle to exemption. [S. 2(15), 12, 12AA, Gujarat Town Planning And Urban Development Act, 1976] 220

Tribunal held that the assessee, a Regulatory Body, was created under Gujarat Town Planning And Urban Development Act, 1976 for proper Development of specified area in State in a phased and planned manner, preparation and implementation of development measures, surveying for development of areas and land acquisition, managing urban development schemes, working for water systems, sewage and other facilities and services is held to be charitable purpose hence eligible for exemption.(AY. 2012-13, to 2014-15)

Surat Urban Development Authority (Suda) v. DCIT (2020) 182 ITD 20 (Ahd.)(Trib.)

S. 11 : Property held for charitable purposes – Annual Development fee – For development of school building – Not to be treated as revenue receipt – Prior to 1-4-2015, depreciation is allowable even if the such asset was treated as application of income. [S. 32] 221

Allowing the appeal of the assessee the Tribunal held that annual Development fees collected by assessee from students for development of school building and purchase of capital assets and kept in separate account solely for said purpose cannot be treated as income or revenue receipt for the purpose of S. 11 of the Act. Tribunal also held that prior to 1-4-2015 depreciation is allowable even if expenditure incurred for acquisition of such assets was treated as application of income for charitable purposes. (AY. 2010-11)

Vidya Bharati Society For Education & Scientific Advancement v. ACIT (2020) 182 ITD 282 (Kol.)(Trib.)

222 **S. 11 : Property held for charitable purposes – Application of income – Accumulation of income – Retain or accumulate 15 Per Cent. of income without any time limit and is benevolent in nature however it cannot be regarded as an obligation envisaged in Law. [S. 11(1)(a), 11(1)(b)]**

A statutory obligation has been cast on beneficiary trusts to utilise at least 85 Per Cent. of the income derived from the trust property unless accumulated or set apart for application in subsequent years subject to certain stipulated conditions, without any time limit is benevolent in nature, however it cannot be regarded as an obligation envisaged in law. Followed, *Maharshi Karve Stree Shikshan Samstha Karvenagar v. ITO (2019) 174 ITD 591 (Pune)(Trib.).* (AY.2015-16)

Gnyan Dham Vapi Charitable Trust v. Dy.CIT (2020) 82 ITR 14 (SN) (Ahd.)(Trib.)

223 **S. 11 : Property held for charitable purposes – Donations – If disclosure of income in hands of assessee as corpus fund and income applied for charitable purposes and assessee has due registration – Addition cannot be made as cash credits. [S. 12A, 68]**

Tribunal held that to obtain the benefit of the exemption under section 11 the assessee is required to show that the donations were voluntary. The assessee had only disclosed its donations but failed to submit a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, did not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. Section 68 have no application to the facts of the case if the assessee furnished the names and addresses of the donors to the Assessing Officer. That being so, if there was a disclosure of this income in the hands of the assessee as corpus fund and the income was applied for charitable purposes for which the assessee was created and the assessee had due registration under section 12A the Assessing Officer could not invoke the provisions of section 68 so as to sustain the addition. Accordingly the issue was remitted to the Assessing Officer with a direction to the assessee to prove that it had received the amount as donation towards corpus fund of the assessee.(AY.2008-09)

Sneha Trust for Charity and Education v. ACIT (2020) 78 ITR 25 (SMC) (SN)(Cochin.) (Trib.)

224 **S. 11 : Property held for charitable purposes – Accumulation of income – Details of purposes for which income accumulated need not be specified in Form 10 – Investor protection fund Trust – No prohibition in law that trust qualified under Sections 11 to 13 could not claim exemption. [S. 11(2), 13(3), Form No. 10]**

Tribunal held that the assessee had duly mentioned the purpose of accumulation, i.e., to compensate the trading members or a constituents, where a trading member was declared a defaulter on the stock exchange. This was the sole object of the trust for which this protection fund was created and thus sufficiently satisfied the requirements of section 11(2). Similar claim of the assessee had been allowed in the earlier years by the Department. Non-specification of purpose for which the funds were accumulated by the assessee under section 11(2) would not be fatal to the exemption claimed. Specification of certain purpose or purposes is needed for accumulation of the trust's income under section 11(2) but the details of the purposes for which the income was accumulated need not be specified. The trust had only one object and thus there was

no question of ambiguity. The assessee was entitled to exemption under section 11(2) of the Act. (AY.2012-13)
National Stock Exchange Investor Protection Fund Trust v. Dy. CIT(E) (2020) 78 ITR 12 (SN) (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Application of income – Cost of acquisition of assets allowed as application of income – Cannot claim exemption on account of repayment of loan as application of income. 225
The Tribunal held that since the assessee had already claimed exemption towards the cost of asset as application of income, the assessee could not claim exemption on account of repayment of loan taken for acquiring the asset. AY.2012-13 to 2015-16)
A. Shama Rao Foundation v. ACIT (2020) 78 ITR 374 (Bang.) (Trib.)

S. 11 : Property held for charitable purposes – Merely because some profit arising from activity – Entitle to exemption. [S. 11(2), 12A] 226
Tribunal held that, if the predominant object was to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity. The Assessing Officer was directed to allow the claim of the assessee for exemption under section 11(2) (AY.2010-11)
Shree Mohanananda Samaj Seva Samity v. ITO(E) (2020) 79 ITR 43 (SN) (Kol.)(Trib.)

S. 11 : Property held for charitable purposes – Providing facilities to tourists and pilgrims coming to Kurukshetra – No commercial element in activities – Entitle to exemption. [S. 2(15), 12] 227
The Tribunal held that the need, importance and necessity to maintain, preserve and protect the cultural heritage was recognised even under international conventions and cultural policies were a part of development. India is a signatory to the international conventions which acknowledges the need to implement its key components of development strategy through Government agencies. Merely charging fees from visitors or receipt of State funds for their upkeep, did not transform the character of a museum to commercial venture. The museums in fact were akin if not bigger and larger temples of learning, than the best of universities and colleges. The reach of the colleges and the universities is limited to imparting knowledge only to the admitted literate and qualified unlike museums which impart knowledge to the world at large regardless of his literate skills or qualifications. Entitle to exemption.(AY.2014-15)
JCIT (OSD)(E) v. Kurukshetra Development Board (2020) 181 ITD 465 / 79 ITR 31 / 208 TTJ 234 (Chd.)(Trib.)

S. 11 : Property held for charitable purposes – Cash withdrawals – Directed to pass a speaking order. [S. 2(15), 13(1)(c)] 228
Tribunal held that it was not clear from the orders of the authorities whether or not the assessee had submitted all the evidence in support of its claim of exemption and such material was properly appreciated. In the facts and circumstances and in the interests of justice, the entire issues were remitted to the Assessing Officer for a fresh examination. Since the right to exemption must be established by those who seek it, the onus

therefore, lay on the assessee. In order to claim the exemption from payment of Income-tax, the assessee had to put before the Income-tax authorities proper materials which would enable them to come to conclusion. The assessee shall place all contemporaneous primary as well as secondary evidence in support of its claim before the Assessing Officer. The Assessing Officer shall after due verification and after appropriate enquiry, as deemed fit, and after affording adequate opportunity to the assessee, pass a speaking order. Relied on *CIT v. Ramakrishna Deo (1959) 35 ITR 312 (SC)* wherein the Court held that burden is on assessee to prove that income sought to be taxed is agricultural income, exempt from taxation. (AY.2009-10)
Dr. D. John Ponnudurai Educational Trust v. Add. DIT (2020) 81 ITR 69 (SN) (Chennai) (Trib.)

229 **S. 11 : Property held for charitable purposes – Non-profit organisation – Fee received entitle for exemption – Principle of mutuality not claimed – The Assessing Officer cannot thrust upon the mutuality. [S. 2(15), 12A, 13]**
Tribunal held that the Assessing Officer had erroneously treated the assessee as a mutual association instead of a charitable organisation merely on the ground that services were rendered by the assessee to its members. The assessee had not even claimed to be a mutual association and had not claimed any exemption from Income-tax on the basis of principle of mutuality. What had been claimed by the assessee was only exemption under section 11 being a charitable organisation and on fulfilment of all the conditions stipulated in sections 11 to 13. The Department had not pointed out that the assessee's activities were in the nature of trade, commerce or business or activity of rendering any service in relation to any trade, commerce or business and in consideration of which a cess or fee had been received by the assessee. Hence, the assessee's case did not fall within the ambit of the proviso to section 2(15) The activities carried on by the assessee were not with a view to make profit hence entitle to exemption. (AY.2013-14)
Confederation of Indian Textile Industry v. ITO(E) (2020) 81 ITR 12 (SN) (Mum.)(Trib.)

230 **S. 11 : Property held for charitable purposes – Micro finance activity – Not charitable in nature – Not entitled to exemption. [S. 2(15)]**
The assessee-trust claimed exemption under S. 11 of the Act. The AO denied the same on the ground that the assessee was engaged in micro finance activities, wherein it was charging exorbitant interest from its beneficiaries and no charitable activities were involved in micro finance activities. On appeal CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the activities of micro finance were not charitable in nature and the assessee was not entitled to the claim of benefit under S. 11 of the Act. (AY.2010-11, 2011-12)
Shalom Charitable Ministries Of India v. ACIT (2020) 81 ITR 20 (Cochin)(Trib.)

231 **S. 11 : Property held for charitable purposes – Investment of surplus fund in chit fund – Denial of exemption is held to be justified. [S. 2(15), 11(5)]**
Allowing the appeal of the revenue the Appellate Tribunal held that the assessee trust had invested in chit fund during preceding assessment year, it was a clear case of violation of provisions of S. 11(5), hence, assessee-trust was not entitled for exemption.
ACIT v. Sree Gokulam Educational and Medical Trust (2020) 181 ITD 572 (Chennai)(Trib.)

S. 11 : Property held for charitable purposes – Cancellation of registration was set aside by the Appellate Tribunal – Denial of exemption was set aside. [S. 12A] 232

Assessee claimed exemption under S.11 of the Act. AO and CIT(A) denied the exemption on ground that registration granted to assessee under S. 12A was cancelled by Director (Exemption) for reason that assessee was earning income by exploiting its assets commercially and, thus, it was engaged in carrying on business activities. On appeal the Appellate Tribunal had set aside order of cancellation of registration and restored registration granted under S. 12A of the Act. Accordingly the order of the AO and CIT(A) was set aside.(AY.2009-10, 2011-12)

Amateur Riders Club v. ADIT (2020) 181 ITD 401 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Computation of income – Depreciation – Provision barring allowance of depreciation on asset whose acquisition treated as application of income – Prospective – Entitled to depreciation for earlier years – Provision for bad and doubtful debts and bad debts – Provision restricting allowance to debts written off applicable only prospectively – Provision reasonably made for loss or outgoing, can be deducted from income if there is apprehension that debt might become bad – Losses arising on sale of assets to be considered while computing income. [S. 2 (15), 11(6), 32, 28 to 44, 45 to 48] 233

Tribunal held that insertion of sub-S (6) to S. 11 was with effect from April 1, 2015 only and, therefore, it would be applicable with effect from April 1, 2015 only and not to earlier assessment years. Therefore the assessee was entitled to depreciation. That a provision for bad and doubtful debts and bad debts was considered allowable up to and including the assessment year 1988-89 and it was only from the assessment year 1989-90 that the Act required that a mere provision would not be allowable as a deduction and the actual writing off of the debt was a necessary pre-condition. Be that as it may, under the commercial principles it has always been recognised that a provision, reasonably made for a loss or an outgoing, can be deducted from the income if there is apprehension that the debt might become bad. While computing the income available to the trust for application to charitable purposes in India in accordance with S. 11(1)(a) the provision for doubtful debts must be deducted.. That the income under S. 11 has to be determined on commercial principles and losses arising on sale of assets of the society shall be considered. Therefore, the capital loss has to be considered while calculating the income of the assessee. (AY.2012-13)

ACIT(E) v. Indraprastha Cancer Society and Research Center (2020) 77 ITR 27 (SN) (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Corpus fund – letter from Donor – Additional evidence admitted and matter remanded to the AO for decide a fresh – fixed asset not claimed depreciation in earlier years – Allowable as application of income [S. 11(1)(d), 11(6), 32] 234

Tribunal held that since the assessee had filed additional evidence in the form of a letter obtained from the donor and since it required examination by the AO the order passed by the CIT(A) was set aside and the issue was restored to the AO for examining the issue afresh. The Tribunal held that the assessee never claimed the cost of fixed assets as application of income in any of the years. The provisions of S. 11(6) would apply

only in respect of these assets which have been claimed as application of income. The AO had not brought on record any material to disprove the contention of the assessee. On the contrary, the assessee had furnished copies of returns from 2009-10 onwards in support of its submission. There was no reason to suspect the submission made by the assessee in this regard. Accordingly, the provisions of S. 11(6) would not apply in the case of the assessee. The order passed by the CIT(A) on this issue was set aside and the AO was directed to delete the disallowance.(AY.2015-16)
Shivapur Shikshana Samiti v. ITO(E) (2020) 77 ITR 42 (SN) (Bang.)(Trib.)

235 **S. 11 : Property held for charitable purposes – Trust – Beneficiaries a group of individuals – Does not mean association of persons – Assessee to be treated an individual. [S. 2(31)(v), 12A]**
Tribunal held that the trust was treated as an individual. Therefore, the AO was to tax the assessee treating it as an individual instead of an association of persons. The fact that the beneficiaries were a group of individuals did not mean that the liability of the assessee was of the association of persons. The term "individual" does not mean a single living human being. It can include a body of individuals constituting a unit for the purposes of the Act. Even though the assessment of income was in the hands of the Trust, it had to be made in the same manner and to the same extent as it would have been made in the hands of the beneficiaries.(AY.2012-13)
Saraswat Hitwardhak v. ITO (2020) 77 ITR 89 (SN) (Mum.)(Trib.)

236 **S. 11 : Property held for charitable purposes – Educational activities – Activities like holding conferences on industrial safety programmes, public talks, seminars, workshops, etc. on ongoing basis to inculcate industrial safety measures would also be bracketed in league of educational activities – Entitle to exemption. [S. 2(15), 12A]**
Tribunal held that in view of changing time and widening horizon of knowledge and rapid change in method of teaching, multifaceted activities in form of handbook/ literature published together with activities like holding conferences on industrial safety programmes, public talks, seminars, workshops, etc. on ongoing basis to inculcate industrial safety measures would also be bracketed in league of educational activities, accordingly entitle to exemption.(AY. 2011-12, 2012-13)
Gujarat Safety Council v. ITO (2020) 180 ITD 711 (Ahd.)(Trib.)

237 **S. 11 : Property held for charitable purposes – Income from house property – Deductions – Trust would be entitled for deduction – Accumulation of income – Matter remanded. [S. 2(45), 11(3), 24]**
Tribunal held that the trust would be entitled for deduction in computation of income from house property. Followed *ADIT v. Sri Sathya Sai trust ITA No 7350 /Mum/ 2011 dt 25-03 2013, referred Nandlal Tolani Charitable Trust, ITA No 6970& 199 /Mum/ 2011 ITA No 1111 /Mum/ 2011* During year, assessee-trust added accumulation of income of certain amount as it was not spent and reduced it from income of trust. AO held that unutilized amount was taxable under S. 11(3) as deemed income of assessee. CIT(A) up held the order. Tribunal remanded the issue back to file of AO. (AY. 2013-14, 2015-16)
Shantaram Bhat Charitable Trust v. CIT (2020) 180 ITD 735 (Mum.)(Trib.)

S. 12A : Registration – Trust or institution – Maintenance of Shree Durga Mata Mandir – Registration application was made after 34 years of coming in to existence – No dissolution clause – Rejection of application is held to be not valid. [S. 12] 238

Assessee-society was a religious body and was engaged in maintenance of Shree Durga Mata Mandir. CIT(E) rejected application under section 12A mainly on ground that registration was applied for almost after 34 years of coming into existence; there was no dissolution clause in Memorandum of Association and assessee-society had huge corpus as compared to amount used. Tribunal allowed the registration. On appeal by the revenue the Court held that since revenue was not able to dispute that there was nothing on record to show that assessee was not working for achieving its aims and objects or that accumulated funds were used for purposes other than aims and objects, no interference was called for in order of Tribunal

CIT v. Shree Durga Mata Mandir (2020) 275 Taxman 575 / 191 DTR 384 / 315 CTR 923 (P&H)(HC)

S. 12A : Registration – Trust or institution – Charitable purpose – Gujarat Maritime Board – Entitled to exemption. [S. 2(15) 11, 12 12AA] 239

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in negating the findings of the Commissioner (Appeals) as well as the Assessing Officer denying the benefits of sections 11 and 12 of the Income-tax Act, 1961 by invoking the proviso to section 2(15) read with section 13(8) of the Act. (AY. 2009-10)

CIT(E) v. Gujarat Maritime Board (NO. 2) (2020) 428 ITR 175 (Guj.)(HC)

S. 12A : Registration – Trust or institution – Order granting o rejecting of application to be passed within 6 Months – Application Filed On 17-9-1999 decided on 31-10-2001 beyond period of six months – Registration shall be deemed to have taken effect after six months from date of filing application – Grant of registration does not ipso facto entitle to exemption. [S. 2(15) 11, 12A] 240

Dismissing the appeal of the revenue the Court held that,the registration under S. 12A should be deemed to have taken effect after six months from the date of presentation of the application, i. e., March 18, 2000. Admittedly, the application under S. 12A was made on September 17, 1999 and the order on such application had been passed beyond a period of six months, i.e., on October 30, 2001. The registration had already been granted in favour of the assessee under S. 12A by an order dated June 3, 2003. However, mere grant of registration to the assessee would not result in the grant of benefit to the assessee ipso facto under S. 11 and 12 and if any regular assessment was pending, it should be completed. (Followed, *CIT v. Society for Promon of Education (Allahabad) (2016) 382 ITR 6 / 238 Taxman 330 (SC)*

DIT(E) v. St. Ann's Education Society (2020) 425 ITR 642 / 315 CTR 596 / 272 Taxman 251 (Karn.)(HC)

S. 12A : Registration – Trust or institution – Statutory body for urban development under control of State Government is charitable institution entitled to registration. [S. 2(15), 11 Rule 17A] 241

The assessee is a statutory authority created under the Karnataka Urban Development Authorities Act, 1987. The registration was denied which was affirmed by the Appellate

Tribunal. On Appeal the Court held that the purpose and intent of creation of the authority was to establish urban areas in Belgaum in a planned manner. The assessee being a statutory authority was under the control of the State Government, which had the power to issue directions to the Authority. The directions were necessary or expedient for carrying out the purposes of the Act and it would be the duty of the assessee to comply with such directions. Even the utilization of funds by the assessee was fully controlled by periodical instructions issued by the Government. The funds standing in the name of the assessee were under the absolute control of the Government as the assessee functioned in a fiduciary capacity. The assessee is a charitable institution entitled to registration under section 12A. Rule 17A have to be complied with.
Belgaum Urban Development Authority v. CIT (2020) 423 ITR 373 / 193 DTR 279 (Karn.)(HC)

242 **S. 12A : Registration – Trust or institution – Registration cannot be refused on the ground that the Trust deed is not having any provision in relation to disbursement of balance funds in the eventuality of the dissolution of Trust. [S. 2(15), 11, 115TD(c), Code of Civil Procedure, S. 91, 92]**
Dismissing the appeal of the revenue the Court held that, the certificate of registration is only an enabling provision to claim exemption. Even if the registration is granted, the exemptions from the provisions of the IT Act in particular S. 11 and 12 is not automatic. It is only when the assessee satisfies the requirement of S. 13, he would be eligible for exemption. Accordingly the registration cannot be refused on the ground that the Trust deed is not having any provision in relation to disbursement of balance funds in the eventuality of the dissolution of Trust.
CIT(E) v. Shri Narsinghji Ka Mandir (2020) 185 DTR 30 / 312 CTR 307 / 274 Taxman 446 (Raj.)(HC)
CIT(E) v. SHRI Agarwal Panchayat (2020) 185 DTR 30 / 312 CTR 307 / 274 Taxman 446 (Raj.)(HC)

243 **S. 12A : Registration – Trust or institution – Objects of the trust are for the advancement of the business of TPA, it would not ipso facto render the trust to be non-charitable – Entitle to registration. [S. 2(15), 11]**
CIT(E) declined the grant of registration on the ground that the assesseee ATPA was aiming at industry for third party administrator (TPA) business and was working for mutual benefit of its members. Tribunal allowed the appeal in favour of assessee and allowed the registration. Dismissing the appeal of the revenue the court held that, the objects of the trust are for the advancement of the business of TPA, it would not ipso facto render the trust to be non-charitable.
CIT v. Association of third party Administration (2020) 186 DTR 129 / 114 Taxman 534 (Delhi) (HC)

244 **S. 12A : Registration – Trust or institution – Amount collected by the assessee as donation from the students was within the permissible limit of 15% – Denial of exemption is held to be not valid. [S. 11, 12AA(3), 13(1)(d)]**
Appeals filed by the revenue the issue involved is whether the amount collected by the assessee as donation from the students was within the permissible limit of 15% or whether the same was done with the profit motive to suggest that the assessee is

running the related educational institute on commercial line. Court followed the order in assesees, own case in ITA No 59 of 2015 dt 11-09 2017 for the assessment years 2010-11 and 2011-12 and involving the same issue. Relevant portion of the order dated 11.09.2017 is extracted hereunder:-

"9. The Tribunal found that the assessee-trust is more than 100 years old. It runs more than 60 educational institutions imparting education to more than 70000 students in various fields. It was granted registration earlier under Section 12A. The Commissioner of Income Tax, however, relied on certain amounts styled as 'donations collected from students'. He held that this was against the assurance to admit them to these educational courses. Collection of such donations or moneys, therefore, attracts the provisions under the Capitation Fee Act. The Tribunal found that there is no merit in this finding of the Commissioner. The assessee pointed out that as against 70 management quota seats in the educational institutions, the assessee collected donation from nine students. The sum of the donation is within the prescribed limit and the Government of Maharashtra has not at all prohibited the receipt of the same. In paragraphs 8.3 and 8.4 of the order of the Tribunal, the details of such students and donations collected from them have been referred. Then, the other objection of the Commissioner was that the assessee is accumulating huge surplus year after year. However, the Tribunal found that this surplus is within the permissible limit of 15% and how that is worked out is apparent from paragraph 8.5 of the Tribunal's order. Thus, the Tribunal found that the accumulation of surplus is within the permissible limit. It cannot be said that the assessee is running educational institution on commercial lines."

Accordingly the appeal of the revenue is dismissed. (ITA Nos.1127 to 1133/PN/2011 dt 19-10-2016) (ITA Nos. 1061 of 2017 /1062 of 2017 /2017 of 2017 /283 of 2018/ 384 of 2018/526 of 2018 /762 of 2018 dt 20-01 2020 (AY.2003-04, 2009-10)

PCIT v. Shikshan Prasarak Mandali (Bom.)(HC) (UR)

S. 12A : Registration – Trust or institution – Charitable purpose – Changes in objects clause – No communication from the commissioner – Tribunal directed the CIT(E) to take into account the amended object which were amended prior to 01.04.2018, examine its genuineness and its compliance with respect to section 2(15) of the Act. [S. 2(15) 11, 12AA, 80G] 245

Tribunal held that the provisions of section 12A(1)(ab) were inserted only because earlier there were no requirement by which the Department could have examined, in case of trust already registered under section 12A if they amended their object with respect to the genuineness of the activities. The circular of the Board states that the provisions are clarificatory in nature. The two letters submitted by the assessee were clearly requests to the Commissioner to take the amended objects on record after proper verification. There was no communication from the office of the Commissioner and therefore, this appeal was filed. In view of these facts, the Commissioner was directed to take into account the amended object which were amended prior to April 1, 2018, examine its genuineness and its compliance with respect to section 2(15). In fact the assessee had gone a step ahead and requested the Department to examine its amended objects with reference to the provision of sections 2(15) and 12A. The assessee was not obliged to do so as per the provision of the Act.

HCL Foundation v. CIT(E) (2020) 81 ITR 7 (SN) (Delhi)(Trib.)

246 **S. 12A : Registration – Trust or institution – Education – Entitled to Registration. [S. 2(15), 12AA]**

Tribunal held that the first aspect of grant of registration under section 12A / 12AA of the Income-tax Act, 1961 is that the object of the assessee should be charitable in nature. The assessee was engaged in imparting education and the objects were of charitable nature and this had been accepted by the High Court. As far as the genuineness of the activities of the assessee was concerned, the assessee had filed on record the audited accounts for different assessment years with the assessment orders for the respective years and no adverse comments had been made against the assessee. Where the activities undertaken by the assessee in the field of education were genuine, the assessee was entitled to registration under section 12A / 12AA. The Commissioner was directed to grant registration to the assessee from the date of the application moved by the assessee.(AY.2001-02)

Wilsonia West End School Society v. CIT (2020) 78 ITR 93 (Delhi) (Trib.)
Wilsonia Degree College Society v. CIT (2020) 78 ITR 93 (Delhi)(Trib.)
Wilsonia College Society v. CIT (2020) 78 ITR 93 (Delhi)(Trib.)

247 **S. 12A : Registration – Trust or institution – Corporate Social Responsibility – Denial of registration is held to be not justified.**

Tribunal held that the Commissioner nowhere in the order had pointed out that the assessee had not been acting in accordance with its objectives or that the activity of the assessee was not genuine vis-a-vis its objects. There was no allegation or observation by the Commissioner about the charitable nature of its objects and activities thereof. Merely because the assessee had been formed by another company for complying with the corporate social responsibility requirements, it could not be denied registration.

Roundglass Foundation v. CIT(E) (2020) 77 ITR 288 (Chd.)(Trib.)

248 **S. 12A : Registration – Trust or institution – Object clause – Registration cannot be refused on the ground that the Trust Deed does not contain "dissolution clause" and not registering with the Registrar of Societies. [S. 2(15), 11, 12AA]**

On reference to third member,the third member held that, the only requirement for granting registration is that the objects of the society should be charitable in nature and activities are genuine (i) A trust may be of a public charitable nature even if the control of the trust property is not vested in the public but is retained by the settlors, (ii) Registration u/s 12A cannot be declined on the ground that the Trust Deed does not contain "dissolution clause". This is totally irrelevant & beyond the scope of enquiry contemplated u/s. 12A. of the Act, (iii) Registration cannot be refused for non furnishing of registration with the Registrar of Societies. Registration with the Registrar of Societies is not a precondition for granting registration u/s 12A. (ITA No.53/ASR/2017, dt. 08.01.2020)

Shri Dhar Sabha Vaishno Devi v. CIT(E) (TM) (Amristar) (Trib.), www.itatonline.org

S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Objects of Trust and activities are in furtherance of objects – Newly formed trust – Registration cannot be refused on the ground that no activities were carried on – Remand of matter for fresh disposal of matter – Order of High Court is affirmed. [S. 2(15), 11(1)(d), 12A, 13] 249

The assessee-trust was formed on May 30, 2008 and applied for registration on July 10, 2008, i. e., within a period of about two months. No activities had been undertaken by the assessee before the application was made. The Commissioner rejected the application on the sole ground that since no activities had been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the trust were genuine. The Appellate Tribunal reversed the orders of the Commissioner. The Department appealed to the High Court which upheld the order of the Tribunal holding that in the case of a newly formed trust even though there was no activities, it was possible to consider whether the trust can be registered under S. 12AA of the Act. On appeal the Supreme Court held that the view of the High Court was correct. (Decision of the Delhi High Court in *DIT v. Foundation of Ophthalmic and Optometry Research Education Centre (2013) 355 ITR 361 (Delhi) (HC) (Delhi)* affirmed. *CIT v. R. S. Bajaj Society (2014) 222 Taxman 111 (All) (HC) approved. Self Employers Service Society v. CIT (2001) 247 ITR 18 ((Ker) (HC)* disapproved.)

DIT(E) v. Foundation of Ophthalmic and Optometry Research Education Centre (2020) 426 ITR 340 / 187 DTR 169 / 313 CTR 369 / 272 Taxman 7 (SC)

Ananda Social and Educational Trust v. CIT (2020)426 ITR 340 / 187 DTR 169 / 313 CTR 369 / 272 Taxman 7 (SC)

S. 12AA : Procedure for registration – Trust or institution – School – Entire expenditure incurred by assessee was for purposes of school – Denial of registration is held to be not justified. [S. 2(15), 11] 250

Dismissing the appeal of the revenue the Court held that the fees received was utilised for the purpose of school accordingly the order of Tribunal granting the registration is affirmed.

CIT(E) v. Rural Education & Women Welfare Society, SAS Nagar (2020) 114 taxmann.com 190 (P & H) (HC)

Editorial: SLP of revenue is dismissed, CIT(E) v. Rural Education & Women Welfare Society, SAS Nagar (2020) 269 Taxman 466 (SC)

S. 12AA : Procedure for registration – Trust or institution – Entitle to registration. [S. 12A] 251

Dismissing the appeal of the revenue the Court held that when the object of the Krishi Upaj Mandi is benevolent, it cannot be said that it is not entitled to registration under section 12A and 12AA of the Income tax Act. Relied on *CIT v. Krishi Upaj Mandi Samiti 2008 (3) MPLJ 315, SLP(C) No.14592/2008* dismissed 10.11.2008 *CIT v. Gujarat Maritime Board (2007) 295 ITR 561(SC)* (AY. 2003-04)

CIT v. Krishi Upaj Mandi Samiti Raheli (2020) 192 DTR 97 / (2021) 318 CTR 221 (MP) (HC)

252 **S. 12AA : Procedure for registration – Trust or institution – Genuineness of Trust is established – No mandate to get registration under MP Public Trust Act, 1951 – Order of Tribunal is affirmed. [MP Public Trust Act 1951]**

Dismissing the appeal of the revenue the Court held that the registration was applied for by the respondent under Section 12AA(1)(b)(i) of the Act and the provisions under Section 12AA(1) of the Act also refers to the "trust or institution" and there is no mandate under Section 12AA of the Act that the application seeking exemption is required to be applied only by a registered Trust or Institution under the local laws i.e. M.P. Public Trust Act, 1951. The learned Tribunal considering the provisions of Section 12AA(1) of the Act has specifically held that for registering the Trust or Institution for the purposes of the said Act, the Principal Commissioner or Commissioner, is required to satisfy itself about the objects of the applicant-Trust or Institution and the genuineness of its activities. Under the said provision, there is no requirement for a Trust to be mandatorily registered as a Public Charitable Trust under the local Act. In the absence of any provision requiring registration as a Public Charitable Trust before applying for registration under Section 12AA(1) of the Act, the findings arrived at by the learned Tribunal cannot be faulted and said to be illegal or perverse in any manner.
CIT v. Maharshi World Peace Trust (2020) 190 DTR 389 / 315 CTR 469 (MP)(HC)

253 **S. 12AA : Procedure for registration – Trust or institution – Amendment in section 12AA applicable with effect from AY 2011-12 – retrospective cancellation of registration of trust with effect from AY 2010-11 is without jurisdiction. [S. 2(15)]**

The DIT(E) held that the assessee is not running an educational institution, it is only giving donation to another trust and the word 'education' has been defined in various decisions to mean conventional type of education given in class rooms and, since the assessee does not run any schools or colleges, they are not in the field of education and that their activity will fall under the category of 'advancement of any other object of general public utility' as used in section 2(15). It was held that Circular No. 1 of 2011 will clearly show that the amendment brought out in Section 12AA is applicable with effect from 1st June, 2010, i.e., from the assessment year 2011-12 and subsequent years. Therefore, the retrospective cancellation of the registration of the assessee is wholly without jurisdiction. The DIT(E) failed to adhere to the instructions issued by the CBDT which is binding on the DIT(E). The recent pandemic has taught very many lessons and one of which is that, mode and method of education cannot be in any manner restricted, but should be given the widest meaning that is possible. (AY. 2011-12)
Thanthi Trust v. DIT(E) (2020) 196 DTR 57 / 121 taxmann.com 119 / (2021) 318 CTR 403 (Mad.) (HC)
Editorial : SLP granted to the revenue, DIT(E) v. Thanthi Trust (2021) 281 taxman 216 (SC)

254 **S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Imparting financial education/awareness to investor in field of investments – Rejection of registration is held to be not valid. [S. 2(15), Companies Act, 1956, S. 25]**

Assessee-company, registered under section 25 of Companies Act, was engaged in imparting financial education/awareness to investor in field of investments. Application for registration was rejected on ground that assessee was imparting services for price so as to earn profit

and there was no element of charity rather it was purely on commercial basis for earning profits. On appeal the Court held that as per the Memorandum of Association of assessee that income and profit of company, whatsoever derived would be applied solely for promotion of its objects as set forth in memorandum. Accordingly merely because assessee earned certain revenue, it could not be said that activities of assessee were not charitable so as to cancel its registration under section 12AA of the Act. (2016-17)
Investor Financial Education Academy v. ITO(E) (2020) 196 DTR 1 / (2021) 276 Taxman 57 / 318 CTR 353 (Mad.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Amendment has not changed law with regard to cancellation of registration – Cancellation of registration is held to be not valid – Order of Tribunal is affirmed. [S. 2(15), 12AA(3)] 255
Dismissing the appeal of the revenue the Court held that it was not in dispute that there was no violation of the two conditions laid down in section 12AA by the assessee. The activities carried on by the assessee were genuine. The Tribunal had examined the materials on record, and agreed with the trust's contentions that the desire on the part of the trust was to acquire land which could be used for setting up an educational institution. The agreement to purchase agricultural land was executed in the name of the managing trustee since the trust should not have even entered into an agreement to purchase agricultural land. Equally, merely because donations were received that would not per se imply that the trust was operating along commercial lines. The Tribunal noted that the trust was running several self finance educational institutions. Collecting fees for such purpose would be part of the normal activities. The Tribunal was right in setting aside the order cancelling registration of the assessee. (AY.2009-10)
CIT v. Gujarat Maritime Board (No. 1) (2020) 428 ITR 152 / (2021) 277 Taxman 376 (Guj.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – At time of granting registration commissioner not required to examine whether income derived by trust spent for charitable purposes or trust is earning profit – Order of Tribunal is affirmed. [S. 260A] 256
Dismissing the appeal of the revenue the Court held that at time of granting registration commissioner not required to examine whether income derived by trust spent for charitable purposes or trust is earning profit. Order of Tribunal is affirmed.
CIT v. Divine Shiksha Samiti (2020) 428 ITR 552 / 188 DTR 346/ 316 CTR 385 / (2021) 276 Taxman 183 (MP)(HC)

S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Amendment has not changed the law – Activities carried on by the assessee were genuine – Cancellation of registration is held to be not valid – Entitle to exemption. [S. 2(15), 11, 12, 13(8), 260A] 257
Dismissing the appeal of the revenue the Court held that, the Tribunal had examined the materials on record, the agreement to purchase agricultural land was executed in the name of the managing trustee since the trust should not have even entered into an agreement to purchase agricultural land. Equally, merely because donations were

received that would not per se imply that the trust was operating along commercial lines. The Tribunal noted that the trust was running several self finance educational institutions. Collecting fees for such purpose would be part of the normal activities. The Tribunal was right in setting aside the order cancelling registration of the assessee-institution. Denial of exemption is held to be not justified. (TA No. 408 of 2012 dt. 17-2-2020) (AY.2009-10) (TA No. 18 of 2020 dt 17-2-2020)
CIT v. Gujarat Maritime Board (No. 1) (2020) 428 ITR 152 / (2021) 277 Taxman 376 (Guj.) (HC)
CIT(E) v. Gujarat Maritime Board (No.2) (2020) 428 ITR 175 (Guj.)(HC)

258 **S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Trust would be hit by proviso to Section 2(15) cannot be the ground for cancellation of registration. [S. 2(15), 12AA(3)]**
Dismissing the appeal of the revenue the Court held that the view that the assessee was directly hit by the proviso to S. 2(15) of the Act may lead to denial of exemption to the assessee in the assessment proceeding for the relevant assessment year but could not be a ground for cancellation of registration under S. 12AA(3) of the Act. The competent authority must be satisfied that the activities of the trust are not genuine or that the activities are not being carried out in accordance with the objects of the trust or the institution. Such satisfaction must be recorded as a matter of fact on the basis of specific materials on record. The cancellation of registration was not valid.(AY.2009-10)
CIT(E) v. Mumbai Metropolitan Region Development Authority (2020) 425 ITR 166 / 193 DTR 347 / 317 CTR 518 / 270 Taxman 21 (Bom.)(HC)

259 **S. 12AA : Procedure for registration – Trust or institution – Activity of import and distribution of raw material – Matter remanded to the Appellate Tribunal. [S. 2(15), 11, 254(1)]**
The assessee was a public charitable trust registered under S. 12AA of the Act. The assessee imported and distributed wattle extracts (which constituted one of the cleaning agents for processing raw hides). The AO denied the exemption and also recommended for cancellation of the registration of the assessee and assessed the assessee as an association of persons. The CIT(A) allowed the appeals filed by the assessee. The Tribunal held that the trading activities engaged in by the assessee were not mentioned in its objectives, that its activities of import of raw material from abroad and distribution of such raw material amounted to commercial transaction and a trading activity which generated profits and denied the exemption under S. 11 to the assessee. On appeal the Court held that the denial of benefits of tax exemption under S. 11 on the ground that the activities of import and distribution of wattle extracts was commercial in nature within the scope of the provisos to S. 2(15) though the assessee was registered under S. 12A(a) required reconsideration and examination in greater depth by the Tribunal. The findings of the Tribunal were insufficient to reverse the order of the CIT(A). It was required to take note of the legal position which prevailed at the relevant time. The order passed by the Tribunal was set aside and the matter was to be remanded to it for fresh consideration. Matter remanded.(AY.2009-10 to 2011-12)
Tamil Nadu Leather Tanners Exporters Importers Association v. Dy. DIT(E) (2020) 425 ITR 63 (Mad.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Application not disposed of within six months – Registration cannot be deemed to be granted – interpretation of taxing statutes – Literal Interpretation – Meaning of deemed. [S. 12AA(2)] 260

Court held that the delay on the part of the Commissioner to consider an application can be remedied by recourse to the jurisdiction under article 226 of the Constitution of India. S. 12AA(2) of the Act does not provide for a legal fiction. Parliament has carefully and advisably not provided for a deeming fiction to the effect that an application for registration would be deemed to have been granted, if it is not disposed of within six months. The non-disposal of an application for registration by granting or refusing registration before the expiry of six months as provided under S. 12AA(2) of the Act would not result in a deemed grant of registration.

CIT(E) v. Addor Foundation (2020) 425 ITR 516 / 188 DTR 92 / 315 CTR 101 / 273 Taxman 455 (Guj.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Association of third party administrators – Dominant purpose of Institution Charitable – Ancillary purposes not charitable – Entitled to registration. [S. (2(15)] 261

Dismissing the appeal of the revenue the Court held that merely because the objects of the trust were for the advancement of the business of third party administrators, it would not ipso facto render the trust non-charitable. The objects of the trust were not exclusively for the promotion of the interests of the third party administrator members. The objects were to provide benefit to the general public in the field of insurance and health facilities. In the course of carrying out the main activities of the trust, the fact that benefits accrued to the third party administrator members could not, by itself, deny the institution the benefit of being a charitable organisation. The assessee-institution was entitled to registration under S. 12AA. (Referred, *Addl CIT v. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1(SC), DIT v. Bharat Diamond Bourse(2003) 259 ITR 280 (SC)*

CIT(E) v. Association of third party Administrators (2020) 426 ITR 108 / 313 CTR 2 / 269 Taxman 579 (Delhi)(HC)

S. 12AA : Procedure for registration – Trust or institution – Order of Tribunal directing to grant registration is up held – If objects later found not genuine authority has option to cancel registration. [S. 2(15) 11, 12, 12A, Trust Act 1882, Registration Act, 1908] 262

In an appeal filed by the assessee-trust the Tribunal proceeded on the basis that the activities of the assessee-trust were at the commencement stage and that the registration of the trust under section 12AA was to be made after the Commissioner had satisfied himself that the objects of the assessee were charitable and allowed the appeal filed by the assessee and remanded the matter to the CIT(A). On appeal dismissing the appeal the Court held that the Tribunal had appreciated the law correctly. When the statute referred to the objects of the trust and the genuineness of its activities were to be investigated by the Commissioner, the words had to be given a proper and purposive construction. The Commissioner had to see that the constitution of the trust, its objects, its trustees and proposed activities were prima facie genuine. On that basis he had to

consider registering the trust. If the activities were found not to be genuine at a later point of time, he had the option of cancelling its registration under section 12AA(3). Referred *DIT v. Foundation of Ophthalmic and Optometry Research Education Centre [2013] 355 ITR 361 (Delhi) (HC), DIT(E) v. Meenakshi Amma Endowment Trust [2013] 354 ITR 219 (Karn)(HC), Hardayal Charitable and Educational Trust v. CIT [2013] 355 ITR 534 (All) (HC), Self employers service society v. CIT [2001] 247 ITR 18 (Ker) (HC) and Sree anjaneya medical trust v. CIT [2016] 382 ITR 399 (Ker) (HC)*
PCIT(E) v. Shri Nathji Goverdhan Nathji Charitable Trust (2020) 423 ITR 69 / 187 DTR 425 / 313 CTR 773 / 274 Taxman 498 (Cal.)(HC)

263 **S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Cancellation of registration is held to be not valid – Orders made by the CIT and ITAT are quashed and the registration held by the GIDC is ordered to be revived. [S. 2(15) 11, 12A]**
The appellant is a Statutory Corporation established under the Goa, Daman and Diu Industrial Development Corporation Act, 1965 (GIDC Act) with the object of securing orderly establishment in industrial areas and industrial estates and industries so that it results in the rapid and orderly establishment, growth and development of industries in Goa. The CIT, withdrew the registration granted to the appellant by observing that it is crystal clear that the activities of the appellant are interconnected and interwoven with commerce or business based on the proviso to S. 2(15) of the Act. Order of the CIT is affirmed by the Tribunal. On appeal High court held that there are no categorical findings that the activities of GIDC are not genuine or are not in accordance with the objects of the trust or the institution. Merely because, by reference to the amended provisions in S. 2(15), it may be possible to contend that the activities of GIDC are covered under the proviso, that, by itself, does not render the activities of GIDC as non-genuine activities so as to entitle the CIT to exercise powers under S. 12AA(3) of the said Act. Accordingly the orders made by the CIT and ITAT are quashed and the registration held by the GIDC is ordered to be revived.
Goa Industrial Development Corporation v. CIT (2020) 421 ITR 676 / 187 DTR 175 / 313 CTR 589 / 271 Taxman 58 (Bom.) (HC)

264 **S.12AA : Procedure for registration – Trust or institution – Objectives of trust are not under question – Non filing of return – Not a ground for cancelling registration. [S.12A, 80G (5)(vi), 139(4A)]**
It was held that non filling of return cannot be a ground for rejecting the registration u/s 12AA especially if the objects of the trust are not questionable. Relevant documents to be provided to prove genuineness of objective of the Trust. Matter remanded.
Kai Shri Mahadevrao Maykude Dnyanvikas Prabhodhini Trust v. CIT (E) (2020) 194 DTR 353 / 208 TTJ 296 (Pune) (Trib.)

265 **S. 12AA : Procedure for registration – Trust or institution – Refusal of registration was set aside – Matter remanded to CIT(E) to decide accordance with law. [S. 2(15), 12A]**
Allowing the appeal of the assessee the Tribunal held that, the assessee society is an existing society registered under the Society registration Act since 01.10.2015 and

thereafter it has moved an application before the ld. CIT(E) on 15.01.2019 seeking registration u/s 12AA of the Act. Therefore, being an existing and running society at the time of moving an application, the ld. CIT(E) was well within his jurisdiction to examine not just its objects of the assessee society but also the fact that the activities of the assessee-society are genuine and are in consonance with the object for which the society has been established. However facts regarding carrying out main activities as so claimed by the assessee society are not emerging from the order of the ld. CIT(E) and thus not borne out of the records though the assessee society has submitted some photographs which would again need verification. Therefore, in the interest of justice and fair play, the matter remanded to the file of CIT(E) to decide in accordance with law.
Poojya Sindhi Panchayat Kanwar Nagar (Regd) v. CIT(E) (2020) 187 DTR 114 / 203 TTJ 235 (Jaipur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Charitable objects – Registration cannot be denied on ground that no activities had been carried out by Trust. [S. 2(15), 11, 12A] 266
Allowing the appeal the Tribunal held that when the object of the Trust is charitable, registration cannot be denied on the ground that no activities had been carried out by Trust.
South India Club v. CIT (2020) 194 DTR 320 / 207 TTJ 844 / (2021) 187 ITD 492 (Delhi) (Trib.)

S. 12AA : Procedure for registration – Trust or institution – Running Educational Institutions imparting engineering courses – Recognised by All India Council for technical Education and Establishing Polytechnic College – Genuineness established – Eligible for grant of Registration – Grant of approval u/s 80G only after satisfying conditions. [S. 2(15), 80G] 267
The Commissioner denied registration to the assessee under section 12AA of the Income-tax Act, 1961 and approval under section 80G. On appeal the Tribunal held that the Commissioner misdirected himself in wrongly assuming that the assessee had collected capitation fees from students for admission, which act of the assessee according to him was akin to sale of seats. When this was denied by the assessee, he had not conducted a preliminary enquiry on this issue. Since the assessee had filed an application for registration under section 12AA on August 17, 2012, the provisions of sections 11 and 12 shall apply in relation to the income of such assessee from the AY. 2013-14. If the Commissioner was satisfied that the assessee satisfied the conditions stipulated under section 80G(5) read with rule 11AA of the Income-tax Rules, 1962, the assessee was to be granted approval under section 80G from the financial year 2012-13, i.e., AY. 2013-14.
Kalyan Educational Society v. CIT (2020) 82 ITR 1 / 194 DTR 49 / 207 TTJ 505 (Kol.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Failure to deduct tax at source – Salary of staff partly in cash partly by cheque – Denial of registration is held to be not valid. [S. 12A] 268
Assessee was engaged in activity of education. Assessee's application for registration under section 12A was rejected by CIT(E) on grounds that assessee had paid salary

partly through Bank and partly in cash, but had not deducted tax at source in case of any of employees and that application filed by assessee for registration under section 12A read with section 12AA was a change of mind because for three preceding years before that, assessee had filed return as a purely business entity. Tribunal held that reasons mentioned by CIT(E) in his order rejecting assessee's application for registration under section 12A read with section 12AA, were totally irrelevant considerations. Accordingly the CIT(E) was to be directed to grant registration.
Nav Bharat Shiksha Samiti v. CIT (2020) 185 ITD 591 / 187 DTR 1 / 204 TTJ 1 (Delhi) (Trib.)

269 **S. 12AA : Procedure for registration – Trust or institution – Salary, vehicle rent to specified persons – Matter remanded for reconsideration. [S. 13(1)(c), 13(3)]**
Assessee filed an application under section 12AA seeking registration. CIT(E) held that the assessee-society had made payments to specified persons covered under section 13(3) on account of salary, house rent, etc., and thus, income of society had been divested for benefit of interested panties and thereby proviso to section 13(l)(c) was violated and application was rejected. On appeal the Tribunal held that while considering application for registration under section 12AA, to make enquiries to satisfy himself regarding genuineness of activity of trust, i.e., whether activity so carried out was as per objective of trust and such activity was in conformity with provision of law. Since there was no material on record to suggest that CIT(E) made inquiry regarding said payments, matter be restored to file of CIT(E) for reconsideration
Yash Shikshan Sansthan Evam Gramin Vikas Samiti v. CIT (2020) 185 ITD 340 (Indore) (Trib.)

270 **S. 12AA : Procedure for registration – Trust or institution – Engaged in safeguarding rights, privileges and interest of advocates – Purpose being advancement of general public utility – Entitled for registration and exemption under section 80G of the Act. [S. 2(15), 10(23), 80G]**
Tribunal held that the Bar Council of India was engaged in safeguarding rights, privileges and interest of advocates, its dominating purpose was advancement of general public utility within meaning of section 2(15) of the Act and duly approved/notified institution for purpose of section 10(23) of the Act. Accordingly entitled for registration and exemption under section 80G of the Act.
Bar Council of Delhi v. CIT(E) (2020) 84 ITR 181 / 183 ITD 852 (Delhi)(Trib.)

271 **S. 12AA : Procedure for registration – Trust or institution – Voluntary contributions received by assessee – society for a specific purpose cannot be regarded as income. [S. 2(24)(iia)]**
Dismissing the appeal of the revenue the Tribunal held that, voluntary contributions received by assessee-society for a specific purpose cannot be regarded as income under section 2(24)(iia), hence, could not be brought to tax even in case of trust not registered under section 12AA of the Act. (AY. 2014-15, 2016-17)
ITO(E) v. Hosanna Ministries (2020) 185 ITD 144 (Vishakha) (Trib.)

S. 12AA : Procedure for registration – Trust or institution – Visakhapatnam Metro Region Development Authority – Cancellation of registration is held to be not justified. [S. 2(15), Andhra Pradesh Urban Areas (Development) Act, 1975, S. 19] 272

CIT(E) cancelled the registration granted to assessee on ground that assessee was engaged in commercial activity, acted as an agent of Government of Andhra Pradesh, sold lands indiscriminately belonging to State Government, and acted like realtor and lastly for reason that being engaged in commercial activity, it was hit by amendment to section 2(15).On appeal the Tribunal held that the assessee was a Government institution and department did not place any material to show that assessee was engaged in commercial activity,further, revenue also did not place any evidence or material to show that assessee was barred from acting as an agent or in assisting sale of Government's lands. Accordingly the registration was restored.

Visakhapatnam Metropolitan Region Development Authority v. CIT(OSD) (2020) 183 ITD 121 (Vishakha)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Advocate welfare fund trustee committee – Charitable in nature – Entitle to registration. [S. 2(15), 80G] 273

Assessee Advocate welfare fund trustee committee established under the Bar Council of Delhi being engaged in safeguarding rights, privileges and interest of advocates, its dominant purpose is advancement of general public utility within the meaning of section 2(15) of the Act and entitle to registration and exemption u/s 80G of the Act.

Advocate Welfare Fund Trustee Committee v. CIT (2020) 183 ITD 407 (Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – No specific findings on genuineness of activities carried on by Trust – Matter remanded to Commissioner for re adjudication. [S. 2(15), 11] 274

Tribunal held that the Commissioner has not given a specific findings on genuineness of activities carried on by Trust. Matter remanded to Commissioner for re adjudication for and to pass a speaking order.

Shree Govindanand Shreeram Mandir v. CIT(E) (2020) 82 ITR 3 (SN) (Pune)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Delay of 158 days in filing the appeal was condoned – Documents which was not produced before the CIT(E) was produced before the Appellate Tribunal – Matter remanded. [S. 12AA, 80G, 253, 254(1)] 275

Tribunal condoned the delay of 158 days in filing the appeal before the Appellate Tribunal due to illness of the managing Trustee. Tribunal also held that the assessee had produced all the documents, which were called for by the Commissioner (E). In view of the documents having been produced before the Tribunal as additional evidence, it was appropriate to set aside the order of the Commissioner (Exemptions) and restore the issue of registration under section 12AA and exemption under section 80G, back to the file of the Commissioner (Exemptions) for decision afresh with the direction to the assessee to produce all the documents required for examination of conditions for granting of registration under section 12AA and exemption under section 80G of the Act.

Delhi Agroha Vikas Trust v. CIT(E) (2020)83 ITR 26 (SN) (Delhi) (Trib.)

276 **S. 12AA : Procedure for registration – Trust or institution – Education – Yoga – Entitle to registration. [S. 2(15), 11]**

Tribunal held that in terms of the amendment in section 2(15) of the Income-tax Act, 1961 yoga had also been included as a part of education which was also one of the objects of the assessee. The basic aims and objects of the assessee were to provide educational, intellectual, physical and spiritual development of an individual, family, community and the nation by initiating, undertaking and supporting various projects and programmes, which fell within the definition of education as prescribed under section 2(15). Hence the rejection was not tenable. Tribunal also held that where the assessee was at the initial stage, the question of genuineness did not arise. The assessee had to make appropriate amendment of clauses 10 and 11 of the memorandum of association of the assessee and submit the copy of the memorandum before the Commissioner in due course of time during the adjudication of the application of the assessee. The assessee shall also submit all relevant and desirable financial account and bank statements if any, and other documents relating to the carrying out the activities, before the Commissioner.(AY.2019-20)

Sanjhi Sikhiya Foundation v. CIT(E) (2020) 78 ITR 31(SN) (Amritsar)(Trib.)

277 **S. 12AA : Procedure for registration – Trust or institution – Registered address – Matter remanded. [S. 80G]**

Tribunal held, that the assessee submitted that its registered address was mentioned in the application and the assessee's address on its letterhead was the same and there could not be any reason for the assessee to be non-existent. An opportunity was to be given to the assessee to substantiate the case before the Commissioner with evidence and details. The direction also applicable to recognition under section 80G of the Act. (AY.2019-20)

Awas Nivas Foundation v. ITO (2020)79 ITR 26 (SN)(Bang) (Trib.)

278 **S. 12AA : Procedure for registration – Trust or institution – Commissioner is directed to decide afresh on verification of objects and genuineness of activities in accordance with Law in light of documents which assessee is required to submit before him. [S.2(15), 11]**

The Tribunal held that the assessee was required to provide all details regarding constitution of its members, funds received and utilised towards charitable activities, since inception of the society. Since all the details had not been examined by the Commissioner, the order of the Commissioner was set aside with the direction to decide afresh on verification of the objects and the genuineness of the activities in accordance with the law in the light of the documents which the assessee is required to submit before him.(AY.2017-18)

Mariam Education Society v. CIT(E) (2020) 80 ITR 380 (Delhi) (Trib.)

279 **S. 12AA : Procedure for registration – Trust or institution – Charitable purpose – Profit motive – Providing asylum/shelter to cows and maintaining gaushalas and famine relief centres to provide proper treatment and fodder to needy stray cows – Cancellation of registration is held to be not valid. [S. 2(15), 11, 12A]**

Assessee trust was engaged in main aim and object of providing an asylum/shelter to old, maimed, sick and stray cows and maintaining gaushalas and famine relief centres

with object to provide proper treatment and fodder to needy stray cows. It was also engaged in activities to educate and to hold camps to impart training for preparation of medicines produced from cow products and to educate milkmen in order to improve quality of milk and thereby working for their upliftment which were very well covered within ambit of relief to poor and education. CIT(E) withdrew registration of assessee granted under S. 12A on ground that assessee was earning revenue from activities of sale of milk, milk product, cattle feed etc. which did not come under object of assessee-trust and same was in nature of trade, commerce or business as per S. 2(15) of the Act. On appeal the Appellate Tribunal held that sole object and purpose to sell of milk, milk products and cattle feed was to provide financial help to persons in occupation of animal husbandry rearing cows and production of milk. There was no allegation that assessee was carrying out these sale activities of with sole motive of earning profit. On facts, impugned withdrawal of registration under S. 12AA was unjustified and same was to be allowed. Accordingly the assessee-trust was entitled for benefit under S. 11 and 12 to extent income was applied for charitable purposes. (AY. 2009-10)
Rajasthan Gau Seva Sangh v. CIT (2020) 181 ITD 660 (Jaipur) (Trib.)

S. 12AA : Procedure for registration – Trust or institution – Registration granted is required to be continued till nature of its activities change – Registration cannot be cancelled on mere fact that the trust earned commercial lease rent exceeding Rs. 25 lakhs. [S. 2(15), 12A] 280

Tribunal held that once CIT(E) grants registration under S. 12A, then, same is required to be continued till there is change in nature of activities undertaken by assessee-association and the procedure provided in S. 12AA (3) and (4) is to be followed for cancellation of registration. Tribunal also held that income earned by assessee-association from commercial lease rent exceeding Rs. 25 lakhs could not be reason for denying continuation of registration already granted. (AY. 2009-10)
Orissa Olympic Association. v. CIT (2020) 77 ITR 407 / 180 ITD 692 / 190 DTR 167 / 205 TTJ 790 (Cuttack)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Contract with unrelated party for achieving purpose of charitable object – Denial of exemption is not justified – Withdrawal of registration is held to be not valid – Registration granted earlier under S. 12A is restored. [S. 2(15) 11, 12A, 13(3)] 281

The assessee-society was engaged in providing medical relief through running/ operating of hospital and medical research. The society was granted registration under S.12A of the Act. DIT (E) had withdrawn the registration granted earlier under S. 12A on the ground that the assessee had not been operating as a charitable institution as it had allowed its property/hospital to be taken over by Max group by creating various financial and legal obligations and had virtually handed over the activity of the hospital to Max group which were corporate bodies established with a clear intention of profit motive which, according to him, was against the basic principles of charitable organizations and further, it was held that the assessee-trust did not fulfil the minimum notified criteria of providing 25 per cent of OPD and 10 per cent of beds in IPD as free treatment to the economically weaker section. This,

according to the DIT(E) is against the basic principles of the charitable organizations. He, therefore, held that the assessee was not entitled to the exemption under S. 11 as its activities could not be classified as charitable activities since inception. Therefore, the registration granted under S. 12A was cancelled by him since inception. The Tribunal upheld the action of the DIT(E) in cancelling the registration of the assessee granted under S. 12A since its inception. The High Court restored the issue to the file of the Tribunal for fresh decision in accordance with law. Tribunal held that there is nothing on record to suggest that the assessee has refused admission to any person of the economically weaker section nor the Government has taken any action against the assessee for such violation. The argument of the assessee that the statistics have always been displayed near the reception giving the list of patients and such copy was also always filed with the Director of Health Services, Government of Delhi and neither any patient has made any complaint nor the Government has taken any action could not be controverted by the revenue. Since there is no allegation by the revenue that the activities of the trust/society are not genuine or are not being carried out in accordance with the objects of the trust and since the assessee has demonstrated clearly that the management and control of the hospital was always with the assessee society and the assessee society has not virtually handed over the management of the hospital to the Max group of concerns which are corporate bodies established with the clear intention of profit motive and since the revenue also failed to bring on record any material to suggest that the assessee-trust has refused any patient from the economically weaker section of the society in violation of the guidelines laid down by the Delhi High Court, there was no justification on the part of the DIT(E) in withdrawing the registration granted under S. 12AA with retrospective effect. Accordingly the order of the DIT(E) is set aside and the registration granted earlier under S. 12A is restored.
Devki Devi Foundation v. DIT (2020) 180 ITD 417 (Delhi)(Trib.)

282 **S. 12AA : Procedure for registration – Trust or institution – Education – Coaching to IBBI aspirant students for examination preparation – Matter remanded for adjudication. [S. 2(15), 11]**
Assessee-company is a Registered Valuers organisation. It conducted education courses in valuation. CIT(E) rejected assessee's application for registration by holding that assessee-company did not provide any formal school education and was merely engaged in providing coaching to aspirant students for IBBI examination preparation. On appeal the Tribunal held that CIT(E) had not examined objective of assessee as well as its activities in light of decision of Supreme Court in *Sole Trustee, Loka Shikshana Trust v. CIT (1975) 101 ITR 234 (SC)* nor did he verify whether education imparted by assessee was in character of formal schooling. He had also not verified examination conducted or degree/certificate awarded by assessee. Accordingly the order of CIT(E) was to be set aside and matter was to be remitted back for fresh decision.
IOV Registered Valuers Foundation v. CIT (2020) 180 ITD 1 (Delhi)(Trib.)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Only upto the violation of the provisions – Exemption cannot be denied [S. 11, 12, 13(3), 164 (2)] 283
I it was held that there was violation of Section 13, and then only the amount of benefit given to the persons specified under Section 13(3) out of the income of the trust was chargeable to tax at maximum marginal rate. The action of AO in taxing the surplus at maximum marginal rate without considering the provisions of Section 11 & 12 was bad in law. (AY. 2013-14, 2014-15, 2015-16)
DCIT (E) v. Central Academy Jodhpur Education Society (2020) 208 TTJ 545 (Jaipur)(Trib.)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Benefit to Trustees – Interest at the rate of 10% was paid to trustees on unsecured loan from Trustees – Exemption cannot be denied. [S. 11, 12A, 80G] 284
Tribunal held that admittedly the assessee had derived interest on its fixed deposits with banks at 7.5 per cent. to 7.75 per cent. and in turn paid interest to its trustee at 10 per cent. and at 14.75 per cent. to the bank in the previous year. The assessee had 17 fixed deposit accounts with banks out of which the first one was in the nature of margin money security in favour of the Dental Council of India whereas accounts 2 to 14 thereof were fund securities, more in the names of affiliating or regulatory bodies than fixed deposit investments per se. It was very much justifiable on the assessee's part to maintain these fixed deposits for the purpose of carrying out the trust's medical education activities. The Department had itself accepted interest paid to the lender banks at 14.75 per cent. in the case of secured loans as against unsecured loans availed of from the trustee. Thus the interest rate of 10 per cent. was not excessive so as to attract the disqualification. The assessing authority had erred in disallowing assessee's interest payment of Rs. 1,13,41,361 and the enhancement by the Commissioner (Appeals) was also not sustainable. (AY. 2015-16)
Shaheed Kartar Singh Saraba Charitable Trust (Regd.) v. Dy. CIT(E) (2020) 84 ITR 27 (SN) (Chd.) (Trib.)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Excess amount charged refunded – Neither a case of violation or diversion of fund – Entitle to exemption – Application of income – Normal commercial principle should be applied. [S. 11, 12A, 13(1)(c), 13(2)(g), 144, 145] 285
Tribunal held that the excess amount refunded to SICL did not amount to diversion of funds as defined under section 13(2)(g). The assessee had refunded the excess amount collected from the party by way of anonymous decision of the board of directors of the trust further supported by proof of payment. Therefore, the assessee had not violated the provisions of section 13(1)(c) and 13(2)(g) read with section 13(3). Entitled to exemption. Tribunal held that the action of the Assessing Officer in rejecting the books of account without finding any defects in the accounts could not be upheld and the AO was directed to compute the income as per the method of account followed by the assessee. (AY.2008-09, 2011-12, 2012-13)
Dy. CIT(E) v. Cargo Handling Private Workers Pool Trust (2020) 79 ITR 38 (SN) (Vishakha) (Trib.)

286 **S. 14A : Disallowance of expenditure – Exempt income – Provision is not applicable to prior to assessment year 2007-08.**
Dismissing the appeal of the revenue the Court held that provisions of section 14A would be applicable from assessment year 2007-08 and not for earlier assessment years. Followed *CIT v. Essar Tele holdings Ltd. (2018) 401 ITR 445 (SC)*
CIT v. State Bank of Travancore (2020) 114 taxmann.com 555 (Ker.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. State Bank of Travancore (2020) 269 Taxman 571 (SC)

287 **S. 14A : Disallowance of expenditure – Exempt income – Investment was made from interest free funds – No disallowance could be made. [R. 8D]**
Dismissing the appeal of the revenue the Court held that Tribunal is right in holding that no investment is made by the assessee in shares and securities (Mutual funds) out of interest bearing funds relying on the decision of Hon'ble High Court in the case of *CIT v. Reliance Utilities & Power Ltd. (2009)313 ITR 340 (SC)* (AY. 2008-09)
CIT v. Weizmann Ltd. (2020) 115 taxmann.com 246 (Bom.)(HC)
Editorial : SLP of revenue is dismissed as withdrawn as due to low tax effect, CIT v. Weizmann Ltd (2020) 273 Taxman 15 (SC)

288 **S. 14A : Disallowance of expenditure – Exempt income – Enhancement by the Assessing Officer – Considering the facts disallowance is held to be justified. [R. 8D]**
Assessee filed its return declaring certain taxable income. Assessee had held investment in shares and mutual funds and earned dividend income therefrom. However, only a small amount was offered for disallowance in respect of earning tax free income. In response to notice issued by Assessing Officer, assessee submitted its books of account and other documentary evidence. Assessing Officer was prima facie not satisfied with working provided by assessee in arriving at amount offered for disallowance He thus having invoked provisions of Rule 8D of 1962 Rules, read with section 14A, enhanced amount of disallowance for earning exempt income. Tribunal confirmed said order of disallowance. On appeal the Court held that taking note of volume of investments and amount of exempt income earned thereon, Assessing Officer came to conclusion that a part of managerial remuneration and directors' remuneration should be attributed towards dividend earning activity of assessee. Accordingly order of Tribunal is affirmed (AY. 2009-10)
FLSmidth (P) Ltd. v. Dy.CIT (2020) 273 Taxman 441 (Mad.)(HC)

289 **S. 14A : Disallowance of expenditure – Exempt income – Insurance Company – Provision not applicable – Ground not raised before the Tribunal cannot be argued before the High Court. [S. 44, 260A]**
Tribunal dismissed an appeal filed by revenue holding that applicability of section 14A was excluded in relation to computation of income of assessee, an insurance company. Revenue filed an appeal claiming Tribunal should have remanded the said matter to Assessing Officer for computation of income of assessee in terms of first schedule.

Dismissing the appeal the Court held that since revenue confined its challenge only in respect of applicability of section 14A and its claim was not even a ground urged before Tribunal, there was no fault in order of Tribunal. (AY. 2011-12)
PCIT v. Oriental Insurance Co. Ltd. (2020) 273 Taxman 527 (Delhi)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction is mandatory – Disallowance cannot exceed exempt income. [R. 8D] 290
Allowing the appeal of the revenue the Court held that disallowance under rule 8D read with section 14A can never exceed exempted income. Court also held that recording of satisfaction is mandatory. (AY. 2009-10 to 2012-13)
Marg Ltd. v. CIT (2020) 275 Taxman 502 (Mad.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Failure to prove that no expenditure was incurred – Disallowance of expenditure is held to be justified. [R. 8D] 291
Dismissing the appeal since assessee could not substantiate fact that he did not incur any expenditure for earning said income before lower authorities and it was found that there was substantial increase in investment and value of assets of assessee, Assessing Officer was justified in making disallowance under section. (AY. 2010-11)
Polaris Consulting and Services Ltd. v. PCIT (2020) 275 Taxman 121 (Mad.)(HC)

S.14A : Disallowance of expenditure – Exempt income – Interest free funds more than investment – No disallowance can be made. [R. 8D] 292
Dismissing the appeal of the revenue the Court held, interest free funds more than investment, no disallowance can be made (AY. 2005-06 to 2011-12).
PCIT v. Gujrat Fluorochemicals Ltd. (2020) 275 Taxman 366 (Guj.)(HC)

S.14A : Disallowance of expenditure – Exempt income – Not earned any exempt income during the relevant year – No disallowance can be made. [R. 8D] 293
Dismissing the appeal of the revenue the Court held that when the assessee had not earned any exempt income during the assessment year under consideration, nor it had claimed any expenditure against any tax free income. Thus, the twin pre-conditions for invoking the provisions of Section 14A read with Rule 8D of the Rules i.e. earning of exempt income and claiming expenditure to earn the same were absent.(A Y.2010-11)
PCIT v. Wockhardt Hospitals Ltd. (2020) 192 DTR 289 / 316 CTR 157 (Bom.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Non recording of satisfaction – No disallowance can be made. [R. 8D] 294
Dismissing the appeal of the revenue the Court held that for non-recording of satisfaction no disallowance can be made, hence adjustment to book profit does not arise. *PCIT v. Gujarat State Fertilizer and Chemical Ltd [(2019) 416 ITR 13 (Guj) (HC)* (AY. 2012-13)
PCIT v. CIMS Hospital P. Ltd. (2020) 193 DTR 275 / (2021) 318 CTR 349 (Guj.)(HC)

295 **S. 14A : Disallowance of expenditure – Exempt income – In the absence of dividend income – No disallowance can be made. [R. 8D]**
Dismissing the appeal of the revenue the Court held that in the absence of dividend income no disallowance can be made. (AY. 2012-2013)
CIT v. Shri Parameshwari Spinning Mills P. Ltd. (2020) 317 CTR 898 (Pat.)(HC)

296 **S. 14A : Disallowance of expenditure – Exempt income – Tribunal justified in deleting the addition made by the Assessing Office. [S.10(38), R.8D]**
Dismissing the appeal of the revenue the Court held that the disallowance made by the assessee is reasonable hence the order of the Tribunal is affirmed. Relied on *CIT v. Calcutta Knitewears (2014) 6 SCC 444*. Referred *ITO v. Daga Capital Management Capital Pvt Ltd (2009) 117 ITD 169 (SB) (Trib.)* (AY. 2006-07)
CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 1) (2020) 429 ITR 207 / 276 Taxman 90 / 196 DTR 377 / (2021) 318 CTR 38 (Bom.) (HC)
Editorial : Notice issued in SLP filed against order of High Court, CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2021) 281 Taxman 297 (SC)

297 **S. 14A : Disallowance of expenditure – Exempt income – Onus to establish such proximity on department – Assessing Officer must give a clear finding with reference to the assessee's accounts how expenditure related to exempt income. [S. 10(35), R.8D]**
Dismissing the appeal of the revenue the Court held that Assessing Officer must give a clear finding with reference to the assessee's accounts how expenditure related to exempt income, there must be a proximate relationship between the expenditure and the exempt income and only then would a disallowance have to be effected. (AY.2009-10)
CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 2) (2020) 429 ITR 358 / (2021) 277 Taxman 6 (Bom.)(HC)

298 **S. 14A : Disallowance of expenditure – Exempt income – Failure by Assessing Officer to record dissatisfaction – No disallowance could be made. [R. 8D]**
Dismissing the appeal of the revenue the Court held that the Tribunal had rightly concluded that the Assessing Officer had not recorded the satisfaction with regard to the claim of the assessee for disallowance under section 14A read with rule 8D(2). Section 14A was not applicable.(AY. 2009-2010)
CIT v. Brigade Enterprises Ltd. (No. 2) (2020) 429 ITR 615 / (2021) 318 CTR 325 / 197 DTR 319 / 278 Taxman 81 (Karn.)(HC)

299 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income earned. [R. 8D]**
Dismissing the appeal of the revenue the Court held that Disallowance cannot exceed exempt income earned. Followed, *Nirved Traders Pvt. Ltd. v. Dy.CIT (2020) 421 ITR 142 (Bom.)(HC).* (AY.2002-03)
PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)
PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 (2021) 277 Taxman 543 (Bom.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Non-taxable income. [R. 8D] 300
Court held that the Tribunal was right in holding that the provisions of section 14A read with rule 8D would have no applicability if there was no exempt income received. (AY.2011-12)
CIT v. Celebrity Fashion Ltd. (2020) 428 ITR 470 (Mad.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – No non-taxable income – No disallowance could be made. [R. 8D] 301
Court held that the Tribunal was right in holding that the provisions of section 14A read with rule 8D would have no applicability if there was no exempt income received. (AY.2011-12)
CIT v. Celebrity Fashion Ltd. (2020) 428 ITR 470 (Mad.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Amendment is not retrospective – Not applicable to Assessment year prior to AY 2007-08. [S. 10(33), 254(1)] 302
Court held that that in the absence of any mechanism in the AY. 2002-03 to compute the disallowance for expenditure incurred for earning exempt income, the Tribunal grossly erred in setting aside the order of the Commissioner (Appeals). (AY.2000-01, 2001-02, 2002-03)
Ingersoll-Rand (India) Ltd. v. CIT (2020) 427 ITR 158 / 192 DTR 36 (Karn.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Investment from borrowed capital – Presumption that advances made out of interest free funds – No facts pleaded for apportionment – Deletion of addition is held to be justified. [S. 36(1)(iii), R. 8D] 303
Dismissing the appeal of the revenue the Court held that The Tribunal had affirmed the order of the CIT(A) deleting the addition made by the Assessing Officer under section 14A on the ground that the interest-free funds available with the assessee were far in excess of the advance given. The principle of apportionment under rule 8D of the Income-tax Rules, 1962 did not arise as the jurisdictional facts had not been pleaded by the Department. That finding of the CIT(A) as affirmed by the Tribunal was that the assessee had not utilised interest bearing borrowed funds for making interest-free advances but had its own interest-free fund far in excess of interest-free advance. (AY.2010-11)
PCIT v. Shapoorji Pallonji and Co. Ltd. (2020) 423 ITR 220 / 273 Taxman 167 (Bom.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – No expenditure was incurred – Disallowances cannot be made. [R. 8D] 304
Dismissing the appeal of the revenue the Court held that rule 8D could not be applied blindly when the assessee had hardly incurred any expenses in respect of the dividend earned and substantial investments were made temporarily in order to invest idle funds.
PCIT v. Lee and Muirhead Pvt. Ltd. (2020) 423 ITR 167 (Bom.) (HC)

305 **S. 14A : Disallowance of expenditure – Exempt income – Notional expenditure on earning dividends cannot be disallowed when there is no expenditure is incurred – Rule 8D cannot be applied to any assessment year prior to assessment year 2008-09. [R.8D]**

Dismissing the appeal of the revenue the Court held that the assessee has not incurred any expenditure. The estimated expenditure in respect of administrative or financial cost at five per cent. of dividend income earned by the Assessing Officer in accordance with S. 14A of the Act could not be disallowed. Rule 8D cannot be applied to any assessment year prior to assessment year 2008-09 (AY. 2000-01)

CIT v. Syndicate Bank (2020) 422 ITR 298 / 186 DTR 200 / 313 CTR 76 / 270 Taxman 237 (Karn.)(HC)

306 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance if exemption has not been claimed. [R. 8D]**

Dismissing the appeal of the revenue the Court held that under S. 14A no disallowance can be made if no exemption from the income has been claimed. (AY. 2011-12)

PCIT v. Jay Chemical Industries Ltd. (2020) 422 ITR 449 / 275 Taxman 78 (Guj.) (HC)

307 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income declared during the year no disallowance can be made. [R. 8D(2)(ii)]**

Dismissing the appeal of the revenue the Court held that, when there is no exempt income declared during the year no disallowance can be made. Followed *Cheminvest Ltd v CIT (2015) 378 ITR 33 (Delhi) (HC), CIT v Shivam Motors Pvt Ltd (2015) 230 Taxman 63 / 272 CTR 277 (All) (HC), PCIT v. Man Infra projects Ltd ITA NO dt 9-04 2019. (ITA No.5241/2013 dt.18-10 2016)* (AY.2008-09)

PCIT v. Kohinoor Project Pvt Ltd (2020) 425 ITR 700 / (2021) 276 Taxman 180 (Bom.)(HC)

Editorial : Also refer, PCIT v. Ballapur Industries Ltd (ITA No. 51 of 2016, dt.13.10.2016) (Bom.) (HC), www.itatonline.org, PCIT v. Oil Industries Development Board (2019) 262 Taxman 102 (SC), www.itatonline.org, Cheminvest Ltd v. ITO (2009) 27 DTR 82 /124 TTJ 577 / 121 TTD 318 (SB) (Delhi) (Trib.)

308 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income declared during the year no disallowance can be made. [R. 8D(2)(ii)]**

Dismissing the appeal of the revenue the Court held that when there is no exempt income declared during the year no disallowance can be made. Followed *CIT v. Delite Enterprises ITA No 110 of 2009 dt 26.2.2009 (Bom.) (HC) CIT v. India Debt Management Pvt Ltd ITA No 266 of 201 dt 15.4.2019 (Bom.) (HC) (ITA No 114/Mum/2013 and Cross-objection No. 215/Mum/2015 dt 5-01-2017. (ITA No 1701 of 2017 dt 21-1-2020)* (AY.2008-09)

PCIT v. Morgan Stanley India Securities P. Ltd. (Bom.)(HC)(UR)

309 **S. 14A : Disallowance of expenditure – Exempt income – Rule 8D is not applicable to assessments prior to AY. 2008-09. [R. 8D]**

Dismissing the appeal of the revenue the Court held that Rule 8D of the Income tax Rules 1962 is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09. Followed *Godrej and Boyce Manufacturing Co Ltd v. Dy. CIT*

(2010) 328 ITR 81 (Bom.) (HC), CIT v. Essar Teleholdings Ltd (2018) 90 taxmann.com 2 (SC) (ITA No 2966 / 3085 /Mum/ 2014 dt 13-07-2016) (ITA No.1996 of 2017 dt 23-1-2020) PCIT v. Bank of India (Bom.)(HC) (UR)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income earned – Tribunal restricting disallowance to extent offered by assessee is held to be proper. [R. 8D] 310

Dismissing the appeal of the revenue the Court held that the disallowance of expenditure incurred to earn the exempt income could not exceed the exempt income earned. The ratio of the decisions in the cases of *Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)) and CIT v. Holcim India (P) Ltd. (I. T. A. No. 486 of 2014 decided on September 5, 2014 (Delhi) (HC)* would include a facet where the assessee's exempt income was not nil, but had earned exempt income which was more than the expenditure incurred by the assessee in order to earn such income. The order of the Tribunal which restricted the disallowance of the expenditure to the extent voluntarily offered by the assessee was not erroneous. (AY. 2009-10)

CIT v. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom.) (HC)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed assessee's exempt income. [R.8D] 311

The assessee earned dividend income of Rs.1,13,72,545 which was exempt from tax. The AO disallowed interest and administrative expenditure in relation to the exempt income in a sum of Rs.4,22,72,425/-of the Act. The Tribunal confirmed the disallowances. On appeal court held that the disallowance under section 14A read with rule 8D could not exceed the assessee's exempt income. The disallowance under section 14A was to be limited to the extent of the dividend income earned by the assessee which was exempt from tax. (AY. 2008-09)

Nirved Traders Pvt Ltd (2020) 421 ITR 142 (Bom)(HC)

S. 14A : Disallowance of expenditure – Exempt income – No non-taxable income in relevant assessment Year – No disallowance can be made. 312

Dismissing the appeal of the revenue the Court held that,in view of the clear fact found that the assessee did not earn any exempt income or dividend income on the equity shares held by it during this year, there was no question of disallowing any part of the debenture interest or finance charges, since the provisions under section 14A were not attracted at all. Followed *CIT v. Chettinad Logistics P. Ltd. (2017) 80 taxmann.com 221 (Mad) (HC), Redington (India) Ltd. v. Add.CIT (2017) 392 ITR 633 (Mad) (HC).*(AY. 2002-03)

CIT v. Apollo Infrastructure Projects Finance Co. Ltd. (2020) 421 ITR 162 (Mad.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction – AO needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise – AO discussing and not accepting is not sufficient – Order of Tribunal is affirmed. [S. 14A(2), R.8D] 313

Dismissing the appeal of the revenue the Court held that, non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts

submitted by the assessee. The AO needs to record his non-satisfaction having regard to the sou motu disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise. AO discussing and not accepting is not sufficient. Followed *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC), Godrej & Boycee Mfg Co Ltd v. CIT (2018) 328 ITR 81 (Bom.) (HC) (ITA No 1017 of 2017 dt 15-10-2019)*(AY.2008-09)
PCIT v. Bombay Stock Exchange Ltd. (2020) 185 DTR 390 /113 taxmann.com 303 (Bom.)(HC)
Editorial : Notice issued in SLP filed by revenue, PCIT v. Bombay Stock Exchange Ltd (2021) 281 Taxman 365 (SC)

314 **S. 14A : Disallowance of expenditure – Exempt income – In the absence of any exempt income, disallowance is not permissible. [R. 8D]**
The assessee made investment in group concerns, which yielded no dividend income during the relevant assessment year. Tribunal deleted the disallowances on appeal by revenue dismissing the appeal the Court held that, in the absence of any exempt income, disallowance is not permissible. Followed, *CIT v. Essar Teleholdings Ltd. (2019) 401 ITR 445 (SC), PCIT v. Oil Industry Development Board (2019) 103 taxmann.com 326 (SC) (ITA no 2067/Mum/2015 dt.20-12-2106)(ITA No. 1545 of 2017 dt.11-02-2020)* (AY. 2009-10)
PCIT v. Dish TV India Ltd (Bom) (UR)

315 **S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction – AO has not recorded the satisfaction how the disallowance made by the Assessee is not correct – Deletion of disallowance by the Tribunal is affirmed. [R. 8D]**
Dismissing the appeal of the revenue the Court held that the AO has not recorded his satisfaction regarding correctness of self disallowance made by the assessee u/s 14A as was mandatory in terms of S.14A(2) to invoke and recourse as per rule 8D of the Act. Accordingly the order of the Tribunal is affirmed. (AY. 2011-12)
PCIT v. Keshav Power Ltd. (2019) 112 taxmann.com 323 / (2020) 268 Taxman 332 (Delhi)(HC)
Editorial : SLP of revenue is dismissed as the tax effect is less than Rs 2 crores PCIT v. Keshav Power Ltd. (2020) 266 Taxman 331 (SC)

316 **S.14A : Disallowance of expenditure – Exempt income – No income earned by assessee during the relevant AY – No disallowance can be made [R.8D].**
It was held that no disallowance under section 14A was to be made where assessee has not earned any income during the relevant period. (AY. 2009-10, 2010-11)
Tata Sky Ltd v. ACIT (2020) 195 DTR 177 / 208 TTJ 194 (Mum)(Trib.)

317 **S.14A : Disallowance of expenditure – Exempt income – AO was required to work out the average of such investment, the income from which did not form part of the total income instead of total value of investment – Matter remanded.[R.8D(2)(iii)]**
Where the income of the assessee has been assessed under different heads, the disallowance u/s 14 read with rule 8D was made by AO. Tribunal held that the average of only such investments have to be taken into account while undertaking calculations under rule 8D, which yielded the income not forming part of the total income. The matter is restored with AO to make fresh calculation under rule 8D. (AY. 2015-16, 2016-17)
Sankalp v. Dy.CIT (2020) 195 DTR 273 / 208 TTJ 399 (Cuttack) (Trib.)

S.14A : Disallowance of expenditure – Exempt income – No exempt income – No disallowance can be made. [R.8D] 318
Assessee had not derived any exempt income during year. Hence, provisions of S. 14A cannot be made applicable. This issue is now very well settled by the decision of Supreme Court in case of *Maxopp Investments Ltd v. CIT (2018) 402 ITR 640 (SC).* (AY. 2010-11, 2011-12, 2012-13)
Dy. CIT v. BMI Whole sale Trading (P) Ltd (2020) 203 TTJ 797 (Mum.) (Trib.)
Dy. CIT v. Brand Marketing (India) (P) Ltd (2020) 203 TTJ 797 (Mum.) (Trib.)

S.14A : Disallowance of expenditure – Exempt income – No exempt income – No disallowance can be made. [R.8D] 319
The facts born out from record clearly indicate that the assessee has not earned any dividend income which does not form part of total income for the year under consideration. In fact, the Ld. AO has categorically admitted that for the impugned assessment years, the assessee has not earned any dividend income from investments. No disallowance can be made. AY. 2014-15 to 2016-17)
DCIT v. SNJ Distillers Pvt. Ltd. (2020) 208 TTJ 968 /(2021) 87 ITR 540 (Chennai) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not earning any dividend income during year and not claiming exemption – Disallowance cannot be made. [R. 8D] 320
Tribunal held that when the assessee has not earned any dividend income during the year and not claiming exemption, disallowance cannot be made. (AY.2014-15)
Assetz Infrastructure Pvt. Ltd. v. Dy.CIT (2020) 84 ITR 59 (SN) (Bang.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Interest – Own funds more than the investment – Presumption is investment is from own funds – No disallowance of interest can be made – Erroneous disallowance shown in the return – Indirect expenses – Only investments actually yielding exempt income to be considered for working out disallowance – Assessment cannot be based on consent or acceptance of assessee either in return or during course of assessment or Appellate Proceedings. [S. 143(3), R. 8D(2)(iii), Art. 265] 321
Tribunal held that once sufficient funds of its own were available with the assessee for making investments, there could not be any disallowance of interest under second limb of rule 8D(2) of the Rules, even though erroneously made by the assessee in the return of income. While this direction may eventually go to reduce the returned income of the assessee, taxes are to be collected in accordance with law in terms of article 265 of the Constitution of India and not based on the consent or acceptance of the assessee either in the return or during the course of assessment or appellate proceedings. There is no estoppel against the statute. The Tribunal also held that, with regard to disallowance of indirect expenses under the Assessing Officer was to consider only those investments which had actually yielded exempt income for working out the disallowance thereon, and to recompute and reduce the disallowance already made by the assessee in the return under the third limb of rule 8D(2). (AY. 2013-14)
Dy. CIT v. Godrej Properties Ltd. (2020) 84 ITR 13 (SN)(Mum.)(Trib.)

322 **S. 14A : Disallowance of expenditure – Exempt income – Interest – Disallowance of interest on net interest – Higher interest income – No disallowance can be made – Sufficient interest free funds – Presumption that investment and advances were made out of such funds – No interest to be disallowed. [S. 36(1)(iii), R. 8D]**
Tribunal held that the assessee had demonstrated that interest-free funds available to the assessee for making investment were more than interest-bearing funds utilised for investment in earning tax-free income. For application of rule 8D(2), disallowance of expenditure to be considered should be net of interest, i. e., interest paid minus interest received. When the assessee has sufficient interest free funds presumption that investment and advances were made out of such funds and no interest should be disallowed. (AY. 2014-15)
Dy.CIT v. Priyal International P. Ltd. (2020) 84 ITR 50 (SN) (Ahd.) (Trib.)

323 **S. 14A : Disallowance of expenditure – Exempt income – Share application money pending allotment at year end – Not to be treated as investment yielding exempt income. [R. 8D]**
Tribunal held that Share application money pending allotment at year end-Not to be treated as investment yielding exempt income. (AY. 2012-13)
Kumar Urban Development Ltd. v. ITO (2020) 84 ITR 17 (SN) (Pune) (Trib.)

324 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income. [R. 8D]**
Tribunal held that held that disallowance of the expenses could not exceed the amount of exempted income. (AY.2014-15)
Addlife Investments Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 343 (Ahd.) (Trib.)

325 **S. 14A : Disallowance of expenditure – Exempt income – Satisfaction not recorded – Deletion of addition is held to be justified. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that the Assessing Officer had not recorded his dissatisfaction with the disallowance worked out by the assessee to arrive at his conclusion of reasonable expenditure incurred to earn the exempt income and no books of account were examined. Hence the order of the Commissioner (Appeals) in restricting the quantum of expenditure in respect of earning exempt income to the amount claimed by the assessee was correct.(AY. 2014-15)
JCIT (OSD) v. Rare Enterprises (2020) 84 ITR 164 / (2021) 187 ITD 65 (Mum.)(Trib.)

326 **S. 14A : Disallowance of expenditure – Exempt income – Interest has no nexus with investment in mutual funds and shares – Disallowance not attracted – Administrative expenses – Disallowance is attracted. [R. 8D, ITAT R. 34 (5)]**
Tribunal held that there were no borrowings made by the assessee in order to make payment of interest thereon. The interest paid by the assessee had no nexus or bearing with the investment in mutual funds and shares. The existence of the dispute and the copy of the order of the Commission was brought to the notice of the Commissioner (Appeals) and he had not made any disallowance under section 14A of the Act. Hence, there could not be any proportionate disallowance of interest in terms of second limb

of rule 8D(2) of the Rules. Accordingly, the disallowance of interest was hereby deleted. As regards administrative expenses disallowance is attracted. The period during which lockdown was in force was to be excluded for the purpose of the 90-day time limit set out in rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963 (AY.2011-12).
Megha Property Developers Ltd. v. ITO (2020) 84 ITR 406 (Mum.) (Trib.).

S. 14A : Disallowance of expenditure – Exempt income – Own funds excess of investments – No disallowance can be made. [R.8D] 327
Tribunal held that available own funds are excess of investments, no disallowance can be made. (AY.2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No exempt income earned during year – No disallowance can be made. [R. 8D] 328
Tribunal held that there was no exempt income earned by the assessee during the year and hence no disallowance could be made. (AY. 2013-14)
IBM India Pvt. Ltd. v. ACIT (2020) 83 ITR 24 (Bang.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Administrative expenses – Restricted to the extent of exempt income. [R. 8D] 329
Tribunal held that the disallowance of expenditure under section 14A exceeded the dividend income claimed as exempt by the assessee. The disallowance on account of administrative expenses under rule 8D(2)(iii) was to be restricted to the extent of exempt income claimed by the assessee. (AY. 2015-16)
Maharaja Shree Umaid Mills Ltd. v. Dy. CIT (2020) 83 ITR 498 (Jaipur) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investment made in earlier years – Disallowance to be restricted to extent of funds invested. [R.8D] 330
Tribunal held that when the investment was made in earlier years, disallowance to be restricted to funds invested of the relevant year.(AY. 2013-14)
Abhinav International P. Ltd. v. Dy.CIT (2020)82 ITR 258 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investment was made in earlier year – No interest expenditure was claimed – Matter remanded to the AO for fresh consideration. [R. 8D] 331
Tribunal held that the assesseee had contended that investment was made in earlier years and not from the borrowed money hence no disallowance of interest could be made. The matter was remanded to the AO for verification.(AY. 2013-14)
S. Annamalai (BHUF) v. ITO (2020)82 ITR 68 (Chennai) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investments held as Stock In Trade cannot be subject matter of disallowance – Strategic investments yielding exempt income alone to be considered for purpose of working of disallowance. [R.8D (2)(iii)]. 332
Tribunal held that in the case of banks, investments that were held as stock in trade could not be a subject matter of disallowance and those investments which had not

yielded any exempt income were not to be considered for the purpose of working out the disallowance. Relied on *CIT v. Vireet Investment (P) Ltd. [2017 58 ITR (Trib.) 313 (Delhi) [SB and Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC).* (AY. 20011-12) *HDFC Bank Ltd. v. ACIT (2020) 82 ITR 533 (Mum.)(Trib.)*

333 **S. 14A : Disallowance of expenditure – Exempt income – No exempt income – Disallowance cannot be made. [R.8D]**
Tribunal held that in the absence of any exempt income, no disallowance under section 14A could be made. Since the issue required verification at the level of the Assessing Officer, this issue was remitted to the Assessing Officer with a direction to find out whether the assessee had, in fact, received any exempt income and decide the issue. (AY. 2007-08, 2008-09)
MakeMy Trip (India) Pvt. Ltd. v. Dy. CIT (2020) 82 ITR 71 (Delhi) (Trib.)

334 **S. 14A : Disallowance of expenditure – Exempt income – Shares held as stock in trade – Disallowance is held to be not justified. [R.8D]**
Tribunal held that the shares were held as stock-in-trade by a bank would become business activity and not investments in order to fell within the ambit of rule 8D(2)(iii) of the Act. Disallowance confirmed by the Commissioner (Appeals) was not justified. (AY. 2013-14)
Dy. CIT v. Punjab National Bank (2020) 82 ITR 95 (Delhi) (Trib.)

335 **S. 14A : Disallowance of expenditure – Exempt income – Only exempt income yielding investments to be considered to compute disallowance.[S.115JB, R.8D]**
Tribunal held that only exempt income yielding investments were to be considered to compute the disallowance under section 14A. The disallowance would be made under the normal provisions as well as while computing book profits under section 115JB since the disallowance substantially was comprised of direct expenditure under rule 8D(2)(i).(AY.2013-14)
Bahar Agrochem And Feeds P. Ltd. v Dy.CIT (2020) 80 ITR 24 (SN) (Mum.)(Trib.)

336 **S. 14A : Disallowance of expenditure – Exempt income – No exempt income during the year – No disallowance can be made. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that since no exempt income received during the year, no disallowance can be made. (AY.2013-14)
ACIT v. Chadha Papers Ltd. (2020) 80 ITR 38 (SN) (Delhi)(Trib.)

337 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be more than exempt income. [S.10(34), R. 8D]**
Tribunal held that where dividend income earned by assessee was of Rs. 1,80,717/-which was claimed exempt under section 10(34), disallowance under section 14A read with Rule 8D should not exceed to Rs. 1,80,717/-, i.e., exempt income.(AY. 2015-16)
Kundan Rice Mills Ltd. v. ACIT (2020) 83 ITR 466 / 185 ITD 765 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Own funds exceed amount of investment – Interest expense incurred cannot be disallowed. [R. 8D] 338

Tribunal held that where own funds of assessee exceed amount of investment, it is presumed that investment has been made by assessee out of its own fund without utilizing borrowed funds, and, thus, there cannot be any disallowance of interest expenses with respect to exempt dividend income earned. (AY. 2011-12)

K. B. Mehta Construction (P.) Ltd. v. DCIT (2020) 185 ITD 81 (Ahd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No exempt income – No disallowance can be made. [R. 8D] 339

Dismissing the appeal of the revenue the Tribunal held that when the assessee had not earned any exempt income during year, no disallowance can be made. (AY. 2013-14, 2014-15)

DCIT v. Cornerstone Property Investment (P.) Ltd. (2020) 185 ITD 202 (Bang.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction – suo motu disallowance – Satisfaction cannot be on the basis of mechanism of Rule 8D itself. [S. 14A(2), R.8D] 340

Allowing the appeal of the assessee the Tribunal held that the Assessing Officer cannot reject suo motu disallowance offered by assessee on ground that such a disallowance under rule 8D will be higher; an Assessing Officer can resort to rule 8D only when, as per prescription of section 14A(2) he is not satisfied with correctness of claim of assessee in respect of expenditure in relation to income which does not form part of total income under Act, and that satisfaction cannot be on basis of mechanism of rule 8D itself; it has to be independent of rule 8D. (AY. 2013-14, 2014-15)

Tata Industries Ltd. v. DCIT (2020) 185 ITD 215 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investments in Indian companies which did not yielded exempt dividend income – Excluded while computing disallowance. [R. 8D(2)(iii)] 341

During year under consideration, assessee made investments in foreign companies from which dividend income was received which was taxable. Assessee contended that investments in foreign companies be excluded while applying the provision of section 14A and also contended that investments in Indian companies from which no dividend income was received during year be excluded while computing disallowance of expenditure. The AO disallowed expenses invoking rule 8D(2)(iii) by applying 0.5 per cent of average investment. Tribunal held that investments in Indian companies which did not yield exempt income during year could not be included while computing disallowance of expenditure. Matter remanded. (AY. 2007-08, 2009-10)

Pentamedia Graphics Ltd. v. DCIT (2020) 80 ITR 555 / 185 ITD 45 /190 DTR 391/205 TTJ 892 (Chennai)(Trib.)

342 **S. 14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – Disallowance is held to be not justified [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that Assessing Officer had not made any observation and/or deliberation by recording satisfaction so as to correctness of claim of assessee in respect of expenditure in relation to income which did not form part of total income, invocation of rule 8D for disallowing expenses under section 14A was unsustainable. (AY. 2012-13)
DCIT v. DML Exim (P.) Ltd. (2020) 184 ITD 432 (Rajkot)(Trib.)

343 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance of expenses can be made if there is no exempt income earned during relevant previous year. [R. 8D]**
Tribunal held that there can be no disallowance of expenses under section 14A, if there is no exempt income earned during relevant previous year and disallowance cannot exceed exempt income.(AY. 2014-15, 2015-16)
Global Tech Park (P.) Ltd. v. ACIT (2020) 184 ITD 673 (Bang.) (Trib.)

344 **S. 14A : Disallowance of expenditure – Exempt income – Average value of investment which has yielded income during year shall only be considered for purpose of disallowance. [R. 8D]**
Tribunal held that only average value of investment which has yielded income during year shall only be considered for purpose of disallowance. (AY. 2013-14)
Anant Raj Ltd. v. ACIT (2020) 184 ITD 820 (Delhi)(Trib.)

345 **S. 14A : Disallowance of expenditure – Exempt income – Interest free funds available was far more than investment – No interest expenditure can be disallowed. [R. 8D]**
Assessee claimed dividend income as exempt from tax. AO disallowed the interest. CIT(A) held that share capital and reserves are more than the investment no interest expenditure could be disallowed. Order of CIT(A) is affirmed by the Tribunal. (AY. 2012-13, 2013-14)
Zaveri & Co. (P.) Ltd. v. DCIT (2020) 184 ITD 777 (Ahd.)(Trib.)

346 **S. 14A : Disallowance of expenditure – Exempt income – Surrender of right to claim exemption – Matter remanded. [S. 10(34)]**
The Tribunal held hat the assessee could not claim that provisions of section 14A could not be invoked because it had surrendered its right over claiming deduction under section 10(34) in respect of dividend income earned on shares. However, in view of fact that assessee had claimed that it had not incurred any expenses to earn exempt dividend income as investment had been made out of its own funds in 100 per cent subsidiary company, matter was to be remanded back for disposal afresh after taking into consideration aforesaid plea of assessee. (AY. 2013-14)
BBR Projects (P.) Ltd. v. ITO (2020) 184 ITD 842 (Hyd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Short term borrowings – Equity shares held as stock in trade – Portion of interest expenses related to earning of exempt dividend income had to be disallowed – Matter remanded – Method of valuation – Stock in trade – Matter remanded. [R. 8D] 347

Tribunal held that where the assessee paid interest on short-term borrowings for equity shares held as a stock-in-trade and claimed dividend income from same as exempt, entire interest expenditure corresponding to stock-in-trade could not be allowed to assessee as business expenditure, portion of interest expenses related to earning of exempt dividend income had to be disallowed. Matter remanded. Tribunal held that it was not clear, whether provision for diminution in value of stock-in-trade had been made out of trading account or within trading account, matter was to be remanded back to Assessing Officer for adjudication afresh. (AY. 2012-13)

ACIT v. PNB Gilts Ltd. (2020) 81 ITR 224 / 183 ITD 111 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance under Rule 8D(2)(iii) is to be done by taking into account dividend bearing securities only. [S. 10(34), R.8D(2)(iii)] 348

The assessee has voluntarily disallowed a sum of Rs. 30,000 under section 14A in computation of total income. The AO disallowed Rs. 49.35 lakhs. DRP held that only such investments in respect of which dividend income or exempted income has been earned can be considered when computing disallowance. On appeal the Tribunal directed the Assessing Officer to compute disallowance under Rule 8D(2)(iii) by taking into account dividend bearing securities only. (AY. 2014-15)

Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2020) 183 ITD 354 (Kol.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Own funds exceeded amount of investment in shares – No disallowance can be made. [R. 8D] 349

Tribunal held that where own funds of assessee exceed amount of investment in shares, no disallowance of interest on borrowed fund can be made by Assessing Officer by invoking provisions of section 14A, read with rule 8D of 1962 Rules. (AY. 2010-11)

Gujarat State Energy Generation Ltd. v. ACIT (2020) 183 ITD 590 (Ahd.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Own funds are more than investments – Presumption that investment was made out of own funds – No disallowance can be made. [R. 8D] 350

Dismissing the appeal of the revenue the Tribunal held that since assessee was having a common fund consisting of both own funds and borrowed funds and in case own funds were sufficient to invest in non-business activities, a presumption was to be drawn that said investment was made out of own funds and no disallowance in this regard was to be made.(AY. 2010-11)

ACIT v. Padma Logistics & Khanij (P.) Ltd. (2020) 81 ITR 61 / 183 ITD 891/ 208 TTJ 67 (Kol.)(Trib.)

351 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be made in absence of exempt income. [S. 10(34), R.8D]**
Dismissing the appeal of the revenue the Tribunal held that disallowance cannot be made in absence of exempt income. (AY. 2012-13, 2013-14)
DCIT v. Asian Grantio India Ltd. (2020) 182 ITD 441 (Ahd.) (Trib.)

352 **S. 14A : Disallowance of expenditure – Exempt income – Assessing Officer should examine correctness of claim that no expenses were incurred after making reference to Account – Without recording the dissatisfaction no disallowance can be made. [S. 10(34), R.8D]**
Tribunal held that the Assessing Officer at the first instance should have examined the correctness of the statement made by the assessee that no expenses were incurred for earning the exempt income during the year and only if he was not satisfied on this account after making reference to the accounts, was he is entitled to adopt the method under rule 8D of the Income-tax Rules, 1962. The disallowance under section 14A was not sustainable. (AY. 2013-14)
Vinay Bhasin v. ACIT (2020) 83 ITR 78 (SN) (Delhi)(Trib.)

353 **S. 14A : Disallowance of expenditure – Exempt income – No satisfaction recorded – Disallowance not sustainable. [R. 8D(2)(ii)]**
Tribunal held that the Assessing Officer had failed to record any satisfaction with regard to the correctness of the claim of the assessee that it had not incurred any expenditure. The Assessing Officer did not cite any of the expenditure in the profit and loss account of the assessee, which was incurred by the assessee for earning of the exempt income. The satisfaction of the Assessing Officer as provided under sub-section (2) of section 14A is a preliminary requirement for invoking the provisions of rule 8D for making a disallowance under section 14A. Therefore, in the absence of any satisfaction recorded by the Assessing Officer with respect to the examination of the books of account of the assessee to verify the correctness of the claim of the assessee, the disallowance under section 14A could not be sustained. Accordingly the Assessing Officer was to delete the disallowance of Rs. 1,252,630 made under section 14A. Followed. *ACIT v. Vireet Investment P. Ltd. [2017 58 ITR (Trib.) 313 (Delhi) (SB) (Delhi) (Trib.)* (AY.2011-12)
Dy. CIT(LTU) v. EXL Service.Com (India) Pvt. Ltd. (2020) 83 ITR 11 (SN) (Delhi) (Trib.)

354 **S. 14A : Disallowance of expenditure – Exempt income – Only investments yielding exempt income during year to be considered for computing average value of investments. [R. 8D]**
Tribunal held that for the purpose of computing the average value of investments while calculating the disallowance under section 14A read with rule 8D, only those investments were to be considered which had yielded exempt income during the year under consideration. (AY.2015-16)
Ameya Logistics Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 46 (SN) (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not recording the satisfaction – No disallowance can be made. [R. 8D] 355
Tribunal held that the Assessing Officer should have recorded his satisfaction about the correctness of the claim of the Assessee. If no such satisfaction is recorded, no disallowance can be made. (AY.2012-13)
WM India Technical and Consulting Services Pvt. Ltd. v. Dy. CIT (2020) 82 ITR 37 (SN) (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Own interest – free funds deployed in business much higher than average investment held by assessee during Year – Disallowance not sustainable. [R. 8D(2)(ii)] 356
Tribunal held that own interest-free funds deployed in business much higher than average investment held by assessee during Year. Disallowance not sustainable. (AY.2011-12)
Sundaram Business Services Ltd. v. ITO (2020) 82 ITR 12 (SN) (Chennai)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investments not generating any income – Disallowance of interest on borrowed funds utilised for making investments cannot be made. [R. 8D] 357
Tribunal held that as the investments has not generated any income disallowance of interest on borrowed funds utilized for making investments cannot be made (AY. 2010-11, 2014-15)
ACIT v. Amartara P. Ltd. (2020) 78 ITR 46 (SN) (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No Disallowance of expenses relating to dividend received from foreign companies taxable in India and offered to tax – Strategic investments or investments in subsidiary companies or group or associated companies in India or companies promoted by assessee – Includible in disallowance – Disallowance not to exceed exempt income. [R.8D(2)(iii)] 358
Tribunal held that, no disallowance of expenses relating to dividend received from foreign companies taxable in India and offered to tax. Strategic investments or investments in subsidiary companies or group or associated companies in India or companies promoted by assessee is includible in disallowance however disallowance not to exceed exempt income.(AY.2012-13)
Lakshmi Machine Works Ltd. v. Add. CIT (2020) 78 ITR 398 (Chennai) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Sufficient interest free funds – No disallowance could be made. [R. 8D] 359
Tribunal held that the financial statement available on record clearly indicated that the assessee had sufficient interest-free funds available with it. The presumption was that the interest-free funds were utilised in investment in shares. Thus, no part of the interest expenditure could be attributed for earning of exempt income. The only disallowance which could be made under section 14A was the administrative expenditure as per rule 8D(2)(iii). While computing the disallowance the Assessing Officer had to consider only those investments which had yielded exempt income during the year. (AY.2007-08, 2008-09)
Darashaw And Co. Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 553 (Mum.)(Trib.)

360 **S. 14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – No disallowance could be made – Period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in rule 34(5) of the Income – tax (Appellate Tribunal) Rules, 1963. [S. 254(1), R. 8D]**

Tribunal held that the Assessing Officer had not expressed any satisfaction that the assessee had incurred certain expenditure for earning the dividend income. Section 14A of the Income-tax Act, 1961 postulates the disallowance of expenditure incurred for earning the exempt income which does not form part of the total income of the assessee. No claim had been made in respect of dividend income. The formula given in rule 8D did not recognise the actual expenditure incurred by the assessee but it calculates the disallowance at 0.5 per cent. of the average investment. Therefore, this computation of disallowance could not override the actual expenditure attributable for earning the exempt income. Accordingly, the disallowance made by the Assessing Officer of Rs. 10,81,553 under section 14A by applying rule 8D(2) was deleted. Tribunal also held that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963.(AY.2010-11)

S. K. Minerals Handling P. Ltd. v. ACIT (2020) 79 ITR 18 (SN) (Cuttack) (Trib.)

361 **S. 14A : Disallowance of expenditure – Exempt income – Sufficient interest free fund – No disallowance can be made – Administrative expenses – No bifurcation of expenses – Disallowance at 0.5 Per Cent is held to be a reasonable estimation. [R.8D]**

Tribunal held that there were sufficient interest-free funds in the form of share capital and reserves available with the assessee to explain the investment in mutual funds. In view of there being no interest expenditure relatable to the investment in the assets yielding exempt income, no disallowance could be made. CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom.) (HC) followed. Tribunal held that In the absence of any bifurcation of the expenses, a reasonable estimate had to be made for such disallowance. The Assessing Officer was to restrict the disallowance at 0.5 per cent. of the value of assets which had yielded exempt income. *ACB India Ltd. v. ACIT (2015) 374 ITR 108 (Delhi)(HC) ACIT v. Vireet investment (P) Ltd. (2017) 58 ITR (Trib.) 313(SB) (Delhi) [Trib)* followed. (AY.2007-08, 2008-09)

ACIT v. Niit Technologies Ltd. (2020) 79 ITR 60 (Delhi)(Trib.)

362 **S. 14A : Disallowance of expenditure – Exempt income – No exempt income in relevant previous year – No disallowance can be made. [R 8D]**

Tribunal held that there was no tax exempt income in the relevant previous year, no disallowance under section 14A could have been made. Relied on *Cheminvest Ltd v. CIT (2015) 378 ITR 33 (Delhi) (HC)* (AY.2013-14)

Dy. CIT v. JSW Ltd (2020)79 ITR 585 / 116 taxmann.com 565 / 183 ITD 148 / 189 DTR 15 / 205 TTJ 1 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No exempt income received during year – Disallowance cannot be made. [R. 8D] 363
Tribunal held that when there is no exempt income received by the assessee during the year under consideration, no disallowance can be made. Followed *Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)* (AY.2011-12)
Dy. CIT v. Hind Industries Ltd. (2020) 79 ITR 1/ / (2021) 186 ITD 272 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – No income exempt from tax received in relevant previous year – Disallowance cannot be made. [R. 8D(2)(iii)] 364
Tribunal held that, when no income exempt from tax received in relevant previous year, disallowance cannot be made.(AY.2013-14, 2014-15)
Dy. CIT v. Coffee Day Global Ltd. (2020) 79 ITR 322 (Bang.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Foreign investments – Dividend suffered taxation in India – No disallowance can be made – Investments in Indian companies not yielding exempt Income – Has to be excluded. [R. 8D(iii)] 365
Tribunal held that the foreign investments on which dividend suffered taxation in India, no disallowance can be made. Similarly investments in Indian companies which not yielding exempt income, has to be excluded. Matter remanded to the Assessing Officer.
Pentamedia Graphics Ltd. v. Dy. CIT (2020) 80 ITR 555 / 185 ITD 145 / 205 TTJ 892 (Chennai) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not earning any exempt income during relevant period – No disallowance can be made. [R.8D] 366
Tribunal held that S. 14A envisages that there has to be actual receipt of exempt income during the relevant previous year for purpose of making any disallowance. The Assessing Officer having categorically held that no exempt income was earned by the assessee during the year 2013-14 there could be no disallowance. Followed *Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)* (AY.2013-14)
Dy.CIT v. Futurz Next Services P. Ltd. (2020) 80 ITR 58 (Delhi) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investments in past years – Reserves and surpluses far in excess of investments No disallowance could be made. [R. 8D(2)(ii)] 367
Tribunal held that the total investment as shown in the profit and loss account was only Rs. 4.98 crores. Moreover, most of the investments were made in the past. No disallowance under rule 8D(2)(ii) was warranted where the reserves and surpluses of the assessee were in excess of the investments made by the assessee. The assessee had surpluses and reserves available with it at the end of the financial year, when the investments were made in the exempt income and therefore no disallowance under rule 8D(2)(ii) was warranted.(AY.2009-10)
S. Vinodkumar Diamonds P. Ltd. v. Dy.CIT (2020) 81 ITR 46 (SN) (Mum.)(Trib.)

368 **S. 14A : Disallowance of expenditure – Exempt income – Investments far below reserves and surpluses – Presumption that invested out of reserves and surpluses – No disallowance shown – Disallowance to the extent of Rs. 1,17,760 was sustained. [R. 8D(2)(ii), 2(iii)]**

Tribunal held that if the interest-free funds were sufficient to meet the investments, the presumption would arise that the investments were out of interest-free funds accordingly the disallowance made under rule 8D(2) was to be deleted. Regarding rule 8D(2)(iii) there was nothing on record that the assessee made disallowance on its own in earning the exempt income. Therefore, the disallowance made by the Assessing Officer as confirmed by the Commissioner (Appeals) was to be sustained. The Department submitted that the assessee stated that no expenditure had incurred towards making the investments and the addition made under rule 8D(2)(iii) was to be upheld. Thus the disallowance made under rule 8D(2)(iii) to an extent of Rs. 1,17,760 was sustained. (AY.2012-13)

Mahavir Steel Industries Ltd. v. ACIT (2020) 81 ITR 34 (SN) (Pune)(Trib.)

369 **S. 14A : Disallowance of expenditure – Exempt income – Only Investments which yielded exempt income during relevant period to be considered for computing average value of investment. [R. 8D]**

Tribunal held that the only those investments were to be considered for computing the average value of investment which yielded exempt income during the year. The issue was remanded to the Assessing Officer for recomputing the disallowance under section 14A. (AY.2014-15, 2015-16)

Gujarat Mineral Development Corporation Ltd. v. ACIT (2020) 81 ITR 57(SN) (Ahd.)(Trib.)

370 **S. 14A : Disallowance of expenditure – Exempt income – Not recording dissatisfaction with the working of disallowances given by the Assessee – No disallowance can be made – Industrial undertaking – Matter remanded to the Assessing Officer. [R.8D 80IA(4)(iv)]**

The Tribunal held that The Assessing Officer was required to record his categorical dissatisfaction with the working of the disallowance given by the assessee and state that the working was not correct. The Assessing Officer had invoked the provisions contained under section 14A read with rule 8D on the basis of general principles, inter alia, that the earning of exempt income was not in the nature of passive activity having no input and that the assessee's claim that he had not incurred any expenditure to earn dividend income was not acceptable. When the Assessing Officer had failed to comply with the mandatory requirement of section 14A(2) read with rule 8D(2)(iii) to record his satisfaction, the question of applying rule 8D(2)(iii) did not arise. Thus, the disallowance made by the Assessing Officer and confirmed by the Commissioner (Appeals) was not sustainable. As regards claim under section 80IA of the Act, the issue was remanded to the Assessing Officer with a direction to verify the claim of the assessee by examination of the audited accounts of the industrial undertaking and then grant deduction under section 80IA in accordance with the law.(AY.2012-13)

Gujarat Guardian Ltd. v. Dy.CIT (2020) 81 ITR 61 (SN) (Delhi) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Shares held as stock – in trade – Interest expenditure – Value its stock at cost or market value, whichever was lower – Matter remanded. [S. 36(1)(iii), 115JB, R.8D (ii)] 371

Tribunal held that exempt income is not only from the equity shares kept as stock-in-trade but also from interest received on bonds. The same has been invested in compliance of the Reserve Bank of India (RBI) Rules. But once exempt income is earned, then interest for corresponding borrowing would be liable for disallowance. Thus, the assessee is required to demonstrate not only investment in shares had been out of interest free funds but investment in Bonds was also made out interest free own funds. Accordingly the matter restored to the file of AO for deciding afresh. Tribunal also held that the assessee was at liberty to value its stock at cost or market value, whichever was lower in accordance with the consistent method of accounting and such reduction if any, in value of the shares held as stock-in-trade would be allowed. But if such a provision is made outside the trading account (only in computation of income) it may not be allowable. In the facts of the case, it was not clear whether the provision for diminution in the value of stock-in-trade had been made out of the trading account or within the trading account. Therefore, the issue was remitted to the Assessing Officer for verifying the facts from the books of account and other records of the assessee and decide the issue afresh in accordance with law.(AY.2012-13)

Add. CIT v. PNB Gilts Ltd. (2020) 81 ITR 224 / 183 ITD 111 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Strategic Investment – Own funds more than investments – No disallowance can be made. [R. 8D] 372

On appeal the Tribunal held that the assessee had sufficient funds of its own to invest in shares. And since the assessee had common funds consisting of its own funds and borrowed funds and if the assessee's own funds were sufficient to invest in non-business activities, a presumption was drawn that the investment was made out of the assessee's own funds. Thus, no disallowance under rule 8D(2)(ii) was warranted. Not all investments become the subject matter of consideration when computing disallowance under section 14A read with rule 8D. The disallowance had to be in relation to the income which did not form part of the total income and this could be done only by taking into consideration the investment which had given rise to this income which did not form part of the total income. (AY.2010-11)

ACIT v. Padma Logistics and Khanij Pvt. Ltd. (2020) 81 ITR 61 183 ITD 891/ 208 TTJ 67 (Kol.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Maintaining separate books of account – Matter remanded to CIT(A). [R. 8D] 373

Assessee earned dividend income on shares and securities held by her as stock in trade and claimed this income as exempt on ground that it was incidental to its trading activity and it had not incurred any expenditure for earning said income. AO however made disallowance towards expenses attributed to earning of dividend income. CIT(A) partly confirmed additions made by AO. On appeal, it was argued that the CIT(A) had not considered submissions of assessee that it was maintaining separate books of account and expenditure related to exempt income was not claimed in P&L account,

further, submission of assessee that earning of dividend income was incidental to business income of assessee had also not been considered. Appellate Tribunal remanded back to CIT(A) to consider submissions of assessee and to verify from books of account that assessee was maintaining separate accounts. (AY. 2006-07)
Vinita Devi Bagrodia v. DCIT (2020) 181 ITD 355 (Indore)(Trib.)

374 **S. 14A : Disallowance of expenditure – Exempt income – Investments Not generating any exempt income – Disallowance of interest on borrowed funds utilized for making investments cannot be made. [R. 8D]**
On appeal, the Tribunal held that, provisions of S. 14A of the Act cannot be attracted if there is no exempt income earned during the year and hence disallowance of interest is not allowable when there is no exempt income earned. (AY.2010-11, 2014-15)
ACIT v. Amartara P. Ltd. (2020) 78 ITR 46 (SN) (Mum.)(Trib.)

375 **S. 14A : Disallowance of expenditure – Exempt income – Not earned any tax – exempt during the relevant assessment year – Mixed funds – No disallowance can be made. [S. 80D(2)(ii)]**
Tribunal held that on facts the assessee has not earned any tax-exempt income during the relevant assessment year hence no disallowance can be made. (AY. 2013-14)
Dy.CIT v. JSW Ltd. (2020) 116 taxmann.com 565 (Mum.)(Trib.)

376 **S. 14A : Disallowance of expenditure – Exempt income – Owns funds were more than investments – No disallowance of interest – Indirect administrative expenditure of 5% of average investment is held to be justified. [R. 8D]**
Tribunal held that the assessee had, owns funds were more than investments hence disallowance of interest is not justified, however, indirect administrative expenditure of 5% of average investment is held to be justified (AY. 2013-14)
Agrasen Engineering Industries Pvt. Ltd. v. ACIT (2020) 186 DTR 197 / 203 TTJ 498 (Jaipur)(Trib.)

377 **S. 14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – Addition is unsustainable. [R. 8D]**
The Tribunal held that the AO did not record any satisfaction before making the disallowance and merely made the addition because the assessee had earned dividend income. No disallowance be made in the absence of satisfaction that the voluntary disallowance made by the assessee was unreasonable and unsatisfactory. The onus is on the AO to record satisfaction that interest bearing funds used for investment to earn tax-free income. Therefore in the absence of any satisfaction recorded by the AO for making disallowance no disallowance could be made. (AY. 2012-13 to 2014-15)
ATS Infrastructure Ltd. v. ACIT (2020) 77 ITR 70 (SN) (Delhi) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Neither debiting any expenditure nor claiming any expenditure – Expenditure cannot be disallowed on presumptive basis – Disallowance is restricted to exempt income – Claiming excess expenditure – Disallowance is confirmed. [S. 80P(2)(iv), R.8D] 378

The assessee had not debited any expenditure nor claimed any expenditure for earning exempt income. On presumptive basis expenditure could not be calculated for disallowance. By applying the formula given in rule 8D read with S. 14A, the AO had worked out an estimated disallowance of Rs. 4,40,120. The rationality of estimating an expenditure of Rs. 4,40,120 for earning a meagre dividend income of Rs. 16,362 was unclear. The AO is directed to restrict disallowance under S. 14A to the extent of exempt income earned by the assessee, i. e., Rs. 16,362. As regards excess expenditure, disallowance is confirmed. (AY.2011-12)

Baroda District Co-Op. Milk Producers Union Ltd. v. ACIT (2020)77 ITR 87 (SN) (Ahd.) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – No disallowance can be made. [R. 8D] 379

Tribunal held that where no finding at all had been recorded by AO as to incurrence of any expenditure by assessee for earning exempt income, no disallowance is called for. (AY. 2009-10)

ACIT v. Crompton Greaves Ltd. (2019) 75 ITR 17 (SN) / (2020) 181 ITD 40 / 203 TTJ 94 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Long term capital gains – AO is justified in making disallowance. [S. 10(38) R.8D] 380

Assessee had earned long-term capital gain on shares during year which was claimed as exempt under S. 10(38) of the Act. However, no expenditure in relation to exempt income had been disallowed. AO disallowed expenditure. Tribunal up held the disallowances made by the AO. (AY. 2011-12 to 2014-15).

Doon Valley Foods (P.) Ltd. v. ITO (2020) 181 ITD 18 (Chd.) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Not earned any exempt income – No disallowances can be made. [R. 8D] 381

Tribunal held that since the assessee had not earned any exempt income during relevant year, no disallowance could be made. (AY. 2009-10)

Alpex International (P.) Ltd. v. ACIT (2020) 180 ITD 844 (Mum.) (Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income – Average of investments which have yielded exempt income is to be considered for computation of S. 14A disallowance. [R. 8D] 382

Disallowance under S.14A read with rule 8D is to be restricted to exempt income earned during year and only average of investments which have yielded exempt income is to be considered for computation of S. 14A disallowance. (AY. 2014-15)

Mylan Laboratories Ltd. v. DCIT (2020) 180 ITD 558 / 187 DTR 259 / 204 TTJ 426 (Hyd.) (Trib.)

383 **S. 14A : Disallowance of expenditure – Exempt income – Recording satisfaction – Suo-moto disallowance of certain expenditure – Not justified in recomputing disallowance by the AO – Interest – Own funds were more than investment made to earn exempted dividend income, there could be no disallowance of interest expenses – Only such investments are to be taken into account which yield tax exempt income. – Disallowance made under section 14A read with rule 8D cannot be resorted while determining the expenses as mentioned under clause (f) to Explanation 1 to section 115JB. [S. 115JB, R.8D]**

Assessee offered suo-moto disallowance of certain amount of expenditure in computation of income. The AO, not being satisfied with assessee's working, Assessing Officer computed aggregate disallowance under rule 8D at higher amount. Tribunal held that since the AO did not specify any cause of dissatisfaction with assessee's working of suo moto disallowance, AO is not justified in recomputing disallowance. Where assessee's own funds were more than investment made to earn exempted dividend income, there could be no disallowance of interest expenses. Only such investments are to be taken into account which yield tax exempt income. Disallowance made under section 14A read with rule 8D cannot be resorted while determining the expenses as mentioned under clause (f) to Explanation 1 to S. 115JB (AY. 2013-14, 2014-15)

Goyal & Co. (Const.) (P.) Ltd. v. DCIT (2020) 180 ITD 280 (Ahd.) (Trib.)

384 **S. 15 : Salaries – Non-Compete fee – Service rendered outside India – Held to be not taxable – Cannot be treated as assessee in default – DTAA-India-USA. [S. 5(2), 17, 195(2), 201(IA), Art. 16(1), 23]**

Tribunal held that since the employees were rendering services outside India, i. e., the U. S. A., and payments were also made in the U. S. A., article 16 of Double Taxation Avoidance Agreement applied and the payments were taxable only in the U. S. A. It held that income in the hands of the employees was salary or profits in lieu of salary and it had to be treated as such and in view of article 16 of the Double Taxation Avoidance Agreement, it was taxable in the U. S. A. It held that where the payments were in the nature of salary, the payer need not approach the appropriate authority under section 195(2), that the assessee could not be deemed to be an assessee in default under section 201(1) and the interest under section 201(1A) of the Act need not be levied. On appeal,High Court affirmed the order of the Tribunal. (AY.2006-07)

DIT (IT) v. Sasken Communication Technologies Ltd. (2020) 428 ITR 194 / 193 DTR 214 / 315 CTR 320 / 117 taxmann.com 278 (Karn.)(HC)

385 **S. 15 : Salaries – Employed in GEII – Assignment to Australia – Remission of salary to Indian Bank – Cannot be taxed as salary earned in India – DTAA-India-Australia. [S. 5, Art. 15]**

Assessee was employed in company GEII. During the year, assessee was seconded to Australia for an assignment. Assessee filed its return of income and salary income received in Australia was claimed as not taxable in India. The AO held that taxed the salary income accrued in India. On appeal the Tribunal held that the assessee was a resident of Australia and non-resident of India during year and hence the assessee

would be entitled to India-Australia Treaty wherein as per article 15, salary income of resident of Australia was taxable only in Australia. (AY. 2015-16)
Paul Xavier Antony Samy v. ITO (IT) (2020) 183 ITD 143 / 78 ITR 48 (SN) (Chennai)(Trib.)

S. 15 : Salaries – Director – Assessable on accrual basis and not on receipt basis – Salary shown in form 26 AS filed by company alone to be taxed – Assessing Officer is directed to examine factual aspect [Companies Act, 1956, Schedule XIII] 386
Tribunal held that salary was payable in terms of the contract reached between the company and the assessee. Merely because a higher amount was paid in the earlier years that did not lead to the presumption that the same amount should have been paid in the succeeding year also. There was a possibility of reduction in salary in the succeeding year. Salary shown in form 26 AS filed by company alone to be taxed. Assessing Officer is directed to examine factual aspect.(AY.2011-12)
Dy. CIT v. Villoo Zareer Morawala Patel (Smt.) (2020) 78 ITR 17 (SN) (Bang.)(Trib.)

S. 15 : Salaries – Business income – Commission – Commission from employer is liable to be taxed as business income – TDS was deducted as salary – Matter remanded to the AO to verify the expenses incurred for earning of commission income. [S. 28(i)] 387
Assessee was a salaried employee. During relevant year, assessee received certain payment from his employer. Assessee contended that a part of amount so received constituted commission which was liable to be taxed as business income. AO rejected the claim, which was affirmed by the CIT(A).On appeal the Appellate Tribunal held that assessee had been issued Form No. 16 for salary received and Form No. 16A for commission paid and, moreover, applicable rate of TDS had been deducted. Assessee had submitted copy of profit and loss account in which he had shown amount received as commission but same had not been considered by lower authorities. Accordingly in order to arrive at correct profit from activities carried out by assessee, expenses needed to be verified by the AO and the issue was to be sent back to him for verification of expenses debited in the profit and loss account for earning commission income. (AY. 2010-11)
Jalendra Sahoo v. ITO (2019) 76 ITR 337 / 202 TTJ 1 (UO) / (2020) 181 ITD 581 (Cuttack) (Trib.)

S. 15 : Salaries – Director Of Company – Assessable on accrual basis and not on receipt basis – Even if higher salary proposed by employer Not approved By Central Government – AO to examine factually if what is claimed by employer as deduction has been offered to tax by Director. 388
On appeal, the Tribunal held that, any salary due from an employer or a former employer to an assessee is taxable on accrual basis whether the salary is paid or not. Though a higher amount of salary was approved by the Company, the salary was not paid to the director as the necessary approval from the Central Government was not received. Hence, no such excess salary can be subject to tax merely because a higher amount was paid in the earlier years as that did not lead to the presumption that the same amount should have been paid in the succeeding year also. If the company had claimed salary of Rs. 2,10,00,004 only as deduction, there was no reason to tax any

amount in excess of such amount. However, this factual aspect required verification by the Assessing Officer. Accordingly, for the limited purposes of verification of the aspect, the issue was restored to the Assessing Officer. (AY.2011-12)
DCIT v. Villoo Zareer Morawala Patel (Smt.) (2020) 78 ITR 17 (SN.) (Bang.)(Trib.)

389 **S. 17(2) : Perquisite – Salary – Right of redemption in respect of stock appreciation rights (SARs) – Cannot be assessed as perquisite. [S. 15]**
Assessee had received right of redemption in respect of stock appreciation rights (SARs) of a company during relevant previous year when he was an employee of said company and he redeemed SARs during year 1998-99. Assessing Officer held that amount received on redemption of SARs as an employee of company, there being an employer-employee relationship subsisting at relevant time, be treated as taxable income under head 'income from salaries'. As per sub-clause (iiia) of section 17(2), a perquisite would also include value of any specified security allotted or transferred by any person free of cost or at concessional rate to an individual who is or has been in employment of that person. Order of the Assessing Officer was affirmed by the Tribunal. On appeal the Court held that since said sub-clause was effective from 1-4-2000 and assessee had received SARs during assessment year 1998-99 which was prior to insertion of sub-clause (iiia) to section 17(2), said amount could not have been treated as a perquisite to be included as income under head 'salaries' and taxed accordingly (AY. 1998-99)
Sumit Bhattacharya v. ACIT (2020) 274 Taxman 182 / 195 DTR 439 / 317 CTR 727 (Bom.) (HC)
Editorial: Special Bench order in Sumit Bhattachrya v. ACIT (2008) 112 ITD 1 (SB) (Mum.) (Trib.) is reversed.

390 **S. 17(2) : Perquisite – Salary – Medical allowance – Fixed medical allowance was given – No proof of medical expenditure was furnished – Taxable as salary income. [S. 15]**
Tribunal held that medical allowance is not categorised as an allowance which bears entire exemption and, therefore, medical allowance is a fixed pay provided by an employer, and is fully taxable and employees can claim a tax benefit up to Rs. 15,000/-under medical reimbursement on production of bills and supporting document as per section 17(2). However when no proof of medical expenditure incurred by employees was furnished fixed medical allowance given by assessee employer was taxable as salary income. (AY. 2011-12 to 2012-13)
Branch Manager, LIC of India. v. ITO (TDS) (2020) 185 ITD 77 / 196 DTR 261 / (2021) 209 TTJ 1040 (Cuttack)(Trib.)

391 **S. 17(3) : Profits in lieu of salary – Amounts paid to employees under non-compete agreement – Not taxable in India – DTAA-India-USA. [S. 5(2), 9(1), 15, 195, 260A, Art. 16]**
Dismissing the appeal of the revenue the Court held that that, amounts paid to employees under non-compete agreement is not taxable in India. No question of law. (AY.2006-07)
DIT (IT) v. Sasken Communication Technologies Ltd. (2020) 428 ITR 194 / 315 CTR 320 / 191 DTR 214 (Karn.)(HC)

S. 22 : Income from house property – Business income – Call centre services – Rental Income from property assessable as Income from house property – Income arising out of providing services assessable as business Income. [S. 24, 28(i)] 392

Assessee letting out premises and providing ancillary services such as scanning and Digitisation. Assessee receiving composite amount and bifurcating it as income from house property and income from business. AO disallowed the deduction u/s 24(a) of the Act. CIT(A) allowed the claim of the assessee. Tribunal held that bifurcation is in conformity with law and on basis of comparative market rates. Rental income from property assessable as income from house property and income arising out of providing services assessable as business income. (AY.2013-14, 2015-16)

ACIT v. Dr. ITM Ltd. (2020) 77 ITR 338 (Chd.)(Trib.)

S. 22 : Income from house property – Deemed owner – Income from house property – Income from business – Sub letting of property – Leasing of property for a period exceeding 12 years – Lease rental is assessable as income from house property and not as business income. [S. 27(iiib), 28(i), 56, 269UA(f)] 393

Tribunal held that, leasing of property for a period exceeding 12 years. Lease rental is assessable as income from house property and not as business income. (AY. 1990-91 to 1992-93, 1994-95, 1998-99, 2000-01 to 2003-04)

Nahalchand Laloochand P. Ltd. v. Dy. CIT (2020) 77 ITR 664 / 183 ITD 25 / 191 DTR 218 / 204 TTJ 975 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Property which is not legally occupiable and not occupied – Could not be made liable to tax on notional rental income for that period. [S. 22] 394

Assessee purchased commercial property under conveyance deed, dated 18-12-2008, but Occupancy Certificate (OC) for same was given on 24-5-2009, only. In meantime, assessee had leased out property with effect from 1-4-2009. AO held that assessee was liable to pay tax on rental income of property from 1-1-2009 to 31-3-2009, on notional basis. CIT(A) and Tribunal also confirmed the addition. On appeal the Court held that between 1-1-2009 to 31-3-2009, the property was legally not occupiable and not occupied. Under such circumstances, charging of tax on notional rental basis and the question of interpretation of S. 23(1)(a) did not arise at all. Accordingly the order of Tribunal is reversed. (AY. 2009-10)

Sharan Hospitality (P.) Ltd. v. DCIT (2020) 268 Taxman 443 (Bom.)(HC)

S. 23 : Income from house property – Annual value – Arrears of rent – Arrears of rent accruing in a prior years, not received in those years, could not be assessed in a subsequent year when same were received as income from house property – Arrears of rent attributable to preceding years cannot be brought to tax under the head income from other sources – Provision of section 25B inserted by Finance Act, 2000 with effect from 1-4-2001 would apply prospectively. [S. 22, 25B, 56] 395

Dismissing the appeal of the revenue the Court held that, arrears of rent accruing in prior years, not received in those years, could not be assessed in a subsequent year when same was received as income from house property. Arrears of rent attributable to preceding years could not be brought to tax in previous year in which they were

actually received under head income from other sources. Provision of section 25B inserted by Finance Act, 2000 w.e.f. 1-4-2001 enabling taxation of income received from house property relatable to a prior year in year of its receipt is applicable prospectively. (Arising from *Punalur Paper Mills Ltd. v. ITO (2009) 29 SOT 449 (Cochin) (Trib.)* (AY. 1985-86, 1996-97 to 2000-01)
CIT v. Punalur Paper Mills Ltd. (2020) 268 Taxman 47 (Ker.) (HC)

396 **S. 23 : Income from house property – Annual value – Unsold flats – Stock-in-trade – Before the insertion of S. 23(5) – Addition is held to be not valid. [S. 22, 23(5), 28(i)]**
Annual value of the unsold property held by an assessee as stock-in-trade could not be determined and brought to tax under the head 'house property', as against that arrived at by the Hon'ble High Court of Delhi holding to the contrary in *CIT v. Ansal Housing Finance and Leasing Company Ltd (2013) 354 ITR 180 (Delhi) (HC), CIT v. Gundecha Builders (2019) 102 taxmann.com 27 (Bom.) (HC), CIT v. Neha Builders (2008) 296 ITR 661 (Guj) (HC), K. Subaramanian v. Siemens India Ltd (1985) 156 ITR 1(Bom.) (HC), Rajendra Godshalwar v. ITO (ITA No. 7470/Mum/ 207 dt 31-1 2019 (SMC) (Mum.) (Trib.), CIT v. Gundecha Builders (2019) 102 taxmann.com 27 (Bom.) (HC), CIT v. Neha Builders (2008) 296 ITR 661 (Guj) (HC), K. Subaramanian v. Siemens India Ltd (1985) 156 ITR 1(Bom.) (HC), Rajendra Godshalwar v.ITO (ITA No. 7470/Mum/ 207 dt 31-1 2019 (SMC) (Mum.) (Trib.))* As the statutory provision of S. 23(5) is applicable prospectively i.e w.e.f AY 2018-19, the same would have no bearing on the year under consideration. No addition can be made u/s 22 on notional basis. (AY.2014-15, 2015-16)
Osho Developers v. PCIT (2020) 208 TTJ 802 / (2021) 197 DTR 51 (Mum)(Trib.)

397 **S. 23 : Income from house property – Annual value – Business income – Unsold flats – Stock in trade – No rental income to be computed when flats held as stock-in-trade. [S. 22, 23(5), 28(i)]**
The assessee is a builder and developer. During the course of assessment proceedings it was found that the assessee had on hand unsold flats and shops. The AO computed the notional rental on such stock-in-trade under the head "Income from house property" at Rs. 5,54,400. The CIT(A) upheld the contention of assessee in taxing the income as income from business. On appeal the Tribunal held that no rental income could be computed when the flats were held as stock-in-trade. The Finance Act, 2017 with effect from April 1, 2018 has inserted sub-section (5) of section 23 which has the effect of providing that from the assessment year 2018-19, stock-in-trade of buildings, etc., shall be liable to be considered for computation of annual value under the head "Income from house property" after two years from the end of the financial year in which the certificate of completion of construction of the property is obtained. As the assessment year was 2015-16, the amended S. 23 would not apply.(AY.2015-16)
Rafiahamad Rasul Patel v. ITO (2020) 77 ITR 16 (SN) (Pune) (Trib.)

398 **S. 23 : Income from house property – Annual value – Stock in trade – Fair market value – Used for the purpose of business – Addition cannot be made on the basis of notional annual value. [S. 22]**
Property was purchased by assessee, engaged in real estate business, for purpose of resale. Same was lying vacant under head 'inventory' and meanwhile used for purpose

of business. Tribunal held that FMV of property used by appellant for business purpose could not be determined under section 23(1) and addition made by determining annual value was not in accordance with law (AY. 2015-16)
Shivsagar Builders (P.) Ltd. v. ACIT (2020) 185 ITD 684 (Delhi) (Trib.)

S. 23 : Income from house property – Annual value – No rental income – Security deposits to be adjusted for old outstanding – If amount excess remains then current assessment year outstanding to be adjusted [S. 22] 399
Where the assessee has not received rental income for the previous assessment year and any Security/ Rental deposit available is to be adjusted first for old outstanding and if there is any amount remaining unadjusted, the extra rental advance will be adjusted in the current assessment year outstanding. It is undisputed that the rental advance was adjusted for previous assessment year dues and nothing was available for outstanding rent of current assessment year. No addition can be made. (AY. 2012-13)
Vishwaroop Infotech Pvt. Ltd. (Now Merged With Ms Wadhwa group Holgings Pvt. Ltd.) v. ACIT (2020) 195 DTR 393 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Unrealised rent – Failure to produce evidence – Unrealized rent not allowable as deduction. [S. 24, R.4] 400
Assessee had leased out his commercial property at a monthly rent for a period of three years. Received rent only for a period of two months which he declared as annual rental value. AO held that rent agreement reflected monthly rent and, thus, property should be treated as deemed let out and annual rental value was determined accordingly and income from house property was computed. On appeal the Tribunal held that since assessee failed to fulfil conditions laid down in rule 4, namely, any evidence to effect that defaulting tenant vacated property in question, and steps taken to compel defaulting tenant to vacate property as per rule 4, deduction of unrealized rent is not allowable. (AY. 2011-12)
ITO v. Yashovardhan Tyagi (2020) 184 ITD 461 (Delhi)(Trib.)

S. 23 : Income from house property – Annual value – Valuation by Municipal Authorities determining the Annual value of a property cannot be rejected. [S. 22, 24] 401
Allowing the appeal of the assessee the Tribunal held that since the Assessing Officer had not made any enquiry with municipal authorities or any other Government agencies to find out market rent of property, annual value of property had to be determined as per valuation of Municipal Authorities. (AY. 2011-12)
Sanjay Brahmdev Kapoor v. ACIT (2020) 182 ITD 243 (Mum.) (Trib.)

S. 23 : Income from house property – Annual value – Remained vacant throughout relevant year – No addition can be made on account of notional rent. [S. 22] 402
Assessee, engaged in business of trading in shares and commodities, owned a property. The said property remained vacant throughout relevant year due to obstruction caused by ongoing Metro Project just before entrance of premises. Tribunal held that addition on account of notional rent is held to be not justified Followed. *Sachin R. Tandulkar v. Dy. CIT (2018) 172 ITD 266 (Mum.) (Trib.)* (AY. 2014-15)
Empire Capital (P.) Ltd. v. ACIT (2020) 181 ITD 173 (Mum.)(Trib.)

403 **S. 23 : Income from house property – Business income – Annual letting value – Non-resident Director – Flat used as residence as well as carrying on business – Notional value from property cannot be assessed as income from house property. [S. 22, 23(1) 23(4), 28(i)]**

Assessee owning flat and giving to Non-resident director for residence as well as carrying on business therein. Tribunal held that flat a business asset used partly for business and partly for residence of both shareholder directors, notional income from property cannot be assessed as income from house property. (AY.2013-14)

Record Investments and Leasing Pvt. Ltd. v. ITO (2020) 77 ITR 76 (SMC) (SN) (Mum.) (Trib.)

404 **S. 24 : Income from house property – Deductions – Interest on borrowed capital – Part of self – owned house property let to unmarried son and daughter – No evidence that arrangement not genuine – Loss on account of interest to be adjusted against rental income – Interest on entire property not allowable as rental income is only from part of house property. [S. 24(1)(b)]**

Tribunal held that a genuine arrangement could not be disregarded because it resulted or operated to minimise the assessee's tax liability. Therefore interest claimed qua the entire property could not be allowed in full against the rental income, which was qua a part of the house property. Therefore the assessee's interest claim could not be allowed in full and shall have to be suitably proportioned, even as agreed to by the assessee, restricting the interest claim relatable to the self-occupied part thereof to, as allowed, Rs. 1.50 lakhs. The assessee shall provide a reasonable basis for such allocation as well as the working of the area let. In view of the joint residence, be that no area (portion) was specified in the rent agreements. The number of family members living jointly, their living requirements-which may not be uniform, fair rental value of the property, etc., were some of the parameters which could be considered for the purpose. The Assessing Officer shall adjudicate thereon by a speaking order, giving definite reasons for being in disagreement, where so, in whole or in part with the assessee's working, within a reasonable time.(AY.2009-10)

Md. Hussain Habib Pathan v. Asst. CIT (2020) 78 ITR 63(SN) / (2021) 186 ITD 373 (Mum.) (Trib.)

405 **S. 24 : Income from house property – Deductions – Interest paid on borrowed fund – Loan utilised for construction of commercial property a part of which is let out – Allocation of interest – Held to be allowable. [S. 22, 24(b)]**

The assessee is engaged in business of real estate. While computing the income under the head income from house property, the assessee had claimed deduction under S. 24(b) on account of interest paid on borrowed funds. The AO rejected assessee's claim mainly on two grounds, firstly, assessee had not proved utilization of fund for construction of property and, secondly, deduction under S. 24(b) could not be allowed on the basis of area let out. CIT(A) allowed the claim. Tribunal held that since the AO had not pointed out any major deficiency in allocation of interest expenditure between area used for commercial purpose and area let out, assessee's claim for deduction was to be allowed. (AY. 2009-10)

Alpex International (P.) Ltd. v. ACIT (2020) 180 ITD 844 (Mum.) (Trib.)

S. 24 : Income from house property – Deductions – Trust would be entitled for deduction. [S. 11] 406

Tribunal held that the trust would be entitled for deduction in computation of income from house property. Followed *ADIT v. Sri Sathya Sai trust ITA No 7350 /Mum/ 2011 dt 25-03 2013*, referred Nandlal Tolani Charitable Trust, ITA No 6970& 199 /Mum/ 2011 ITA No 1111 /Mum/ 2011 (AY. 2013-14, 2015-16)

Shantaram Bhat Charitable Trust v. CIT (2020) 180 ITD 735 (Mum.) (Trib.)

S. 28(i) : Business income – Income from other sources – Interest earned from surplus fund assessable as business income – Expenditure is held to be allowable as business expenditure. [S. 37(1), 56, 260A] 407

Dismissing the appeal of the revenue the Court held that interest earned by assessee on its surplus funds was taxable as business income and same could not be assessed as income from other sources and accordingly the expenditure incurred is held to be allowable as business expenditure.

PCIT v. NTPC SAIL Power Co. (P.) Ltd. (2020) 117 taxmann.com 135 (Delhi)(HC)

Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. NTPC SAIL Power Co. (P.) Ltd (2020) 272 Taxman 92 (SC)

S. 28(i) : Business income – Electricity company – Electricity distribution – Efficiency gain amount which was not refunded to customers, said surplus fund being at disposal of State Electricity Regulatory Commission, could not be included in business profit. [S. 4] 408

Assessee company was engaged in business of distribution of electricity in Delhi. It had no right to appropriate efficiency gain amount which was not refunded to customers and said surplus fund was at disposal of State Electricity Regulatory Commission. Assessing officer treated the said income as business income. Tribunal deleted the addition. On appeal by the revenue the Court held that surplus amount could not be included in business profit of assessee. (AY. 2009-10)

Dy. CIT v. Tata Power Delhi Distribution Ltd. (2020) 273 Taxman 56 (Delhi) (HC)

S. 28(i) : Business income – Real estate development – Letting out mall – Assessable as business income and not income from house property. [S. 22, 23] 409

Dismissing the appeal of revenue the Court held that as the business of assessee being real estate development, rental income received by assessee from letting out mall developed by it and rental income received from fit outs, namely, base super structure of building, were liable to brought to tax under head 'income from business' and income from other sources' respectively and not income from house property. (AY. 2005-06)

CIT v. Prestige Estate Projects (P) Ltd. (2020) 274 Taxman 6 (Karn.)(HC)

S. 28(i) : Business income – Income derived from letting out of property to the tenants as income from business in the hands of the owner of the property – Assessable as business income. [S. 14A, 22, 56] 410

Dismissing the appeal of the revenue the Court holds that CBDT vide circular No.16 of 2017 issued by the CBDT dated 25.04.2017 has clarified this issue. The CBDT

after taking note of the two decisions of the Karnataka High Court held that it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out the premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'. Referred to *CIT v. Elnet Technologies Limited, (2013) 30 Taxmann.com 63 (Mad) (HC)* and after considering *CIT v. Chennai Properties and Investments Limited, (2005) 274 ITR 117, (SC)* it was pointed out that income derived from letting out of the property with all amenities and facilities would be income from business and cannot be assessed either as income from house property or as income from other sources. The said decision of the Hon'ble Division Bench was appealed against by the revenue before the Hon'ble Supreme Court in SLP No.11638 of 2013 and we are informed that the appeal was dismissed on 27.01.2020 on the ground of Low Tax Effect. As regards disallowance of u/s 14A the order of tribunal was affirmed based on the facts that no expenditure was incurred for earning exempt income. (AY. 2011-12, 2012-13)
CIT v. Tidel Park Ltd. (2020) 195 DTR 356 (Mad.)(HC)

411 **S. 28(i) : Business income – Income from house property – Rental income from Technology Park owned, developed and maintained by assessee – Taxable as business income – Remand by Appellate Tribunal is held to be not proper. [S. 22, 80IAB, 254(1)]**
Allowing the appeal the Court held that the Tribunal was not right in holding that the assessee's income from the technology park owned, developed and maintained by it was assessable under the head Income from house property and not under the head "Income from business. Court also held that remand by the tribunal is held to be not proper. (AY.2008-09)
Lulu Tech Park Pvt. Ltd. v. PCIT (2020) 428 ITR 514 (Mad.)(HC)

412 **S. 28(i) : Business income – Income from house property – Development of software park and leasing of it – Assessable as business income – The tendency of the Revenue authorities not to follow the judgments of superior constitutional courts deserves to be strongly deprecated by imposition of suitable costs on them. [S. 22]**
Dismissing the appeal the Court held that the assessee diversified and added its business line for the development of real estate of a particular type, namely software companies even though the name of the company continued to remain KMPL. The main business activity of the company from its motor business had been diversified into developing special kinds of property and earning lease rental income as its main business income. By no stretch of imagination, could a software park developed with the special facilities and amenities for software companies, be described or believed to be a property created for earning rental income as income from house property. The income was assessable as business income.
Obiter dicta : The tendency of the Revenue authorities not to follow the judgments of superior constitutional courts deserves to be strongly deprecated by imposition of suitable costs on them.(AY.2010-11, 2011-12)
PCIT v. Khivraj Motors Pvt. Ltd. (2020) 427 ITR 113 / 193 DTR 205 / 317 CTR 184 / 274 Taxman 308 (Mad.)(HC)

S. 28(i) : Business income – Income from house property – Object of developing commercial complexes – Income earned assessable as business income. [S. 22] 413

The assessee set up a commercial complex-cum-shopping mall and the operations commenced during the financial year 2009-10. The assessee let out various shops in this commercial complex dealing with various products. Apart from letting out the premises, the assessee provided various services to the occupants of the premises such as security services, housekeeping, maintenance, lighting, repairs to air conditioners, marketing and promotional activities, advertisement and such other activities. The premises were let out on leave and licence basis, and the compensation was based on revenue sharing basis. The assessee declared its income under the head income from business. The AO treated it as income from house property. CIT(A) up held the order of the AO. Tribunal up held the contention of the assessee. On appeal dismissing the appeal of the revenue the Court held that the object of the assessee was clearly to acquire, develop, and let out the commercial complex. The assessee provided even marketing and promotional activities. The intention of the assessee was a material circumstance and the objects of association, and the kind of services rendered clearly pointed out that the income was from business. All the factors cumulatively taken demonstrated that the assessee had intended to enter into a business of renting out commercial space to interested parties. The findings rendered by the Tribunal on assessment of the factual position before it that the income in question had to be treated as business income was justified. (AY.2010-11)

PCIT v. City Centre Mall Nashik Pvt. Ltd. (2020) 424 ITR 85 / 121 taxmann.com 87 (Bom.)(HC)

Note : Also digested at page No. 126, Case No. 417

S. 28(i) : Business income – Capital gains – Object of firm is to purchase and sell land – Profit from purchase and sale of land assessable as business income. [S. 45] 414

Dismissing the appeal the Court held that the business of the assessee very specifically included buying and selling properties situated in various places in Goa either wholly or in plots. Considering the wide phraseology employed, it was obvious that the business of the assessee included buying and selling even agricultural properties. Therefore, this was not a case of sale of a solitary property, by way of a one off transaction. The gains from sale of land were assessable as business income. (AY.2007-08)

Afonso Real Estate Developers v. CIT (2020) 425 ITR 153 / 271 Taxman 40 (Panaji) (Bom.) (HC)

S. 28(i) : Business income – Income from house property – Main business is let out of property – Income assessable as business income. [S. 22] 415

The issue before the high Court was whether rental income can be assessed as income from business or income from house property. Court held that it will depend upon the facts of each case and whether such income is earned by the assessee by way of utilisation of its business assets in the form of property in question or as an idle property which could yield rental income. Even the amended definition under section 22 of the Income-tax Act, 1961 intends to tax the notional income from the self occupied portion of the property to run the assessee's own business therein as business income. Considering the facts of the case,the Court held that it was not in dispute that the exclusive and main source of income of the assessee was only the rentals and

lease money received from the lessees. The income received was assessable as business income.(AY. 1999-2000, 2000-01, 2001-02, 2005-06)
PSTS Heavy Lift and Shift Ltd. v. Dy.CIT (2020) 422 ITR 497 / 107 CCH 0454 / 193 DTR 193 / 317 CTR 172 (Mad.)(HC)

416 **S. 28(i) : Business income – Client code modification – (CCM) – Shifting of profits – Addition as income on the basis of alleged doubtful transaction is held to be not valid – Deletion of addition by the Tribunal is affirmed. [S. 69, 143(3)]**
The assessee is a member of Multi Commodity Exchange of India Ltd (MCX) and National Commodity and Derivatives Exchange of India. The assessee is carrying on trading activities both on derivatives and delivery based transactions on its own account as well as on behalf of various clients. AO has added the entire amount of doubtful transactions by way of assessee's additional income on the basis of client code modification. CIT(A) deleted the addition on the ground that all the clients are having PAN and regularly filing their returns and profits were taxed in their hands. Clients are not related parties. Modification was around 3% of the total transactions. All of them were complied with KYC norms. Tribunal affirmed the order of CIT(A)). On appeal by the revenue, dismissing the appeal the Court held that, even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses is correct, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. Adding the entire amount of doubtful transactions by way of assessee's additional income is wholly impermissible. The fate of the individual investors in whose cases the Revenue could have questioned the artificial losses is not known. Accordingly the appeal of the revenue is dismissed. (ITA No.1257 of 2016, dt.15.01.2019)(AY. 2006-07)
PCIT v. Pat Commodity Service Pvt. Ltd. (Bom.)(HC), www.itatonline.org
Editorial: Order of Mumbai Tribunal in ITO v. Pat Commodity Services P. Ltd (ITA No. 3498/3499/Mum/2012 dt.07/08/2015)(AY. 2006 07, 2007-08) is affirmed.

417 **S. 28(i) : Business income – Income from house property – Exploitation of property commercially by way of complex commercial activities – Rental income is to be taxable as income from business – Not as Income from House Property. [S. 22]**
Assessee declared its income under the head Income from Business. The AO however, treated the same as Income from House Property which was affirmed by the CIT(A). Tribunal decided the issue in favour of the assessee. On appeal before the High Court, question raised is "Whether, on the facts and in the circumstance of the case and in law, the Hon'ble Tribunal was justified in holding that the assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the assessee to be taxable as income from business and not under the head "Income from House Property'?" The Honourable Court considered the object clause of the company and various services provided such as marketing and promotional activities and also organising various events and programs. Court also noted in the context of the revenue sharing agreement copies of which have been placed on record on which the revenue receives not only license fee of the amounts specified therein and percentage of net revenue. In some of the agreements the compensation is either license fee or

percentage of net revenue, whichever is higher. The Intention of the Assessee is also a material circumstance and the objects of Association, the kind of services rendered clearly point out that the Income is from Business. All the factors cumulatively taken demonstrate that the assessee had intended to enter into a Business of renting out commercial space to interested parties. The other income is only an income which is a dividend income from the deposits received from the Business income. Therefore, considering all these factors which have been enumerated above and referred to by the Tribunal, the findings rendered by the Tribunal on assessment of the factual position before it that the income in question has to be treated as business Income. Referred *Chennai Properties and Investments Ltd. v. CIT [2015] 373 ITR 673 (SC) Raj Dadarkar, Associates v ACIT [2017] 394 ITR 592 /81 taxmann.com 193 (SC) PCIT v. Krome Planet Interiors (P.) Ltd [2019] 107 taxmann.com 443 / 265 Taxman 308 (Bom.) (HC).(ITA No.1783/Mum/ 2015 dt.23-09-2016)* (AY.2010-11)
PCIT v. City Centre Mall Nashik Pvt. Ltd. (2020) 424 ITR 85 / 121 taxmann.com 87 (Bom.) (HC)

S.28(i) : Business income – Income from house property – Rule of consistency – No justifiable reasons to change income head – Income continued to be assessed under the head of business income.[S. 22] 418
Where income has been assessed under the head of business income for past assessment years, it was held that there are no justifiable grounds for AO to change the income heads in the particular AY in contradiction with the views taken in past Assessment Years. The view of Supreme Court in the case of *CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC)* has been taken, as per which if certain facts were allowed to attain finality in particular year, then contradictory opinion on those very facts in subsequent years are not allowed. (AY. 2012-13)
Deep Multiplex P. Ltd. v. Dy. CIT (2020) 190 DTR 451 / 205 TTJ 916 (SMC) (Ahd)(Trib.)

S. 28(i) : Business income – Ancillary objects – Financial services – Assessable as business income. [S. 37(1), 57(3)] 419
Tribunal held that since the business of the assessee during the AY. 2014-15 was only financial services, the income earned during the AY. 2014-15 ought to be assessed as business income and the entire expenditure incurred by the assessee for earning such income had to be allowed as deduction. There was nothing to suggest that the assessee was indulging in any other business activity during the AY. 2014-15.(AY. 2014-15)
ACIT v. Sunstar Hotels and Estates Pvt. Ltd. (2020) 82 ITR 437 (Chennai) (Trib.)

S. 28(i) : Business income – Civil contractor – Transfer of development rights – Income earned from project assessable as business income – Estimation of 10% of gross receipts is held to be justified – When income is estimated specific disallowance u/s 40A(3) cannot be made – The transfer definition cannot be applied to on transfer of development rights which is a business asset – Income taxable on performing certain obligations. [S. 2(47)(v), 40A(3), Transfer of Property Act, 1882, S.53A] 420
Tribunal held that the assessee was engaged as a civil contractor and the income earned from the project was assessed as business income. Therefore, the term ”transfer” as

defined in section 2(47)(v) not applicable since the transfer was applicable only in the case of capital assets held by the assessee. The development rights were held as business assets. In terms of the joint venture agreement only part of the income accrued to the assessee on execution of the project agreement. The balance consideration was conditional and was to accrue only in the event of the assessee performing certain obligations under the agreement. The payments received in the subsequent years had already been offered to tax. Therefore, estimating the income at 10 per cent of gross receipts was justified. Once the income was estimated, no further disallowance under section 40A(3) would be warranted. (AY. 2009-10)
ITO v. Abdul Kayum Ahmed Mohd. Tamboli (2020) 82 ITR 419 (Mum.)(Trib.)

421 **S. 28(i) : Business income – Redemption of debentures – Amount earned on redemption of debentures by company in which investment was made, would be taxable as business income – Proportionate revenue – Net amount received is held to be taxable. [S. 145]**
Tribunal held that the amount earned by assessee on redemption of debentures by company in which investment was made by assessee would be taxable as business income. Tribunal also held that as per agreement for purchasing area developed and allocated to land owner, developer would reimburse landowner proportionate revenue proceeds after adjusting proportionate expenses on account of advertising, marketing and other expenses, only net amount received would be taxable in landowner's hand. (AY. 2015-16)
Shivsagar Builders (P.) Ltd. v. ACIT (2020) 185 ITD 684 (Delhi)(Trib.)

422 **S. 28(i) : Business income – Excess wastage of raw material – Cannot be assessed as suppressed/unaccounted production.**
Tribunal held that excess wastage of raw material would not ipso facto lead to an inference of suppressed/unaccounted production carried out by assesse de hors any material evidencing factum of suppressed / unaccounted production carried out by assessee. (AY. 2012-13)
Medley Pharmaceuticals Ltd. v. DCIT (2020) 184 ITD 8 / 207 TTJ 143 (Mum.)(Trib.)

423 **S. 28(i) : Business income – Capital gains – Bad debt – There is no embargo either on Assessing Officer or on assessee to show income or loss under head business or profession in subsequent year merely because it was shown in earlier assessment year – Income has to be assessed under correct head – Allowability of bad debt or business loss has to be determined in the year in which it is to be allowed – Bad debt is allowable in the year it is written off in the books of account. [S. 36(1)(viii), 36(2), 45, 143(3)]**
Tribunal held that if either assessee has offered income or Assessing Officer in earlier assessment year has assessed income under particular head which originally was assessable in a different head, i.e., capital gain, even though same was liable to be assessed under head 'business or profession', then there is no embargo either on Assessing officer or on assessee to show income or loss under head 'Business or profession' in subsequent year. Therefore claim regarding allowability of bad debts or

business loss has to be determined by Assessing Officer in year in which loss has been claimed in P&L account and assessment of corresponding income as capital gain in an earlier year would not be binding on assessee and it is always open for assessee to point out that it is to be assessed under correct head, that is, business income. Assessee need not require to establish/prove that debt has in fact become irrecoverable and it is sufficient that if the bad debt is written off irrecoverable in account of assessee; and, there is no requirement under Act that bad debt has to accrue out of income under same head 'income from business or profession' to be deducted as income (AY. 2013-14)
Anant Raj Ltd. v. ACIT (2020) 184 ITD 820 / 191 DTR 32 / 206 TTJ 1 (Delhi)(Trib.)

S. 28(i) : Business income – Interest income from fixed deposit (FD) receipts with bank – Obtaining letter of credit for its purchases – Assessable as business income. [S. 10AA] 424
Assessee in its SEZ, was engaged in business of trading of diamonds and gold jewellery as well as manufacturing gold jewellery for purpose of export. It earned interest income from fixed deposit (FD) receipts with bank which were made by assessee in course of its trading business of import for purposes of re-export, for obtaining Letter of Credit for its purchases. Tribunal held that FD being business assets, said interest income was to be assessed as business income of assessee. (AY. 2012-13, 2013-14)
Zaveri & Co. (P.) Ltd. v. DCIT (2020) 184 ITD 777 (Ahd.)(Trib.)

S. 28(i) : Business income – Purchase and sale of immovable properties – Sale of agricultural plot of land – Stock in trade – Assessable as business income and not capital gains [S 2(14)(iii), 45] 425
Assessee was engaged in purchase and sale of immovable properties-During relevant year, assessee sold agricultural plot and resultant gain was claimed as exempt on grounds that land was located outside municipal limits. The Assessing Officer however held that land was held as stock in trade and resultant income was business income as intention of assessee to sell land at time of purchase was clear from fact that successive returns had been filed declaring same as stock-in-trade and no investments had been made by assessee in last five years. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that main objects of company were to acquire, purchase, take on lease or otherwise any land, building, structures, plot, to act as real estate agents in connection with buildings, schemes and also to be colonizers to sale plots and flats and having acquired land as stock-in-trade, land continued to be held for business purpose and continued to be shown as closing stock for all years and also on going through Memorandum and Articles of Association, conduct and business affairs of assessee, and on perusal of books of account of assessee, income from sale of plot could not be said to be an income arising out of capital gains and had been rightly treated as business income. (AY. 2011-12)
Kohli Estates (P.) Ltd. v. ITO (2020) 183 ITD 650 / (2021) 209 TTJ 624 (Delhi)(Trib.)

S. 28(i) : Business income – Interest income – Fixed deposit – Rule of consistency – Directed to be assessed as business income. [S. 56] 426
The assessee had offered interest income as business income in consonance with the consistent stand taken by it in earlier years. In all these years, the Department had

accepted the stand of the assessee that the interest income on fixed deposits had business nexus and had to be assessed as business income. The authorities did not accept the claim for the assessment year 2014-15. On appeal the Tribunal held that the interest income on fixed deposits in the peculiar facts of the instant case should be assessed under the head business income.(AY.2014-15)
Trans Freight Containers Ltd. v. Dy. CIT (2020) 78 ITR 5 (SN) (Mum.)(Trib.)

427 **S. 28(i) : Business income – Remission or cessation of trading liability – Introduction of Gold Bars in to business – Nether assessable as business income or cessation of liability. [S. 41(1)]**
Tribunal held that unless the benefit accrued to the assessee is in nature of cash or money, section 28 of the Act had no application and in the absence of cessation of liability, section 41(1) had no application. All that had happened was that the assessee had introduced the gold left behind by his father into his business and shown the trade liability in his own name in the name of other family as a whole or individual legal heir. Such an act could not be termed either as introduction of unaccounted or unexplained money into the capital nor could the trade liability be said to have ceased to exist. Thus the addition under section 28 read with section 41 could not be sustained. (AY. 2012-13)
Deepak Garg v. ITO (2020) 78 ITR 40 (SN) (Delhi)(Trib.)

428 **S. 28(i) : Business income – Intercorporate deposit – Interest on margin money – Interest earned assessable as business income and not as income from other sources. [S. 56]**
Assessing which is carrying on business of drilling, mount advancing borrowed funds as intercorporate deposits to its subsidiary to carry out drilling business. Income on such intercorporate deposits be treated as business income and not income from other sources. Money kept with bank as margin money out of business compulsion. Interest earned on margin money taxable as business Income. (AY. 2013-14)
Essar Shipping Ltd. v. ACIT (2020) 79 ITR 555 (Mum.)(Trib.)

429 **S. 28(i) : Business income – Income from other sources – Interest earned from investments with treasuries and banks was part of the banking activity of the assessee, and was eligible to be assessed as income from business. [S. 56]**
Tribunal held that the interest earned from investments with treasuries and banks was part of the banking activity of the assessee, and was eligible to be assessed as income from business instead of income from other sources. (AY. 2010-11)
The Chombal Service Co-Operative Bank Ltd. v. ITO (2020) 81 ITR 13 (Cochin)(Trib.)

430 **S. 28(i) : Business income – Income from other sources – Interest income on fixed deposits – Extending guarantee to Government authorities – Assessable as income from business and not as income from other sources. [S. 56]**
Tribunal held that interest income earned by assessee from fixed deposits kept with banks, in normal course of business was to be taxed as business income. (AY. 2006-07)
ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 (Mum.)(Trib.)

S. 28(i) : Business loss – Foreign exchange forward contract loss – Allowable as business loss. 431

Dismissing the appeal of the revenue the High Court held that Tribunal was right in deleting the addition of Rs. 1,06,90,750/-made by the assessing officer on account of disallowance of loss on foreign exchange forward contract loss as business loss. Followed *CIT v. D. Chetan & Co (2016) 243 Taxman 356 (Bom.) (HC) and CIT v. Chaitya [IT Appeal No. 128 of 2015, dated 7-7-2017* (AY. 2009-10)

CIT v. C.J Exports (2020) 121 taxmann.com 8 (Bom.)(HC)

Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, CIT v. C.J Exports (2020) 275 Taxman 388 (SC)

S. 28(i) : Business loss – Investment in subsidiary – Subsidiary wound up – Loss is allowable. [S. 37(1)] 432

Assessee made investment in equity of its wholly owned subsidiary company set up in USA Subsidiary could not perform upto company's expectations and, therefore, it was wound up. Assessee claimed loss arising from investment made in its subsidiary as business loss on ground that investment was made for purpose of business. Assessing Officer disallowed the loss. Order of the Assessng Officer was affirmed by Appellate Tribunal. On appeal the Court held that assessee made investment in shares of its subsidiary company for enhancement of business activity of assessee in global market which primarily related to business operation of assessee. Investment was not made with a view to create capital asset in form of holding shares. Accordingly the loss claimed by assessee was to be allowed as business loss. (AY. 2004-05)

ACE Designers (P) Ltd. v. ACIT (2020) 275 Taxman 138 (2021) 198 DTR 118 (Karn.)(HC)

S. 28(i) : Business loss – Foreign exchange derivative loss cannot be disallowed holding it to be a speculative loss – Remand to the Assessing Officer is held to be valid. [S. 43(5)] 433

Assessee-company incurred loss in respect of foreign exchange derivative transaction. Assessing Officer disallowed claim of derivative loss by holding that forex derivative losses were speculative losses and not business losses. Tribunal held that loss incurred on foreign exchange derivative could not be disallowed holding to be a speculative loss; that foreign exchange derivative loss in respect of capital items was certainly a capital expenditure and could not be allowed as loss whereas in respect of revenue items, it could be allowed as revenue loss. Tribunal directed the Assessing Officer to verify whether the loss was in respect of capital items or revenue items. (AY 2009-10)

PCIT v. Precot Meridian Ltd. (2020) 275 Taxman 398 (Mad.)(HC)

S. 28(i) : Business loss – Fluctuation in rate of foreign exchange – Allowable as business loss. [S. 37(1)] 434

Dismissing the appeal of the revenue the Court held that the loss on account of fluctuations in foreign currency did not pertain to any capital asset and such loss had occurred to the assessee in the ordinary course of business, hence allowable as business loss

PCIT v. V. A. Tech Wabag Pvt. Ltd. (2020) 424 ITR 105 (Mad.)(HC)

435 **S. 28(i) : Business loss – Business expenditure – Obsolescence allowance – Write of off obsolete stock – Allowable as business loss. [S. 37(1), 145A]**
Dismissing the appeal of the revenue the Court held that the obsolete stock which was not disposed of or sold was allowable as expenditure. Order of Tribunal is affirmed. Followed *CIT v Heredilla Chemicals Ltd (2002) 255 ITR 532 (Bom.)(HC)*
CIT v. Gigabyte Technology (India) Ltd. (2020) 421 ITR 21 / 195 DTR 334 / 273 Taxman 184 (Bom.)(HC)

436 **S.28(1) : Business loss – losses incurred due to surrender of NLD certificate – Allowable as normal business loss.[S.37(1)]**
Where assessee surrendered the NLD certificate obtained earlier after subsequently having obtained 2G spectrum certificate to department of telecommunication. It was held that as assessee was engaged in providing telecommunication services, losses incurred on account of surrender of NLD certificate would be considered normal business expenditure therefore the same shall be allowable. (AY. 2011-12)
ACIT v. Loop Telecom Ltd (2020) 189 DTR 46 / 205 TTJ 27 (Mum)(Trib.)

437 **S. 28(i) : Business loss – Commercial expediency – Loss caused as a result of fraud, embezzlement by employees was allowed as business loss. [S. 37(1)]**
Where the assessee claimed loss on account of different items of frauds, embezzlement by the employees of the bank, the same was allowed, as the legal recourses was taken against the alleged defaulters including termination of service of the guilty employees. It was held that the losses caused to the assessee was allowed, as they were very much irrecoverable. The reliance was placed on Supreme Court judgement in the case of *Bombay Steam Navigation Co. (1953)(P) Ltd. v. CIT (1964) 56 ITR 52 (SC)* where it was specifically held that the question must be viewed in the larger context of business necessities or commercial expediency and that no abstract or pedantic view can be taken in the matter. (AY. 2011-12)
Washim Urban Co-Operative Bank Ltd. v. Dy. CIT (2020) 191 DTR 310 / 206 TTJ 420 (Nag.)(Trib.)

438 **S. 28(i) : Business loss – Losses incurred on surrender of NLD licence – Allowable as business loss. [S. 35ABB(2), 37(1)]**
Dismissing the appeal of the revenue the Tribunal held that the Assessee was engaged in business of providing telecom services and losses incurred on account of surrender of NLD license would be in normal course of business. The assessee has not claimed any depreciation on intangible assets in return of income therefore the assessee is eligible to claim write-off as normal business loss considering the provisions of section 35ABB(2) read with CBDT Circular No. 763 dt. 18/02/1998. (AY. 2011-12)
ACIT v. Loop Telcom Ltd. (2020) 189 DTR 46 / 205 TTJ 27 (Mum.)(Trib.)

439 **S. 28(i) : Business loss – Derivative contracts – Futures and options – Interim report of SEBI – Loss in trading from stock option – Loss allowable as business loss.**
Assessee transacted in various derivative contracts, including futures and options. It claimed certain loss in trading from stock option. Assessing Officer relying upon interim

order of SEBI that assessee was part of entities which had entered into non-genuine, fraudulent trades to generate fictitious profits/losses, disallowed loss claimed by assessee. Tribunal held that SEBI vacated interim order and allowed assessee and other entities to trade as usual observing that issue would require detailed verification from Income Tax Department. Accordingly since there were no material available with authorities below so as to conclude that assessee had entered into any dubious or other transactions deliberately to show business loss, it was imperative on part of authorities below to examine issue on merit and to decide whether assessee had suffered genuine business losses out of transactions/trades in question-Held, yes-Whether since authorities below did not examine issue on merits and merely relying upon ad-interim order of SEBI concluded issue against assessee, impugned order was to be set aside and addition was to be deleted.(AY. 2015-16)
Kundan Rice Mills Ltd. v. ACIT (2020) 83 ITR 466 / 185 ITD 765 (Delhi)(Trib.)

S. 28(i) : Business loss – Sale of shares – Disallowance of loss was deleted. 440
Assessee had purchased shares for consideration of Rs. 25 lakhs and sold for a consideration of Rs. 50,000 and claimed loss on sale of shares at Rs. 24.50 lakhs. The AO held that whole transaction of purchase and sale of shares was sham and loss claimed by assessee was bogus and, accordingly, he disallowed said loss. The Tribunal held that revenue had not brought on record whether assessee received consideration more than Rs. 50,000 or consideration more than this would accrue to assessee. Regarding cost of acquisition of shares also Assessing Officer had not brought on record any adverse evidence. Accordingly the loss was directed to be allowed. AY. 2011-12)
Alka Jain (Smt.) v. ACIT (2020) 80 ITR 464 / 185 ITD 224 / 207 TTJ 1013 (Delhi)(Trib.)

S. 28(i) : Business loss – Commodity derivatives – Suspension of operations by NSEL – Amounts due from brokers – Allowable as business loss. [S. 43(5)(e)] 441
Assessee had been dealing in trading on NSEL platform and treated receipts as income from business which had been accepted by revenue in earlier years. In current year, assessee purchased through two Commodities brokers-NSEL failed to fulfill its commitments and ultimately Government had prohibited NSEL to make any transactions after 1-7-2013-Owing to suspension of operations by NSEL, assessee could not recover amounts from both brokers which was given as a part of business transaction for purchase of commodities in conduct of regular business operations. Assessing Officer disallowed losses as claimed by assessee on the ground that transactions carried out by assessee were speculative transactions settled without delivery in terms of section 43(5). Tribunal held that since assessee was in business of commodity derivatives and revenue had also accepted income from transactions of assessee as business income and not as income from speculation for all earlier years, the loss is allowable as business loss. (AY. 2015-16)
Chowdry Associates v. ACIT (2020) 184 ITD 222 (Delhi) (Trib.)

442 **S. 28(i) : Business loss – Foreign exchange fluctuation loss – Matter remanded – Bad debt – Advances written off was not allowable as bad debt, same would not ipso facto jeopardize assessee's claim for deduction of same as business loss – Matter remanded. [S. 36(1)(vii), 36(2), 37(1)]**

The assessee has claimed foreign exchange fluctuation loss as business loss. The Assessing Officer rejected assessee's claim on ground that assessee failed to substantiate same by bringing relevant material on record. Tribunal remanded the matter. As regards the claim of bad debt,even if deduction of advances written off by assessee during relevant year was not allowable as bad debt, same would not ipso facto jeopardize assessee's claim for deduction of same as business loss. Matter remanded. (AY. 2013-14)
Futura Polyster Ltd. v. ITO (2020) 184 ITD 158 (Mum.)(Trib.)

443 **S. 28(i) : Business loss – Forfeiture of advance – Allowable as business loss having direct nexus with operation of business and is incidental to business. [S. 36(1)(vii), 36(2)]**

Assessee was engaged in business of trading of agricultural products, building construction and generation of power/energy. The assessee written off the forfeiture of advance as bad debt. The AO disallowed the said loss. Tribunal held that loss was incurred in character of trade and during ordinary course of business therefore forfeiture of advance was a business loss having direct nexus with operation of business and was incidental to business carried too hence, was allowable. (AY. 2011-12)
DCIT v. DML Exim (P.) Ltd. (2020) 184 ITD 432 (Rajkot)(Trib.)

444 **S. 28(i) : Business loss – Speculation business – Contract cancellation charges – Part and parcel of regular export business – Loss cannot be disallowed as speculative loss. [S. 73]**

Assessee was engaged in export of cotton and other agricultural products to various countries. It entered into proforma invoice contract with proposed purchasers of foreign country specifying therein terms of contract of goods, time period of supply and rate. It paid contract cancellation charges to various foreign parties for non-fulfilment of contractual terms and conditions resulting in settlement of contracts at price lower than pre-determined price. The AO held that said contract cancellation charges as speculation loss and disallowed same. CIT(A) held that contract cancellation charges were in nature of payment for failure to oblige contractual terms and conditions resulting in settlement of contracts at price of lower than pre-determined price and, thus, assessee had to make payment as per terms of contract, further, noted that cancellation of contract was in respect of supply of goods in which assessee was dealing and it was assessee who knew his business and knew when to enter into a contract and when to exit. Accordingly, held that such cancellation of contracts by assessee was part and parcel of regular export business and, thus, directed to delete disallowance made by Assessing Officer. On appeal the Appellate Tribunal affirmed the order of the CIT(A). (AY. 2012-13)
DCIT v. DML Exim (P.) Ltd. (2020) 184 ITD 432 (Rajkot)(Trib.)

S. 28(i) : Business loss – Sale of cashew to sister concerns – Conformity with normal commercial practice – Allowable as business loss. [S. 145] 445

Assessee sold cashew kernels to its sister concerns. The Assessing Officer disallowed loss claimed by assessee on sale of cashew kernels. Tribunal held that price charged by assessee from its sister concerns was in conformity with normal commercial practice whereby assessee got huge orders in large quantities with timely recovery of debts. Documentary evidences in form of purchase invoice, sale invoice, various bills and vouchers were not found defective by Assessing Officer, on facts, therefore, impugned disallowance of loss incurred by assessee by Assessing Officer was to unjustified. (AY. 2008-09 to 2011-12)

R. Pratap v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
R. Prakash v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
Ramesh Chandran Nair v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
T.C. Usha v. CIT (2020) 183 ITD 750/195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
Vijaylaxmi Cashew Co. v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin) (Trib.)

S. 28(i) : Business loss – Foreign exchange fluctuation exchange rates – Loans were not used for import of capital goods – Loss allowable as business loss. [S. 37(i)] 446

Tribunal held that although there was import of capital assets in those years when external commercial loans were taken there was substantial exports also and the assertion of the assessee was that such export proceeds were used for import of capital assets and foreign exchange loan was not used for that purpose. There was no evidence on record to show that the foreign exchange loans were used for import of capital goods. The Commissioner (Appeals) was right in deleting the disallowance made by the Assessing Officer of foreign exchange loss. (AY.2011-12, 2012-13)

Dy. CIT v. Coffee Day Global Ltd. (2020) 83 ITR 41 (SN) (Bang.) (Trib.)

S. 28(i) : Business Loss – Import duty – Non – payment of duty would have resulted in substantial losses for assessee and damaged reputation in market – Loss is allowable as business Loss out of commercial expediency. [S. 37(i)] 447

The loss was incurred in the course of business being carried out by the assessee and non-payment of the duty would have resulted in substantial losses for the assessee and damaged the assessee's reputation in the market. Thus the loss would be allowable to the assessee as a business loss out of commercial expediency.(AY.2006-07, 2008-09)

Mihir Bipin Parekh v. Dy. CIT (2020) 79 ITR 5 (SN) (Mum.)(Trib.)

S. 28(i) : Business loss – Loss on account of fluctuation in rate of foreign exchange – Allowable as business loss [S.37(1), 145] 448

Tribunal held that the assessee was following the mercantile system of accounting consistently. The foreign exchange loss was due to the reinstatement of the accounts at the end of the financial year as well as loss incurred on account of exchange fluctuation on repayment of borrowings similar to the interest expenditure and it was to be allowed as revenue expenditure under section 37 of the Act, according to the accounting standard. (AY. 2013-14, 2014-15)

Dy. CIT v. Coffee Day Global Ltd. (2020) 79 ITR 322 (Bang.)(Trib.)

449 **S. 28(i) : Business loss – Cancellation of purchase orders – Business transactions it is not necessary that all the transactions should be proved by documentary evidence – Loss deductible.**

Tribunal held that in the business transactions it is not necessary that all the transactions should be proved by documentary evidence. In business, orders were placed orally as well and particularly when the transactions had been confirmed by the parties, there was no reason to doubt the statements of the parties or their reply. The documentary evidence which had not been rebutted by the Assessing Officer could not have been disbelieved by him on irrelevant reasons. The Assessing Officer did not examine the parties from whom the assessee had purchased the items under reference which he had later on sold to other parties when the two parties refused to accept the goods from the assessee. The Assessing Officer had failed to establish that the loss suffered by the assessee was not genuine. Loss is held to be allowable as deduction (AY.2014-15)

Ramesh Kumar Agarwal v. ITO (2020) 80 ITR 436 (Delhi)(Trib.)

450 **S. 28(i) : Business loss – Foreign exchange forward contracts to safeguard against losses due to fluctuation in foreign currency – Not speculative activity but business activity. [S. 37(1)]**

Tribunal held losses on revaluation of unmatured foreign exchange forward contracts were not notional losses and were allowable as business expenditure under section 37(1). Further, forward contracts in foreign exchange when incidental to the carrying on of the business of export were intended to cover losses on account difference in foreign exchange valuation and would not be speculative activity but a business activity. Therefore, the Assessing Officer was directed to delete the disallowance. Followed *CIT v. D. Chetan and Co (2017) 390 ITR 36 (Bom.)(HC).* (AY.2009-10)

S. Vinodkumar Diamonds P. Ltd. v. Dy.CIT (2020) 81 ITR 46 (SN) (Mum.)(Trib.)

451 **S. 28(i) : Business loss – Speculative business – Loss on forward booking of foreign exchange – Transaction not speculative in nature – Allowable as business loss. [S. 43(5)(a)]**

Tribunal held that the provision of S. 43(5)(a) of the Act stated that forward contract was not a speculative transaction and the loss could not be regarded as speculation. The Act clearly excluded hedging foreign currency transactions from the definition of speculative transaction. Hence, the disallowance of Rs. 1.45 lakhs on the ground of speculative transaction required to be deleted.(Relied on *CIT v. Soorajmull Nagarmull (1981) 129 ITR 169 (Cal) (HC)*. (AY. 2014-15)

Arvind Metals and Minerals P. Ltd. v. ACIT (2020) 81 ITR 648 (Kol.)(Trib.)

452 **S. 28(i) : Business loss – Housing Finance – Pre-termination of loan – Onus on AO to show that loss claimed by assessee was tax evasion device – Matter remanded. [S. 254(1)]**

Tribunal held that the assessee demonstrated that it had included income on securitisation of housing loans in its operating income in the year when the securitisation agreement was entered into by it with the bank. No adjustments were

made to its income while computing the income chargeable to tax and since complete documents were not filed by the assessee as it did not file the profit and loss account nor balance-sheets, it could not be said that the entire income arising from securitisation of the housing loan suffered taxation in the year of securitisation of the housing loan. The AO was directed to verify from the completed audited financial statements as well the computation of income whether the income from securitisation actually suffered taxation with due taxes paid by the assessee including taxability, if any of reserves for contingency as carved out by the assessee and its impact on tax payable by the assessee or whether it was tax neutral. The onus was on the AO to show that the loss claimed by the assessee was a tax evasion device adopted by the assessee. The loss had to be allowed as business loss unless the Assessing Officer was able to demonstrate that the computation of the loss was a tax evasion device, mala fide or fraud being perpetrated by the assessee to evade taxes. (AY.2011-12)

L & T Housing Finance Ltd. v. Dy.CIT (2020) 77 ITR 85 (SN) / 186 DTR 153 / 203 TTJ 835 (Chennai)(Trib.)

S. 28(i) : Business loss – Foreign currency loss on foreign exchange forward contracts – Allowable as business loss. 453

Assessee engaged in business of international trading in commodities, suffered foreign currency loss on foreign exchange forward contracts, loss so incurred was to be allowed as business loss. (AY. 2012-13)

Emmsons International Ltd. v. ACIT (2020) 180 ITD 292 (Delhi)(Trib.)

S. 28(ii)(a) : Business income – Compensation – Capital or revenue – Capital gains – Restrictive covenant as to non – competition – Held to be not taxable – Prior to assessment year 2013-14. [S. 2(47), 4, 28(va)] 454

By a memorandum of understanding dt. 13.04.1994, made between the appellant and three group Signature of Shaw Wallace Company Group, consideration of the sum of Rupees Six crores only was paid by Shaw Wallace Company Group to the assessee as an advance against the non-competition fee. As per the understanding the covenant shall remain in full force and effect for a period of 10 years from the date of these presents and this covenant will be absolutely and irrevocably binding on the assessee. The AO held that the deed of covenant was held to be a colourable device to evade tax that is payable under Section 28(ii)(a) of the Act hence taxable as revenue receipt. Order of the AO was affirmed by the CIT(A). On appeal the Appellate Tribunal allowed the appeal of assessee by a majority of 2:1 .On appeal by the revenue the High Court held that Rs. 6.00 crores paid was for as consideration for sale of shares, rather than a payment under Section 28(ii)(a) of the Act accordingly taxable as capital gains. On appeal by the assessee the Court held that, there is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative/ restrictive covenant is a capital receipt. Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till AY 2003-2004. It is only w.e.f. 1-4-2003 that

the said capital receipt is now made taxable u/s 28(va). It is well settled that a liability cannot be created retrospectively. (AY. 1995-96)
Shivraj Gupta v. CIT (2020) 425 ITR 420 / 272 Taxman 391 / 315 CTR 601 / 192 DTR 20 (SC)
Editorial : CIT v Shiv Raj Gupta (2014) 52 taxmann.com 425/ [2015] 372 ITR 337 / 273 CTR 353 (Delhi) (HC) reversed. Followed Guffic Chem (P.) Ltd. v. CIT (2011) (2011) 332 ITR 602 / 239 CTR 225 / 52 DTR 289 / 198 Taxman 78 / 225 Taxation 383 (SC) / 4 SCC 254.

455 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Waiver of loan cannot be assessed as benefit or perquisites. [S. 4]**
Loan given by Government of Karnataka was subsequently waived. The AO assessed the waiver of loan as value of benefit or perquisite assessable u/s 28(iv) of the Act. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that the AO had correctly made the addition considering the waiver of loan as revenue receipt of the assessee. On appeal High Court held that waiver of loan cannot be assessed as benefit or perquisite. Followed *CIT v. Mahindra and Mahindra Ltd (2018) 404 ITR 1 (SC),distinguished, Protos Engineering Company P. Ltd v CIT, (1995) 211 ITR 919 (Bom.) (HC)* is held to be not good law.(AY.1984-85)
Essar Shipping Ltd. v. CIT (2020) 426 ITR 220 / 192 DTR 449 / 273 Taxman 49 / 317 CTR 25 (Bom.)(HC)

456 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Receipt of capital asset from holding company – Enhanced profit would be eligible deduction u/s. 10A – Issue left open. [S. 10A, 69]**
Assessee received capital assets from holding company. DRP treated value of said assets as value of benefit/perquisite received by assessee in course of business and taxed it under section 28(iv). Holding company affirmed that they had given all assets free of cost to assessee. Tribunal held that since any addition made would go to enhance assessee's profits and that profit would be eligible for claim of deduction under section 10A, addition, even if sustained, would have no impact on tax liability as disallowance of expenses would enhance profits of eligible business, and assessee would be eligible for deduction on enhanced profits. Accordingly-question of taxability under section 28(iv) was to be left open without any adjudication. (AY. 2014-15)
Brocade Communications Systems (P.) Ltd. v. DCIT (2020) 185 ITD 634 (Bang.)(Trib.)

457 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Premature payment of deferred sales tax at Net Present Value of certain amount against total liability capital receipt – Not assessable as business income.**
Tribunal held that payment made premature payment of deferred sales tax at Net Present Value of certain amount against total liability, said amount was a capital receipt and it could not be treated as business income. (AY. 2005-06)
Mahindra & Mahindra Ltd. v. ACIT (2020) 184 ITD 621 (Mum.) (Trib.)

S. 32 : Depreciation – Goodwill – Held to be allowable. 458
Dismissing the appeal of the revenue the Court held that depreciation on good will is held to be allowable. (AY. 2012-13)
PCIT v. Zydus Wellness Ltd. (2019) 112 taxmann.com 400 (Guj.) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. Zydus Wellness Ltd. (2020) 269 Taxman 57 (SC) Followed CIT v. SMIFS Securities Limited (2012) 13 SCC 488.

S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and set off of – Unabsorbed depreciation loss for assessment year 1995-96 to be carried forward and set off against future profits beyond eight years holding that amendment by Finance Act, 2001 and CBDT Circular No. 14/2001 was applicable retrospectively. [S. 32(2), 72] 459
Dismissing the appeal of the revenue the High Court held that the Tribunal is justified in holding that unabsorbed depreciation loss for assessment year 1995-96 to be carried forward and set off against future profits beyond eight years holding that amendment by Finance Act, 2001 and CBDT Circular No. 14/2001 was applicable retrospectively. Followed *CIT v. Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom.)(HC).* (AY. 2004-05)
CIT v. Bhima Sahakari Sakhar Karkhana Ltd. (2020) 121 taxmann.com 6 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v.Bhima Sahakari Karkhana Ltd. (2020) 275 Taxman 390 (SC)

S. 32 : Depreciation – Unabsorbed depreciation – Amalgamation – Unabsorbed depreciation of amalgamating company allowed to be set off against income of amalgamated company for assessment year 2008-09 i.e. beyond period of eight years. [S. 32] 460
Dismissing the appeal of the revenue the High Court held that the Tribunal is justified in holding that unabsorbed depreciation of amalgamating company pertaining to assessment years 1994-95 to 1998-99 was rightly set off against income of amalgamated company for assessment year 2008-09 i.e. beyond period of eight years as per amended section 32(2) of the Act. Followed *General Motors India (P.) Ltd. v. Dy. CIT (2013) 354 ITR 244 (Guj) (HC), CIT v. Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom.) (HC).* (AY. 2008-09)
PCIT v. Supreme Petrochem Ltd. (2020) 115 taxmann.com 221 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Supreme Petrochem Ltd (2020) 275 Taxman 8 (SC)

S. 32 : Depreciation – Cranes used in hiring business – Nomenclature in Motor Vehicle Act cannot be test for allowability of depreciation – Entitle depreciation at 30%. 461
The appellant claims depreciation at the rate of 30% on various types of cranes, viz. Telescopic Cranes, Rail for Tower Cranes, Tower Cranes, Mobile Tower Cranes, Crawler Cranes, Tower Crane Masts and Hydra Cranes. The Assessing Officer allowed the depreciation at 15%. The CIT(A) held that only the Hydra Cranes can be termed as "Motor Cranes" and accordingly allowed depreciation at the rate of 30%. The CIT(A), however, confirmed the disallowance on all other types of cranes. Appellate Tribunal also affirmed the order of CIT(A). On appeal allowing the appeal the Court held that there is thumping evidence on record to indicate that the assessee is involved in the business of hiring the cranes. He might be using the cranes for his personal construction

business too, but that does not disentitle him to claim higher depreciation once it is shown that the assessee is in the business of hiring the cranes. The assessee is entitle to depreciation at 30%. Order of Tribunal is reversed. Referred Circulars and Notifications: Instruction No. 617, dated 13-9-1973. (AY. 2011-12)
Prasad Multi Services (P) Ltd. v. Dy.CIT (2020) 423 ITR 542 / 317 CTR 873 (Guj.)(HC)

462 **S. 32 : Depreciation – Intangible asset – Firm succeeded by Company – Revaluation of assets – Assessee is entitle to depreciation on actual cost incurred by it – 5th proviso will apply only in the year of succession and not in subsequent years and also in respect of over all quantum of depreciation in the year of succession – Order of Appellate Tribunal was quashed. [S. 32(1)(ii), 47(xiii)]**
The assessee is a Pvt Ltd company filed the return of income, declaring nil income. The assessment was reopened on the ground that depreciation was wrongly allowed on the basis of revaluation by the firm. Under a scheme of succession estwhile partnership firm was succeeded in its business by assessee-company. Before firm was converted into private limited company, partnership firm had revalued its intangible assets using standard valuation methods and same were transferred to assessee. In consideration, assessee allotted shares to partners of erstwhile partnership firm. Assessee claimed depreciation on such intangible assets. Same was accepted and an same assessment order was passed. Thereafter, a reopening notice was issued against assessee on ground that original assets which were added in company at time of succession could not be considered for purposes of depreciation-accordingly, claim for depreciation on intangible assets was disallowed. The Appellate Tribunal has up held the reassessment and also affirmed the order of the Assessing Officer on merit On appeal allowing the claim of the assessee the Court held that the assessee and erstwhile partnership firm were different entities and there was transfer of intangible assets by partnership firm to assessee for a valuable consideration that was by way of allotment of shares. The transaction between firm and assessee-company was covered under section 47(xiii) and, therefore, assessee was entitled to depreciation on actual cost incurred by it with reference to intangible assets. (AY. 2005-06 to 2008-09)
Padmini Products (P.) Ltd. v. Dy. CIT (2020) 195 DTR 1 / 317 CTR 369 / (2021) 277 Taxman 22 (Karn.)(HC)

463 **S. 32 : Depreciation – ATM can be regarded as computer – Eligible depreciation at rate of 60 %.**
Dismissing the appeal of the revenue the Court held that ATM can be regarded as a computer and thus it is eligible for higher rate of depreciation, i.e., at rate of 60 per cent. (AY. 2003-04)
CIT v. NCR Corporation (P.) Ltd. (2020) 274 Taxman 139 / 193 DTR 66 (Karn.)(HC)

464 **S. 32 : Depreciation – Actual cost – Purchase of second-hand Windmill – Disallowance of depreciation is held to be justified. [S. 43(1), Expln. 3, 143(3), 147]**
Dismissing the appeals the Court held that there was no scientific basis for fixation of the value of the second-hand windmill at Rs. 1. 50 crores and such fixation had been done based on the personal opinion of the Commissioner (Appeals). Therefore,

the Tribunal was fully justified in allowing the Department's appeal. With regard to the assessee's appeal, the Tribunal had reappreciated the facts and found that the manufacturer of the windmill had certified that the windmill, which was sold to the assessee was no more in the market and the technology had become obsolete. The Tribunal had also considered the effect of a report of the Government valuer and Explanation 3 to section 43(1), which required the Assessing Officer to arrive at an objective satisfaction and had observed that valuations were relevant in ordinary circumstances, but when cumulative depreciation claimed was far in excess of the cost, the valuation report of the approved valuer was insignificant and thus held that the order passed by the Assessing Officer required no interference. No question of law arose.(AY.2009-10)

V. Sabitamani v. ACIT (2020) 194 DTR 301 / 317 CTR 463 / (2021) 430 ITR 490 (Mad.) (HC)

S. 32 : Depreciation – Unabsorbed Depreciation – Carry Forward And Set Off – Amendment Finance Act of 2001 and Circular No. 14 Of 2001 – No time limit for carry forward and set off. [S. 32(2)] 465

Dismissing the appeal of the revenue, Circular No. 14 of 2001 dt November 9 2001, clarified that under section 32(2), in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory. Therefore, the provisions of section 32(2) as amended by the Finance Act, 2001, would allow the unabsorbed depreciation allowance available in the assessment years 1997-98, 1999-2000, 2000-01 and 2001-02 to be carried forward to succeeding years, and if any unabsorbed depreciation or part thereof could not be set off till the assessment year 2002-03 then it would be carried forward till it is set off against the profits and gains of subsequent years. Order of Tribunal is affirmed and held that the assessee, was entitled to carry forward the depreciation loss pertaining to the assessment year 1997-98 to the assessment year 2006-07. (AY.2006-07)

CIT v. Sanmar Speciality Chemicals Ltd. (2020) 428 ITR 237 / (2021) 278 Taxman 94 (Mad.)(HC)

S. 32 : Depreciation – Additional depreciation – Generating electricity Manufacture or production of article or thing – Business of generating electricity – Article or thing – Entitled to additional depreciation. [S. 32(1)(iia)] 466

Dismissing the appeal of the revenue the Court held that electricity is capable of abstraction, transmission, transfer, delivery, possession, consumption and use like any other movable property. To deny the benefit of additional depreciation to a generating entity on the basis that electricity is not an "article" or "thing" was an artificially restrictive meaning of the provision. The benefit of additional depreciation under section 32(1)(iia) had, therefore, been rightly granted to the assessee by the Commissioner (Appeals) and the Tribunal. With effect from April 1, 2013, the provision had been amended by the Finance Act, 2012 and the assessees engaged in the generation of power have expressly been included in the ambit thereof. (AY.2011-12)

PCIT v. NTPC Sail Power Co. Pvt. Ltd. (2019) 178 DTR 53 / 308 CTR 838 / (2020) 428 ITR 535 (Delhi)(HC)

467 **S. 32 : Depreciation – Unabsorbed depreciation – Set off against long – term capital gains – Held to be justified. [S. 32(2), 71, 72, 73]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that, in terms of the provisions of section 32(2) read with sections 71, 72 and 73 the total depreciation which comprised of the depreciation of the relevant assessment year along with the unabsorbed depreciation of the earlier years became the total current year's depreciation which was allowed to be set off against income under any head of income including long-term capital gains, that in terms of the provisions of section 72 the unabsorbed business loss (other than speculative loss) of earlier years shall be allowed to be set off only against the profits and gains from business carried on by the assessee of the current year and so on and dismissed the appeal filed by the Department. (AY.2008-09)

PCIT v. Gunnebo India Pvt. Ltd. (2020) 428 ITR 233 (Bom.)(HC)

468 **S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and set off – Unabsorbed depreciation can be carried forward and set off against profits of current year.**

Dismissing the appeal the Court held that by the order passed by the Assessing Officer under section 154 of the Income-tax Act, 1961 he had allowed unabsorbed depreciation of earlier years to be set off against the income of the assessee for the AY. under consideration, further allowing unabsorbed depreciation and unabsorbed business loss to be carried forward to the next year for set off. The Commissioner had set aside the order on revision. The Tribunal was correct in restoring the order of rectification. Followed *CIT v. Virmani Industries Pvt. Ltd. [1995] 216 ITR 607 (SC)* (AY:2011-12)

PCIT v. Destimoney India Services Pvt. Ltd. (2020) 427 ITR 330 (Bom.)(HC)

469 **S. 32 : Depreciation – Rate of depreciation – FSI – Intangible asset – FSI purchased from Government of Maharashtra – held eligible for depreciation at the rates applicable to the Building @ 10% and not to Intangible assets @ 25% [S.32(1)(ii), 43(6)(c)]**

The question before the High Court was whether FSI purchased was eligible for depreciation as an intangible asset. The Court allowing the reasoning of the ITAT held that the view taken by the Tribunal is a reasonable one, having regard to the provisions contained in sections 32 (1)(ii) and 43(6)(c) of the Act. That apart the amount spent by the assessee would add to the value of the existing building as additional FSI would be available to the assessee; the amount spent was for the purpose of business and was of enduring nature; since it related to the building block of the asset, the overall cost of the building block would increase by this amount and thus allowed depreciation by adding FSI payment to the building block of asset and allow depreciation as per law i.e. on the rate applicable to the building which is 10% and not 25%. (AY. 2006-07)

PCIT v. V. Hotels Ltd. (2020) 429 ITR 54 / 275 Taxman 106 / 317 CTR 377 / 194 DTR 369 317 CTR 377 / 194 DTR 369 (Bom.)(HC)

470 **S. 32 : Depreciation – Windmill – Additional depreciation – Trial run – Business of manufacture of matches – Windmill for production of electricity – Entitled to depreciation and additional depreciation. [S. 32(1)(iia)]**

The AO disallowed the depreciation and additional depreciation on the ground that the assessee did not generate electricity before the end of the assessment year, i. e., March

31, 2005 and what was generated was less than one unit, that the actual generation took place on March 31, 2004 and therefore, the windmill could not be stated to have been used by the assessee for the purpose of business. The assessee obtained a certificate dated April 2, 2005, from the competent authority, which showed that the assessee had effected supply of electricity to the Board on March 31, 2005. Further, a statement was recorded from the Executive Engineer, wherein he had stated that generation of electricity had not started but work was over. The CIT(A) allowed the appeal filed by the assessee in part and held that the assessee was entitled to depreciation, but rejected the claim for additional depreciation. Both the assessee and the Department filed appeals before the Tribunal. The Tribunal rejected the assessee's claim for depreciation and held that if the claim to depreciation had been rejected, the claim to additional depreciation should also be rejected. On appeal the Court held that even trial production machinery kept ready for use was considered to be used for the purpose of business to qualify for depreciation under S 32. The Tribunal erred in rejecting the claim of depreciation on the windmill of the assessee and reversing the order passed by the CIT(A). (AY.2005-06)
Tenzing Match Works v. Dy CIT (2019) 182 DTR 1 / (2020) 423 ITR 312 / 314 CTR 679 (Mad.)(HC)

S. 32 : Depreciation – Uninterrupted power supply system for Computers – Entitled to depreciation at 60 Per Cent. 471

Dismissing the appeal of the revenue the Court held that, uninterrupted power supply system was part of the computer and entitled to 60 per cent depreciation. (AY. 2006-07 to 2009-10)
CIT (LTU) v. Cholamandalam Ms General Insurance Co. Ltd. (2020) 424 ITR 272 (Mad.) (HC)

S. 32 : Depreciation – Rate of depreciation – Hiring out construction Equipment – Crane depreciation allowable at 30% – It cannot be reduced to 15% – Res Judicata – Not strictly applicable but consistency essential. 472

The assessee is engaged in the business of hiring, operation and maintenance of construction equipment. It claimed depreciation at the rate of 30 per cent. on various types of cranes, viz., telescopic cranes, rail for tower cranes, tower cranes, mobile tower cranes, crawler cranes, tower crane masts and hydra cranes for the assessment year 2011-12. The Assessing Officer took the view that hiring out construction equipment was an ancillary activity of the assessee and there was every possibility that the cranes were used for the assessee's own construction business. Accordingly the AO made disallowance restricting the depreciation to 15 per cent. On appeal the CIT(A) held that only the hydra cranes can be termed as "motor cranes" and accordingly allowed depreciation at the rate of 30 per cent. The Commissioner (Appeals), however, confirmed the disallowance on all other types of cranes. This was confirmed by the Tribunal. The Court held that a similar issue had cropped up in the assessment year 2007-08, and after due consideration of all the relevant aspects of the matter, the Assessing Officer had granted depreciation at the rate of 30 per cent. The very same cranes were involved in the present tax appeal which were the subject matter of consideration in the assessment year 2007-08. Registration under the provisions of the Motor Vehicles Act was not a sine qua non for claiming depreciation. There was evidence on record to indicate that the

assessee was involved in the business of hiring cranes. It might be using the cranes for personal construction business too, but that would not disentitle the assessee to claim higher depreciation once it is was shown that the assessee was in the business of hiring the cranes. The assessee was entitled to depreciation at the rate of 30 per cent. on the various types of cranes. Court also held that although the doctrine of res judicata does not strictly apply to Income-tax proceedings, yet in order to maintain consistency, the Revenue cannot be permitted to rake up stale issues again merely because the scope of appeal is wider than the scope of reference. (AY.2011-12)
Prasad Multi Services Private Ltd. v. Dy. CIT (2020) 423 ITR 542 / 196 DTR 401 (Guj.)(HC)

473 **S. 32 : Depreciation – Uninterrupted power supply system for Computers – Entitled to depreciation at 60 Per Cent.**
Dismissing the appeal of the revenue the Court held that, uninterrupted power supply system was part of the computer and entitled to 60 per cent depreciation.
CIT v. Royal Sundaram Alliance Insurance Co. Ltd. (2020) 423 ITR 122 (Mad.)(HC)

474 **S. 32 : Depreciation – Special foundation of windmill – 80% depreciation allowed on Civil Construction, electrical and other non – integral part of installations as against 15% restricted by the AO.**
Revenue contended that the depreciation is allowable at 15% and not 80% claimed by the assessee. Dismissing the appeal of the revenue the Court held that windmill was erected in the desert area of Rajasthan which required special foundation of reinforced cement concrete and that said reinforced cement concrete formed integral part of wind mill. Referred *CIT v. Herdilla Chemicals Ltd. (1995) 216 ITR 742 (Bom.)(HC)*. Court followed ITA No. 1326 of 2010 dt. 14-06 2017. (ITA No. 1769 of 2016 dt. 30/01/2019)
PCIT v. Mahalaxmi Infra Projects Ltd. (Bom.) (HC) www.itatonline.org.

475 **S. 32 : Depreciation – Goodwill – Entitle to depreciation – No question of law. [S. 260A]**
Tribunal allowed the depreciation on good will. High Court affirmed the order of the Tribunal. (AY. 2012-13)
PCIT v. Zydus Wellness Ltd. (2019) 112 taxmann.com 400 / (2020) 269 Taxman 58 (Guj.) (HC)
Editorial : Following the order in SMIPS Securities Ltd (2012) 13 SCC 488, SLP of revenue is dismissed, P CIT v. Zydus Wellness Ltd. (2020) 269 Taxman 57 (SC)

476 **S. 32 : Depreciation – Amalgamation – Receipt of the Auditors report subsequently – Directed to allow the depreciation on the basis of Auditor' s report.**
Court held that the Auditor's report provided item wise accounting of assets but it was received after much delay. Accordingly fresh decision on depreciation claimed on assets transferred pursuant to scheme in question was to be determined on basis of itemwise details of Auditor's Report. Matter remanded. (AY. 2007-08 to 2012-13)
CIT v. Poorvanchal Vidyut Vitran Nigam Ltd. (2020) 268 Taxman 132 (All.)(HC)

S. 32 : Depreciation – Passive use of the assets – Unabsorbed depreciation – Business was stopped and assets were not in use for period of 24 years – Depreciation is neither allowable nor set off of carried forward of depreciation for previous year. [S. 32(2), 72] 477

The assessee carried on its operations till 1986. From the assessment year 1986-87, the manufacturing activities of the assessee came to a stop for various reasons. The assessee then commenced operations only in the year 2010. Till 1995-96, the assessee was claiming depreciation; both carried forward and that arising in the respective years. The claim was rejected by the AO. On appeal the Tribunal allowed the claim on the ground of passive use of the assets, meaning the assessee having had the intention to revive the industry and kept the machinery ready for use for the purpose of commencement of manufacturing activities. On appeal by the revenue the Court held that assessee could not be allowed to claim depreciation on assets for all these years when they were not put to use and when such claim did not arise under S. 32(1), then there was no question of any carry forward of depreciation for such period when assets of assessee were not put to use during relevant year. (Arising from *Punalur Paper Mills Ltd. v ITO (2009) 29 SOT 449 (Cochin) (Trib.)* (AY. 1996-97 to 2002-03)

CIT v. Punalur Paper Mills Ltd. (2020) 268 Taxman 47 (Ker.) (HC)

S. 32 : Depreciation – Installation of asset – Considered as asset has been put to use – Entitle to depreciation – UPS is to be considered as an integral part of the computers and depreciation is to be allowed @ 60%. 478

Where the device had been installed, it was held that it was put to use for the purposes of business and that under the law, the assessee was not required to monitor the outcome of use of such items in its business. It was also noted that the UPS is to be considered as an integral part of the computers and depreciation is to be allowed @ 60%. (AY. 2009-10)

Dy. CIT (LTU) v. Nestle India Ltd. (2020) 194 DTR 113 / 207 TTJ 369 (Delhi)(Trib.)

S. 32 : Depreciation – Intangible Assets – Acquired from business transfer agreement – Depreciation allowable on the basis of valuation report. [S.32(1)(ii)] 479

Where assessee has claimed substantial depreciation on intangible assets which were acquired in the relevant assessment year by virtue of business transfer agreement, claim was allowed on account of the valuation report submitted by the assessee. (AY. 2012-13, 2013-14, 2015-16)

Dy. CIT v. Infrasoft Technologies Ltd. (2020) 195 DTR 333 / 208 TTJ 1068 (Delhi)(Trib.)

S. 32 : Depreciation – Water treatment chemicals, industrial additives – Installation at customers site at free of cost – Disallowance is held to be allowable – Conveyance reimbursement – 5% of disallowance is held to be reasonable. [S. 37(1)]. 480

Assessee was company engaged in business of manufacturing and dealing with water treatment chemicals, industrial additives, oilfield chemicals and trading of equipments. It claimed depreciation on new plant and machinery. The Assessing Officer held that there was no justification for installing those plant and machineries at customers site at free of cost hence disallowed the depreciation. CIT(A) deleted the disallowance and

held that the assessee brought to notice by filing sample copies of some of agreements whereby assessee had agreed that monitoring equipments and pumps would be installed at clients premises and Installation of equipments in client's premises of assessee's equipments was necessary and part and parcel of nature of business carried on by assessee. On appeal Tribunal affirmed the order of the CIT(A). Tribunal held that disallowance of 5% of reimbursement of expenses is held to be justified.(AY. 2008 09)
Nalco Water India. v. ACIT (2020) 188 DTR 77 / 205 TTJ 380 (Pune) (Trib.)

481 **S. 32 : Depreciation – Intangible assets – Customer list and goodwill – Entitle for depreciation. [S. 32(1)(ii)]**
Allowing the appeal, the Tribunal held that under Explanation 3 to section 32(1) of the Income-tax Act, 1961, asset includes intangible assets being know-how, patents, copyrights, trademarks, any other business or commercial rights of similar nature. Even the customer list had been treated as falling within the expression "business or commercial rights of similar nature" contained in section 32(1)(ii) of the Act. The business transfer agreement was a composite agreement and the non-compete clause therein was a supporting clause to strengthen the commercial rights which had been transferred to the assessee. Further, the Tribunal had allowed the issue in favour of the assessee in the earlier and subsequent assessment years. Therefore, the assessee was entitled to depreciation on the intangible assets, the goodwill and customer list. (AY. 2013-14)
Rentokil India P. Ltd. v. Dy.CIT (2020) 84 ITR 401 (Chennai) (Trib.)

482 **S. 32 : Depreciation – Additional depreciation – Business of mining iron ore and sale thereof – Entitled to additional depreciation Putting new assets to use for less than 180 days in previous year – Allowed 50 Per Cent of eligible additional depreciation – Amendment allowing carry – Over to subsequent year applicable prospectively from 1-4-2016 – Not entitled to 50 Per Cent. of additional depreciation brought forward from earlier assessment year. [S. 32(i)(iia)]**
Tribunal held that extraction and processing of iron ore amounted to production. The Assessing Officer was to allow claim of additional depreciation. Followed, CIT v. Sesa Goa Ltd. (2004) 271 ITR 331 (SC). Tribunal held that as the amendment was effective from April 1, 2016, it was clearly not applicable to the year under consideration. Considering the plain language of the section, the amendment was not applicable to the year under consideration. The Tribunal being the last fact finding authority, should refrain from adjudication of the retrospectivity or otherwise of the applicability of the amendment. This should be in the domain of superior courts. Therefore, the assessee was not entitled to 50 per cent. of the depreciation brought forward from earlier assessment years. (AY.2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

483 **S. 32 : Depreciation – Leased assets – Eligible depreciation accordance with schedule of assets – Computer software capitalised – Entitled to depreciation at 60 Per Cent.**
Tribunal held, that the assessee had capitalised the assets. On the one hand, the Assessing Officer accepted the lease rentals received by the assessee to be business income and on the other hand disallowed depreciation. The assessee was eligible

for depreciation on the leased assets, but the depreciation had to be computed in accordance with the law having regard to the schedule of assets. This issue was remitted to the Assessing Officer for proper verification of all details filed by the assessee and to consider the claim in accordance with the ratio laid down by the Supreme Court. (AY. 2013-14)
IBM India Pvt. Ltd. v. ACIT (2020) 83 ITR 24 (Bang.)(Trib.)

S. 32 : Depreciation – Windmill – Civil work and electric generator part of windmill – Rate as applicable for windmill i.e 80% – Applicable To Civil Work And Electric Generator – Entitled to additional depreciation. 484
Tribunal held that the civil work and electric generator were taken to be a part of the windmill, and the rate of the depreciation as applicable to the windmill would apply to the civil work and electric generator as well. Thus, the assessee was entitled to depreciation at 80 per cent thereon. Relied on, *CIT v. K. K. Enterprises (2014) 108 DTR 109 (Raj) (HC)* and *CIT v. Mehru Electricals and Mechanical Engineers Pvt. L td. (2016) 141 DTR 342 (Raj) (HC)*. Tribunal held, that the third proviso to section 32(1)(ii) provides for carry forward of the balance 50 per cent. of the additional depreciation in the immediately succeeding previous year in which the plant and machinery is acquired and installed and though the provisions had been introduced with effect from April 1, 2016, this was clarificatory in nature and thus had retrospective application. Therefore, the claim to the balance additional depreciation was allowable. Relied on, *CIT v. Shri T. P. Textiles (P) Ltd (2017) 394 ITR 483 (Mad) (HC) and CIT v. Rittal India (P) L td. (NO. 2) (2016) 380 ITR 428 (Karn)(HC)* (AY. 2015-16)
Maharaja Shree Umaid Mills Ltd. v. Dy. CIT (2020) 83 ITR 498 (Jaipur)(Trib.)

S. 32 : Depreciation – Securities – RBI guidelines – Depreciation on valuation of Securities allowable as business loss. [S. 28 (i)] 485
Tribunal held that calculation for depreciation on Securities Worked out in terms of RBI guidelines and only incremental depreciation debited in profit and loss account. Accumulated Depreciation in respect of any security sold during year automatically reduced at end of relevant year. Profit on sale of securities correctly reflected in profit and loss account. Depreciation on valuation of securities allowable as business loss. Deletion or addition by CIT(A) is held to be justified. (AY. 2013-14)
Dy. CIT v. Punjab National Bank (2020) 82 ITR 95 (Delhi) (Trib.)

S. 32 : Depreciation – Purchase Bills for certain assets not genuine – Assessee and department agreeing for one lakh disallowance – Depreciation is allowable on balance purchases. 486
Tribunal held that the assessee conceded that out of Rs. 14.33 lakhs, Rs. 1 lakh might be disallowed on account of miscellaneous deficiency or differences. The Department had also agreed that in order to cover the miscellaneous deficiencies a minimum of Rs. 1 lakh might be disallowed. Therefore, out of Rs. 14.33 lakhs, Rs. 1 lakh was to be disallowed and the balance of Rs. 13.23 lakhs was directed to be deleted.(AY. 2015-16)
RMV It Services P. Ltd. v. ACIT (OSD) (2020) 82 ITR 590 (Kol.) (Trib.)

487 **S. 32 : Depreciation – Computer software – 60% depreciation is allowable.**
Tribunal held that the computer software is eligible 60% depreciation. (AY.2012-13)
ACIT v. Indiabulls Ventures Ltd. (2020) 80 ITR 5 (SN) (Delhi) (Trib.)

488 **S. 32 : Depreciation – Leased assets – Entitle for depreciation.**
Assessee company, engaged in business of leasing and finance, claimed depreciation on assets leased out by it. Tribunal held that the assessee was owner of leased assets as it had shown lease rent as its income and such leased assets in its balance sheet. Further, lessees also confirmed that they had not claimed depreciation on those assets and they were owned by assessee. The assessee was to allowed depreciation on such leased assets. (AY. 2003-04)
DCIT v. IFCI Ltd. (2020) 185 ITD 742 (Delhi)(Trib.)

489 **S. 32 : Depreciation – Intangible Asset – Brand licence fee – Depreciation is held to be allowable.**
Tribunal held that brand licence fee being intangible asset is entitle for depreciation. (AY.2013-14)
Star India (P.) Ltd. v. ACIT (2020) 185 ITD 559 / 81 ITR 8 (SN) (Mum.)(Trib.)

490 **S. 32 : Depreciation – Intangible assets – Digital content, Animation software – Multimedia and entertainment industry – Eligible depreciation at rate of 25 per cent and not 60%.**
The assessee had developed digital content which was held by assessee as an asset and was used in various films etc. which could be equated with computer program and claimed depreciation at 60%. AO allowed the depreciation at rate of 25 per cent treating it as intangible. Tribunal held that digital content was manipulated by assessee to be used in different films but still retained character of copyrighted material being intangible assets hence eligible for depreciation at rate of 25 per cent. (AY. 2007-08, 2009-10)
Pentamedia Graphics Ltd. v. DCIT (2020) 80 ITR 555 / 185 ITD 45 / 190 DTR 391 / 205 TTJ 892 (Chennai)(Trib.)

491 **S. 32 : Depreciation – Additional depreciation – Software development – Matter remanded. [S. 32(iia)]**
Tribunal held that as per provisions to section 32(iia), new machinery or plant should be used by an assessee engaged in business of manufacture or production of any article or thing and new machinery or plant need not be used in manufacture or production of any article or thing hence the assessee is eligible for additional depreciation of its assets. However in the absence of details matter was to be remanded for this limited issue of determining whether assets in question could be regarded as plant. (AY. 2008-09)
Texas Instruments (India) (P.) Ltd. v. ACIT (2020) 183 ITD 7 / 195 DTR 347 / 207 TTJ 586 (Bang.)(Trib.)

S. 32 : Depreciation – Capital spares – Change in accounting policy – Depreciation is allowable at 15%. 492

Tribunal held that the assessee changed its accounting policies to claim depreciation at rate of 15 per cent on capital spares instead of amortizing cost of those spares over a period of 14 years, since such change did not contravene any of provisions of section 32 the depreciation is allowable. (AY. 2010-11)

Gujarat State Energy Generation Ltd. v. ACIT (2020) 183 ITD 590 (Ahd.)(Trib.)

S. 32 : Depreciation – Business assets – Business of real estate – Not carried out any business activity during the relevant year – Depreciation is allowable. 493

During relevant year assessee claimed depreciation on routine business assets such as computers, air conditioners, cars etc. Assessing Officer rejected assessee's claim on ground that assessee had not carried out any business activity. Tribunal held that on facts, merely because assessee had not undertaken any project during relevant year as it was trying to complete formalities of sale of huge project sold last year, it could not be concluded that assessee had not used its business assets in assessment year in question. Accordingly the claim for depreciation was to be allowed. (AY. 2014-15)

Supreme Build Cap (P.) Ltd. v. ACIT (2020) 183 ITD 728 (Delhi) (Trib.)

S. 32 : Depreciation – Cost of construction of office block – High Court admitting the appeal of earlier year – Not entitled to depreciation following earlier year. [S. 254(1), 260A] 494

Tribunal held that just because the High Court had admitted the appeals filed by the assessee, the Tribunal could not take a different view in the present appeals filed by the assessee. (AY.2011-12, 2014-15)

Avm Productions v. ACIT (2020) 78 ITR 42 (SN) (Chennai)(Trib.)

S. 32 : Depreciation – Customer relationship rights – Non – compete fees akin to any other business or commercial rights – Depreciation allowable – Cannot take benefit of new claim in reassessment proceedings. [S. 32(1)(ii), 147] 495

The customer relationship rights were in the nature of non-compete fees and such rights were akin to business and commercial rights. In the assessee's case, depreciation on customer relationship rights treating them as goodwill was allowed following the Supreme Court judgment in the case of *CIT v. Smifs securities Ltd (2012 348 ITR 302 (SC)*. Assessee cannot take the benefit of new claim in reassessment proceedings. (AY.2008-09)

Incap Contract Manufacturing Services Pvt. Ltd. v. Dy. CIT (2020) 78 ITR 130 (Bang.)(Trib.)

S. 32 : Depreciation – Voice recording software licences – Entitled to Sixty Per Cent 496

Tribunal directed the Assessing Officer was directed to grant the assessee depreciation on the software at the rate of 60 per cent. Followed *Exl service.com (India) Pvt. ltd. v. DY. CIT (ITA. No. 302/Delhi/2015 dated January 3, 2017).* (AY.2011-12)

Dy. CIT (LTU) v. EXL Service.Com (India) Pvt. Ltd. (2020) 83 ITR 11 (SN) (Delhi)(Trib.)

497 **S. 32 : Depreciation – Actual cost – Trade Mark – Revaluation – Depreciation to be claimed on cost incurred and not on revaluation figure – Total amount of depreciation cannot exceed depreciation to which assessee would be entitled if succession had not taken place. [S. 43(1), Explanation 3, 47(xiii)]**

Tribunal held that where the firm is succeeded by a company falling under section 47(xiii), the Act mandates that the aggregate deduction in respect of the asset shall not exceed in any previous year, the deduction calculated at the prescribed rates as if the succession had not taken place and such deduction shall be apportioned between the predecessor and the successor in the ratio of the number of days for which the assets were used by them.

Tribunal also held that the rate and amount of depreciation which was applicable for the predecessor would be the amount of depreciation allowable on the item. (AY.1999-2000 to 2006-07, 2008-09 to 2012-13)

PIK Studios P. Ltd. v. Dy. CIT (2020) 79 ITR 533 (Mum.)(Trib.)

498 **S. 32 : Depreciation – Additional depreciation – Manufacturing – Coffee making machine, vending machine and express Kiosks used for converting raw coffee beans into liquid coffee fit for human consumption – Entitled to additional depreciation. [S.32(1)(iia)]**

Tribunal held that converting raw coffee beans which were not fit for human consumption as such to liquid coffee which was fit for human consumption was a manufacturing activity, as it was an irreversible process producing a different marketable product fit for human consumption. It came to that position by storing, drying of coffee, hulling, pealing, polishing, grading, colour sorting, garbling and manual grading, out-turning of garbled coffee and bulking. This being an irreversible process, there was a change in the chemical composition of the product. Alternatively, it could not be said that this was a processing. It amounts to production and manufacture of a distinct commercial product different from the original product. Thus the coffee making machine, vending machine, express kiosks which were used for such activities, were machines on which the assessee was entitled to additional depreciation. (AY.2013-14, 2014-15)

Dy. CIT v. Coffee Day Global Ltd. (2020) 79 ITR 322 (Bang.) (Trib.)

499 **S. 32 : Depreciation – Modem – Eligible for higher rate of depreciation at 60 Per Cent.**

Tribunal held that, modem-Eligible for higher rate of depreciation at 60 Per Cent. (AY.2007-08, 2010-11)

Dy. CIT v. Asianet Satellite Communications Ltd. (2020) 79 ITR 695 (Cochin)(Trib.)

500 **S. 32 : Depreciation – Golf course – Plant – Entitled to depreciation.**

Tribunal held that the golf course owned and used by the assessee for the purpose of the business was a tool of the business of the assessee. It functioned like a plant in the case of the assessee. The assessee was eligible for depreciation thereon at 15 per cent. Followed *Landbase India Ltd. v. ACIT* (ITA. Nos. 1030-31/Delhi/2019 dt. 26-8-2019). (AY.2013-14, 2014-15, 2016-17)

Landbase India Ltd. v. ACIT (2020) 80 ITR 580 / 185 ITD 40 / 116 taxmann.com 574 (Delhi)(Trib.)

S. 32 : Depreciation – Transfer – Written down value of block of assets should be reduced by sum received not stamp value – Excess depreciation not allowable. [S. 2(11), 43(6)(c)(i)(b), 45, 50C] 501

Tribunal held that merely because the seller agreed to pay and discharge the outstanding dues and liabilities in respect of the share in the premises, it did not mean that the assessee had not transferred or sold the property during the previous year relevant to the assessment year 2013-14. Depreciation was allowable to the assessee on the written down value which is defined under section 43(6). According to section 43(6)(c)(i)(b) the block of the assets is to be reduced by the monies payable in respect of any asset falling within that block which is sold or discarded or demolished or destroyed during the previous year. Therefore, the written down value of the block of the asset should be reduced by the sum received for the immovable property. The provisions of section 50C could not be incorporated in the computation of block of the assets for the simple reason that it only substitutes the "full value of the consideration received or accruing as a result of transfer for the purposes of section 48" only. Therefore, the Assessing Officer was to reduce the written down value of the asset only by Rs. 2 crores, which had been received by the assessee on sale of the property instead of the stamp duty value of the property. On the written down value the assessee would be entitled to the depreciation at 10 per cent amounting to Rs.15,19,729. The assessee had claimed depreciation of Rs. 35,19,729 and therefore the difference of the depreciation excess claimed by the assessee was Rs. 20 lakhs instead of Rs. 29,63,061. Thus, the excess depreciation disallowance of Rs. 20 lakhs was confirmed. (AY.2013-14)

Dy. CIT v. Futurz Next Services P. Ltd. (2020) 80 ITR 58 (Delhi) (Trib.)

S. 32 : Depreciation – Satellite Television Channels – Brand Licence Fees – Entitled to depreciation. 502

Tribunal held that the consideration for the payment towards brand licence was determined based on valuation of the brand by an independent valuer and the payment towards brand licence was capitalised in the books of account and depreciation was claimed only on yearly basis. The payment for the consideration was subjected to the Reserve Bank of India approvals. Further, the Department had taxed the entire amount received by the television channel from the assessee in the assessment year 2011-12. Once the payments including the amount had been approved by the competent authority that had specifically considered the value of the brand licence fees paid for the channel there could not be any disallowance of expenses. Followed, *Star India P. Ltd. v. ACIT (ITA. Nos. 1901/Mum/2016 and 1048/Mum/2017 dt 1-8-2019)* (AY.2013-14)

Star India P. Ltd. v. ACIT (2020) 81 ITR 8 (SN) (Mum.)(Trib.)

S. 32 : Depreciation – Computer accessories and peripherals integral part of computer system – Entitled to depreciation at sixty per cent. 503

Tribunal held that computer accessories and peripherals integral part of computer system. Entitled to depreciation at sixty per cent. (AY.2003-04, 2004-05)

Dy. CIT v. Cadence Design Systems (India) P. Ltd. (2020) 81 ITR 35 (SN) (Delhi)(Trib.)

504 **S. 32 : Depreciation – Cost of construction of office Block – Compensation paid for easement rights not accepted by Tribunal in earlier years – High Court admitting Assessee's appeal against Tribunal not a reason to take a view in favour of Assessee – Assessee not entitled to depreciation.**

On appeal filed, the Tribunal held that the assessee added an amount of Rs 3 crores, to the block of asset consisting of office building, which it claimed to have been paid to 'B', pursuant to 'B' withdrawing from the Court proceedings (Writ petition filed) before the High Court, objecting to the construction and obtaining stay against the construction. Assessee contended that without such payment of Rs. 3 crores, its construction could not have been raised, hence it is part of construction cost. The Tribunal for earlier years had held that no payment can be said to have been made by the assessee to 'B' as there was no mention in memorandum, qua the proof of payment, in the terms of compromise note. For present appeal, it is held that High Court admitting the appeals filed by the assessee for earlier years, could not impact the Tribunal to take a different view in the present appeals, as the Assessee had not filed any order of the High Court having modified or reversed the decision of the Tribunal of earlier years (AY.2011-12, 2014-15)

AVM Productions v. ACIT (2020) 78 ITR 42 (SN) (Chennai)(Trib.)

505 **S. 32 : Depreciation – Capital or Revenue expenditure – Expenditure on leasehold premises – Nature of expenditure to be examined before applying provision relating to ownership of asset.**

On appeal, the Tribunal held that to invoke the provisions of Explanation 1 to Section 32(1) of the Act, a finding has to be given first as to the nature of expenditure incurred by the assessee. If the nature of expenditure is capital in nature, then the provisions of Explanation 1 to Section 32(1) of the Act shall apply. Accordingly, this issue required fresh examination since the nature of expenditure incurred by the Assessee had to be examined in order to apply the provisions of Explanation 1 to Section 32(1) of the Act. (AY. 2012-13, 2013-14)

Century Link Technologies India Pvt. Ltd. v. DCIT (2020) 78 ITR 71 (SN) (Bang.)(Trib.)

506 **S. 32 : Depreciation – Business of transportation – Rural marketing promotions, Road shows, display advertising etc – Not entitled to higher rate of depreciation at 30% – Vehicles are used by the assessee for its own business and not carrying on transpiration – Entitle depreciation @ 15 % only.**

The assessee company is engaged in the business of rural marketing, promotions, road shows, display advertising etc. and not in the business of hiring of vehicles. The assessee carries out its business activities for promotions of brands through its vans duly fitted with display devices. It claimed higher rate of depreciation @ 30 %. AO has allowed only 15% depreciation. On appeal Tribunal held that it is germane to mention here that the assessee is not carrying on business of transportation. By delving into the records of usage by the assessee it is perceived that these vans were used by the assessee wholly and exclusively for its own business. (AY. 2013-14)

Rural Communication and Marketing Pvt. Ltd. v. Dy.CIT (2020) 180 ITD 672 (Delhi)(Trib.)

S. 32 : Depreciation – Survey – Statement on oath – Merely on the basis of statement made in the course of survey – Depreciation cannot be disallowed. [S. 133A] 507

Tribunal held that merely on the basis of statement made in the course of survey depreciation cannot be disallowed when the assessee has produced the reconciliation chart of plant and machinery with Dalal Mott Macdonald report were also submitted to the effect that machines were very much there and inspection was duly carried out by the surveyor. And Valuation Report certificate dated 26.05.2003 wherein before granting loan IDBI Bank carried out inspection and Valuation Report was duly prepared wherein details of all the machines were given. (AY.2002-03, 2005-06)

Shree Rama Multi-Tech Ltd. v. Dy.CIT (2020) 185 DTR 163 / 203 TTJ 129 (Ahd.)(Trib.)

S. 32 : Depreciation – Not in business of running vehicles on hire – Not entitled to depreciation at higher rate. 508

The Tribunal held that the assessee failed to establish that the dominant purpose was to use the vehicles for running them on hire. The dominant purpose was to use the vehicles for its own business. The purpose of allowing deduction at higher rate of depreciation in vehicles running them on hire was that the vehicles were used extensively without taking much care and suffer heavy wear and tear. Whereas in the case of the assessee's business, the wear and tear was lesser than the vehicles used in running on hire. In the instant case, the assessee also failed to establish that the vehicles were used in the business of running them on hire. Therefore the assessee was disentitled for higher rate of depreciation. (AY.2011-12 to 2015-16).

Arihant Constructions v. ACIT (2020) 77 ITR 171 (Vishakha) (Trib.)

S. 32 : Depreciation – Good will – Amalgamation – Purchase, consideration paid in excess of net value of assets and liabilities of amalgamating company was to be treated as goodwill – Entitled to depreciation. 509

Assessee had amalgamated with a company by way of an acquisition/purchase. It claimed depreciation on goodwill being excess amount paid over net value of assets and liabilities. AO disallowed the depreciation. Tribunal held that in view of AS-14, consideration paid in excess of net value of assets and liabilities of amalgamating company is to be treated as goodwill and; goodwill is an intangible asset and depreciation is allowable thereon. Accordingly the assessee is eligible for depreciation on goodwill. (AY. 2014-15)

Mylan Laboratories Ltd. v. DCIT (2020) 180 ITD 558 / 187 DTR 259 / 204 TTJ 426 (Hyd.) (Trib.)

S. 32 : Depreciation – Factory building – Depreciation was allowable on cost of river bank embankment and renovation thereof. 510

Assessee is engaged in business of manufacture of footwear. Its factory is located on bank of river Ganges, in order to protect its factory building from floods, damp, erosion and/or any other forms of water damages, it incurred expenses for river embankment and its renovation. Tribunal held that since costs incurred on river embankment yielded benefit of enduring nature, entire expenditure was capitalized under block 'Factory Building' accordingly the depreciation is allowable. (AY. 2008-09)

Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

511 **S. 32 : Depreciation – Good will – Amalgamation – Second year of amalgamation. Claim for depreciation had been allowed in first year of amalgamation, following principle of consistency, assessee's claim was to be allowed in assessment year in question as well. [S. 43(1), Ex. 7]**

Assessee-company acquired another company in a scheme of amalgamation approved by High Court. Year under consideration was 2nd year after recording transaction of all assets and liabilities acquired in scheme of amalgamation. Assessee paid more consideration against net assets acquired by it from amalgamating company by way of issuing shares and as such, excess consideration paid by assessee was treated as goodwill. Assessee claimed depreciation on such goodwill which was rejected. On appeal the Tribunal held that in view of fact that assessee was allowed depreciation in respect of such goodwill in 1st year of amalgamation, following principle of consistency, assessee's claim was to be allowed in assessment year in question as well. (AY. 2007-08 to 2009-10)

Bodal Chemicals Ltd. v. ACIT (2020) 180 ITD 313 (Ahd.)(Trib.)

512 **S. 32AC : Investment in new plant or machinery – Acquired before 31st March 2017 – Not required to put to use – Deduction allowed**

It was held that once, there is no dispute with regard to the amount incurred by the assesse in acquiring new assets and such assets are installed on or before specified date, then the requirement of the particular asset, ready for use or put to use is not required at all. It was held that the CIT(A) were erred in not allowing the additional allowances claimed by the assessee u/s 32AC of the Act. (AY. 2017-18)

DCIT v. SNJ Distillers Pvt. Ltd. (2020) 208 TTJ 968 /(2021) 87 ITR 540 (Chennai) (Trib.)

513 **S. 32AC : Investment in new pant or machinery – Generation of power amounts to manufacture or production of goods – Eligible for allowance.**

Tribunal held that extraction and processing of iron ore amounted to production. Electric energy would be covered under the definition of "goods" and generation of power would amount to manufacture or production of goods. Therefore, the assessee was eligible for allowance under section 32AC of the Act. Followed, *CST v. Madhya Pradesh Electricity Board (1970) 25 STC 188 (SC)* and *PCIT v. NTPC Sail Power Co. P Ltd (2020)428 ITR 535 (Delhi)(HC)* (AY.2014-15)

Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

514 **S. 35 : Scientific research expenditure – Directed the petitioner to make representation before the competent authority and the Competent was directed to consider the said application with in four weeks of receipt of the application. [Art. 226]**

Respondent-Authority approved Research and Development facility of petitioner only with effect from 1-4-2018 and not from 1-4-2017 on ground that petitioner had submitted Form 3CK only on 27-4-2018 and for approval from 1-4-2017, it should have been filed on or before 31-3-2018. On writ the petitioner contended that though Form 3CK needs to be submitted online, portal of revenue was not working for relevant period and so revenue decided to accept application even in physical form. Petitioner's case was that Form 3CK in physical form required signatures of Managing Director but their

Managing Director was not available in India from 8-3-2018 till 25-4-2018 and, thus, Form 3CK could be submitted in physical form only on 27-4-2018. Allowing the petition the Court held that merely because petitioner could not submit application in physical form in time, petitioner could not be denied grant of approval on such hyper technical ground. Court also held that petitioner satisfying revenue of reasons for non-submission of Form 3CK in physical form before 31-3-2018, revenue should consider request of petitioner to condone delay and grant approval to petitioner for financial year 2017-18. Petitioner was directed to make representation before the competent authority and the Competent was directed to consider the said application with in four weeks of receipt of the application (AY. 2018-19)
Hawkins Cookers Ltd. v. UOI (2020) 273 Taxman 507 / 196 DTR 29 / 317 CTR 843 (Delhi) (HC)

S. 35 : Scientific research expenditure – No product was manufactured in a particular unit – Allocation of expenses is held to be not justified – Research and development – Capital expenditure towards research and development R & said expenditure was to be excluded from toil capital expenditure while allowing expenditure on R & D units. 515
Assessee company was carrying on business of manufacture and export of pharmaceuticals. Tribunal allocated R & D expenditure to a unit of assessee. Assessee contended that Tribunal was not justified in allocating research and development expenditure to said unit as no product were manufactured in said unit during year. How court held that from perusal of record, it was evident that two products were manufactured by said unit in preceding year for which research and development was done by other units of assessee, no product was manufactured by it relevant year. Therefore, there could not be apportionment of current year's expenditure of assesse to said unit. Court also held that if incurred capital expenditure towards research and development R & said expenditure was to be excluded from toil capital expenditure while allowing expenditure on R & D units. (AY. 2001-02)
Microlabs Ltd. v. ACIT (2020) 273 Taxman 434 (Karn.)(HC)

S. 35 : Scientific research expenditure – Facility is recognised by prescribed authority, in-house R & D – role of – Assessing Officer is to allow expenditure incurred on in-house R&D facility as weighted deduction – in computing 90 days limitation period as provided under Rule 34(5) for pronouncing order, period of Covid-19 pandemic lockdown was to be excluded. [S. 35(2AB), S.255] 516
Assessee claimed deduction under section 35(2AB) being 200% of amount incurred towards scientific research. Assessing Officer from perusal of approvals from DSIR in Form No.3CM and working of deduction under section 35(2AB) in return of income and Form No. 3CL, found difference of Rs.10.54 lacs same was disallowed and added to income of assessee. Tribunal held that once such an agreement has been executed, under which recognition has been given to facility, then role of Assessing Officer is to look into and allow expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Tribunal also held that in computing 90 days limitation period as provided under Rule 34(5) for pronouncing order, period of Covid-19 pandemic lockdown was to be excluded. (AY. 2014-15)
Omni Active Health Technologies Ltd. v. ACIT (2020) 184 ITD 714 (Mum.)(Trib.)

517 **S. 35 : Scientific research expenditure – Donation – When a valid registration exists while donation was given by the assessee and if at a later point of time such registration is cancelled with retrospective effect, no disallowance can be made [S.35(1)(ii)]**

Allowing the appeal of the assessee the Tribunal held that, when a valid registration exists while donation was given by the assessee and if at a later point of time such registration is cancelled with retrospective effect, no disallowance can be made. Followed *CIT v Chotatingral Tea (2002) 258 ITR 529 (SC), National Leather Cloth Mfg Co v. Indian Agricultural Research (2000) 100 Taxman 511 (Bom.) (HC) (WP No. 3320 of 1987 dt.17-10-1999), Pooja Hardware Pvt Ltd v. ACIT (ITA No. 3712 /Mum / 2016 dt 28-10-2019) (Mum.) (Trib.) (ITA No. 6399/Mum/ 2019 dt 9-6-2020).* (AY 2014-15)

Span Realtors v. ITO (2020) BCAJ-September-P. 42 (Mum.)(Trib.)

518 **S. 35 : Scientific research expenditure – Non issue of approval for certain period – Denial of weighted deduction is not justified. [S. 35(2AB)]**

Allowing the appeal of the assessee once existence of R & D facility was not disputed and expenditure for that purpose was genuine in nature and recognition to facility was granted way back in 2001-02, which was valid during relevant period, then merely for reason of non-issue of approval for certain period in prescribed Form 3CM by competent authority, weighted deduction claimed under section 35(2AB) could not be denied. (AY. 2011-12)

Advance Enzyme Technologies (P.) Ltd. v. ACIT (2020) 183 ITD 50 / 190 DTR 37 / 205 TTJ 679 (Mum.)(Trib.)

519 **S. 35 : Scientific research expenditure – Weighted deduction – In house research and development facility – Mandate of approval of quantum of expenditure had been inserted with effect from 1-7-2016 – for relevant year eligible for weighted deduction. [S. 35(2AB)]**

The assessee incurred expenditure on in-house research and development facility and claimed that this expenditure was deductible under S. 35(2AB) in computing the total income at the rate of 150 per cent of the actual expenditure. The AO held that the eligible amount, as noted by the Department of Scientific and Industrial Research (DSIR), in Form No. 3CL was less as compared to the deduction claimed by the assessee. The AO made the disallowance of Rs. 42.52 lakh on this basis. CIT(A) confirmed the disallowance. On appeal the Tribunal held that prior to the amendment, i.e., up to 30-6-2016, it was not required to quantify the expenditure and it was only with effect from 1-7-2016, that this mandate has been put in place. Accordingly entitled to weighted deduction.(AY. 2009-10)

ACIT v. Crompton Greaves Ltd. (2019) 75 ITR 17 (SN) / (2020) 181 ITD 40 / 203 TTJ 94 (Mum.)(Trib.)

520 **S. 35AD : Deduction in respect of expenditure on specified business – Hotels – Section per se does not require any specific date of operation – Denial of exemption is held to be not valid.**

Assessee claimed deduction under S. 35AD of the Act. The AO held that newly commenced hotel, qua which deduction was claimed was not of specified category; that

though assessee had started operating hotel, there was no formal launch and Government had not issued any classification certificate, certifying hotel as a four-star hotel. CIT(A) affirmed the order of the AO and held that certificate approving four-star hotel category issued by Ministry of Tourism, in respect of hotel was issued post-passing of assessment order on 30-1-2018, with effect from 29-1-2018, valid till 28-1-2023 and that, since assessee did not have requisite classification certification in year under consideration, benefit of deduction could not be provided. On appeal the Appellate Tribunal held that since conditions of S. 35AD are fulfilled, section, per se, not requiring any specific date of operation, deduction thereunder could not have been disallowed. (AY. 2015-16)
Benares Hotels Ltd. v. DCIT (2020) 181 ITD 486 (Varanasi) (Trib.)

S. 35D : Amortisation of preliminary expenses – Fees for registering Company – One – Fifth of Expenditure – Expenses incurred before commencement of business eligible for deduction. 521
Tribunal held that the business of the assessee commenced only upon the acquisition of the shares. The registration of the assessee and the commencement of the business of the assessee were two different things. The incorporation of an assessee did not mean that the assessee had commenced business activities. In fact the business activities of the assessee commence only after doing the transaction for which it was established. Thus, in such a situation, the activity of the assessee commenced upon the acquisition of the shares of the company. Thus the expenses incurred by the assessee as specified under the provisions of section 35D before the commencement of the business were eligible for deduction. (AY.2014-15)
Addlife Investments Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 343 (Ahd.) (Trib.)

S. 35D : Amortisation of preliminary expenses – Not an industrial undertaking – Issue expenses was not deductible. 522
Tribunal held that the assessee is not an industrial undertaking, hence deduction in respect of share issue expenditure is not allowable. (AY. 2003-04)
DCIT v. IFCI Ltd. (2020) 185 ITD 742 (Delhi)(Trib.)

S. 35D : Amortisation of preliminary expenses – Public limited company – Issue of shares to Qualified Institution Buyers (QIB) would be regarded as issue of shares to public and, thus, expenses incurred on said issue would be eligible for deduction. 523
Assesse, a public limited company, raised certain amount by issue of share capital through a Qualified Institution Placement (QIP) in which it placed its share capital with Qualified Institution Buyers(QIB). The assessee incurred expenses on account of payments to Lead Managers of issue and payments to Legal Consultants for finalization of placement document for QIP. The AO rejected assessee's claim holding that issue of shares to QIP did not amount to public subscription Tribunal held that s per Rule2 (d) of Securities Contracts (Regulation) Rules, 1957, term public means any person other than promoter, promoter group, subsidiaries and associates of company. In instant case, it was apparent from list of QIB to whom shares were issued that they did not fall in any of aforesaid category, accordingly QIB would qualify as public and, therefore, assessee's claim for deduction was to be allowed. (AY. 2010-11)
Yes Bank Ltd. v. DCIT (2020) 183 ITD 721 / 192 DTR 385 / 206 TTJ 913 (Mum.)(Trib.)

524 **S. 35D : Amortisation of preliminary expenses – Inconsistency in manner of claiming expenditure – Deduction of the fresh expenditure allowable only as per S.35D of the Act.**

Tribunal held that the assessee itself had allocated preoperative expenditure in the books of account and a part of it was written off in its books of account. However, while computing the income, it had claimed full deduction of fresh expenditure incurred during the year as against the fact that it had claimed deduction at 20 per cent. on the opening balance of similar expenditure. Therefore, there was inconsistency in the manner of claiming the expenditure. The nature of expenditure remaining the same, the deduction would be allowable under section 35D only. The rule of consistency would debar the assessee to make a claim in a different manner. Therefore, deduction of the fresh expenditure incurred during the year was allowable in terms of section 35D only. (AY.2012-13)

Nuclear Healthcare Limited v. ACIT (2020) 83 ITR 35 (SN) (Mum.)(Trib.)

525 **S. 35D : Amortisation of preliminary expenses – Capital raised for investment in capital equipment, working capital requirement, general corporate purposes – Expenses for extension of undertaking – Allowable. [S. 35D(2)(c)(iv)]**

Tribunal held that Section 35D provides for amortisation of capital expenditure relating to specified items which have been incurred "before the commencement of business" or "after the commencement of his business, in connection with the extension of its undertaking or in connection with his setting up a new industrial unit" provided in sub-section (2)(i) and (ii) of section 35D respectively. The purpose of the assessee's capital raised was investment in capital equipment, working capital requirement, general corporate purposes and issue expenses. The assessee's case fell under section 35D(2)(ii) since the expenditure was in connection with the extension of its undertaking. The findings of the Commissioner (Appeals) deleting the section 35D disallowance of Rs. 120 crores in both these assessment years were to be upheld. (AY.2010-11, 2011-12)

Dy. CIT v. MBL Infrastructure Ltd. (2020)78 ITR 156 (Kol.)(Trib.)

526 **S. 35DD : Amortisation of preliminary expenses – Amalgamation – Demerger – Expenses allowable in hands of parent company and not resultant company. [S. 37(1)]**

Tribunal held that under section 35DD, the deduction was allowable to the assessee for expenditure incurred wholly and exclusively for demerger of an undertaking. Since demerger of the undertaking took place from the parent company, the word "assessee" referred to the parent company and not the assessee, with whom the undertakings of the parent company got merged. In case of demerger, where the undertaking get demerged, this might result in a new entity and in those circumstances, the resultant company could not incur expenditure before its birth. It was the parent entity, which initiated the demerger of the undertaking and incurred expenditure for legal and professional expenses in relation to such demerger. The resultant company having come into existence only as a result of the demerger, the word "assessee" in section 35DD of the Act could not include the resultant company. Therefore, the assessee was not entitled to deduction under section 35DD of the Act. (AY.2007-08, 2008-09)

ACIT v. Niit Technologies Ltd. (2020)79 ITR 60 (Delhi)(Trib.)

S. 35DDA : Amortisation of preliminary expenses – Voluntary retirement scheme – Expenses incurred prior to insertion of section – Governed by earlier provisions. [S. 37(1)] 527

Tribunal held that section 35DDA of the Act was inserted by the Finance Act, 2001 providing for amortisation of expenditure incurred on the voluntary retirement scheme. The assessment year 1998-99 in the instant case was prior to the insertion of section 35DDA and hence could not apply. The instant year would be governed by the earlier provisions. (AY.1998-99)

Foseco India Ltd. v. Dy. CIT (2020) 80 ITR 29 (SN) (Pune)(Trib.)

S. 35E : Expenditure on prospecting – Minerals – Expenses for purpose of developments like roads and trenches, temporary huts, drilling, etc. – Allowable as deduction. [S. 37(1)] 528

Assessee company had claimed deduction in respect of payments made by it to mining lessees. It claimed that same was towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc. The AO held that said amount was paid by assessee for obtaining right to mine, thus, same could not be allowed as revenue expenditure. Tribunal allowed the claim of the assessee. On appeal by the revenue the Court held that material on record clearly indicated that amount paid by assessee to mining lessees was not towards acquisition of right to mine but was towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc. Accordingly the order of Tribunal is affirmed. (AY. 2008-09)

CIT v. Mukhtar Minerals (P.) Ltd. (2020) 195 DTR 393 / (2021) 432 ITR 152 / 321 CTR 30 / 276 Taxman 218 (Goa Bench) (Bom.)(HC)

S. 36(1)(ii) : Bonus or commission – Salary – Director – Shareholder Directors were given commission for promoting and increasing sale – Part of salary allowable as deduction. [S. 15] 529

Shareholder Directors were given commission by assessee company for promoting and increasing sale by their efforts, as a result of which over period of time, assessee's turnover and also profit had increased manifold. Assessing Officer disallowed commission so paid on ground that shareholder Director would get dividend on accumulated profit. CIT(A) has allowed the claim of the assessee. On appeal by the revenue the Tribunal held that if directors, in terms of Board resolution, were entitled to receive commission for rendering services to company and if it was in terms of employment on basis of which they had been rendering services, then such remuneration/commission would be part and parcel of salary hence allowable as deduction. (AY. 2012-13)

Dy.CIT v. Abro Technologies (P.) Ltd. (2020) 184 ITD 82 (Delhi) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Loan given to sister concern – Without charging interest – Disallowance of interest was held to be not valid. 530

Dismissing the appeal of the revenue the Court held that order of Tribunal allowing the claim for deduction of interest on borrowed fund when the same is utilised to

give interest free loan/share application money to subsidiary companies is held to be allowable as deduction. Followed S.A. Builders Ltd. v.CIT (2007) 228 ITR 1 (SC). (AY. 2008-09)
PCIT v. E City Investments And Holdings Company (P.) Ltd (2020) 117 taxmann.com 123 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. E City Investments And Holdings Company (P.) Ltd (2020) 272 Taxman 90 (SC)

531 **S. 36(1)(iii) : Interest on borrowed capital – Investment in group companies for strategic business purpose – Allowable as deduction.**
Dismissing the appeal of the revenue the Court held that investment made was for strategic business purpose because companies were promoted as special purpose companies to strengthen and to promote its existing business by combining different business segments.-Following previous judgment, deduction was to be allowed for current assessment year. (AY. 2004-05)
CIT v. KEC International Ltd. (2020) 269 Taxman 275 (Mad.)(HC)

532 **S. 36(1)(iii) : Interest on borrowed capital – Amount advanced to sister concern without charging interest – Business purpose – Held to be allowable.**
Dismissing the appeal of the revenue the Court held that the amount advanced by the assessee for business purposes as well as commercial expediency is held to be allowable as deduction. (AY.2008-09)
CIT v. Gokaldas Images Pvt. Ltd. (2020) 429 ITR 526 / (2021) 197 DTR 225 / 318 CTR 486 / 276 Taxman 420 (Karn.)(HC)

533 **S. 36(1)(iii) : Interest on borrowed capital – Sufficient surpluses and reserves – No disallowance of interest can be made.**
Dismissing the appeal of the Revenue the Court held that the assessee's own funds were far in excess of the advances and deposits made during the year hence the deletion of interest is held to be justified. (AY.2009-10)
CIT v. Brigade Enterprises Ltd. (No. 2) (2020) 429 ITR 615 / (2021) 318 CTR 325/ 197 DTR 319/ 278 Taxman 81 (Karn.)(HC)

534 **S. 36(1)(iii) : Interest on borrowed capital – Amount borrowed advanced at lower interest – Revenue authorities cannot substitute their own wisdom or notion about the rate of interest agreed to between the parties – Interest is deductible.**
Dismissing the appeal of the revenue the court held that it is not for the Revenue authorities to substitute their own wisdom or notion about the rate of interest agreed to between the parties, including group companies and as such, the finding of fact about commercial expediency or absence thereof is a finding of fact, out of which no substantial question of law can be said to arise. (AY.2013-14)
CIT v. Shriram Investments (2019) 104 CCH 0737 / (2020) 422 ITR 528 (Mad.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Real estate business – Amount borrowed to purchase shares to expand business – Controlling interest – Interest allowable as deduction. [S. 37(1), 57(iii)] 535

Allowing the appeal of the assessee the Court held that, the assessee is in the business of real estate. The assessee had borrowed the capital to purchase shares so as to have effective control in order to expand its real estate business. Thus, the investment in shares was nothing but expansion of business of the assessee. Therefore, all the conditions necessary for deduction under S. 36(1)(iii) were prima facie satisfied by the assessee. The dominant purpose of the assessee to borrow the capital was to acquire the shares to have effective control over so as to expand the business of the assessee. In that view of the matter, the CIT(A) was not justified in granting deduction of interest paid by the assessee under S. 57(iii) of the Act. The assessee was entitled to deduction of interest paid on capital borrowed for investment in the shares of for the purpose of expansion for its business under S. 36(1)(iii).(AY.1996-97, 1997-98)

B. Nanji and Co. v. Dy.CIT (2020) 425 ITR 286 / 194 DTR 390 / 317 CTR 203 (Guj.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Borrowed from banks and advanced to sister concern – Commercial expediency – Sufficient interest free fund was available – Deletion of disallowance is held to be justified. 536

Dismissing the appeal of the revenue the court held that the Tribunal had rightly allowed the deduction claimed by the assessee under section 36(1)(iii). By its investment in the share capital of GR, the assessee was to acquire a controlling stake in GR which was also engaged in the business of real estate development and therefore, there was a direct nexus between the expenditure incurred and the purpose of business. Followed *Hero Cycles (P) Ltd. v. CIT [2015] 379 ITR 347 (SC) and S. A. Builders Ltd. v. CIT(A) [2007] 288 ITR 1 (SC).* As regards other transactions of the interest-free advance made by the assessee, the Tribunal had given finding that the assessee had sufficient interest free funds.(AY.2014-15)

PCIT v. Gaursons Realty Pvt. Ltd. (2020) 422 ITR 123 / 104 CCH 733 / 274 Taxman 512 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Amount used to assist sister concern – Interest not deductible. 537

Dismissing the appeal the Court held that, that the finding of fact recorded by the AO, the CIT(A) and the Tribunal was that the assessee-firm had supplied its finished products to its sister concern and had not insisted upon the sale proceeds and had availed of a letter of credit against the bills and paid interest. This arrangement could not be considered as business prudence and expediency. The interest on borrowed capital was not deductible.(AY.1997-98)

Yenepoya Resins and Chemicals v. Dy. CIT (2020) 423 ITR 161 / 196 DTR 427 / 271 Taxman 271 (Karn.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Allowable as deduction though capitalised in the books of account. [S. 43(1), Ex. 8, 145] 538

Dismissing the appeal of the revenue the Court held that interest paid on borrowings for setting up of Agro Gas plant, though capitalised in the books of account is held to

be allowable as deduction. Followed *CIT v. Core Health Care Ltd (2008) 298 ITR 194/167 Taxman 206 (SC)* (ITA No 51 of 2008 dt 22-11-2019 / 2-01 2020) (AY.1995-96)
CIT v. Zuari Industries Ltd. (2020) 420 ITR 323 / 185 DTR 281 / 312 CTR 416 (Bom.)(HC)

539 **S.36(1)(iii) : Interest on borrowed capital – Advance given to subsidiary or sister concern – Share capital reserves and surplus available – Disallowance of interest was deleted.**
Where the revenue disallowed interest paid on borrowed fund u/s 36(1)(iii) on the ground that loans and advances were provided by assessee to its sister concerns out of borrowed funds without charging adequate interest. It was held that as non-or lower interest-bearing advances given to subsidiary or sister concern are less than interest free funds in form of share capital and reserves and surplus available with assessee, interest cannot be disallowed u/s 36(1)(iii) of the Act. (AY. 2010-11, 2011-12)
Dharampal Satyapal Ltd. v. Dy. CCIT (2020) 191 DTR 87 (Delhi)(Trib.)

540 **S.36(1)(iii) : Interest on borrowed capital – Investment made during the year in capital assets – Proven to be out of assessee's own fund – Disallowance was not justified.**
Where assessee claimed that the investment made in capital assets was out of their own funds and sufficient evidences were provided to prove the same, the interest paid on borrowed funds was to be allowed under section 36(1)(iii). (AY. 2009-10, 2010-11)
Tata Sky Ltd v. ACIT (2020) 195 DTR 177 / 208 TTJ 194 (Mum)(Trib.)

541 **S. 36(1)(iii) : Interest on borrowed capital – Funds diverted for equity infusion of associated concerns – Disallowance of interest is held to be justified.**
Tribunal held that the borrowed funds were diverted for investment for equity infusion of associated concerns, hence disallowance of interest is held to be justified. (AY. 2013-14)
Abhinav International P. Ltd. v. Dy. CIT (2020) 82 ITR 258 (Delhi)(Trib.)

542 **S. 36(1)(iii) : Interest on borrowed capital – Interest-free advances received from customers were available – Interest-free loans given to subsidiaries-Proportionate disallowance of interest not warranted.**
Allowing the appeal of the assessee the Tribunal held that that the interest-free advances received from customers were available with the assessee to the tune of Rs. 16.96 crores. The interest-free loans given to subsidiary companies were at Rs. 10.26 crores. Since the interest-free funds available with the assessee were more than the interest-free loans given to subsidiaries, it should be presumed that the loans had been given out of the interest-free funds. Accordingly, the Assessing Officer was to delete this disallowance. Followed, *CIT v. Brindavan Beverages (P) Ltd (2017) 393 ITR 261 (Karn) (HC)* (AY.2014-15)
Assetz Infrastructure Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 59 (SN) (Bang.)(Trib.)

543 **S. 36(1)(iii) : Interest on borrowed capital – Capitalisation of interest paid up to date of installation of machinery – Interest relating to assessee's own funds utilised in purchase to be excluded in computing the interest to be capitalized.**
The Tribunal held that order of CIT(A) restricted the disallowance holding that as the installation report showed the installation date of the machinery to be a month earlier

than that taken by the Assessing Officer, the disallowance of interest expense should be limited to that extent only. Moreover, as the assessee had utilised its own funds, in addition to funds borrowed from the bank, for the purchase of the machinery, the Commissioner (Appeals) excluded the amount of own funds in reckoning the interest expenses to be capitalized is held to be justified. (AY.2008-09)
ITO v. Rajkalp Mudraalaya Pvt. Ltd. (2020) 84 ITR 4 (SN.)(Ahd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Sufficient interest – free funds available for investment in sister concerns – Interest on borrowings not to be disallowed. 544
Tribunal held that where the assessee has sufficient interest-free funds of its own, the presumption that the investment in sister concerns was made out of such funds gets established and, therefore, no part of interest on borrowings can be disallowed on the basis of these investments. (AY. 2012-13)
Kumar Urban Development Ltd. v. ITO (2020) 84 ITR 17 (SN) (Pune)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Investment Company – Acquisition of shares – Interest directly attributable – Capitalised. 545
Tribunal held that once the assessee had been held as investment company, the interest expenses directly attributable to such investments required to be capitalised. Relied on *CIT v. Trishul Investments Ltd. (2008) 305 ITR 434 (Mad.)* (HC) (AY.2014-15)
Addlife Investments Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 343 (Ahd.) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Intercorporate deposits agreement with assessee and its subsidiaries – Commercial expediency – Interest deductible. 546
Tribunal held that the assessee filed documentary evidence before the Assessing Officer to show that the assessee had an intercorporate deposit agreement with its subsidiary and one of the clauses of the memorandum of articles of association of the assessee was to make investments also in its subsidiary. For commercial expediency the assessee had made investment in shares of the subsidiary company and as such, the amount invested shall have to be considered as invested for business purposes and for commercial expediency. Interest allowable as deduction. (AY. 2015-16)
SKG Wooden Works Pvt. Ltd. v. ITO (2020) 80 ITR 28 (SN)(Delhi) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Paying interest thereon at 12.2 Per Cent and advancing loans charging interest at 7.25 Per Cent and 10 Per Cent. – Disallowance is held to be not justified. 547
Tribunal held that the entire transaction of taking of loan and payment of interest thereon and giving of loan and earning of interest therefrom was duly established. The only factor that prompted the Assessing Officer for making the disallowance was that there was no prudence in carrying out the activity in such a manner, which culminated in incurring of net interest loss which fact could at the best be a triggering point for further investigation but could not have been the basis or foundation for the disallowance of interest expenditure claimed by the assessee. Since the disallowances were made merely on surmises and conjectures, they were to be deleted. (AY. 2007-08)
Subhakaran Sampatlall (HUF) v. ITO (2020) 80 ITR 26 (SN) (Kol.) (Trib.)

548 **S. 36(1)(iii) : Interest on borrowed capital – Firm and partners – Interest is paid on capital contributed by the partners – It no more remained interest free funds – Disallowance of interest is held to be justified. [S. 2(28A), 40(b)]**

Assessee, engaged in real estate business, Assessing Officer disallowed a part of interest on amount borrowed. The assessee raised a plea that since it had surplus interest free funds available in form of capital contribution of partners for making investment in non-business purposes, impugned disallowance was to be deleted. Tribunal held that the assessee paid interest on capital contributed by partners, it no more remained interest free fund, notwithstanding definition of interest under section 2(28A) read in juxtaposition to section 40 (b).Therefore the assessee did not have interest free funds available at its disposal which could have been used for making investment for non-business purpose. Accordingly disallowance of interest made by the AO is affirmed. (AY. 2011-12)

Devi Construction Company v. DCIT (2020) 185 ITD 858 / 193 DTR 225 / 207 TTJ 130 (Pune)(Trib.)

549 **S. 36(1)(iii) : Interest on borrowed capital – Redemption of debentures – Loss on redemption allowable as business loss. [S. 28(i)]**

Assessee-company, during the year, had issued secured unrated fully transferable unlisted 9,500 debentures of face value of Rs. 10 lakhs each aggregating to Rs. 950 crores at a discount of Rs. 3,62,421 per debenture aggregating to total discount of Rs. 350 crores, i.e., at net issue price of Rs. 6,31,579 per debenture, aggregating to Rs. 600 crores for a tenure of three years at a coupon rate of 2 per cent per annum to India Bulls Housing Finance. These debentures were issued on 17-12-2015 and redeemed from open market from 30-3-2015 at a price of Rs. 704.50 crores Thus, as a consequence of redemption of debentures, appellant incurred expenditure on redemption of debentures of Rs. 104.50 crores (Rs. 704.50 crores-Rs. 600 crores). Tribunal held that borrowing had been made through debentures and utilized for purpose of business which had been established through documentary evidence in shape of agreements and correspondences for which, no contrary evidence had been placed on record. Therefore the claim of deduction of loss incurred on redemption of debentures could not be denied to assessee-company.(AY. 2015-16)

Shivsagar Builders (P.) Ltd. v. ACIT (2020) 185 ITD 684 (Delhi) (Trib.)

550 **S. 36(1)(iii) : Interest on borrowed capital – Purchase of machinery – Interest is allowable as deduction even if said machinery was not put to use in year under consideration.**

Assessee-company acquired machinery out of loan availed from bank. Till end of relevant year, machine was not put to use. Assessee claimed deduction on account of interest paid on said loan. AO disallowed deduction by holding that interest expense could not be allowed as deduction until the machinery was put to use. Tribunal held that since value of machine acquired was negligible to value of plant and machinery as shown in assessee's balance sheet of subject year, such small addition in plant and machinery could not amount to extension of existing business, and, thus, interest expense incurred by assessee was eligible for deduction. (AY. 2011-12)

K. B. Mehta Construction (P.) Ltd. v. DCIT (2020) 185 ITD 81 (Ahd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Used for acquisition of land which is part of inventory – Allowable as deduction. 551

Dismissing the appeal of the revenue the Tribunal held that interest paid on borrowed funds by assessee which were used for acquisition of land which was an inventory was allowable. (AY. 2013-14, 2014-15)

DCIT v. Cornerstone Property Investment (P.) Ltd. (2020) 185 ITD 202 (Bang.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Borrowed funds used for giving interest free loan to sister concerns – Interest disallowable interest on funds diverted for non – business purpose. 552

Assessee paid interest on short term and long term borrowings and claimed deduction for same. Assessing Officer disallowed interest expenditure to extent of diversion of funds for non-business purpose on appeal the Tribunal held that assessee had not given any evidence with regard to nexus between assessee's business and interest free loan accordingly disallowance of interest made by Assessing Officer was held to be justified. (AY. 2014-15, 2015-16)

Global Tech Park (P.) Ltd. v. ACIT (2020) 184 ITD 673 (Bang.) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Advance to sister concern – Failure to prove commercial expediency – Disallowance is held to be justified. 553

The Tribunal held that the assessee has failed to prove that the advance to sister concern was due to commercial expediency hence disallowance is held to be justified. (AY. 2005-06)

Mangalam Publications (India) (P.) Ltd. v. ACIT (2020) 183 ITD 1 (Cochin)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Setting up of business – Real estate business – Entered in to development agreement of township – Claim of deduction is allowable. [S. 28(i)] 554

Assessee was engaged in business of real estate business. During relevant year, assessee raised huge amount of loan from banks and made investment in purchase of land which was reflected as stock in trade. Assessee also entered into development agreement with other builders for development of a township. Assessing Officer rejected the claim holding that said expenditure was in nature of pre-operative business expenditure. On appeal the Tribunal held that the assessee had established its company, borrowed funds for purchase of portion of land in own name and further gave loan to associates for acquisition of land and then entered into development agreement for development of township therefore on facts it could be concluded that assessee had not only set-up its business but had also commenced its business during relevant year and, thus, assessee's claim for deduction was to be allowed. (AY. 2006-07)

Jindal Realty (P.) Ltd. v. ACIT (2020) 82 ITR 289 / 183 ITD 228 (Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest on car loan – Car Loan amount directly disbursed to seller of car – Own fund utilized for advancing interest free loan – Disallowance of interests is not justified. 555

Tribunal held that the car loan amount was directly disbursed to the seller of the car. Inasmuch as the loan was for the purpose of business, merely because the assessee

had placed his own funds and interest-free loans for some other purposes, it was not open to the Assessing Officer to disallow the interest on the amount taken for business purpose. (AY.2013-14)
Vinay Bhasin v. ACIT (2020) 83 ITR 78 (SN) (Delhi) (Trib.)

556 **S. 36(1)(iii) : Interest on borrowed capital – Inventories held as current assets – Method of accounting – Accounting Standard 2 – Interest expenses allowable as deduction. [S. 145A]**
Dismissing the appeal of the revenue the Tribunal held that when the inventories held as current assets interest paid on borrowed capital is allowable as deduction as the method of accounting followed by the assessee is in accordance with Accounting Standard 2. (AY.2008-09)
Dy. CIT v. Thermo King India Pvt. Ltd. (2020)82 ITR 42 (SN) (Bang.) (Trib.)

557 **S. 36(1)(iii) : Interest on borrowed capital – Reasonableness of expenditure has to be decided by assessee and not department – Sufficient interest – Free funds – No disallowance can be made.**
Tribunal held that when the assessee has sufficient interest-free funds were available out of which the interest-free loans and advances were provided to parties. How much is a reasonable expenditure has to be decided by the assessee and not the department. Disallowance was deleted.(AY.2013-14, 2014-15)
Balji Electrical Insulators P. Ltd. v. Dy. CIT (2020)82 ITR 39 (SN) (Ahd.) (Trib.)

558 **S. 36(1)(iii) : Interest on borrowed capital – Onus on assessee to establish that interest-bearing loan not used to extend interest-free loan – Matter remanded.**
Tribunal held that since the assessee was not given proper opportunity to show cause enabling him to explain his stand and to establish that no amount of interest bearing loans was used for advancing interest-free loans, the issue was remanded to the Assessing Officer for examination afresh and verification after allowing due opportunity of hearing to the assessee. (AY.2014-15)
R. N. Sahoo v. Dy. CIT (2020) 79 ITR 20 (SN) (Cuttack) (Trib.)

559 **S. 36(1)(iii) : Interest on borrowed capital – Intercorporate deposit to subsidiary – Strategic purposes and not for earning dividend – Interest is allowable as deduction – Common interest expenditure to be apportioned on basis of cost of financing and not on basis of turn over – Business income – Shipping business – Tonnage income not to form part of normal business Income. [S.37(1), 115VE]**
Tribunal held that Intercorporate deposit to subsidiary is strategic purposes and not for earning dividend hence interest is allowable as deduction. Common interest expenditure to be apportioned on basis of cost of financing and not on basis of turn over. When the assessee is carrying on shipping business, tonnage income not to form part of normal business Income. (AY.2013-14)
Essar Shipping Ltd. v. ACIT (2020) 79 ITR 555 (Mum.) (Trib.)

S.36(1)(iii) : Interest on borrowed capital – Till asset for which loan borrowed is put to use, interest not allowable. [S. 37(1)] 560

Tribunal held that according to the proviso to section 36(1)(iii) inserted by the Finance Act, 2003 with effect from April 1, 2004, till the asset for which the loan was borrowed was put to use, interest was not allowable. (AY.2013-14, 2014-15)

Dy. CIT v. Coffee Day Global Ltd. (2020) 79 ITR 322 (Bang.) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest free loans and advances to related party – Free funds available – Presumption that investments from interest – Free funds available – No disallowances can be made. 561

The Tribunal held that the assessee had sufficient funds of its own. When interest-free funds are available to the assessee which were sufficient to make its investments, the presumption is that the investments were made from the interest-free funds available with the assessee. There was no justification to sustain the addition. Followed *CIT v. Reliance utilities and Power Ltd. (2009) 313 ITR 340 (Bom.) (HC), Munjal Sales Corporation v. CIT (2008) 298 ITR 298 (SC) and CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466 (SC).* (AY.2012-13 to 2014-15)

ATS Infrastructure Ltd. v. ACIT (2020)77 ITR 70 (SN) (Delhi) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Advances for construction of factory building – No disallowance can be made – Reimbursement of expenses – Matter remanded. [S. 40(a)(ia)] 562

Advance for construction of factory building is held to be for the purposes of business hence no disallowances can be made. As regards reimbursement of expenses the matter is remanded to the AO for verification. (AY. 2014-15)

ACIT v. Transenergy Ltd. (2020)77 ITR 74 (SN) (Chennai) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Share application money is capital borrowed for purpose of business or profession until shares are allotted – Allowable as deduction. Consulting charges – Matter remanded to AO. [S.37(1)] 563

Tribunal held that S. 36(1)(iii) of the nowhere restricts the disallowance in respect of interest paid on share application money. Until the shares were allotted, the share application money is capital borrowed for the purpose of the business or profession. Until and unless there was an embargo and restriction under S. 36(1)(iii), no disallowance could be made in respect of interest paid on the share application money. Until and unless the shares are allotted, the share application money could be refunded to the persons from whom the money had been received and it remains capital borrowed. The assessee had filed all the documentary evidence in respect of Rs. 6,50,000 being the amount of consultancy charges paid before the authorities and this had not been properly considered. Therefore, in the interest of justice the AO was to decide the issue afresh, as per law, after giving full opportunity of hearing to the assessee and for producing the evidence.(AY.2011-12)

Panarc Consulting Group Pvt. Ltd. v. ITO (2020) 77 ITR 50 (SMC) (SN) (Delhi) (Trib.)

564 **S. 36(1)(iii) : Interest on borrowed capital – Firm – Partners – Debit balances in partner's current account – Opening debit balances – No disallowance can be made.**
The AO held that interest on money borrowed by firm and advanced by it in turn to its partners hence made the disallowance. CIT(A) deleted the addition holding that it was a notional income and debit balance in partner's current account had been carried forward from past several years but there were no additions made on said count in those years. Tribunal held that in view of fact that debit balance in one of partner's current account was appearing for last several years and in none of earlier years any such hypothetical income had been subjected to tax in hands of assessee, following principle of consistency, there was no justification of AO in imputing interest income on debit balance of said partner. Order of CIT(A) is affirmed. (AY. 2011-12, 2012-13)
DCIT v. India Housing. (2020) 181 ITD 1 (Kol.)(Trib.)

565 **S. 36(1)(iii) : Interest on borrowed capital – Sufficient interest free funds – Interest free advances – Advance of loan to related parties – Matter remanded back for disposal afresh.**
Assessee claimed deduction of interest paid on secured and unsecured loan. AO held that interest bearing fund for advancing loans to related entities at much lower rate of interest than rate of interest at which it had availed loan hence he worked out proportionate interest disallowance. In appellate proceedings the assessee raised a plea that it had sufficient interest free funds available to make such advances. Tribunal held that since aforesaid plea raised by assessee had not been factually verified by authorities below, impugned disallowance was to be deleted and, matter was to be remanded back for disposal afresh.(AY. 2009-10)
Alpex International (P.) Ltd. v. ACIT (2020) 180 ITD 844 (Mum.) (Trib.)

566 **S. 36(1)(va) : Any sum received from employees – Employees' Contribution to Provident Fund and Employees' State Insurance – Delay in payment – Tribunal remanding the issue before Assessing Officer – Held to be erroneous. [S. 2(24)(X), 36(1)(Va), Employees' Provident Funds And Miscellaneous Provisions Act, 1952, S. 38.]**
The employees' contribution towards provident fund and employees' State insurance were not deposited within the prescribed period under S. 36(1)(va) read with S. 2(24)(x) of the Act. The AO disallowed the payments. The CIT(A) dismissed the appeal filed by the assessee. The Tribunal held that the question as to whether there was a delay or not was to be decided by the AO and the assessee would get relief if found admissible. On appeal by revenue the Court held that S. 38 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 made it obligatory for the employer before paying the wages to deduct the employees' contribution along with the employer's own contribution as fixed by the Government. The employer is further obliged to pay it within fifteen days of the close of every month's pay, i.e., such contribution and administrative charges. The reference to fifteen days of the close of the month must be in relation to the month during which the payment of wages is to be made and corresponding liability to deduct the employee's contribution to the fund arises. The expression "within fifteen days of the close of every month" therefore, must be interpreted as having reference to the close of the month, for which, the wages were

required to be paid with the corresponding duty to deduct the employees' contribution and to deposit such amount in the relevant fund. The order of the Tribunal restoring the matter to the Assessing Officer was erroneous.(AY.2011-12)
PCIT v. Suzlon Energy Ltd. (2020)423 ITR 608 (Guj.) (HC)

S. 36(1)(va) : Any sum received from employees – Failure to deposit employees contribution on account of PF and ESI with concerned department on or before due date prescribed under relevant statutes – Not entitled to deduction. 567
Failure to deposit entire amount towards employees contribution to PF and ESIC with concerned department on or before due date prescribed under relevant statutes, assessee would not be entitled to deduction. (AY. 2013-14, 2014-15)
Goyal & Co (Const.) (P.) Ltd. v. DCIT (2020) 180 ITD 280 (Ahd.) (Trib.)

S. 36(1)(vii) : Bad debt – Income offered as income – Reduced from asset side of balance sheet – Order was set aside. [S. 36(2)] 568
Assessee's claim for bad debts was rejected by revenue authorities without ascertaining as to whether said amount was offered to income in previous year or earlier years. On appeal High Court held that and, when the aseessee debited amount of doubtful debts to profit and loss account and reduced same from asset side of balance sheet, impugned order was to be set aside and, matter was to be remanded back for disposal afresh. (AY. 2014-15)
Hajee A.P. Bava and Company Const. (P) Ltd. v. ACIT (2020) 272 taxman 230 (Karn.)(HC)

S. 36(1)(vii) : Bad debt – Assessee only to establish that debt written off in accounts – Not necessary to establish that debt in fact had become irrecoverable – Law after 1-4-1989 – Winding up – Diminution in value of investment made by assessee in company in liquidation – Capital loss – Matter remanded to the Assessing Officer. [S. 46(2)] 569
Court held that the Tribunal had not recorded a specific finding by assigning reasons that in the books of account the debts had been written off by the assessee. Only in a single sentence, it was stated that the assessee had in its books of account written off its debt as irrecoverable. The Assessing Officer and the Commissioner (Appeals) had also not recorded a specific finding that the assessee had written off the debts in the books of account. Since GIL had gone into liquidation and there was no trace of recovering the amounts of loans, advances and sundry debtors due from its associate company, the assessee had taken a view to write off such amount in its ledger of accounts during the previous year relevant to the assessment year 2001-02. The matter was remitted to the Assessing Officer to decide the issue in the light of law laid down by the Supreme Court in *T. R. F. LTD. v. CIT (2010) 323 ITR 397 (SC)*, *CIT v. Jaykrishna Harivallabhdas (1998) 231 ITR 108 (Guj.) (HC).* (AY.2001-02)
CIT (LTU) v. ABB Ltd. (2020) 425 ITR 677 / 274 Taxman 314 (Karn.)(HC)

570 **S. 36(1)(vii) : Bad debt – Law after 1-4-1989 – Not necessary to establish or prove that debt has become irrecoverable – Recording of debt as bad debt in books of account is sufficient. [S.28(i)]**

Dismissing the appeals of the revenue the Court held that the Tribunal had recorded from the materials on record that admittedly, the debt in question had been written off as irrecoverable in the accounts of the assessee. The requirement of S. 36(1)(vii) had been complied with and the amount covered by the bad debts would be entitled to be deducted while computing income under S 28(i) of the Act. There was no requirement under the Act that the bad debt had to accrue out of income under the same head, i. e., "Income from business or profession" to be eligible for deduction. All that was required was that the debt in question must be written off by the assessee in its books of account as irrecoverable. (AY. 2001-02, 2003-04)

PCIT v. Hybrid Financial Services Ltd. (2020) 426 ITR 358 / (2021) 276 Taxman 73 (Bom.)(HC)

Note : Also digested at page No. 171, Case No. 573

571 **S. 36(1)(vii) : Bad debt – Lottery and financing business – Advance of money – Amounts written off in accounts – Held to be allowable. [S. 36(1), 36(2)]**

The AO disallowed the bad debts written off by the assessee on the ground that it was carrying on only lottery business. This was upheld by the Tribunal. On appeal, the Court held that a cumulative consideration of all the documents made it clear that the assessee was in the business of not only lottery agency, but also financing. Therefore, the business of the assessee-firm was distribution of lottery tickets and financing. The advance was not out of borrowed funds, but out of surplus income of the assessee-firm. Therefore, the case of the assessee would squarely fall within the ambit of S. 36(1)(vii). The assessee had written off the bad debt as irrecoverable in its accounts thereby fulfilling the statutory requirement. The assessee was entitled to deduction of the bad debt. (AY.2001-02)

Deccan Agency v. Dy CIT (2020) 423 ITR 418 (Mad.)(HC)

572 **S. 36(1)(vii) : Bad debt – Part of current assets – Allowable as bad debt.**

Dismissing the appeal of the revenue, write off of part of current assets as bad debt is held to be proper.

PCIT v. Lee and Muirhead Pvt. Ltd. (2020) 423 ITR 167 (Bom.) (HC)

573 **S. 36(1)(vii) : Bad debt – Inter corporate deposits in respect of purchase of vehicles and plant and machinery – Mere wrote off is sufficient – It is not necessary for the assessee to establish or prove that the debt has in fact become irrecoverable but it would be sufficient if the bad debt is written off as irrecoverable in the accounts of the assessee. [S. 28(i)]**

The assessee is a company engaged in the business of providing finance in the field of lease and hire purchase transaction, management consultancy services etc. The assessee claimed as bad debt in respect of intercorporate deposits in respect of purchase of vehicles or plant and machinery. AO took the view that unless there was an admitted debt it could not be allowed as bad debt when it is written off. Besides, the debt must be incidental to the business or profession of the assessee. The AO rejected the claim of the assessee which was affirmed by the CIT(A). On appeal the Tribunal allowed

the claim of the assessee. On appeal by the revenue the Court held that, it is a settled position in law that after 1.4.1989, it is not necessary for the assessee to establish or prove that the debt has in fact become irrecoverable but it would be sufficient if the bad debt is written off as irrecoverable in the accounts of the assessee. Followed *TRF Ltd v CIT (2010) 323 ITR 397 (SC) CIT v. Shreyas S. Morakhia (Bom.) (HC) [2012] 342 ITR 285 (Bom.) (HC)* (AY.2001-02, 2003-04)
PCIT v. Hybrid Financial Services Ltd (Formerly known as Mafatlal Finance Ltd) (2020) 426 ITR 358 / (2021) 276 Taxmman 73 (Bom.)(HC)

S. 36(1)(vii) : Bad debt – Amount written off – Notice could not be served randomly – Amount could not be disallowed. 574
Allowing the appeal of the assessee the Tribunal held that merely because the notice could not be served on few assesses who were selected on random basis cannot be the ground for disallowance of the bad debt claimed by the assesee. (AY. 2010-11)
Vantage Advertising (P.) Ltd. v. DCIT (2020) 182 ITD 39 (Kol.) (Trib.)

S. 36(1)(vii) : Bad debt – Reversal of provision – Matter remanded to the Assessing Officer. [S. 36(2)] 575
During current year, assessee claimed deduction of Rs.1.18 crore on account of 'reversal of provision for bad and doubtful debts of earlier years' on ground that said provision was duly offered to tax in earlier years. Assessing Officer disallowed same but DRP observed that reversal of provision was apparently allowable and directed Assessing Officer to verify claim on the basis of details submitted. However, Assessing Officer without appreciating details and documents, made an addition of said amount Tribunal held that since Assessing Offficer had neither followed directions of DRP nor he had examined submissions, documents and details filed by assessee in right perspective, Assessing Officer was to be directed to examine assessee`s claim and readjudicate issue (AY. 2014-15)
Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2020) 183 ITD 354 (Kol.)(Trib.)

S. 36(1)(vii) : Bad debt – Doubtful debts – 7.5 Per Cent. of total business income plus 10 Per Cent. of average rural advances – Provision for bad and doubtful debts – Direction to AO to consider the claim. [S. 36(1)(viia)] 576
Tribunal held that that the benefit provided to the assessee in the statute had to be duly provided to the assessee. Hence, the Assessing Officer was directed to apply the statutory provision and consider the claim of deduction. Tribunal also held that according to the Central Board of Direct Taxes Instruction No.17.of 2008 dated November 26, 2008, deduction was to be allowed only after a thorough examination of the claim on the facts and law according to the provisions of the Act. Accordingly, if the opening credit balance brought forward as on 1st April of the relevant accounting year in the provision for bad and doubtful account was more than the bad debts written off during the year, the assessee would not be entitled to any deduction under section 36(1)(viia). The Assessing Officer after examining the balance in the provision for bad and doubtful debts account under section 36(1)(viia) was to allow deduction of bad debts written off only if it exceeds the credit balance in the provision account. (AY. 20011-12)
HDFC Bank Ltd. v. ACIT (2020) 82 ITR 533 (Mum.)(Trib.)

577 **S. 36(1)(vii) : Bad debt – Amount written off in the books of account – Allowable as deduction. [S. 36(2)]**
During relevant financial year assessee had written off bad debts of Rs. 14.36 lakhs in profit and loss accounts. Such bad debts were shown in invoices raised on customers in previous year and was credited to accounts. Accordingly the assessee was justified in writing off bad debts during current year, considering facts that amounts were not recoverable. (AY. 2009-10)
Firemenich Aromatics (I) (P)Ltd. v. ACIT (2020) 184 ITD 43 (Mum.)(Trib.)

578 **S. 36(1)(vii) : Bad debt – Mere write off in the books of account is sufficient compliance – Not required to justify the irrecoverability of the amount from the debtors.**
The Tribunal held that the assessee was entitled to deduction of the bad debts once he had written off the debt in the books of account. The assessee was not required to justify the irrecoverability of the amount from the debtors. (AY.2014-15)
Arvindkumar K. Patel v. Dy. CIT (2020) 78 ITR 625 (Ahd.)(Trib.)

579 **S. 36(1)(vii) : Bad debt – Write off in books of account – Real estate business transaction – Entitle to deduction – Land levelling charges – Allowable as deduction.**
Tribunal held that the assessee was entitled to deduction of the bad debts once he had written off the debt in the books of account. The assessee was not required to justify the irrecoverability of the amount from the debtors. As regards allowability of deduction in respect of land levelling charges (AY.2014-15)
Arvindkumar K. Patel v. Dy. CIT (2020) 78 ITR 625 (Ahd.)(Trib.)

580 **S. 36(1)(vii) : Bad debt – Advance to subsidiary – Interest income was offered as income – Failure to repay the advances – Allowable as bad debts. [S. 28(i), 36(2), 37(1)]**
Assessee-company gave certain advance to its subsidiary company to acquire development rights of a property. Assessee offered interest income on said advance to tax on year to year basis. Subsequently, on account of failure of subsidiary company to repay advance money, assessee wrote off the amount as bad debts. The AO held that the assessee had never credited advance money to its profit and loss account in any of years hence rejected its claim. Tribunal held that on facts, income offered by assessee in form of interest itself formed part of entire debt owned by assessee and since assessee had offered to tax a part of debt, requirement of S. 36(2) stood satisfied and assessee became eligible to claim deduction. Followed *CIT v. T. Veerabhadra Rao (1985) 155 ITR 152 (SC)* (AY. 2004-05)
Mahindra & Mahindra Ltd. v. DCIT (2020) 180 ITD 776 (Mum.) (Trib.)

581 **S. 36(1)(vii) : Bad debt – Termination of lease agreement – Write off of security deposit – Matter remanded.**
Assessee had taken on lease subject premises on furnishing security deposit. Lease agreement was terminated, however, security deposit was not refunded. The assessee wrote-off security deposit in its books after making adjustment towards unpaid rent and claimed it as deduction. AO disallowed assessee's claim of deduction. On appeal the Tribunal held that having reached a settlement with landlord and offered amount so

received in lieu of settlement to tax, matter remanded back for verification of the facts. (AY. 2005-06, 2009-10)
DCIT v. AGC Network Ltd. (2020) 180 ITD 204 (Mum.)(Trib.)

S. 36(1)(vii) : Bad debt – Non furnishing of TDS certificate amounts to amount due – Allowable as bad debt – Cannot be disallowed on ground that it was not within time prescribed under S.155(14) of the Act. [S. 37(1), 155(14)] 582

Assessee claimed the non receipt of TDS certificate as revenue expenditure. The AO held that the write off of TDS could not be allowed to the assessee. Further, he observed, non-furnishing of TDS certificate could not be treated as debt due to the assessee from the persons who had deducted tax at source. Therefore, provision of S. 36(1)(vii) could not be applied. On appeal, the CIT(A) held that that withholding of tax by the deductor amounted to debt owed by him to the deductee and in the event of non-receipt of such debt, deduction would be eligible to the assessee under S. 36(1)(vii) as the conditions prescribed therein are fulfilled. However, he held that assessee's claim could not be allowed in view of the provisions of S. 155(14), since assessee had not claimed the deduction in the computation of income filed along with the return of income. Accordingly, he disallowed assessee's claim. On appeal the Tribunal held that, though, tax was deducted at source in earlier assessment years, however, the assessee could not get credit of such TDS amount due to non-furnishing of TDS certificate by deductors. Undisputedly, the TDS amount is nothing but a part of income accruing to the assessee. It is also a fact that the assessee has offered the gross income including TDS in the respective assessment years. Therefore, to that extent, non-allowance of TDS credit to the assessee due to non-receipt of TDS certificates amounts to loss of income. Relied on *CIT v. Shreyans Industries Ltd. [2008] 303 ITR 393 (Punj. & Har.) (HC)*. The decision of the P & H High Court in the aforesaid case with regard to write off of TDS was not a subject matter of dispute before the Supreme Court, therefore, the contention of the revenue that the decision of the P & H High Court, has been reversed by the Supreme Court, is not correct interpretation of the legal position, as the subject matter of dispute before the Supreme Court was on a different issue. In view of the aforesaid, the AO is directed to allow assessee's claim of write off of TDS. (AY.2005-06 to 2009-10)
DCIT v. AGC Network Ltd. (2020) 180 ITD 204 (Mum.)(Trib.)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Entitled to deduction to the extent provision is made in the accounts subject to the limit mentioned in S.36(1)(viia) of the Act. 583

Court held that once a provision is made and the amount of deduction is within the limit prescribed under the Act, the assessee would be entitled to deduction of the amount for which provision is made in the books of account. The language employed in section 36(1)(viia) of the Act is clear and unambiguous. In the absence of any provision the assessee is not entitled to deduction. The assessee is entitled to deduction to the extent provision is made in the accounts subject to the limit mentioned in section 36(1)(viia)
CIT v. Syndicate Bank (2020) 422 ITR 460 / 107 CCH 0450 / 188 DTR 272 / 274 Taxman 522 (Karn.)(HC)

584 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Co-Operative Bank – Deduction for 10 Per Cent. of aggregate advances of Rural Branches – Not allowable.**
Dismissing the appeal, that the issue of entitlement of a co-operative bank to the benefit under the second limb of clause (viia) of section 36(1) without reference to the definition of rural branch in Explanation (ia) under section 36 was no longer res integra. Followed *Kannur District Co-operative Bank Ltd. v. CIT [2014] 365 ITR 343 (Ker.) (HC). Ernakulam District Co-Operative Bank Ltd. v. CIT (2020) 423 ITR 308 (Ker.)(HC)*

585 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Entitled to set off though did not have any positive profit to set off.**
AO held that the assessee had declared loss in original as well as in revised return and, therefore, deduction under S. 36(1)(viia)(c) is not allowable. Tribunal held that the assessee is entitled to deduction in respect of provision made for doubtful assets and loss assets in terms of proviso to S. 36(1)(viia)(c) even though assessee did not have any positive profits to set it off from. High Court confirmed Tribunal's order of the Tribunal. (AY. 2003-04)
CIT v. Tamilnadu Industrial Investment Corpn. Ltd. (2019) 112 taxmann.com 386 / (2020) 421 ITR 525 / 268 Taxman 396 (Mad.)(HC)
Editorial : SLP of revenue is dismissed ; CIT v. Tamilnadu Industrial Investment Corpn. Ltd. [2019] 416 ITR (St.) 77 / (2020) 268 Taxman 395 (SC)

586 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Not debited to profit and loss account – Rejection of claim is held to be justified.**
Assessee was a rural regional bank engaged in business of banking which claimed deduction on account of provision for bad and doubtful debts under S. 36(1)(viia) of the Act. The AO rejected assessee's claim on ground that assessee did not debit its profit and loss account any sum towards 'provision for bad and doubtful debts'. CIT(A) allowed the claim. On appeal by revenue following the order of appellate Tribunal for earlier year, disallowance made by the AO is affirmed. (AY. 2012-13, 2013-14)
JCIT v. Karnataka Vikas Grameena Bank (2020) 181 ITD 672 / 79 ITR 207 (Bang.) (Trib.)

587 **S. 36(1)(viii) : Eligible business – Special reserve – Financial Corporation – Entitled to deduction. [Companies Act, 1956, S.3, 617]**
Dismissing the appeal of the revenue the Court held that the assessee-bank was not a private company. Therefore, it fulfilled the requirement of section 3 of the Companies Act, 1956 and was a public company. Fifty one per cent of its shares were held by the Government of India and therefore, the assessee was a Government company within the meaning of section 617 of the Companies Act, 1956. Therefore, the assessee was squarely covered within the meaning of the expression "financial corporation" and was entitled to the benefit of deduction under section 36(1)(viii) of the Act.(AY.2007-08)
CIT(LTU) v. Vijaya Bank (2020) 429 ITR 407 / 277 Taxman 148 (Karn.)(HC)

S. 36(1)(viii) : Eligible business – Reserve – No time limit for creation of special Reserve – Eligible for deduction. 588

Tribunal held that a reserve created in subsequent years, however, before finalisation of grant of deduction, was required to be considered while allowing the assessee's claim of deduction made under section 36(1)(viii) of the Act. A financial corporation engaged in providing long-term finance for development of infrastructure facility in India was an eligible assessee and for computing the deduction under section 36(1)(viii) of the Act in the hands of all eligible assessees, only the income derived from the business of providing long-term finance specified in section 36(1)(viii) of the Act had to be taken into account and an amount not exceeding 40 per cent of the profits from such business was to be carried to such reserve account. However, since the matter had attained finality at this juncture, the order of the Commissioner (Appeals) did not call for interference. (AY. 2013-14)

Dy. CIT v. Punjab National Bank (2020) 82 ITR 95 (Delhi)(Trib.)

S. 36(1)(viii) : Eligible business – Reserve – Commercial loan – Borrower failed to construct on plot of land for residential purpose with in three years has to be considered eligible business – Only the income which has direct and immediate nexus with grant of loans for construction of house only included for computation of deduction. 589

Tribunal held the advance of commercial loan and borrower failed to construct on plot of land for residential purpose within three years has to be treated as allowable deduction similarly Income such as admin Fees, other charges, prepayment charges, recovery in bad debts, CERSAI charges received had direct and immediate nexus with grant of loans for construction or purchase of houses in India for residential purposes, same would be included for computing deduction. However, incomes such as notice period salary, other income, interest on car/personal loan, interest on conveyance loans, PEMI on personal loans, penal interest on personal loans had no direct and immediate nexus with profits derived from loans granted for construction or purchase of house in India for residential purposes, these items were not to be considered. (AY. 2013-14)

Hi-tech Estates & Promoters (P.) Ltd. (2020) 84 ITR 10 / 183 ITD 690 / 207 TTJ 209 (Cuttack)(Trib.)

S. 36(1)(viii) : Eligible business – Business of providing long term finance for construction or purchase of houses in India – AO is directed to examine the issue. [S. 254(1) 590

Tribunal held that if the borrower fails to use a 'plot loan ' received for purchase of a plot land and construct a residential house thereon, then the said loan shall be treated as a 'commercial loan' and the assessee will not be entitle to claim the deduction. However as the ITAT has not examined in detail whether the loans were actually utilised for constructing /purchasing residential houses within the stipulated time period and hence the issue remanded to the file of the AO for fresh examination and determination of deduction u/s. 36(1)(vii) of the Act. (AY. 2013-14)

DCIT v. Repco Home Finance Pvt Ltd (2020) 83 ITR 530 / 183 ITD 782 / 117 taxmmann.com 233 (Chennai) (Trib.)

591 **S. 36(1)(viii) : Eligible business – Special reserve – General reserve – Balance in profit and loss account, which is not in nature of any other reserve having specific objectives, would not form part of 'general reserves' for purpose of proviso to S 36(1)(viii) of the Act**

Tribunal held that reserves are created as an appropriation out of profit and loss account and terms profit and loss account and general reserves as mentioned in proviso to section 36(1)(viii) cannot be equated with each other. Accordingly balance in profit and loss account, which is not in nature of any other reserve having specific objectives, would not form part of 'general reserves' for purpose of proviso to S 36(1)(viii) of the Act.(AY. 2004-05, 2005-06)

LIC Housing Finance Ltd. v. Dy. CIT (2020) 180 ITD 45 (Mum.) (Trib.)

592 **S. 37(1) : Business expenditure – Business income – Income from other sources – Interest income – Assessable as business income – Real income theory – Diversion by overriding title – Assessee for preceding years not claiming adjustments does not preclude right of assessee to make out case of mistake at a subsequent date – Disbursements of grants was held to be core business of appellant expenditure incurred in course of business and for purpose of business is allowable as deduction – Recommendation – A Committee of legal experts presided by a retired Judge can give its imprimatur to the settlement – A vibrant system of Advance Ruling can go a long way in reducing taxation litigation – This is true even of disputes between the taxation department and private persons, who are more than willing to comply with the law of the land but find some ambiguity – A council for Advance Tax Ruling based on the Swedish model and the New Zealand system may be a possible way forward. [S. 4, 28(i), 36(1)(xii), 56]**

Dismissing the appeal of the revenue the,court held that to decide whether a particular source is business income, one has to look to the notions of what is the business activity. The activity must have a set purpose. The fact that the assessee does not carry on business activity for profit motive is not material as profit making is not an essential ingredient

Obiter dicta : "A number of litigations arise inter se the Government and its bodies. One of the main impediments to such a resolution, plainly speaking, is that bureaucrats are reluctant to accept responsibility of taking such decisions, apprehending that at some future date their decision may be called into question and they may face consequences post retirement. In order to make the system function effectively, it may be appropriate to have a committee of legal experts presided over by a retired judge to give their imprimatur to the settlement so that such apprehensions do not come in the way of arriving at a settlement. It is our pious hope that a serious thought would be given to the aspect of dispute resolution amicably, more so in the post – COVID period.

In so far as taxation matters are concerned, they are consistently sought to be carved out as a separate category of cases. A vibrant system of advance rulings can go a long way in reducing taxation litigation. Instead of first filing a return and then facing consequences from the Department because of a different perception which the Department may have, an advance ruling system can facilitate not only such a resolution, but also avoid the tiers of litigation which such cases go through as in the present case. In 2000 public sector companies were added to the definition of "applicant", and in 2014, it was made applicable to a resident who had undertaken one

or more transactions of the value of Rs. 100 crores or more. In so far as a resident is concerned, the limit is so high that it cannot provide any solace to any individual, and it is time to reconsider and reduce the ceiling limit. The aim of any properly framed advance ruling system ought to be a dialogue between taxpayers and revenue authorities to fulfil the mutually beneficial purpose for taxpayers and revenue authorities of bolstering tax compliance and boosting tax morale. This mechanism should not become another stage in the litigation process.

Thus, the Central Government must consider the efficacy of the advance tax ruling system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers, whether private or public sectors are involved. A council for advance tax rulings based on the Swedish model and the New Zealand system may be a possible way forward.". (AY.1976-77 1981-82 to 1983-84)

National Co-Operative Development Corporation v. CIT (2020) 427 ITR 288 / 274 Taxman 187 / 119 taxmann.com 137 / 193 DTR 409 / 316 CTR 593 (SC)

Editorial: Decision in National Co-Operative Development Council v. CIT [2008] 300 ITR 312 (Delhi) (HC) reversed.

S. 37(1) : Business expenditure – Paid by account payee cheque – Held to be allowable though the purchaser has informed that no agent was involved in the contract. 593

Dismissing the appeal of the revenue the Court held that, commission paid to broker is allowable as business expenditure though the purchaser has informed that no agent was involved in the contract when the payment was made by account payee cheque and commission agents have confirmed the service rendered. (AY. 2005-06)

CIT v. Genus Overseas Electronics (2020) 117 taxmann.com 103 (Raj.) (HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. Genus Overseas Electronics (2020) 272 Taxman 22 (SC)

S. 37(1) : Business expenditure – Ex gratia payment to employees is held to be allowable as deduction on account of commercial expediency. 594

Dismissing the appeal of the revenue the Court held that ex gratia payment to employees is held to be allowable as deduction on account of commercial expediency. Relied on *CIT v. Maina Ore Transport (P.) Ltd. (2008) 324 ITR 100 (Bom.) (HC) and Shahzada Nand & Sons v. CIT (1977) 108 ITR 358 (SC) CIT v. Mafatlal Fine Spg. & Mfg. Co. Ltd. (2003) 263 ITR 140 (Bom.)(HC)* (AY. 2007-08)

CIT v. New India Co. Op. Bank Ltd. (2020) 117 taxmann.com 127 (Bom.)(HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. New India Co. Op. Bank Ltd (2020) 272 Taxman 435 (SC)

S. 37(1) : Business expenditure – Capital or revenue – Hotel business – Lessee – Renovation expenses – Held to be revenue expenditure. 595

Dismissing the appeal of the revenue the Court held that renovation expenses incurred by lessee which is in hotel business is allowable as revenue expenditure. (AY. 2001-02)

CIT v. New Kenilworth Hotel (P.) Ltd (2020) 117 taxmann.com 109 (Cal.)(HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. New Kenilworth Hotel (P.) Ltd (2020) 272 Taxman 108 (SC)

596 **S. 37(1) : Business expenditure – Foreign exchange fluctuation loss – Loan to subsidiary – Allowable as business expenditure. [S.28 (i)]**

Dismissing the appeal of the revenue the court held that loss suffered due to fluctuation in foreign exchange rate at time of recovering loan advanced to subsidiary company is held to be allowable as business expenditure. Order of Tribunal is affirmed. (AY. 2011-12)

PCIT v. Albasta Wholesale Services Ltd. (2020) 117 taxmann.com 165 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Albasta Wholesale Services Ltd. (2020) 272 Taxman 105 (SC)

597 **S. 37(1) : Business expenditure – Aimed at improving practices for better fertility amongst milk animal – Allowable as business expenditure.**

Dismissing the appeal of the revenue the Court held that expenditure incurred aimed at improving practices for better fertility amongst milk animal is held to be allowable as business expenditure.

PCIT v. Gujarat Co. Op. Milk Marketing Federation Ltd (2020) 113 taxmann.com 84 (Guj.) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Gujarat Co. Op. Milk Marketing Federation Ltd (2020) 269 Taxman 41 (SC)

598 **S. 37(1) : Business expenditure – Capital or revenue – Compensation paid towards vacating the premises treating it as revenue expenditure – Question of law admitted. [S. 260A]**

The following question of law is admitted, "Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the payment made by the assessee to M/s. GESCO amounting to Rs. 20.00 crore towards vacating the premises treating it as revenue expenditure?"

Revenue has raised addition question "Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in concurring with the decision of CIT(A) while deleting the addition made by the Assessing Officer on NRI Mobilization expenses of Rs. 3,38,53,896/-on the basis of decision of this Court in case of Emirates Commercial Bank Ltd, 262 ITR 55 ignoring that the facts of that case were entirely different from the present case, which have been ignored while deciding the issue. The Tribunal failed to follow the ratio in case of *CIT v. Jansamparak Advertising & Marketing Pvt Ltd 56 taxmann.com 286 (Delhi)* dated 11.3.2015?"

Following assesses orders dated 6.2.2019. *CIT v. Hong Kong and Shanghai Banking Corpn. Ltd. [2019] 111 taxmann.com 284 (Bom.)* additional question was not considered.

CIT v. Hongkong and Shanghai Banking Corporation Ltd. (2020) 114 taxmann.com 275 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Hongkong and Shanghai Banking Corporation Ltd (2020) 270 Taxman 99 (SC)

599 **S. 37(1) : Business expenditure – Capital or revenue – Builder – Brokerage and commission – Held to be allowable as revenue expenditure.**

Dismissing the appeal of the revenue, the Court held that the Tribunal is justified in allowing the brokerage and commission expenses.

PCIT v. DLF Home Development Ltd. (2020) 114 taxmann.com 97 (Delhi) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. DLF Home Development Ltd. (2020) 270 Taxman 97 (SC)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure of lease premises – Allowable as revenue expenditure. 600

Dismissing the appeal of the revenue the Court held expenses incurred on improvement of lease premises which was taken for three years in respect of improvement of interiors and electrical works, ceiling work for networking of computers in connection with set up of office, etc., is allowable as revenue expenditure. (AY. 2003-04)

CIT v. NCR Corporation (P.) Ltd. (2020) 274 Taxman 139 / 193 DTR 66 (Karn.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Hotel business – Renovation and repair of hotel rooms is allowable as revenue expenditure. 601

Assessee was running a hotel. During relevant year assessee incurred certain expenditure on renovation and repairs of hotel rooms. The Assessing Officer treated the said expenditure as capital in nature. Tribunal up held the order of the Assessing Officer. On appeal High Court held granite and marble used on floors of room would not last long and become obsolete in a couple of years Accordingly allowable as revenue expenditure. (AY. 2012-13)

Pandian Hotels Ltd. v. Dy. CIT ITO (2020) 273 Taxman 256 (Mad.) (HC)

S. 37(1) : Business expenditure – Wholly and exclusively – Remuneration paid to promoter – Director – Consultation – Allowable as deduction though not attended the office for six years. 602

Shri Faraz G. Joshi was a promoter-Director of assessee-company since 1972. In response to specific query during search as to who looked after assessee-company on day-to-day basis, he answered that he was not aware about who actually looked after day-to-day business activity since for last 6 years, he was not attending office and he was involved only in consultation. On basis of this statement, Assessing Officer disallowed remuneration paid to Shri Faraz G. Joshi by assessee company Tribunal held that answer of Shri Faraz G. Joshi quite reasonable and held that no adverse inference could be drawn therefrom. Tribunal held that services were rendered by FJ and, hence, remuneration paid to him was allowable under section 37(1). High Court affirmed the order of the Tribunal. Followed *Sassoon J. David & Co. (P.) Ltd. v. CIT (1979) 118 ITR 261 (SC).* (AY. 2007-08)

PCIT v. VVF Ltd. (2020) 273 Taxman 503 (Bom.)(HC)

Note : Also digested at Page No. 185, Case No. 622

S. 37(1) : Business expenditure – Real estate business – Forfeiture of advance – Allowable as business expenditure. [S. 28(i), 45] 603

Assessee-company, engaged in business of real estate development, had entered into a contract with HDIL for purchase of land to construct commercial complex in 2004 and had paid an advance of Rs. 3.50 crores. However, it could not pay balance amount and, therefore, HDIL forfeited advanced amount in 2011. In relevant assessment year, entire capital gain and interest income of assessee-company was offset with amount so forfeited. Assessing Officer held that forfeiture of advance was a colourable device to adjust capital gains. He characterised forfeiture as capital expenditure and made addition. Tribunal allowed the claim. On appeal the Court held that since transaction between assessee-company and HDIL, was not disputed and was in fact accepted by

Assessing Officer while treating write off as capital expenditure and assessee-company had produced several documents in support of forfeiture, such a transaction could not be categorised as colourable device. Since main object of business of assessee-company was development of real estate and advance to HDIL was given in ordinary course of business forfeiture of advance could not be categorised as capital expenditure but would be allowed as business expenditure. (AY. 2012-13)
PCIT v. Frontiner Land Development P. Ltd. (2020) 270 Taxman 63 (Delhi)(HC)

604 **S. 37(1) : Business expenditure – Marketing and publicity expenses – Star Pravaha – Star Maza – Allowable as business expenditure incidental benefit to some other party from such expenses, would not reduce allowability of such expenditure.**
Dismissing the appeal of the revenue the Court held that where assessee incurred expenditure by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza', since said expenses were primarily incurred for purpose of business, incidental benefit to some other party from such expenses, would not reduce allowability of such expenditure and, thus, entire expenditure so incurred was allowable as deduction under section 37(1) (AY. 2010-11)
PCIT v. Star Entertainment Media (P) Ltd. (2020) 269 Taxman 66 (Bom.)(HC)
Note : Also digested Page No. 192, Case No. 648

605 **S. 37(1) : Business expenditure – Provision for warranty – Held to be allowable as deduction.**
Dismissing the appeal of the revenue the court held that provision for warranty is held to be allowable as deduction. Followed *Rotrok Controls India Pvt. Ltd. v. CIT (2009) 314 ITR 62 (SC).* (AY. 2008-09)
CIT v. Amco Batteries Ltd. (2020) 193 DTR 169 / 316 CTR 772 (Karn.)(HC)

606 **S. 37(1) : Business expenditure – Deferred revenue expenditure – Advertisement publicity and sales promotion – Allowable in the year it was incurred.**
Dismissing the appeal of the revenue the Court held that the Tribunal while accepting the plea of the assessee had held that the expenses incurred by the assessee were revenue in nature and the entire amount was admissible in the year in which it was incurred Referred, *Madras Industrial Investment Corporation Ltd. v. CIT (1997) 91 Taxman 340 (SC)*. (AY.2001-02 2002-03)
CIT v. Godrej Foods Ltd. (2020) 193 DTR 212 / (2021) 318 CTR 506 (MP)(HC)

607 **S. 37(1) : Business expenditure – Discount to customers – Higher percentage than discount granted earlier year – Disllaownace is arbitrary – Income – tax Authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act – Books of account not rejected – Allowable as business expenditure.**
Allowing the appeal of the assessee the Court held that once it is established that there was nexus between the expenditure and the purpose of business, which need not necessarily be the business of the assessee itself, the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It is further been held that the Income-tax Authorities must

put themselves in the shoes of the assessee and see how a prudent businessman would act. On the facts it is evident that the Assessing Officer has not doubted the books of accounts of the appellant. Followed *Sassoon J. David and Co. Pvt. Ltd. v. CIT (1979) 118 ITR 261 (SC), S.A. Builders Ltd. v. CIT(A) (2007) 288 ITR 1 (SC).* (AY. 2004-05)
Tristar Motors v. ACIT (2020) 196 DTR 209 (Karn.)(HC)

S. 37(1) : Business expenditure – Discount on Debentures – Principle of matching concept not applicable – Amount relating to relevant accounting year alone deductible as revenue expenditure. [S.145] 608
Dismissing the appeal held that the assessee was entitled to deduction under section 37 for the current year only of the amount liable to be redeemed in the first year as against the entire discount. The assessee had not incurred the expenditure of Rs. 5 crores but had merely issued debentures at a discount. The redemption of debentures was in stages over a period of time and the discount on debentures had resulted in an enduring benefit during the period of debentures. However, the expenditure incurred to create an enduring benefit did not create any asset or add value to the existing asset. There was no creation of capital asset, which had resulted in an advantage of enduring benefit by discount on debentures. The assessee had failed to satisfy the principle of matching concept since in the assessee's case it was a financial transaction and the test of matching principle could not be made applicable as in the case of real estate following the percentage completion method. The benefit of discount to the assessee was instant as the assessee had paid a lesser amount as against the amount which was actually payable and therefore, the benefit had to be offered to tax in the same year. The Tribunal was justified in restoring the order of the Assessing Officer. Followed *Madras Industrial Investment Corporation Ltd. v. CIT (1997) 225 ITR 802 (SC)* (AY.2006-07)
Shetron Ltd. v. Dy.CIT (2020) 429 ITR 340 / 276 Taxman 444 (Karn.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Contribution towards reconstruction of Bridge to enable transportation of assessee's products to port – Allowable as revenue expenditure. 609
Dismissing the appeal of the revenue the Court held that contribution towards reconstruction of Bridge to enable transportation of assessee's products to port is allowable as revenue expenditure. (AY.2009-10)
CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 2) (2020) 429 ITR 358 / (2021) 277 Taxman 6 (Bom.)(HC)

S. 37(1) : Business expenditure – Contribution made under specific directions of Government of India to other projects – Contributions to Provident Fund – Held to be allowable as deduction. [S. 36(1)(va), Electricity (Supply) Act, 1948, S. 24] 610
Dismissing the appeal of the revenue the Court held that section 24 of the Electricity (Supply) Act, 1948 required the assessee to subscribe to the associations constituted for the purpose conducive to development of electricity. Therefore, the amount paid for the project was to be allowed under section 37(1) of the Act as it was incurred in the ordinary course of the business of the assessee and as a part of obligation to its consumers to develop electricity. Further the assessee was allowed to deposit contributions with the Provident Fund Trust under regulation 11 of the Provident Fund

Regulations under which there was no specific date for deposit of the provident fund by it. Order of Tribunal is affirmed. (AY.1994-95)
CIT v. M. P. Electricity Board (2020) 429 ITR 349 / (2021) 277 Taxman 483 (MP)(HC)

611 **S. 37(1) : Business expenditure – Capital or revenue – Payment made to an entity under an agreement for additional infrastructure for augmenting continuous supply of electricity – No asset acquired – Held to be allowable as revenue expenditure.**
Dismissing the appeal of the revenue the Court held that the lump sum payment made by the assessee for the development of infrastructure for uninterrupted power supply to it was revenue expenditure under section 37(1), though the assessee had parted with substantial funds to the company, the capital asset continued to remain the property of the company. (AY.2010-11)
CIT v. Hanon Automative Systems India Private Ltd. (2020) 429 ITR 244 / (2021) 277 Taxman 454 (Mad.)(HC)

612 **S. 37(1) : Business expenditure – Legal and professional fees – Non export oriented units – Held to be allowable.**
Dismissing the appeal of the revenue the Court held that legal and professional fees, rates and taxes, insurance, managerial remuneration and miscellaneous expenses related exclusively to non-export oriented units are held to be allowable. Allocation of expenditure between export oriented units and non-export Oriented units is held to be justified. (AY. 2008-09)
CIT v. Gokaldas Images Pvt. Ltd. (2020) 429 ITR 526 / (2021) 197 DTR 225 / 318 CTR 486 / 276 Taxman 420 (Karn.)(HC)

613 **S. 37(1) : Business expenditure – Staking and handling expenses and blending and screening charges – Sister concern – Deletion of addition is justified.**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the Staking and handling expenses and blending and screening charges paid to sister concern (AY.2002-03)
PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)
PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

614 **S. 37(1) : Business expenditure – Capital or revenue – Expenses incurred for upgradation of computers and to acquire software – Held to be revenue expenditure.**
Dismissing the appeal of the revenue the Court held that expenses incurred for upgradation of computers and to acquire software is held to be revenue expenditure. Followed *CIT v. NCR Corporation Pvt Ltd. (2020)15 ITR-OL 482 (Karn.) (HC)* (AY.1998-99)
CIT(LTU) v. ABB Ltd. (2020) 429 ITR 355 (Karn.)(HC)

615 **S. 37(1) : Business expenditure – Service charges paid to employees in terms of agreement entered into under Industrial Disputes Act – Allowable as deduction. [Industrial Disputes Act, 1947, S. 18(1)]**
Allowing the appeal of the assessee the Court held that the Assessing Officer merely

going by the statements of a few employees, could not have disbelieved statutory registers and forms, as there was a presumption to their validity and the onus was on the person, who disputed their validity or genuineness to prove that the documents were bogus. Accordingly the service charges paid to employees in terms of agreement entered in to allowable as deduction.(AY.2013-14, 2014-15)
New Woodlands Hotel Pvt. Ltd. v. ACIT (2020) 428 ITR 492 / 274 Taxman 468 / 196 DTR 449 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Loan to purchase plant and machinery – Increase in liability due to fluctuation in foreign exchange rates – Capital expenditure. 616
Dismissing the appeal, that it was an admitted case of the assessee that it had availed of a loan for the purpose of purchase of capital assets in India. The loan was availed of in Indian currency and pursuant to a request made by the assessee, by entering into a contract dated August 4, 2011 with the State Bank of India, the loan in Indian currency was converted into a loan in foreign currency with a view to save interest. This resulted in the premium payable by the assessee on the forward contract. The exchange difference was required to be capitalised because the liability had been incurred by the assessee for the purpose of acquiring fixed assets, namely, plant and machinery. Ration in *ACIT v. Elecon Engineering Co. L td. (2010) 322 ITR 20 (SC)* explained. (AY.2013-14)
Continuum Wind Energe (India) Pvt. Ltd. v. Dy.CIT (2020) 428 ITR 559 (2021) 277 Taxman 30 (Mad.)(HC)

S. 37(1) : Business expenditure – Bank – Purchase and sale of securities – Broken period interest paid on purchase of securities allowable as deduction when the broken period interest from sale offered to tax as business income. [S. 28(i), 145] 617
Dismissing the appeals of the revenue the Court held that the assessee ever since its inception had been offering the broken period interest income earned from the sale of securities as business income under section 28 of the Income-tax Act, 1961 and not as income under the head "Income from other sources". Therefore, the broken period interest paid to the sellers of securities was an allowable deduction from its business income under the Act. Clarification dated October 5, 1993 was issued by Circular No. 665 (1993) 204 ITR (St.) 39) (AY.1999-2000, 2000-01)
CIT(LTU) v. State Bank of India (SBI) (2020) 428 ITR 316 / 194 DTR 259 / (2021) 277 Taxman (Karn.)(HC)
Editorial : Notice issued in SLP filed against the High Court order CIT(LTU) v. State Bank of India (2021) 281 Taxman 368 (SC)

S. 37(1) : Business expenditure – Service charges paid to employees in terms of agreement entered into under Industrial Disputes Act – Held to be allowable. [Industrial Disputes Act, 1947, [S. 18(1)] 618
Court held that service charges paid to employees in terms of agreement entered into under Industrial Disputes Act is held to be allowable. (AY.2013-14, 2014-15)
New Woodlands Hotel Pvt. Ltd. v. ACIT (2020) 428 ITR 492 / 274 Taxman 468 (Mad.) (HC)

619 **S. 37(1) : Business expenditure – Capital or revenue – Club membership – Revenue expenditure – Disallowance of part of expenditure – Held to be not justified.**
Court held that the Tribunal failed to take into account the fact that its order passed in *CIT v. Infosys Technologies Ltd.* by which it had held that the club membership expenditure was in the nature of revenue expenditure was upheld by the court whose order was binding on the Tribunal. The Tribunal also failed to appreciate that the order of the Commissioner (Appeals), by which he had held the expenditure to be revenue expenditure in previous years was not challenged by the Revenue. Therefore, the 'expenditure on obtaining club membership was deductible. Court also held that in the absence of a finding that part of the expenditure had been laid out for non-business purposes, the full amount of expenditure was deductible.(AY.2000-01, 2001-02, 2002-03)
Ingersoll-Rand (India) Ltd. v. CIT (2020) 427 ITR 158 (Karn.)(HC)

620 **S. 37(1) : Business expenditure – Travel expenses of employees – To be computed based on average basis – Not Tripwise. [R. 6D]**
Court held that the Tribunal was justified in holding that the trip expenses incurred by the employees of the assessee were properly computed based on average basis and not on trip wise basis as contemplated under rule 6D. (AY.1995-96)
CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 192 DTR 376 / 272 Taxman 224 (Karn.)(HC)

621 **S. 37(1) : Business expenditure – Capital or revenue – Expenditure on developing new product – Capital expenditure.**
Dismissing the appeal the Court held that the assessee had started a new unit at Hosur in the financial year 2004-05 by taking over machinery and properties of V. on lease. The work of development of the new product was started in the financial year 2005-06 in the Hosur unit. The product was developed in the financial year 2006-07. Thus, the assessee had produced a new product from which enduring benefit was derived. Therefore, it had to be treated as capital expenditure. The assessee itself in the books of account had shown it as capital expenditure. Therefore, the Assessing Officer, the Commissioner (Appeals) and the Tribunal had rightly treated the expenditure incurred by the assessee for development of a new asset as capital expenditure. Followed *Alembic Chemical Works Co. Ltd. v. CIT (1989) 177 ITR 377 (SC)* (AY.2006-07, 2007-08)
Bioplus Life Sciences Pvt. Ltd. v. Dy.CIT (2020) 427 ITR 325 (Karn.)(HC)

622 **S. 37(1) : Business expenditure – Wholly and exclusively – Salary paid to director – Held to be allowable though the payment made was voluntary.**
Dismissing the appeal of the revenue the Court held that the salary paid to director is held to be allowable as business expenditure. Followed *Sasoon J David & Co P. Ltd v. CIT (1979) 118 ITR 261 (SC)*, wherein it was held that the expression 'wholly and exclusively' appearing in the said section does not mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the courses of his business. Such expenditure may be incurred voluntarily and without any necessity. If it is incurred for promoting the business and to earn profits, the assessee can claim deduction u/s 10(2)n(xv) even though there was no compelling need for incurring such

expenditure. The fact that somebody other than the assessee is also benefited by the expenditure should not come in any way of an expenditure being allowed by way of deduction u/s 10(2) (xv) of the Act. (AY. 2007-08)
PCIT v. VVF Ltd (2020) 118 Taxmann.com 375 (Bom.) (HC)

S. 37(1) : Business expenditure – Service charges to employees – Held to be allowable as business expenditure – The Assessing Officer should not have used the expression "modus operandi" to mean that the assessee had adopted dubious tactics to inflate its expenditure. 623

Allowing the appeal of the assessee the Court held that, the Assessing Officer while rejecting the assessee's contention has not disbelieved any of these documents. The payments effected in cash were sought to be substantiated by the assessee by producing vouchers. If the Assessing Officer was of the view that the vouchers are fabricated documents, then all of such employees should have been examined and statements should have been recorded and if the same was done, the assessee is entitled to an opportunity of cross examination. This having not been done, the assessment order is flawed on this aspect. Court also observed that the Assessing Officer should not have used the expression "modus operandi" to mean that the assessee had adopted dubious tactics to inflate its expenditure. Finding of the Appellate Tribunal is reversed. (AY. 2013-14, 2014-15)
New Woodlands Hotel Pvt. Ltd. v. ACIT (2020) 428 ITR 492 / 274 Taxman 468 / 196 DTR 449 (Mad.) (HC)

S. 37(1) : Business expenditure – Expenditure on higher education of managing director of subsidiary company – Person becoming director after completion of higher Education – Not deductible. 624

Dismissing the appeal of the assessee the Court held that the decision taken by the subsidiary company did not bind the holding company. There was also no resolution of the holding company, deciding to send the managing director of the subsidiary company for higher studies and then take him into the fold of the holding company itself, by reason only of the education he acquired in the foreign country. The further resolution was by the assessee-company wherein the board merely agreed to reimburse the expenses. This again would be only by reason of love and affection the board members had, towards the person deputed especially noticing the fact that it was a closely held private limited company wherein all the directors were siblings or closely related. In such circumstances the expenses were not deductible.
Kerala Kaumudi Pvt. Ltd. v. CIT (2020) 425 ITR 202 (Ker.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Interest paid for delay in allotment of shares for increasing share capital – Not allowable as revenue expenditure. 625

Court held that all the expenses incurred for expansion of the capital base of the company is directly related to the capital. When the object of the assessee is to increase the share capital, the expenses incurred in expanding the share capital would be in the capital field. The assessee with an object to increase the share capital had incurred

expenses in the form of payment of interest on account of delay in allotment of shares. The increase in capital resulted in expansion of the capital base of the company and may also help in profit making. Therefore, it retained its character as capital expenditure as the expenditure was directly relatable to expansion of the capital base of the company. The interest was not deductible. (AY.2003-04)
CIT v. GMR Industries Ltd. (2020) 425 ITR 504 / 194 DTR 52 (Karn.)(HC)

626 **S. 37(1) : Business expenditure – Capital or revenue – Expenditure on replacing machinery destroyed by fire – Expenditure on dies and tools – Allowable as revenue expenditure.**
Allowing the appeal of the assessee the Court held that what was being done was to preserve and maintain an already existing asset and the expenses were not incurred to bring a new asset into existence or to obtain a new or a fresh advantage to the business of the assessee. In that view of the matter, the object of the assessee in incurring the expenses in replacement was not with a view to bringing into existence a new asset or to make substantial replacement or renovation, but the assessee was motivated in making the expenses by the object of preserving and maintaining the asset for the purpose of use in the business. (*Addl.CIT v. Desai bros (1977) 108 ITR 14 (Guj.)(HC)*) Court also held that the expenditure incurred on dies and tools was a recurring revenue expenditure and no capital asset of enduring benefit comes into existence more so because the dies need to be replaced often. (AY.1997-98)
Precision Wires India Ltd. v. ACIT (2020) 424 ITR 130 / 272 Taxman 42 (Guj.)(HC)

627 **S. 37(1) : Business expenditure – Legal expenses – Defend its Directors and shareholders in individual capacities – Disallowance is held to be proper. [S. 260A]**
Dismissing the appeals the Court held that all the authorities had found on the facts that the legal expenses incurred by the assessee were not for the purpose of carrying out its business. The court while admitting the criminal writ petition had observed that the complaints had been filed so as to settle personal scores between the parties. On the facts the view taken by the authorities including the Tribunal was a plausible view and not perverse. No questions of law arose.(AY.2005-06, 2007-08, 2008-09, 2009-10)
National Refinery Pvt. Ltd. v. ACIT (2020) 424 ITR 267 / 272 Taxman 160 (Bom.)(HC)

628 **S. 37(1) : Business expenditure – Capital or revenue – Acquisition of non-transferable sub-licence – Allowable as revenue expenditure.**
Dismissing the appeal of the revenue the court held that acquisition of non-transferable sub-licence is held to be allowable as revenue expenditure. (AY.2011-12)
PCIT v. Western Agri Seeds Ltd. (2020) 424 ITR 244 / 192 DTR 142 / 316 CTR 590 (Guj.) (HC)

629 **S. 37(1) : Business expenditure – Capital or revenue – Acquisition of technical know -how – Depreciation – Allowable as revenue expenditure. [S. 32(1)]**
The assessee incurred expenditure for acquiring technical advice, assistance and information for running the business and to produce more products and to run the business more efficiently. Before the Assessing Officer, the assessee produced the separate

terms of agreement for providing such know-how, showing that the same would be valid for a period of five years from the date of commencement of the regular production. The assessee claimed that the expenditure was revenue in nature. The Tribunal upheld this claim. Dismissing the appeal of the revenue the Court held that, clause (ii) of section 32(1) merely granted depreciation on the listed intangible assets, in the absence of which, the assessee would not be entitled to such depreciation. This provision however, could not be pressed into service to examine whether certain expenditure for acquisition of know-how or similar intangible asset was revenue or capital expenditure.
PCIT v. Grasim Industries Ltd. (2020) 424 ITR 236 (Bom.)(HC)

S. 37(1) : Business expenditure – Advertisement expenses – Failure to prove the genuineness of expenses – Disallowance is held to be justified. 630
Dismissing the appeal the Court held that the Appellate Tribunal had analysed the evidence placed on record to evaluate whether or not the transactions relating to web advertisement development and purchase of the customised software, were genuine. The disallowances were justified. (AY. 2004-05, 2005-06)
Fiitjee Ltd. v. PCIT (2020) 423 ITR 354 / 271 Taxman 177 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Foreign travel expenditure – Acquisition of business – Repair and maintenance – Bonafide expenditure incurred, wholly and exclusively for the purpose of business would be allowable. 631
Allowing the appeal of the assessee the Court held that Foreign travel expenditure incurred in effecting overseas payment to Stehlin Associates, Paris France in connection with the acquisition of Belair France and expenditure on repair and maintenance is held to be allowable as the bonafide expenditure was incurred wholly and exclusively for the purpose of business. Followed *CIT v. Bombay Dyeing & Mfg. Co. Ltd (1996) 219 ITR 521(SC)* Referred *S.A. Builders Ltd v. CIT (2007) 288 ITR 1 (SC)*. (AY.2010-11)
Elgi Equipments Ltd. v. JCIT (2020) 120 taxmann.com 142/ (2021) 276 Taxman 141 (Mad.) (HC)

S. 37(1) : Business expenditure – Termination of lease and licence – Deletion of expenditure is held to be justified. 632
Dismissing the appeal of the revenue the Court held that the amount deducted by the lessor towards compensation for premature termination of lease and licence agreement by the assessee in respect of two warehouses held to be deductible
PCIT v. Lee and Muirhead Pvt. Ltd. (2020) 423 ITR 167 (Bom.) (HC)

S. 37(1) : Business expenditure – Capital or revenue – Preliminary expenditure incurred for submission of tender in another Port – Allowable as revenue expenditure. 633
Dismissing the appeal of the revenue the court held that the finding of fact by the Tribunal that the assessee was already engaged in port related activities and had also carried out constructions in ports and that the submission of tender for a build, operate and transfer project for the Vishakhapatnam port was a related activity was correct. The project did not take off and broke down when the Government of India cancelled the tender. On the facts, there was no enduring benefit obtained by the assessee.
CIT v. South India Corporation Ltd. (2020)423 ITR 158 (Ker.)(HC)

634 **S. 37(1) : Business expenditure – Capital or revenue – Replacement of damaged parts of existing machinery – Revenue expenditure.**
Dismissing the appeal of the revenue the Court held that, replacement of damaged parts of existing machinery is revenue expenditure on the facts of the case no independent parts capable of functioning independently. (AY.2004-05)
PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. (2020) 423 ITR 54 / 192 DTR 233 (Guj.) (HC)

635 **S. 37(1) : Business expenditure – Capital or revenue Computer software expenses – Legal expenses incurred in connection with sale of capital assets – Held to be revenue expenditure.**
Dismissing the appeal of the revenue the Court held that computer software expenses and legal expenses incurred in connection with sale of capital assets is held to be revenue expenditure. (AY.2009-10)
PCIT v. Aker Powergas Pvt. Ltd. (2020) 423 ITR 536 (Bom.)(HC)

636 **S. 37(1) : Business expenditure – Wholly and exclusively for the purposes of business – Donations made under Corporate Social Responsibility – Held to be deductible – Res Judicata – Not strictly applicable in Income – Tax proceedings – Consistency essential.**
The assessee-company is engaged in the business of manufacturing, sale and trading of chemical fertilizers and chemical industrial products. The assessee claimed expenditure of Rs.1,75,036,756 in respect of contributions made to various institutions. The Assessing Officer disallowed the claim. Appellate Tribunal allowed the claim of the appellant Company. On appeal by the revenue dismissing the appeal the Court held that the assessee-company was a polluting company. The assessee-company was conscious of its social obligations towards society at large. The assessee-company was a Government undertaking and, therefore, obliged to ensure fulfilment of all the protective principles of State policy as enshrined in the Constitution of India. The moneys had been spent for various purposes and could not be regarded as outside the ambit of the business concerns of the assessee. The order passed by the Appellate Tribunal was just and proper and needed no interference in the present appeal. such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be "wholly and exclusively for the purposes of business".
Court also held that although the doctrine of res judicata is not applicable to Income-tax proceedings since each assessment year is independent of the other, where an issue has been considered and decided consistently in a number of earlier years in a particular manner the same view should continue to prevail in the subsequent years unless there is some material change in the facts. (AY.2010-11)
PCIT v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd. (2019) 105 CCH 0504 / (2020) 422 ITR 164 / 192 DTR 233 / 316 CTR 722 (Guj.) (HC)

S. 37(1) : Business expenditure – Method of accounting – Accrual of income – Real income – Provision for revision of pay by Government committee – Liability is not contingent – Provision is held to be deductible. [S.145] 637

The assessee is a public sector undertaking. It claimed deduction of Rs.1.60 crores on account of the provision for revision of pay in its books of account. The deduction was made in the light of the Pay Revision Committee appointed by the Government of India. The AO disallowed the claim, holding that the expenditure was purely a provision against an unascertained liability and could not be claimed as expenditure for the AY 2007-08. The disallowance was upheld by the Tribunal. On appeal the Court held that, provision for revision of pay by Government committee is not contingent liability hence provision is held to be deductible. Followed *CIT v. Bharat Heavy Electricals Ltd. (2013) 352 ITR 88 (Delhi) (HC), CIT v. Excel Industries (2013) 358 ITR 295 (SC)*. As regards the fees the Court held that no income accrued at the point of execution of agreement. The change in the accounting policy was a result of the audit objection raised by the Comptroller and Auditor General. The assessee had claimed deduction in profits in the computation of the total income, and added it as income in the subsequent AY, which had been accepted by the Assessing Officer. The change was, thus, revenue neutral. The addition of Rs. 1,28,00,000 was not justified. (AY. 2007-08)

Housing and Urban Development Corporation Ltd. v. Add. CIT (2020) 421 ITR 599 / 189 DTR 211 / 314 CTR 583 / 270 Taxman 101 (Delhi)(HC)

S. 37(1) : Business expenditure – Payment to consultant – Statement made in the course of search was retracted – Disallowance is held to be not justified. [S. 132(4)] 638

Dismissing the appeal of the revenue the Court held that disallowance of commission cannot be made merely on the basis of statement made during the search which was retracted, without bringing on any independent material on record.

CIT(LTU) v. Reliance Industries Ltd. (2019) 104 CCH 0730 / (2020) 421 ITR 686 (Bom.) (HC)

Editorial : SLP is granted to the revenue CIT v. Reliance Industries Ltd. (2019) 418 ITR 13 (st.) (SC)

S. 37(1) : Business expenditure – Capital or revenue – Bank NRI mobilisation expenditure – Amount paid to vacating the premises – Held to be allowable. 639

Expenditure incurred for Bank NRI Mobilisation expenditure paid to the agent for mobilization and collection of India Millennium Deposits (IMD) is allowable. (Arising out of ITA No.4670/Mum/2005, dt.20/11/2015)(ITA No.1588 of 2016, dt.04/03/2019) (AY.2001-02)

CIT v. Hongkong and Shanghai Banking Corporation Ltd. (2020) 114 taxmann.com 275 (Bom.)(HC)

Editorial : SLP of revenue is dismissed (SLP (C)No.19466 of 2019dt)(2019) 418 ITR 9 (St) (SC) / (2020) 114 taxmann.com 276 (SC)

640 **S. 37(1) : Business expenditure – Commission paid to the foreign agents for having worked on behalf of the Assessee in procuring sales is held to be allowable – Business Loss – No colourable device employed by Assessee in the process sale of shares at low price – Loss is held to be allowable. [S. 28(i)]**

Commission paid to the foreign agents for having worked on behalf of the Assessee in procuring sales in outside India is allowable and sale of shares at lower rate / price was not colourable device employed by the Assessee. (ITA No.1161 of 2016, dt.16/01/2019)

PCIT v. Navin Fluorine International Ltd. (Bom.)(HC)(UR)

Editorial : SLP of revenue is dismissed (SLP No.19379 of 2019 dt.13/08/2019) (2019) 417 ITR 55 (St.)(SC)

641 **S. 37(1) : Business expenditure : Bank NRI deposits mobilisation expenditure – replacement of shares – Held to be allowable.**

Assessee assist and facilitate the investments by NRIs, such a branch was set up. The said amount was expended towards administrative and other related expenses and the entire expenditure was for the purposes of head office and, therefore, no restrictions in terms of S.44C should be imposed. And also replacement of shares by assessee to its clients is allowable. (ITA No. 1561 of 2016, dt.06/02/2019)

CIT v. Hongkong and Shanghai Banking Corporation Ltd. (Bom.) (HC) (UR)

Editorial : SLP of revenue is dismissed (SLP No.18521 of 2019 dt.02/08/2019)(2019) 416 ITR 124 (St.)(SC)

642 **S. 37(1) : Business expenditure – Amortization of investment 'held to be maturity' – Tribunal is justified in allowing the claim. [S. 145]**

Dismissing the appeal of the revenue the Court held that assessee which maintains its accounts in terms of RBI Regulations, the assessee is entitled to deductions. Accordingly the tribunal is justified in allowing the claim of the assessee on the issue of amortization of investment 'held to be maturity'. (AY. 2002-03, 2005-06, 2006-07, 2009-10)

CIT v. Ing Vysya Bank Ltd. (2020) 422 ITR 116, 186 DTR 193 / 313 CTR 69 / 270 Taxman 162 (Karn.)(HC)

643 **S. 37(1) : Business expenditure – Technical consultancy fees is held to be allowable business expenditure.**

Dismissing the appeal of the revenue the Court held that the technical consultancy fees is held to be allowable business expenditure. (AY. 2010-11)

PCIT v. Merck Ltd. (2020) 185 DTR 401 / 312 CTR 242 / 275 Taxman 181/ (2021) 434 ITR 596 (Bom.) (HC)

644 **S. 37(1) : Business expenditure – Capital or revenue – Buy back of shares – Held to be revenue expenditure.**

Dismissing the appeal of the revenue the court held that the learned Counsel appearing for the parties are agreed that the issue stands concluded by the decision of this Court in *CIT v. Aditya Birla Novo Ltd. 79 Taxmann.com 210, and CIT v. Hindalco Industries Ltd.* (ITA No.1846 of 2010) decided on 7th August, 2012 against the revenue and in favour of the respondent. (AY. 2010-11)

PCIT v. Merck Ltd. (2020) 185 DTR 401 / 312 CTR 242 / 275 Taxman 181 (Bom.)(HC)

S. 37(1) : Business expenditure – Sales promotion expenses – Held to be allowable as business expenditure. 645

While allowing the deduction the Tribunal held that held that so long as the expenses have been incurred wholly and exclusively for the purpose of business, whether necessary or not are to be allowed as expenditure. Relied on *CIT v. Chandulal Keshavlal & Co (1960) 38 ITR 601 (SC) and Sasoon J. David & Co. v. CIT (1989) 180 ITR 261 (SC)* wherein it has been held that the expenditure incurred voluntary on account of commercial expediency and wholly and exclusively for the purpose of trade, then it is allowable expenditure. The Court in the above case observed that it is pertinent to note that the words "wholly and exclusively" used in S. 37 of the Act does not mean "necessarily". Thus, it is for the assessee to decide whether the expenditure should be incurred in the course of his business and once it is found that it is incurred wholly and exclusively for the purposes of business, then it is deductible under S. 37 of the Act. It further records that it is relevant to note that an attempt was made to introduce the word "necessity" in S. 37 of the Income Tax Bill of 1961. However, this had led to public protest and resulted in dropping the word "necessity" when the Income Tax bill of 1961 was passed into the Income Tax Act, 1961. Thus, the view of the Tribunal on this issue cannot be faulted as it is in accord with the Supreme Court decisions referred to hereinabove. Dismissing the appeal of the revenue the Court held that sales promotion expenses is held to be allowable as business expenditure. High Court affirmed the order of Tribunal. (AY. 2010-11)

PCIT v. Merck Ltd. (2020) 185 DTR 401 / 312 CTR 242 / 275 Taxman 181 (Bom.)(HC)

S. 37(1) : Business expenditure – Additional evidence of lorry expenses for first time before CIT(A) – Considering the remand report Tribunal confirmed the addition – Miscellaneous application was dismissed – High court remanded the matter to AO for re adjudication. [S. 254(2), 260A] 646

The assessee is in the business of goods transporter. Lorry expenses was claimed as deduction. AO disallowed the expenses. Additional evidences were furnished before the CIT(A). who remanded the matter to AO. AO committed factual mistakes in the remand report. Tribunal confirmed the order of the AO. Miscellaneous application filed by the assesee was dismissed. On appeal the Court held that revenue authorities and Tribunal did not go into these aspects. High Court remanded the matter to the AO to decide in accordance with law by giving a reasonable opportunity to the appellant. (AY. 2012-13)

Dilip Kumar v. ACIT (2020) 269 Taxman 93 / 196 DTR 199 / 317 CTR 901 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure incurred on fertility improvement amongst milk animals – Held to be allowable as revenue expenditure. 647

Assessee claimed deduction of expenditure incurred on fertility improvement amongst milk animals. AO rejected the claim by holding that expenditure was capital in nature. Tribunal allowed the claim of the assessee. High Court up held the order of the Tribunal. (AY. 2008-09)

PCIT v. Gujarat Co. Op. Milk Marketing Federation Ltd. (2020) 113 Taxmann.com 84 / 269 Taxman 42 (Guj.)(HC)

Editorial : SLP of revenue is dismissed ; PCIT v. Gujarat Co. Op. Milk Marketing Federation Ltd. (2020) 269 Taxman 41 (SC)

648 **S. 37(1) : Business expenditure – Marketing and publicity expenses – Expenditure by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza' – Held to be allowable as business expenditure.**
Dismissing the appeal of the revenue the Court held that; expenses incurred by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza' which were primarily incurred for purpose of business, incidental benefit to some other party from such expenses, would not reduce allowability of such expenditure and, thus, entire expenditure so incurred was allowable as deduction. (AY. 2010-11)
PCIT v. Star Entertainment Media (P.) Ltd. (2020) 269 Taxman 66 (Bom.)(HC)

649 **S. 37(1) : Business expenditure – Cheque issued – Realised in next assessment year – Cheque is not dishonoured but encashed, payment relates back to date of tendering of cheque and date of payment would be date of delivery of cheque – Allowable as deduction during previous year.**
Assessee paid municipal tax for which cheques were issued to local authority prior to end of previous year relevant to assessment year, however, bank statements showed realization only on commencement of next assessment year, deduction in respect of such municipal tax was to be allowed during previous year. When a cheque is not dishonoured but encashed, payment relates back to date of tendering of cheque and date of payment would be date of delivery of cheque. Followed *CIT v. Ogale Glass Works Ltd (1954) 25 ITR 529 (SC) (Arising from Punalur Paper Mills Ltd. v. ITO (2009) 29 SOT 449 (Cochin) (Trib.)* (ITA Nos. 1378 to 1423 of 2019 dt 7-02-2019) (AY.1996-97 to 2002-03 2004-05)
CIT v. Punalur Paper Mills Ltd. (2020) 268 Taxman 47 (Ker.) (HC)

650 **S. 37(1) : Business expenditure – Capital or revenue – Payment to for the purpose of having continuous supply of limestone as a raw material – Held to be capital expenditure – Order of Tribunal directing for the payment to be amortised for a period of 8 years is held to be not valid – Question is answered in favour of the revenue. [S. 145]**
The assessee claimed the payment to Texmaco for the purpose of having continuous supply of limestone as a raw material as revenue expenditure. The AO treated the said expenditure as capital expenditure. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that payment made to Texmaco as deferred revenue expenditure thereby permitting the assessee to amortise the payment for a period of eight years. Reversing the order of the Tribunal the Court held that the respondend had obtained a long term captive source of the new raw material by purchase of right from Texmaco. However at the same time the raw material was required to be won, gotten and brought to the surface and as such, cannot be said to be a stock in trade, hence the question was answered in the negative and in favour of appellant. Followed *R.B Seth Moolcahnd Suganchand v. CIT (1972) 86 ITR 647 (SC)* (ITA No 51 of 2008 dt 22-11-2019 / 02-01-2020) (AY.1995-96)
CIT v. Zuari Industries Ltd. (2020) 420 ITR 323 / 185 DTR 281 / 312 CTR 416 (Bom.)(HC)

S. 37(1) : Business expenditure – Foreign Trip – Medical professionals – Doctors – Allowable as business expenditure. 651

The AO disallowed the claim on the reasoning that the benefit derived from foreign trip is by the medical professionals and not by the assessee as they are not working exclusively for the advancement of assessee's business. Tribunal has consistently held that the expenditure having been incurred for the purpose of assessee's business is allowable as expenditure. (AY. 2007-08)

Dy. CIT v. India Medtronic Pvt. Ltd (2020) 205 TTJ 950 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Setting up of business and commencement of business – Allowable as deduction. 652

The Tribunal held that the assessee had during the period May, 2009 to July, 2009 incurred expenses, inter alia, towards salaries of the employees, nominal electricity expenses, internet expenses, office expenses, office rent, staff welfare expenses, and technical consultancy fees. As the assessee which was engaged in the business of providing software development services exclusively to its parent company, belonged to the service industry, the incurring of expenditure on payment of rent, salary expenses, electricity expenses, revealed that its business during the period under consideration was set up but had yet not commenced. All expenses incurred by an assessee during the interregnum period between setting up of its business and commencement of the business, are permissible as a deduction. (AY.2010-11)

Gco Technologies Centre P. Ltd. v. ITO (2020) 84 ITR 21 (SN) /(2021) 187 ITD 136 (Mum.) (Trib.)

S. 37(1) : Business expenditure – Abandoned project – Link with existing business – Allowable as deduction – Payment of bonus commensurate with efforts – Allowable as deduction. [S. 36(2)] 653

Tribunal held that since no consideration was received by the assessee on account of winding up of the special purpose vehicle, the entire investment was written off. The write off was nothing but write off of an expenditure on an abandoned project. The project in question had inextricable link with the assessee's existing business and hence, the expenditure was allowable as revenue expenditure. The Tribunal held that the team was successful in negotiating the deal with a buyer for purchase of the special purpose vehicle. The payment of bonus was commensurate with the efforts rendered by the team over a period of time in order to exit the project. The ad hoc disallowance made by the Assessing Officer was to be deleted.(AY.2012-13)

IDFC Projects Ltd. v. ACIT (2020) 84 ITR 30 (SN) (Mum.)(Trib.)

S. 37(1) : Business expenditure – Environmental, Travelling, Office maintenance expense – Matter remanded to the Assessing Officer. 654

Tribunal held that the assessee did not produce any material regarding expenditure incurred under all the heads in question before the Commissioner (Appeals) or the Tribunal and so the matter required to be examined afresh by the Assessing Officer after affording a reasonable opportunity of hearing to the assessee. (AY.2014-15)

Kartikeya Manganese and Iron Ore Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 10 (SN) (Bang.) (Trib.)

655 **S. 37(1) : Business expenditure – Failure to furnish C Forms – Disallowance – Payment For Violation Of Law – Sales Tax On Inter – Delay in depositing Sales Tax, Excise and Customs duty and Service Tax – Differential amount deposited with interest – Not penalty – Allowable as revenue expenditure. [Central Sales Tax Act, 1956]**

The assessee made certain inter-State sales paying sales tax at concessional rate against C forms prescribed under the Central Sales tax Act, 1956 to be furnished by the buyers. However, for certain sales transactions, the assessee could not obtain the required forms from the buyers and thus normal rate of tax was made applicable on such transactions. The assessee was required to deposit the differential amount of sales tax. Since there was a delay the assessee was made to deposit interest. The Assessing Officer disallowed the claim to deduction of the interest on the ground that it had been incurred on account of violation of law. The Commissioner (Appeals) upheld the disallowance. Tribunal held that the amount of tax deposited by the assessee was not in the nature of penalty for contravention of any law. It was only a tax which was paid as the route of concessional rate of tax was blocked as the assessee was not able to deposit the requisite forms with the Sales Tax Department. Therefore, the assessee was entitled to deduction. (AY.2016-17)

GEM Electro Mechanicals Pvt. Ltd. v. ACIT (2020) 84 ITR 1 / (2021) 187 ITD 361 (Jaipur) (Trib.)

656 **S. 37(1) : Business expenditure – Corporate social responsibility – Payments made to church, Police station, summits, Schools, Etc. cannot be considered as corporate social responsibility – Disallowance is proper. Not been spent on Corporate Social Responsibility.**

Tribunal held that the expenses in question were either in the nature of charity or donation. They were not in the nature of corporate social responsibility. Payments made to church, police station, summits, schools, etc., could not be considered to have been spent on corporate social responsibility. The details did not justify the claim of expenditure on account of commercial expediency. Disallowance of Rs. 50.37 lakhs was to be confirmed. (AY.2014-15)

Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

657 **S. 37(1) : Business expenditure Duty Drawback – Reimbursing Duty Drawback To Supporting Manufacturers Through Account Payee Cheques – No disallowance can be made. [S. 133(6)]**

Tribunal held that during the assessment proceedings, the assessee furnished sample copies of vouchers before the Assessing Officer and furnished complete details supported by vouchers before the Commissioner (Appeals). The duty drawback had been reimbursed by the assessee to supporting manufacturers through account payee cheques. During the assessment proceedings, the Assessing Officer had issued notices under section 133(6) of the Act to the persons whose names were not in the list of duty drawback. Therefore, there was no question of their confirming the transactions. The notices to two parties were sent correctly considering the facts in totality and in the light of voluminous documentary evidence, the confirmations and the transaction there was no error or infirmity in the finding of the Commissioner (Appeals). (AY. 2004-05)

IKEA Trading India Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 415/ (2021) 186 ITD 473 (Delhi) (Trib.)

S. 37(1) : Business expenditure – Club membership fees for employees and entertainment of customers – Allowable as business expenses. 658

Tribunal held that the expenses on account of club membership fees for the employees and to entertain customers allowable as business expenditure, so, these were business expenses. (AY. 2016-17)

Isgec Heavy Engineering Ltd. v. Dy. CIT (2020) 83 ITR 426 (Chd.) (Trib.)

S. 37(1) : Business expenditure – Expenditure incurred on celebration of Ireland – Not allowable as business expenditure – Unverifiable and personal element involved – Disallowance of 20 Per Cent is up held. 659

The Tribunal held that the managing director of the assessee-company was the Honorary Consul of Ireland in his individual and personal capacity and an event was hosted by him at Hotel Taj Bengal to celebrate Ireland National Day in India in that capacity. There was no evidence to substantiate the contention that the guests related to the business of the assessee-company were invited to participate in the event nor to establish that the event in any way helped in the advancement of the business of the assessee-company. The claim of the assessee that the expenditure incurred on organising an event to celebrate the Ireland National Day in India was wholly and exclusively incurred for the purpose of business of the assessee-company was not correct and the expense was rightly disallowed by the authorities. That the expenses incurred on organizing the event to celebrate Ireland National Day in India having been entirely disallowed by the authorities below the disallowance of 20 per cent. was to be out of the balance amount of sales promotion expenses. (AY. 2014-15)

MKJ Enterprises Ltd v. Dy. CIT (2020) 83 ITR 224 / (2021) 187 ITD 678 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenses on repairs, supply of consumables, and recalibration of machinery – No new asset coming into existence – Allowable as revenue expenses. 660

Tribunal held that from the details of the bills it was seen that the bills for the expenses indicate the expenses to be for repairs, supply of consumables, and recalibration of machinery. It was not the Department's case that any new asset had come into existence. The repairs were for preserving and maintaining an already existing asset. The expenses were of revenue nature and to be allowed. (AY. 2011-12)

Peartree Enterprises Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 436 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Loss on revaluation of business advances – Loss on account of foreign exchange rate fluctuation as on date of balance-sheet is allowable as deduction [S.28(1)] 661

Tribunal held that the exchange fluctuation loss arising on account of the revaluation of business advances at the close of the year by the assessee was allowable as deduction in the hands of the assessee. Accordingly, the addition of Rs.2.59 crores was deleted. (AY. 2014-15)

Sitae Re P. Ltd. v. ITO (2020) 83 ITR 457 (Delhi)(Trib.)

662 **S. 37(1) : Business Expenditure – Miscellaneous expenses – Transport Business In North East States – Expenses in cash for repairs of trucks in local repair shops – No disallowance can be made – Puja expenses – Only 10 % of expenses can be disallowed.**

Tribunal held that considering the road conditions of North East States disallowance of miscellaneous and repair for truck expenses incurred in cash cannot be disallowed. Tribunal also held that 10% of puja expenses may be disallows for plugging the revenue loss if any (AY. 2014-15)

Capital Tours (India) P. Ltd. v. ITO (2020) 82 ITR 229 (Kol.)(Trib.)

663 **S. 37(1) : Business expenditure – Bank – Broken period interest – Paid for securities at time of acquisition – Allowable as deduction – Appellate Tribunal – Pronouncement of 90 days – Lockdown period to be excluded. [ITAT R. 34(5)]**

The assessee debited an amount of Rs. 1,947 crores in the profit and loss account as broken period interest on the ground that this broken period interest paid was part of the price paid for the securities at the time of its acquisition. The Assessing Officer observed that the purchase price was in the nature of capital outlay and could not be allowed as deduction while computing business income of the assessee. The Commissioner (Appeals) deleted the addition the Tribunal held that the broken period interest paid by the assessee was allowable as deduction while computing the total income of the assessee. (AY. 2011-12)

ACIT v. HDFC Bank Ltd. (2020) 82 ITR 533 (Mum.)(Trib.)

664 **S. 37(1) : Business expenditure – Capital or revenue – Advertisement, marketing and promotion expenses – Allowable as revenue expenditure. [S. 92CA (3)]**

Tribunal held that the Department in the assessee's case for the AY. 2010-11 onwards had not considered such advertising, marketing and promotion expenses as an international transaction. Further, the expenditure incurred by the assessee on advertisement was revenue in nature since no permanent character or advantage was achieved from it and such expenses for advertising consumer products generally were a part of the process of profit earning and not in the nature of capital outlay. Followed *CIT v. Jubilant Foodworks Pvt. Ltd. (2014) 271 CTR 227 (Delhi) (HC) and CIT v. Monto Motors Ltd.* (I. T. A. No. 978 of 2011 dated December 12, 2011 (Delhi)) (HC).(AY. 2007-08, 2008-09)

MakeMy Trip (India) Pvt. Ltd. v. Dy. CIT (2020) 82 ITR 71 (Delhi) (Trib.)

665 **S. 37(1) : Business expenditure – Books of account not rejected – No Ad hoc disallowance can be made.**

The Tribunal held that the Assessing Officer had made the disallowance simply holding that the assessee produced the ledger account of the expenses which were not open to full verification and hence had disallowed 10 per cent out of various expenses. He had nowhere pointed out any specific discrepancy in the books of account nor had he rejected the books. The Assessing Officer could not make ad hoc disallowance. (AY. 2013-14)

Suresh Khatri v. ITO (2020) 82 ITR 29 (Luck.)(Trib.)

S. 37(1) : Business expenditure – Employees stock option plan Expenses – Allowable as revenue expenditure. 666

Tribunal held that expenses stock option plan expenses is held to be allowable as revenue expenditure. The direction of CIT(A) was modified to the extent of pertaining to earlier years (AY.2012-13)

ACIT v. Indiabulls Ventures Ltd. (2020) 80 ITR 5 (SN) (Delhi) (Trib.)

S. 37(1) : Business expenditure – Business promotion expenses – Not practically possible to furnish complete list of gifts to various customers – Quantum of expenditure vis-a-vis turnover would have to be justified – Restriction of 40 Per Cent of initial total disallowance is held to be reasonable. 667

Tribunal held that it may not be practically possible for all businesses to maintain a complete list of the gifts given to their various customers and demonstrate that a particular sales order was received as a result of a particular gift. The Income-tax Act, 1961 did not prescribe demonstrating such live linkage. In the present case, there was no denial by the Department that the assessee had been carrying on business regularly, the Department also did not allege that there was any personal element involved in the expenditure. In business practice in India customary gifts are usually handed out during festive occasions. Although handing out gold items or semi-precious items may be frowned upon by the Department, all the same it could not be a reason for disallowing the expenditure, especially when the Department could not step into the shoes of a businessman and direct how the business should be conducted. However, the reasonableness of quantum of expenditure vis-a-vis the turnover would have to be justifiable. Accordingly, interest of justice would be served if the disallowance was restricted to 40 per cent. of the initial total disallowance of Rs. 50,32,880. (AY. 2012-13)

Rajeev Verma v. ACIT (2020) 80 ITR 12 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenses incurred by assessee for issue of bonds was to be allowed as revenue expenditure – Expenses from benevolent fund – Held to be allowable. 668

Tribunal held that expenses incurred by assessee for issue of bonds was to be allowed as revenue expenditure. Expenses incurred by assessee company from its benevolent fund is held to be allowable. (AY. 2003-04)

DCIT v. IFCI Ltd. (2020) 185 ITD 742 (Delhi) (Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure incurred towards software was to be treated as capital in nature, however depreciation was directed to be allowed – Reimbursement of property tax – Matter remanded. [S. 32] 669

Tribunal held that expenditure incurred towards software was to be treated as capital in nature however the AO was directed to grant the depreciation. Reimbursement of property tax, matter remanded to the AO.. (AY.2013-14)

Star India (P.) Ltd. v. ACIT (2020) 185 ITD 559/81 ITR 8 (SN) (Mum.)(Trib.)

670 **S. 37(1) : Business expenditure – Commission – Details of service was not furnished – Disallowance is held to be justified.**
Assessee-company claimed deduction on account of commission payment. However supporting documents and evidences in respect of services received from various entities but it did not furnish documents/evidences required by Assessing Officer. The AO disallowed the commission. Tribunal also affirmed the disallowance made by the AO. (AY. 2009-10)
Ramesh Exports (P.) Ltd. v. DCIT (2020) 185 ITD 551 (Bang.) (Trib.)

671 **S. 37(1) : Business expenditure – Capital or revenue – Abandoned project – Promotion of business of company – Held to be revenue expenditure.**
Assessee engaged in business of online advertisement was developing a new software platform but such new platform was abandoned during subsequent financial year due to rapid change in technology and shifting of technology from desktop to mobile platform. Product had never been put to use and no depreciation had been claimed Tribunal held that when product was in development stage during year under consideration and same had never been put to use even in subsequent financial year and finally abandoned, then it could not be termed that an independent product would come into existence, which gave enduring benefit to assessee to treat expenditure incurred on development of said product to be capital in nature. Similarly marketing expenditure towards overall promotion of business of company and there was no direct nexus between marketing expenses and new software platform being developed by assessee, expenditure incurred on same would be revenue expenditure. (AY. 2015-16, 2016-17)
Adadyn Technologies (P.) Ltd. v. ACIT (2020) 185 ITD 426 (Bang.)(Trib.)

672 **S. 37(1) : Business expenditure – Ad-hoc addition – Books of account not rejected – Addition is held to be not valid.**
Tribunal held that when the books of account is not rejected ad-hoc addition is held to be not justified. (AY. 2012-13)
Katira Construction Ltd. v. ACIT (2020) 185 ITD 173 (Rajkot) (Trib.)

673 **S. 37(1) : Business expenditure – Passive infrastructure and automated teller machine sites to telecom and banking industry Professional charges – Interest on borrowed capital – Not carried on any business during the relevant year – Not allowable as business expenditure. [S. 36(1)(iii)]**
Assessee company was engaged in business of providing passive infrastructure and automated teller machine sites to telecom and banking industry. Assessee claimed expenditure in respect of professional charges paid for investment advisory services and interest in respect of capital borrowed. Assessing Officer held that assessee did not earn any income from business during year, therefore, professional fees paid by assessee was not allowable, further disallowed interest paid on borrowed capital on ground that capital borrowed was not utilised for purpose of business. Tribunal held that, main intention in whole transaction was to acquire a stake in a company and it was not a transaction of purchase and sale of securities as business, further, balance sheet of assessee also did not show that assessee was carrying on any business during year. Accordingly the disallowance is affirmed. (AY. 2010-11)
Quippo Telecom Infrastructure (P.) Ltd. v. ACIT (2020) 185 ITD 275 / (2021) 198 DTR 378 / 209 TTJ 828 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Repairs of machinery and replacement of some of its parts – Allowable as business expenditure. [S. 32] 674

Dismissing the appeal of the revenue the Court held that expenditure incurred by assessee on repairs of machinery and replacement of some of its parts on regular basis in course of manufacturing process is allowable as revenue expenditure. (AY. 2011-12)

DCIT v. Gulshan Chemicals Ltd. (2020) 184 ITD 71 / 208 TTJ 153 / (2021) 197 DTR 274 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Pharmaceutical company – Freebies to doctors – Gifts as product reminders, travel facilities of doctors, conference of doctors or similar freebies to medical practitioners or their professional associations would not be hit by Explanation 1 to section 37(1). 675

Tribunal held that gifts as product reminders, travel facilities of doctors, conference of doctors or similar freebies to medical practitioners or their professional associations would not be hit by Explanation 1 to section 37(1). Tribunal held that CBDT is divested of its powers to enlarge scope of Medical Council of India Regulation by extending same to pharmaceutical companies without there being any enabling provision either under Income-tax Act or Indian Medical Regulations. Further since CBDT Circular No. 5/2012 was issued only as on 1-8-2012, same would thus not be applicable to case of assessee for period relevant to assessment year 2012-13. (AY. 2012-13)

Medley Pharmaceuticals Ltd. v. DCIT (2020) 184 ITD 8 / 207 TTJ 143 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Education expenditure – Personal expenditure – Disallowance is held to be justified. [S. 132] 676

Assessee claimed certain amount as expenses towards his education. The AO disallowed expenses on ground that said expenses had no nexus with assessee's business and they were of personal in nature. (AY. 2010-11)

Harshvardhan Johari v. DCIT (2020) 184 ITD 537 / (2021) 199 DTR 41 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Provision for wages – Pending labour demand regarding incremental wages – Held to be allowable Capital or revenue – Premium on redemption of foreign currency convertible Bonds – Prorata premium payable on redemption of foreign currency convertible Bonds – Allowable as deduction – Issue of foreign currency convertible bonds – Held to be allowable as revenue expenditure – Discount given on issue of employee stock ownership plan – Allowable as business expenditure. Employee' welfare expenses – Amount paid to an educational institution where children of assessee's employees were taking education – Held to be allowable as revenue expenditure – Provision made towards warranty – Held to be allowable – Discount on issue of employee stock ownership plan held to be allowable – Professional fee towards acquisition – Entities which did not materialize was to be allowed as revenue expenditure – Abandoned project – Allowable as revenue expenditure. 677

Assessee company, engaged in business of manufacturing and sale of on road automobiles, agricultural tractor, implements, etc., made provision towards pending labour demand regarding incremental wages. Tribunal held that provision for wages

is held to be allowable as deduction. Tribunal held that prorata premium payable on redemption of foreign currency convertible Bonds allowable as deduction. Tribunal held that the said expenditure is allowable as revenue expenditure. Tribunal held that discount given on issue of employee stock ownership plan allowable as business expenditure. Tribunal held that amount paid to an educational institution where children of assessee's employees were taking education, held to be allowable as revenue expenditure. Tribunal held that the provision for warranty is held to be allowable deduction. Tribunal held that discount on issue of employee stock ownership plan held to be allowable. Tribunal held that amount which was in relation to acquisition which did not materialize was to be allowed as revenue expenditure. Tribunal held that Assessee company incurred expenditure related to development of three wheeler vehicles, however, project did not materialize, since no such new asset was created for deriving benefit of enduring nature from such expenditure, same was to be allowed as revenue expenditure. (AY. 2005-06)
Mahindra & Mahindra Ltd. v. ACIT (2020) 184 ITD 621 (Mum.)(Trib.)

678 **S. 37(1) : Business expenditure – Capital or revenue – Expenditure towards joint venture – Held to be capital in nature – Travel expenses – mergers and acquisitions of entities engaged in similar business – Held to be capital in nature – Consultancy fees – For developing new range of tractors and also upgradation of existing range of tractors, said expenditure was to be treated as capital in nature – Staff cost revenue nature.**
Expenditure incurred by assessee company towards joint venture was capital in nature and was part of cost of improvement and, therefore, same was to be disallowed. Tribunal held that expenditure incurred by assessee company on travelling related with mergers and acquisitions of entities engaged in similar business, was to be treated as capital expenditure and as part of cost of improvement. Tribunal held that consultancy fees as capital in nature however staff cost as revenue expenditure. (AY. 2005-06)
Mahindra & Mahindra Ltd. v. ACIT (2020) 184 ITD 621 (Mum.) (Trib.)

679 **S. 37(1) : Business expenditure – Capital or revenue – Technical know-how – For upgrading engines of vehicles so as to make emission normal and also to make vehicles eco-friendly – Capital in nature – Entitle depreciation. [S. 32]**
Assessee company was engaged in business of manufacturing and sale of on road automobiles, agricultural tractor, implements, etc.. Assessee incurred expenditure on account of payment for technical consultants for upgrading engines of vehicles so as to make emission normal and also to make vehicles eco-friendly. Tribunal held that said expenditure was to be treated as capital in nature and assessee was entitled to depreciation thereon. (AY. 2005-06)
Mahindra & Mahindra Ltd. v. ACIT (2020) 184 ITD 621 (Mum.) (Trib.)

680 **S. 37(1) : Business expenditure – Capital or revenue – Expansion of business – Project abandoned – Held to be capital expenditure.**
Assessee was planning expansion of its business premises and in that regard employed consultants and contractors for planning, designing and constructing new building. Later on, assessee decided to abandon expansion plan and, accordingly, entire expenditure

incurred towards expansion of building premises was written off in profit and loss account Assessee also paid damages to contractor employed for purpose of putting up business premises for purpose of expansion. The Assessee claimed the expenditure as revenue expenditure. The AO has treated the said expenditure as capital expenditure. Tribunal affirmed the order of the AO treating the said expenditure as capital in nature. (AY. 2008-09)
Texas Instruments (India) (P.) Ltd. v. ACIT (2020) 183 ITD 7 / 195 DTR 7 / 207 TTJ 586 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Electronic design automation (FDA) software license – Right to use – Allowable as revenue expenditure. [S. 32] 681
Assessee was engaged in business of software development. Assessee made payment towards acquiring electronic design automation (EDA) software license and claimed same as revenue expenses. Assessing Officer disallowed same concluding that expenditure was capital in nature and, therefore, only depreciation at rate of 60 per cent would be allowed and not entire expenditure. Tribunal held that US parent company of assessee had acquired license to use EDA tools from vendors and right of assessee to use same and only billing done on assessee on basis of actual use of software by assessee. As the assessee had acquired no right or interest whatsoever in EDA tools and had only a right to use software, accordingly allowable as revenue expenditure. (AY. 2008-09)
Texas Instruments (India) (P.) Ltd. v. ACIT (2020) 183 ITD 7 / 195 DTR 7 / 207 TTJ 586 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Remuneration from various firms – Expenditure salary and wages to staff, postage, Travel and conveyance and legal fees etc. for earning such business income as claimed by assessee would be allowable – Income from other sources – Deduction – Matter remanded. [S. 57(iii)] 682
Dismissing the appeal of the revenue the Tribunal held that the assessee has received interest and remuneration receipts from various firms in which he was a partner, business expenditure incurred under various heads such as salary and wages to staff, postage, Travel and conveyance and legal fees etc. for earning such business income as claimed by assessee would be allowable. The assessee has also earned interest income from savings and fixed deposits and claimed expenditure on salary and allowances, postage, telephone, travel, car and conveyance, bank charges etc. Tribunal remanded for verification. (AY. 2013-14)
ACIT v. Ijyaraj Singh. (2020) 183 ITD 237 /207 TTJ 953 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Ad-hoc disallowance – When the books of account is not rejected – No disallowance can be made [S. 144C, 145] 683
Tribunal held that without rejecting books of account of assessee, the ad-hoc disallowance made by the Assessing Officer is directed to be deleted. (AY. 2014-15)
Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2020) 183 ITD 354 (Kol.)(Trib.)

684 **S. 37(1) : Business expenditure – Prepaid expenses – Matter remanded. [S. 145]**
Assessee has claimed Rs. 13.91 lakhs was prepaid expenses shown in previous assessment year 2013-14 (not debited in profit and loss account) and paid during assessment year 2013-14 after deduction of applicable withholding taxes; however, as assessee followed mercantile system of accounting, actual expenses had been booked during assessment year 2014-15 on account of fact that they relate to current financial year. The AO disallowed claim. Tribunal directed the AO to adjudicate the claim in accordance with law. (AY. 2014-15)
Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2020) 183 ITD 354 (Kol.)(Trib.)

685 **S. 37(1) : Business expenditure – Payment of rent allowable as revenue expenditure.**
Dismissing the appeal of the revenue, the Tribunal held that payment of rent as per agreement is held to be allowable as revenue expenditure. (AY. 2010-11)
ACIT v. Padma Logistics & Khanij (P.) Ltd. (2020) 81 ITR 61 / 183 ITD 891/ 208 TTJ 67 (Kol.)(Trib.)

686 **S. 37(1) : Business expenditure – Temporary suspension of business – Real estate business – Work in progress – Change in method of accounting – Genuineness of expenses not doubted – Allowable as deduction. [S. 145]**
The assessee is in the business of real estate. In the earlier years the assessee has debited the expenses pertaining to project at Karnataka to work in progress account, however due to suspension of business on account of not getting the clearance of land from the farmers, the business was suspended and the assessee has changed the method during the year and claimed the expenditure as revenue expenditure. The AO has disallowed the expenditure on the ground that change in the method of accounting is not justified. The order of the AO is affirmed by the CIT(A). On appeal the Tribunal held that there is no estoppel against the law and the assessee is with in its rights to bring about the change in method of accounting, so long as the assessee adopts such change bonafide and proposes to employ the new method regularly. As the business was set up in earlier years the revenue expenditure is allowable as business expenditure. Referred *CIT v. Corporation Bank Ltd (1998) 174 ITR 816 (Karn.) (HC) Bajaj Auto Ltd v. CIT (Bom.) (HC)* (ITA No. 92/Mum/2018 dt 29-1-2020) (AY. 2012-13)
Highstreet Developers Pvt. Ltd. v. ITO (2020) The Chamber's Journal-December-P.179 (Mum.)(Trib.)

687 **S. 37(1) : Business expenditure – Supervision charges to group concern – Held to be allowable as deduction.**
Assessee paid supervision charges to its group concern. Assessing Officer rejected assessee's claim for deduction of said expenses by taking a view that no conclusive evidence and reasoning to support claim could be produced in course of assessment proceedings. CIT(A) deleted the addition. On appeal the Tribunal held that the assessee had incurred management supervision charges for purpose of business, claim of deduction in respect of same deserved to be allowed. (AY. 2011-12)
Dy.CIT v. India Housing (2020) 181 ITD 1 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Telephone and Telex, Vehicle running and maintenance and depreciation on Vehicle – Ad hoc addition of ten per cent – Not sustainable – Expenditure on software matter remanded. 688

Tribunal held that the Assessing Officer had not pointed out in which items of expenses a personal element was involved. He had not pointed out any specific item which was used by the assessee for personal purposes. The ad hoc additions could not be sustained. There was thus, no justification for any disallowance out of these expenses. As regards expenditure on software matter remanded to the Assessing Officer. (AY. 2013-14)

Vinay Bhasin v. ACIT (2020) 83 ITR 78 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Profits on sale of asset – Prior period expenses – Earned leave paid to employees – Matter remanded to the Assessing Officer. [S. 254(1)] 689

Tribunal remanded matter to the Assessing Officer, in respect of profits on sale of asset,prior period expenses, earned leave paid to employees. (AY. 2014-15)

Sun Paper Mill Ltd. v. Dy. CIT (2020) 83 ITR 44 (SN) (Chennai) (Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Differential lease premium and processing fees – Fixed asset – Capital expenditure – Depreciation allowable. [S. 32] 690

Tribunal held that the payment of, differential lease premium and processing fees for acquiring fixed asset is capital expenditure, however depreciation is allowable. (AY. 2012-13)

Nuclear Healthcare Ltd. v. ACIT (2020) 83 ITR 35 (SN)(Mum.) (Trib.)

S. 37(1) : Business expenditure – Marketing expenses – Mobile handsets issued free of cost to after – Marketing services Centres, annual maintenance and services contractors, dealers and employees – Cost allowable as business expenditure – Trade discount also allowable as business expenditure. 691

Tribunal held that the assessee was engaged in manufacture, import and sale of mobile handsets. The assessee had given mobile handsets to its employees, dealers, sale personnel, etc., free of cost and thus no longer owned the handsets. Thus, the cost was rightly taken as business expenditure by the assessee and was rightly reduced from the inventory. The disallowance was not warranted. Trade discount is also allowable as business expenditure. (AY. 2008-09, 2012-13)

Nokia India Pvt. Ltd. v. Add. CIT (2020) 83 ITR 69 (SN) (Delhi) (Trib.)

S. 37(1) : Business expenditure – Recruitment of employees – Held to be allowable as deduction. 692

Tribunal held that the sum was paid to the employees when the assessee hired a person referred by those existing employees. The Assessing Officer had failed to bring any material on record to justify the disallowance. According to the Panel the expenditure was allowable under section 37(1). There was no infirmity in the order of the Panel because such expenditure was incurred by the assessee for the purpose of recruitment of its own employees. The payment for such referral was made to the employees of the company who were existing and who referred new employees. Therefore, the

expenditure was incurred wholly and exclusively for the purposes of the business. (AY.2011-12)
Dy.CIT(LTU) v. EXL Service.Com (India) Pvt. Ltd. (2020) 83 ITR 11 (SN) (Delhi)(Trib.)

693 **S. 37(1) : Business expenditure – Grants to Philanthropic Organisations and recreational clubs – In terms of agreement between management and employees union – Allowable as deduction.**
Tribunal held that the assessee was under an obligation to incur expenses on education, sports and recreation for the welfare of its employees as well as people in the locality for maintaining employee health and for general development of the locality, which in turn contributed to the assessee's business. It was a necessary expenditure in terms of the National Coal Wage Agreement. The amendment in the Companies Act introducing provisions relating to corporate social responsibility was with affect from April 1, 2015 and, therefore, Explanation 2 to section 37 did not apply on the facts of the case as they did not have retrospective effect.(AY.2009-10, 2012-13)
ACIT v. Eastern Coalfields Ltd. (2020) 83 ITR 61 (SN) (Kol.)(Trib.)

694 **S. 37(1) : Business expenditure – Provision for future expenses – Construction of stations and tunnels for the Bangalore metro – Matter remanded to the Assessing Officer. [S. 145]**
Tribunal held that the authorities below had not looked into the documents referred to by the assessee. The nature of the provisions considered by the Tribunal in preceding years was not similar to provision for future claims made by the assessee during the year under consideration. The matter was remanded to the Assessing Officer to verify the submissions of the assessee in light of the contract entered into with BMRCL. The assessee was to furnish all requisite details in support of its claim and the A.O. to consider the claim of the assessee in accordance with law. (AY.2013-14)
ACIT v. CEC Soma CICI Joint Venture (2020) 83 ITR 54 (SN) (Bang.)(Trib.)

695 **S. 37(1) : Business expenditure – Capital or revenue – Admission fees paid to Stock Exchange for membership is capital expenditure – Membership of Stock Exchange is a capital asset – Depreciation is allowable. [S. 2(14), 32 National Stock Exchange Rules, 18(b)]**
The assessee which is engaged in stock exchange operations, claimed deduction of the payment made to the stock exchange for admission fees and processing charges.. The AO disallowed the claim as revenue expenditure. On appeal the CIT(A) concurred with the Assessing Officer but allowed the assessee's alternative claim for grant of depreciation thereon. On appeal by the assessee the Tribunal held that according to rule 18(b) of the National Stock Exchange Rules, the certificate or entitlement slip, which accords the benefits and privileges of trading membership of the Exchange, is transferable by nomination subject to approval, and rule 20 thereof prohibits a trading member from assigning, mortgaging, pledging or charging his right of membership, rights or privileges attached thereto. As a result, the membership creates an intangible right in favour of the assessee, which is capable of being transferred or transmitted. These rights are in the nature of rights in personal, have an element of permanency and of being a source

of income ; therefore, they constitute property of a capital nature within the meaning of section 2(14) of the Act. Such rights are not in the nature of stock-in-trade, consumable stores or raw material. The assessee was not entitled to deduction of the admission fees. (AY.2013-14)
BGSE Financials Ltd. v. Dy.CIT (2020) 83 ITR 56 (SN) / 194 DTR 313 / 207 TTJ 1121 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Mobile handsets to employees, dealers and sales personal etc,at free of cost – Allowable as business expenditure. 696
Tribunal held that cost of mobile sets provided to employees, dealers and sales personal etc,at free of cost is allowable as business expenditure and rightly reduced from the inventory. Followed the order of the Tribunal for the AY.2003-04 which was affirmed by the High Court. (AY.2011-12)
Nokia India Pvt. Ltd. v. Add. CIT (2020) 82 ITR 16 (SN) (Delhi) (Trib.)

S. 37(1) : Business expenditure – Distributor – Trade price protection – Commercial expediency – Allowable as deduction. 697
Tribunal held that the Trade price protection which was offered to distributors on handsets allowable as deduction on the principle of commercial expediency. (AY.2011-12)
Nokia India Pvt. Ltd. v. Add.CIT (2020) 82 ITR 16 (SN) (Delhi) (Trib.)

S. 37(1) : Business expenditure – Provident fund – Contribution made after expiry of due date provided under Employees' Provident Funds and Miscellaneous Provisions Act 1952 – Not allowable as deduction. 698
Tribunal held that the delayed payment In Provident Fund Account after the expiry of due date provided under the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 was held to be not allowable.(AY.2013-14, 2014-15)
Balji Electrical Insulators P. Ltd. v. Dy.CIT (2020) 82 ITR 39 (SN) (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Education Cess – Not a tax – Allowable as business expenditure. 699
Allowing the appeal the Tribunal held that Education Cess is not a tax hence allowable as business expenditure. (AY.2016-17)
Agrawal Coal Corporation Pvt. Ltd. v. ACIT (2020) 82 ITR 8 (SN) (Indore)(Trib.)

S. 37(1) : Business expenditure – Set up of business – Interest, administrative and other expenses is held to be allowable as deduction – Interest income is to be assessed as business income and interest expenditure to be set off against it. [S. 28(i), 56, 57] 700
Tribunal held that as the business of the assessee had already commenced in the assessment year 2006-07, the interest expenditure and all other expenses both administrative and other expenses were to be allowed as business expenditure. The interest income was to be taxed as business income and the interest expenditure was to be set off against the business income. During the year 2007-08, The Assessee had capitalised interest expenditure of Rs. 40.78 Corers. Hence, there was no issue of its allowability. (AY.2007-08)
Jindal Reality Pvt. Ltd. v. Dy. CIT (2020)82 ITR 19 (SN) (Delhi) (Trib.)

701 **S. 37(1) : Business expenditure – Capital or revenue – Repair and renovation of leased premises – Revenue expenditure – Power of CIT(A) – Cannot travel beyond the direction of the ITAT order. [S. 250, 254(1)]**

Allowing the appeal of the assessee the Tribunal held that repair and renovation expenses incurred on the leased premises are in the nature of revenue expenditure. Tribunal also held that the CIT(A) cannot travel beyond the direction of the ITAT and disallow an expenditure holding it as non-genuine.(ITA No. 3204/ Del/ 2015 dt 5-3-2020) (AY. 2007-08)

Aspect Research & Management P. Ltd. v. ITO (2020) The Chamber's Journal-June-P 81 (Delhi)(Trib.)

702 **S. 37(1) : Business expenditure – One time payment of annual lease rent is held to be allowable as revenue expenditure.**

The Assessing Officer disallowed the lease rent as capital expenditure which was affirmed by the CIT(A). On appeal the Tribunal held that one time payment of the annual rent as per the lease deed is a revenue expenditure. Followed *CIT v. Madras Auto Service (P) Ltd (1998) 233 ITR 468 (SC)* (ITA No. 2722/Del/ 2017 dt.13-12-2019) (AY. 2012-13)

Multitute Infrastructure Pvt Ltd v. Dy.CIT (2020) The Chamber's Journal-March-P.123 (Delhi)(Trib.)

703 **S. 37(1) : Business expenditure – Defective goods – Addition based on presumptions and suspicions – Held to be not justified – Appeal – Commissioner (Appeals) – Power of enhancement – Enhancement of assessment had to be considered in the context of each issue raised in the appeal before the Commissioner (Appeals). [S. 251(2)]**

Tribunal held that the Assessing Officer had not doubted the fact that the assessee had not paid in respect of the goods found to be defective and therefore the cost of the purchase of the goods found to be defective was to be reduced from the total cost of purchase as per the import bill. The claim of defective goods reduced from purchase was established by supporting evidence. Therefore the addition made by the Assessing Officer purely on presumption and assumption was liable to be deleted. Tribunal also held that if the Assessing Officer had made more than one addition to the total income of the assessee and some of the additions were found to be not sustainable by the Commissioner (Appeals) and accordingly deleted then the addition which was enhanced by him shall satisfy the conditions of issuing show cause under sub-section (2) of section 251 of the Income-tax Act, 1961. Therefore, the enhancement of assessment had to be considered in the context of each issue raised in the appeal before the Commissioner (Appeals).(AY.2015-16)

Shankar Gupta v. ITO (2020) 78 ITR 76 (SN) (Jaipur)(Trib.)

704 **S. 37(1) : Business expenditure – Real estate development – Selling and administrative costs – Selling expenses – Revenue expenses after setting up of business is held to be allowable although revenue was not yet earned – Accounting Standard 7.**

Tribunal held that Accounting Standard 7 provides that the selling and administrative costs are required to be excluded from the contract costs while drawing financial

statements. Hence, the action of the assessee was in line with the parameters of Accounting Standard 7. Expenses incurred in the normal course of business are required to be allowed after setting up of business irrespective of whether the revenue was earned. The action of the assessee in any case was a revenue neutral affair and the Revenue was not put to any tax loss per se by such premature claim.(AY.2012-13)
Pragnya Crest Properties Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 43 (SN) (Bang.)(Trib.)

S. 37(1) : Business expenditure – Payment to contractors benevolent Fund – Allowable subject to verification – Penalty – Delayed contract – Assessing Officer is directed to verify nature of default. 37(1) Explanation. 705
Tribunal held that the payment to contractors benevolent Fund is allowable subject to verification. As regards penalty for delayed contract, the Assessing Officer is directed to verify nature of default and whether S. 37(1) Explanation is applicable.
Pampamaheshwar Ravindranath v. ACIT (2020) 78 ITR 68 (SN) (Bang.)(Trib.)

S. 37(1) : Business expenditure – Labour charges – Road construction business – Some labour contractors not having complete knowledge of contract and looked after by their husbands – Disallowance is not justified. 706
Tribunal held that assessee had demonstrated the incurrence of the expenditure for the purpose of business. It had submitted details to show how these contracts were completed by it with help of labour contractors. The labour bills and contract indicated the working assigned by it to different labour contractors. Bank statements showed payment through banking channels to labour contractors. The Income-tax return of the contractor showing income of these receipts received from the assessee. Details of tax deduction at source were produced. Comparative analysis of the gross profit as well as net profit of earlier years vis-a-vis this year was produced. How the profits would abnormally rise if these disallowances were included in the income of the assessee was demonstrated. There was no doubt with regard to the contracts obtained and completion of work. Thus, actual expenditure must have been incurred on such work. The claim of the assessee could not be denied simply for the reason that some of the labour contractors did not have complete knowledge of the contract which was being looked after by their husbands. The Department failed to appreciate the actual circumstances of the dispute.(AY.2014-15)
Dwarkesh Infrastructure P. Ltd. v. Dy.CIT (2020) 78 ITR 33 (SN) (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Salaries to employees – Allowable as deduction – Explanation I is not applicable. 707
Tribunal held that the salary payment to employees is allowable as deduction. Explanation 1 to section 37 of the would not be attracted. (AY.2011-12, 2012-13)
Add. CIT v. National Research Development Corporation (2020) 78 ITR 56 (SN) (Delhi) (Trib.)

708 **S. 37(1) : Business expenditure – Capital or revenue – Leasehold premises – Nature of expenditure to be examined before applying provision relating to ownership of asset. [S. 32(1), Expln. 1]**

Tribunal held that in order to invoke the provisions of Explanation 1 to section 32(1) a finding has to be given first as to the nature of expenditure incurred by the assessee. If the nature of expenditure is capital in nature, then the provisions of Explanation 1 to section 32(1) shall apply. It was the case of the assessee that most of the expenditure incurred by it on leasehold premises were revenue in nature. The authorities had not examined the nature of expenditure incurred by the assessee. The assessee had furnished the various details of expenditure incurred by it on leasehold premises. Accordingly, this issue required fresh examination since the nature of expenditure incurred by the assessee had to be examined in order to apply the provisions of Explanation 1 to section 32(1).(AY.2012-13, 2013-14)

Century Link Technologies India Pvt. Ltd. v. Dy. CIT (2020) 78 ITR 71 (SN) (Bang.)(Trib.)

709 **S. 37(1) : Business expenditure – Revised return – Claim of assessee acceptable with regard to expenditure involved as allowable expenditure – Disallowance is held to be not valid.**

Tribunal held that the business had to be looked into as a composite activity of the assessee and the receipts and the expenditure had to be taken compositely. The apportionment of the expenditure against each project was not in tune with the standard accounting practices. This was not a case of construction of buildings or townships wherein the expenditure incurred against each project was considered separately depending upon the method of accounting followed by the assessee. Once the assessee had realised that the claim was not made, the assessee had every right to revise the return indicating the correct taxable income. What is to be examined is whether or not the claim of the assessee is correct and not whether the correct claim is filed with the original return or revised return. Since the claim of the assessee could be accepted with regard to the expenditure involved as allowable expenditure for the year, no disallowance on this account was required and the addition made was deleted. (AY.2011-12)

Torrence Capital Advisors Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 96 (Delhi)(Trib.)

710 **S. 37(1) : Business expenditure – Contribution to State Cricket Association to create cricket academy – Getting first right to recruit players from academy to play for assessee – Allowable as business expenditure.**

Tribunal held that the assessee made a contribution of Rs. 45 lakhs to the Karnataka State Cricket Association for the purpose of creating a cricket academy. At the time of admission of players to the academy, the Karnataka State Cricket Association shall ensure that the player shall sign a contract giving the assessee first right to offer an uncapped player contract to recruit the player to play for the assessee. Thus, the terms of contract directly related to business interest of the assessee. Therefore, the contribution made for creation of the cricket academy could be held to be in business interest and the contribution was allowable as deduction. (AY.2012-13)

Royal Challengers Sports Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 577 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Local area expenses and pooja expenses in temples outside factory – Onus on assessee to prove nexus with business – Provision for profit incentive payable to employees – Matter remanded to the Assessing Officer. 711

Tribunal held that the onus was on the assessee to prove the nexus between the business and the expenses being incurred in the year 2012-13 wholly and exclusively for the purposes of business of the assessee. As regards provision for profit incentive payable to employees. Matter remanded to the Assessing Officer to adjudicate the matter afresh.(AY.2012-13)

Lakshmi Machine Works Ltd. v. Add.CIT (2020) 78 ITR 398 (Chennai)(Trib.)

S. 37(1) : Business expenditure – Driver's salary and fuel and lubricant expenses – Disallowance of fifty Per Cent is restricted to twenty Per Cent – Conference expenses – Flight booking expenses – Deductible. 712

Tribunal held that the business conference was accepted by the Assessing Officer as incidental to the business of the assessee in the field of direct selling. However in view of the failure of the assessee to produce the relevant documentary evidence in the form of bills and vouchers to support and substantiate the claim, he disallowed the claim of the assessee for business conference expenses to the extent of 50 per cent. Keeping in view all the facts and circumstances of the case as well as the nature of assessee's business, the disallowance of 50 per cent made by the Assessing Officer was on the higher side and it would be fair and reasonable to restrict it to 20 per cent. Tribunal also held that the flight booking expenses were in respect of the employees of the assessee and since the expenses were incurred wholly and exclusively for the purpose of the assessee's business, the disallowance made by the Assessing Officer to that extent was not sustainable. Keeping in view all the facts and circumstances of the case including especially the nature of assessee's business, the flight booking expenses were necessary for the purpose of the assessee's business and there was no justifiable reason to disallow them. (AY.2015-16)

Avinash Shaw v. ITO (2020)78 ITR 617 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Land levelling charges – Held to be allowable expenditure. 713

Tribunal held that the authorities under obligation before rejecting claim of assessee to verify veracity of bills produced and to verify why the assessee is under no obligation of assessee to incur expense after date of transfer of property. (AY.2014-15)

Arvindkumar K. Patel v. Dy.CIT (2020) 78 ITR 625 (Ahd.)(Trib.)

S. 37(1) : Business expenditure – Self made vouchers – Ad-hoc disallowance of 15% of expenditure is based on surmises and conjectures – Held to be not valid. 714

Tribunal held that the Department had not doubted the nature of expenditure incurred. It had only made the addition because the vouchers were self-made and not verifiable. Though the Department had some justification for making the addition, it had not ventured to look into the net profit earned by the assessee and compared it with the net profit of companies engaged in similar business to establish that the expenditure was inflated. The addition made by the Department was based on surmises and conjectures.

In this situation, the addition of Rs. 14,44,500 by estimating the disallowance at 15 per cent. of the expenditure of Rs. 96.30 lakhs was not warranted.(AY.2009-10)
Vijaya Bhavani Constructions P. Ltd. v. ITO (2020) 79 ITR 24 (SN) (Hyd.)(Trib.)

715 **S. 37(1) : Business expenditure – Disallowance is restricted to 10% as against 20% disallowance affirmed by the CIT(A).**
Tribunal held that when the assessee was unable to produce the bills and vouchers, the Assessing Officer could make reasonable additions, as he deemed proper. In this case, the assessee had produced ledger copies in support of various expenses incurred by it. The assessee was in the business of hotel and textile business and was bound to incur the expenditure for smooth running of the hotel and textile business but had to keep the bills and vouchers for claiming the deduction, which was lacking in this case. However, considering the nature of business and expenditure incurred, the disallowance at 20 per cent was on the higher side. Therefore, the disallowance at 10 per cent. (AY.2014-15)
R. N. Sahoo v. Dy.CIT (2020) 79 ITR 20 (SN) (Cuttack)(Trib.)

716 **S. 37(1) : Business expenditure – Capital or revenue – One time lease rental charges for 90 years – One-Ninetieth of amount paid allowable as revenue expenses and balance to be treated as pre paid advance rent.**
The Tribunal held that the assessee was entitled to claim one-ninetieth of the amount every year till the period of lease of 90 years as revenue expenditure. Even according to the matching principles of income and expenditure, the entire expenditure was not allowable in one year when the income corresponding to the expenditure of subsequent years would be reflected in the relevant year only. (AY. 2007-08, 2008-09)
ACIT v. Niit Technologies Ltd. (2020) 79 ITR 60 (Delhi)(Trib.)

717 **S. 37(1) : Business expenditure – Capital or revenue – Expenditure on setting up of new outlets an expansion of existing business – Expenditure on salary and conveyance allowable as revenue in nature.**
Tribunal held that, expenditure on setting up of new outlets an expansion of existing business. Accordingly the expenditure on salary and conveyance allowable as revenue in nature. (AY. 2013-14, 2014-15)
Dy.CIT v. Coffee Day Global Ltd. (2020) 79 ITR 322 (Bang.)(Trib.)

718 **S. 37(1) : Business Expenditure – Interest for delayed payment of pole rental charges – Liability crystallised during the year – Not prior period expenses but compensatory in nature – Allowable as deduction. [S. 145]**
The Tribunal held that the demand had arisen and the liability crystallised during the year, the statutory auditors had disclosed the expenditure under the extraordinary items in the financial statements of the company in accordance with the provisions of Accounting Standard 5 on net profit or loss for the year prior period items and changes in the accounting policies issued by the Institute of Chartered Accountants of India considering the largeness of the amount involved. Thus there was no case for the Department that the expenditure was in the nature of prior period expenses. Interest liability was only compensatory payment and the liability was accrued during the

assessment year 2007-08. Irrespective of the long delay involved and also the period of default the interest was computed at a stipulated percentage on the amount of pole rent charges remitted with delay. Therefore, the nature of the payment continued to remain was of compensatory nature (AY.2007-08, 2010-11)
Dy.CIT v. Asianet Satellite Communications Ltd. (2020) 79 ITR 695 (Cochin)(Trib.)

S. 37(1) : Business expenditure – Corporate social responsibility expenses – Matter remanded. [S. 80G] 719
The Tribunal held that, the Explanatory Memorandum to the Finance (No. 2) Bill, 2014 states that for the purposes of section 37(1) of the Income-tax Act, 1961 any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37. However, the corporate social responsibility expenditure which is of the nature described in sections 30 to 36 of the Act shall be allowed as deduction under those sections subject to fulfilment of conditions, if any, specified therein. All payments forming part of corporate social responsibility would not form part of the profit and loss account. The assessee could not be denied the benefit of claim under Chapter VI-A, which was considered for computing "total taxable income". If the assessee was denied this benefit, it would lead to double disallowance. The authorities had not verified the nature of payments qualifying for exemption under section 80G of the Act and the quantum of eligibility in terms of section 80G(1) of the Act. The issue was remitted to the file of the Assessing Officer.(AY.2016-17)
First American (India) Pvt. Ltd. v. ACIT (2020) 80 ITR 538 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Motor car, conveyance and miscellaneous expenses – Ad hoc disallowance – Books of account not rejected – Disallowance is held to be not justified [S.145] 720
Tribunal held that disallowance of ad-hoc expenses on motor car conveyance and miscellaneous expenses is held to be not justified. (AY.2013-14)
The Rajlaxmi Cotton Mills P. Ltd. v. Dy. CIT (2020) 81 ITR 52 (SN) (Kol.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenses for upgradation and renewal of existing software – Revenue Expenditure. 721
Dismissing the appeal of the revenue the Tribunal held that expenses for upgradation and renewal of existing software is held to be revenue Expenditure. (AY.2003-04, 2004-05)
Dy.CIT v. Cadence Design Systems (India) P. Ltd. (2020) 81 ITR 35 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Rent expenses – Allowable as revenue expenditure. 722
The Tribunal held that the assessee had paid rent and copies of the rental agreement and evidence of payment were available and this fact had not been controverted. The Assessing Officer had not refuted the claim of the assessee that the expenditure or rent paid was for the purpose of the business. (AY. 2010-11)
ACIT v. Padma Logistics and Khanij Pvt. Ltd. (2020) 81 ITR 61 / 183 ITD 891 / 208 TTJ 67 (Kol.)(Trib.)

723 **S. 37(1) : Business expenditure – Referral fees – Hospital, paid referral fee to doctors for referring their patients to assessee's hospital – Regulations of Indian Medical Council was not applicable to pharmaceutical company or allied health sector industries – Entitled to deduction.**

Assessee-company was running hospital and was providing treatment to its patients. It claimed expenditure towards referral fees paid to doctors for referring their patients to assessee's hospital. AO disallowed said expenditure alleging that it was clear violation of prohibition mandated by Indian Medical Council in terms of Explanation 1 to S. 37(1) of the Act. CIT(A) affirmed the disallowances made by the AO. On appeal The Appellate Tribunal held that regulation issued by Medical Council of India was applicable to doctors/medical practitioners and not for pharmaceutical companies or allied health sector industries like that of assessee. Accordingly the expenditure on payment of referral fees to doctors could not be said to be in violation to Regulations of Indian Medical Council. As the expenditure was incurred wholly and exclusively for purpose of carrying on its business, the same was allowable as deduction. (AY. 2009-10, 2013-14)

Peerless Hospitex Hospital & Research Centre Ltd. v. DCIT (2020) 181 ITD 446 / 196 DTR 57 / 207 TTJ 300 (Kol.)(Trib.)

724 **S. 37(1) : Business expenditure – Trade Price Protection (TPP) extended to distributors for reduction in prices of products having been incurred wholly and exclusively for business, would be allowable as revenue expenditure.**

Trade Price Protection (TPP) was extended to distributors to counter change in prices of handsets by competitors, life of model, market demand of model etc. Same was offered to protect distributors against probable loss that they may suffer due to fall in prices of handsets. Besides, Trade Price Protection was offered to distributors on handsets which had not been subjected to trade offers/discounts. Allowing the appeal the Tribunal held that since this expenditure had been incurred wholly and exclusively for business, it would be allowable as revenue expenditure. (AY. 2010-11)

Nokia India (P.) Ltd. v. DCIT (2020) 181 ITD 645 / 114 taxmann.com 442 (Delhi)(Trib.)

725 **S. 37(1) : Business expenditure – Expenses prohibited by law – Grants – Assessee receiving grants on annual basis and grants used in accordance with directions of Government – AO allowing salary expenses in preceding year – AO should not have taken a different stand in current year – Salary paid to all old employees who worked for Assessee and expenses genuine – Expenses wholly and exclusively for purpose of business, hence expenses are deductible.**

On appeal, the Tribunal held that, the assessee received grants from the Ministry of Science and Technology. The grants were to be used in accordance with the directions issued by the Ministry. In the preceding AY, the Assessing Officer had accepted Assessee's claim without any objection. Hence, when the same policy had been followed by the assessee and accepted by the Assessing Officer, he should not have taken a different stand in the year under review. Further, the assessee had made it very clear that salary was paid to all old employees who had worked for the assessee and the expenses were genuine. Tax had been deducted on the salary and paid to the Government. All the employees had worked for the assessee. No case was made out

by the Assessing Officer that making salary payment was an offence or something prohibited by law. Therefore, Explanation 1 to S.37 of the Act, would not be attracted in the present case. (AY.2011-12, 2012-13)
Addl. CIT v. National Research Development Corporation (2020) 78 ITR 56 (SN) (Delhi) (Trib.)

S. 37(1) : Business expenditure – "freebies" to doctors – sales promotion expenses – The code of conduct prescribed by the Medical Council is applicable only to medical practitioners/ doctors registered with the MCI and does not apply to pharmaceutical companies & the healthcare sector in any manner – Expenditure is held to be allowable – Re assessment with in four years – Change of opinion – Held to be not valid. [S. 371(1), Explanation, 147, 148] 726
Allowing the appeal of the assessee the Tribunal held that the disallowance under the Explanation to 37(1) of "freebies" to doctors by relying on CBDT Circular No. 5 dated 01.08.2012 & the IMC (Professional Conduct, Etiquettes & Ethics) Regulation, 2002 is not justified. The code of conduct prescribed by the Medical Council is applicable only to medical practitioners/ doctors registered with the MCI and does not apply to pharmaceutical companies & the healthcare sector in any manner. The CBDT has no power to extend the scope of the MCI regulation to pharmaceutical companies without any enabling provision either under the Income tax Act or the Indian Medical Regulations. As the appeal was quashed on reassessment, the Tribunal held that observation as regards the merit of the case is held to be academic in nature. Referred MAX Hospital, Pitampura v. Medical Council of India [CWP No. 1334/2013, dated 10.01.2014 (Delhi) (HC), Aristo Pharmaceuticals Pvt. ltd. v. ACIT (ITA No. 6680/ Mum/2012, dt. 26.07.2018), (ITA No. 2344 / Mum /2018 / 1212 /Mum/2019 dt 22-07-2020) (AY. 2012-13)
Medley Pharmaceuticals Ltd. v. ITO (2020) 118 taxmann.com 44 (Mum.)(Trib.) www.itatonline.org

S. 37(1) : Business expenditure – adhoc addition on account of weight and rate difference – No evidence to establish basis of arriving the amount debited in P&L Account – Addition justified. 727
On appeal, the Tribunal held that, even before the Tribunal, the assessee could not substantiate the claim for deduction on account of weight and rate difference and hence, the addition made by the Assessing Officer is confirmed. (AY.2010-11)
Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Consultancy fee – Failure to submit original bills cannot be a ground for making disallowance – Disallowances cannot be made on ad – hoc basis. [S.145] 728
Dismissing the appeal of the revenue the Tribunal held that non-submission of the original bills could not be a ground for making a disallowance of the expenses on ad hoc basis. Indeed, there was an increase in the amount of consultancy expenses incurred by the assessee in the immediately preceding assessment year. The assessee had duly justified the incurrence of such expenses on account of new projects undertaken by it

from its clients based in the U. K. and the U. S. A. The new projects undertaken had not been doubted. Therefore the expenditure was incurred by the assessee in connection with the new projects and was deductible.(AY.2011-12)
ITO v. Ascendum KPS P. Ltd. (2020) 77 ITR 12 (SN) (Ahd.)(Trib.)

729 **S. 37(1) : Business expenditure – Management supervision charges – Allowable as business expenditure.**
During relevant year, assessee paid supervision charges to its group concern. AO rejected assessee's claim for deduction of said expenses by taking a view that no conclusive evidence and reasoning to support claim could be produced in course of assessment proceedings. CIT(A) allowed the expenditure. Tribunal held that in order to allow an expenditure there should be a nexus between expenditure and purpose of business and expenditure should have been wholly and exclusively laid out for that purpose. On facts of the case, assessee had incurred management supervision charges for purpose of business, claim of deduction in respect of same deserved to be allowed. (AY. 2011-12, 2012-13)
DCIT v. India Housing. (2020) 181 ITD 1 (Kol.)(Trib.)

730 **S. 37(1) : Business expenditure – Compensation for not complying with terms of contract – Civil consequence for not complying with certain terms of contract and had nothing to do with any offence – No violation of law – No disallowances can be made by applying the explanation 1.**
The AO held that the expenditure as penalty levied on it for not complying with the terms of the contract, such penalty paid for violation of the contract in the course of the conduct of business could not be regarded as a deductible expenditure. The CIT(A) deleted the addition. On appeal the Tribunal held that the contract between the assessee and the buyers was clear in its terms that there was a specification as to the quality of coal that had to be supplied and should there be any variation in such quality, the price would be adjusted accordingly. In the case of supply of coal with the high moisture under low gross calorific value, the buyer would make deduction on such account. Further, the case of the assessee had been that it did not pass on the liability incurred on this count to its sellers. The Assessing Officer should have considered this aspect as to the possibility of the assessee passing on such liability to its sellers, which was not possible in the case of the penalty paid for an offence or infraction of law. The inability to meet the contractual obligation by the assessee could not be termed as an offence or infraction of law so as to deny the claim of the assessee by invoking Explanation 1 to S. 37(1). Merely because the assessee categorised the claim under "penalty levied on it for not complying with the terms of the contract", it was not permissible to conclude that such penalty was in respect of any offence or infraction of law committed by the assessee so as to invoke the provisions under Explanation 1 to section 37(1). The expression "penalty was levied on the assessee for not complying with the terms of the contract", clearly indicated that it was a civil consequence for not complying with certain terms of contract and had nothing to do with any offence.(AY.2012-13)
Dy.CIT v. Mahavir Multitrade P. Ltd. (2020) 77 ITR 165 / 180 ITD 730 / 192 DTR 257 / 206 TTJ 640 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Trade mark licence utilisation fees based on turnover – Held to be revenue expenditure. 731

Tribunal held that the payment of user licence fees based on turnover was deductible as revenue expenditure. The assessee had been merely granted a licence to use the trade mark on payment of licence fee determined on the basis of a formula laid down in the agreement. The right to use could neither be assigned at the wishes of the licensee nor was the licensor prohibited to terminate the user licence agreement executed with the licensee. Thus, the licensor retained the inherent control over the manner of use of trade mark. Thus the licence fee paid for mere use of the capital asset which continued to belong to someone else thus could not be regarded to be in the capital field in the hands of licensee. (AY. 2012-13 to 2014-15)

ACIT v. Vishnu Pouch Packaging P. Ltd. (2020) 77 ITR 10 (Trib.) (SN) (Ahd.) (Trib.)

S. 37(1) : Business expenditure – fine/penalty levied upon it by European commission for violating European union competition laws by way of accepting non-compete settlement amount from a European company – Payment could not be disallowed as per Explanation 1 to S. 37(1) of the Act – Allowability of claim as business loss – Matter remanded for verification. [General Clauses Act, 1897, S.3(38), Indian Evidence Act, 1872, S. 57(1), Art. 13] 732

Assessee-company paid fine/penalty levied upon it by European Commission for violating European Union Competition laws by way of accepting non-compete settlement amount from a European company, such payment could not be disallowed as per Explanation 1 to S.37(1) of the Act. The Tribunal held that what has to be disallowed under Explanation 1 to S.37(1) of the Act is a payment made for contravention of laws in force in India and not of any foreign country. The laws are specific to each of the countries according to their rules and regulations and an offence in one country may not be so in another country. Accordingly addition confirmed by the CIT(A) is deleted. As regards whether allowable as business loss as the income was offered in the earlier year, the matter remanded to the file of AO for verification. (AY. 2014-15)

Mylan Laboratories Ltd. v. DCIT (2020) 180 ITD 558 / 187 DTR 259 / 204 TTJ 426 (Hyd.) (Trib.)

S. 37(1) : Business expenditure – lease rent – lease rent expenditure was recognized on straight – lining basis, which led to creation of additional lease rental liability in relevant assessment year, would be deductible – Incremental liability on account of lease rental equalization provided for pursuant to adoption of AS – 19 having accrued during relevant previous year was allowable deduction in computing income for said year, notwithstanding that such liability may relate to earlier years. [S.145, AS-19] 733

Assessee-company in view of AS-19, decided to recognize scheduled rent increase over lease term on a straight-lining basis. On accounting of escalating rentals in operating lease agreements, it led to creation of additional lease rental liability in relevant year which was debited to profit and loss account under head 'Rent Straight-Lining'. The AO disallowed the claim. On appeal CIT(A) allowed the claim. Tribunal held that since profits so determined after accounting for expense towards straight-lining of lease rentals reflected a better & accurate picture of true commercial profits of

assessee-company and there are no contrary or specific provisions in Act, in respect of accounting of lease rentals, expenditure so recognized in profit and loss account was deductible while computing profits of business. Incremental liability on account of lease rental equalization provided for pursuant to adoption of AS-19 having accrued during relevant previous year was allowable deduction in computing income for said year, notwithstanding that such liability may relate to earlier years. (AY. 2008-09)
Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

734 **S. 37(1) : Business expenditure – Capital or revenue – Royalty paid for availing technical know-how and technical expertise and use of brand so owned by provider was allowed as revenue expenditure.**
Assessee paid royalty to certain concerns for availing technical know-how and technical expertise and use of brand so owned by provider. It claimed expenditure as revenue expenditure. AO treated the said expenditure as capital expenditure. Tribunal held that, royalty paid for availing technical know-how and technical expertise and use of brand so owned by provider was allowed as revenue expenditure. (AY. 2008-09)
Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

735 **S. 37(1) : Business expenditure – Foreign travel expenses – Foreign travel of wives and children of directors – Not allowable as revenue expenditure.**
Tribunal held that expenditure incurred on foreign travel of wives and children of directors who accompanied them on various foreign trips, could not be allowed as deduction. (AY. 2012-13)
Emmsons International Ltd. v. ACIT (2020) 180 ITD 292 (Delhi) (Trib.)

736 **S. 37(1) : Business expenditure – Capital or revenue – Royalty – Technical know – how payment to secure technical know how – Held to be revenue expenditure.**
Assessee made payment of royalty to said company for securing a license to use all necessary technical know-how and other technical information in respect of manufacture of products listed in said agreement. AO held that the said expenditure is capital in nature. CIT(A) deleted the addition. On appeal by the revenue the tribunal held that since the assessee was already engaged in manufacturing of cars and spare parts and payments towards royalty/technical know-how were not towards setting up of manufacturing facility, said payments were revenue in nature. (AY. 2009-10)
DCIT v. Honda Cars India Ltd. (2020) 180 ITD 235 (Delhi)(Trib.)

737 **S. 37(1) : Business expenditure – Provision for liability on estimated basis – Held to be allowable as deduction – Change in method of accounting – Matter remanded. [S. 145, AS-1]**
Tribunal held that that there is no such thumb rule either in Accounting Standards or elsewhere to restrict the provision to within the range of 10 per cent of the actual expenditure. It is worth mentioning; the assessee has reversed the provision in the subsequent year and offered to tax. This fact has not been disputed by the Department. Therefore, the ratio laid down in case of *CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC)* would apply. More so, when the assessee is consistently following this accounting method from past years the provision made is held to be allowable as deduction. As

regards change in method of accounting, matter remanded to the AO. (AY. 2005-06, 2009-10)
DCIT v. AGC Network Ltd. (2020) 180 ITD 204 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure incurred for construction of any structure or extension or improvement of building taken on lease would be treated as capital expenditure – Repair/renovation of leased premises – Held to be allowable as revenue expenditure. 738
Tribunal held that if any expenditure is incurred for construction of any structure or extension or improvement of the building taken on lease would be treated as capital expenditure. The nature of expenditure incurred by the assessee in respect of the leased premises and more particularly the premises at Hyderabad and Bangalore are not of the nature of constructing new structure, extension or improvement of building. Therefore, Explanation-1 to section 32(1) would not be applicable to the facts of the instant case. The nature of expenditure incurred by the assessee with reference to facts of each case would decide whether it is capital or revenue in nature. In the facts of the instant case, after examining the details of expenditure incurred by the assessee, it is viewed that it is of revenue nature, hence, has to be allowed. (AY. 2005-06, 2009-10)
DCIT v. AGC Network Ltd. (2020) 180 ITD 204 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Finance lease – Rent paid during lease period is held to be allowable as business expenditure. 739
Assessee-company took various infrastructure assets on finance lease. These assets were required for purpose of business of assessee. In relevant agreements, it was provided that after termination of agreement, assessee would buy said infrastructure. Assessee-company claimed deduction of principal amount of lease rent paid contending that same was revenue expenditure. The AO disallowed the lease rent on the ground that the though the interest on such finance lease could be allowed as revenue expenditure, payment of principal amount was in nature of capital expenditure in respect of the value of leased assets and could not be allowed as revenue expenditure. CIT(A) confirmed the disallowances. On appeal the Tribunal held that since similar expenditure was allowed in earlier years, following rule of consistency, assessee had rightly claimed deduction of lease rent as revenue expenditure. (AY. 2009-10)
NIIT Ltd. v. DCIT (2020) 180 ITD 141 (Delhi)(Trib.)

S. 38 : Building – Partly used for business – Business income – Income from house property – Entitled to proportionate deduction for remaining period of seven months of repairs and maintenance. [S. 22, 38(2)] 740
The Tribunal held that t he rental income offered by the assessee in the sum of Rs. 57,500 was only in respect of 100 square feet of premises let out for five months. Hence, the corresponding deduction at 30 per cent towards repairs under the head "Income from house property" was also given only for a period of five months. The assessee was entitled to proportionate deduction for the remaining period of seven months of these repairs and maintenance in respect of 100 square feet of property. (AY.2003-04)
Wilhelmsen Ship Management India Pvt. Ltd. v. Dy.CIT (2020) 81 ITR 14 (SN) (Mum.) (Trib.)

741 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non – resident – Interest on foreign currency Loan – Specific exemption from Ministry of Finance for interest – Not liable to deduct tax at source – No disallowances can be made. [S. 10(15)(iv)(f), 37(1), 195]**

Dismissing the appeal of the revenue the Court held that, since the assessee had specific exemption from the Ministry of Finance, Government of India there was no liability to deduct tax at source on the payment made by it towards interest on the foreign currency loan taken by it. S. 40(a) was not attracted. The exemption given to the assessee by the Government had not been revoked or withdrawn on any such contingency at any point of time. Even if the foreign currency loan in question was utilised to repay the domestic loan taken as working capital loan earlier and employed by the assessee for industrial development the exemption given by the Government would not be lost. Therefore, the additions made under S. 40(a) were rightly deleted by the appellate authorities. (AY.2000-01)

CIT v. Seven Seas Distillery (Pvt.) Ltd. (2020) 422 ITR 229 / 185 DTR 105 / 312 CTR 272 / 271 Taxman 229 (Mad.)(HC)

742 **S.40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Payment towards information systems and Telecommunications – Agreement was filed as additional evidence Matter restored for reconsideration in light of fresh evidence submitted by assessee. [S.40(a)(ia), 254(1)]**

AO disallowed such amount u/s.40(a)(i)/(ia) of the Act because the assessee failed to deduct tax at source on payments. The assessee filed agreement as additional evidence. The matter was remitted back to the AO for fresh assessment in light of the additional evidence provided by the assessee. (AY. 2010-11)

John Deere India Pvt. Ltd. v. ACIT (2020) 191 DTR 388 / 206 TTJ 213 (Pune)(Trib.)

743 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Provision for guarantee fee are not interest – Not liable to deduct tax at source – DTAA-India-Netherlands [S.9 (1)(vii), Art, 11, 12(5))(b)]**

It is merely a promise to possibly perform a future act and there was no obligation to pay immediately. Thus, court held that guarantee fee cannot be considered as an interest. The provision of guarantee fees service is not fees for Technical services under article 12 of DTAA. In view of this, assessee is not required to deduct tax at source. (AY. 2009-10, 2010-11)

Lease Plan India P. Ltd. v. Dy. CIT (2020) 206 TTJ 981 (Delhi)(Trib.)

744 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Advertisement expenses – Expenditure not claimed as deduction – No disallowance can be made – Matter remanded. [S. 30 to 38, 195]**

Tribunal held that when the expenditure not claimed under section 30 to 38 of the Act as deduction no disallowance can be made. Matter remanded for verification. (AY. 2015-16)

Interactive Avenues (P.) Ltd. v. DCIT (2020) 196 DTR 249 / 208 TTJ 945 / (2021) 187 ITD 463 (Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Service rendered outside India – Not liable to deduct tax at source. 745

Allowing the appeal Tribunal held that in the light of the agreement and material on record on the findings that the agents had their bases abroad, the services were rendered by them outside India and the assessee was not required to deduct tax at source while making the payments in question, for this year also, the disallowance was to be deleted.(AY. 2014-15)

Divya Creations v. ACIT (2020) 83 ITR 433 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Testing charges – Not liable to deduct tax at source – Services rendered outside India – Reimbursement expenses – No disallowance could be made – Amendment by Finance Act, 2014, restricting disallowance to 30 per cent of amount paid on which tax had not been deducted at source, will have no retrospective operation – OECD Model Tax Convention, Art 12. [S. 9(1)(vii), 40(a) (i), 195] 746

Assessee made payments to non-residents towards IVTC charges for services rendered for assessee outside India. AO held that as per amendment made by Finance Act, 2010 in provisions of section 9(1)(vii) with retrospective effect from 1976, FTS was liable to tax in India, even though services were rendered outside India accordingly the amount was disallowed. Tribunal held that a retrospective amendment cannot fasten obligation to deduct tax when not in force at time when payment was made and since non-resident service providers were not liable to tax in respect of FTS at time of remittance for services rendered outside India, no disallowance can be made. Reimbursement of expenses in relation to providing said technical services also could not be disallowed under section 40(a)(i) for failure to deduct tax at source. Tribunal also held that amendment to section 40(a)(ia) brought by Finance Act, 2014, restricting disallowance to 30 per cent of amount paid on which tax had not been deducted at source, will have no retrospective operation. (AY. 2008-09 to 2010-11)

SGS India (P.) Ltd. v. ACIT (2020) 182 ITD 498 (Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Reimbursement of salary cost – No disallowance can be made. [S. 192, 195] 747

The Tribunal held that the employment of the assessee and as per the terms, the associated enterprise was paying salaries in the home country of the secondees and, therefore, there was reimbursement by the assessee. The assessee had been paying to its own employees. The assessee had deducted tax at source under section 192. The provisions of section 195 did not apply. There was no merit in the disallowance. (AY.2015-16)

Boeing India Pvt. Ltd. v. ACIT (2020) 81 ITR 94 (SN) (Delhi)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Royalty – Fees for technical services – Not liable to deduct tax at source on referral fee paid to the foreign concern as the same did not fall within the realm of "Fees for included services" and there was no Permanent Establishment of the said foreign concern in India – No disallowance can be made – DTAA-India-USA. [S. 9(1)(vii), 90(2), Art. 7, 12] 748

Tribunal held that referral fee did not fall within realm of "FTS" as envisaged in Article 12 of India-USA, DTAA; and (ii) that as said payment made to foreign concern for

services which were rendered entirely in USA, constituted its business profits within meaning of Article 7 of India-USA DTAA, therefore, in absence of any PE of said foreign concern in India, said amount could only be brought to tax in USA. Even as per s. 90(2), in pursuance of beneficial provisions of India-USA DTAA, as referral fees received by foreign concern was not taxable in India, therefore, no obligation was cast upon assessee to have deducted any TDS on said payment. No disallowance can be made. (AY. 2012-13)
Knight Frank (India) Pvt. Ltd. v. ACIT (2020) 185 DTR 292 / 203 TTJ 117 (Mum.)(Trib.)

749 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to deduct tax at source – Payment exceeding Rs.20,000 to each truck owners – Contract with a cement factory to transport cement with truck owners is a sub – contractor – Disallowance is not limited only to amount outstanding and this provision equally applies in relation to expenses that had already been incurred and paid by assessee – S. 40(a)(ia) as introduced by Finance (No. 2) Act, 2004 with effect from 1-4-2005 is applicable to and from assessment year 2005-06 – Disallowance is held to be justified. [S. 40A(3), 194C]**
The appellant is a partnership firm, had entered into contract with
Aditya Cement Limited for transporting cement to various places in India. As the appellant was not having the transport vehicles of its own, it had engaged the services of other transporters for the purpose. On verifying the AO observed that while making payment to the truck operators/owners, the appellant had not deducted tax at source even if the net payment exceeded Rs. 20,000/-. The appellant contended, inter alia, that the trucks hired were belonging to different operators/owners who were not the sub-contractors or contractors; that they came from different parts of India and mostly required cash payment for diesel and other running expenses; that the appellant had no liability to deduct tax at source because it had not made payments exceeding Rs. 20,000/-in a single transaction; and that the provisions of Section 40(a)(ia) were not applicable to the appellant. the AO held that the payments to different truck operators/ owners were made directly by the appellant firm and not the consignor company; that the appellant firm was responsible for transportation of goods of the company as per the contract for which, the appellant received payment from the company after tax being deducted at source therefrom. The AO also held that the appellant firm paid freight charges to the truck operators/owners from the income so earned; and the remaining amount was shown as commission. AO held that looking to the nature of dealings of the parties where the single payment exceeded the sum of Rs 20, 000 the amount was disallowed by applying the provision of S. 40(a) (ia) of the Act. Order of the AO is affirmed by the CIT(A),Tribunal and also High Court. On appeal affirming the decision of High Court, the Court held that, disallowance u/s 40(a)(ia), 40A(3) etc are intended to enforce due compliance of the requirement of other provisions of the Act and to ensure proper collection of tax as also transparency in dealings. The interest of a bonafide assessee who had made the deduction as required and had paid the same to the revenue is safeguarded. No question about prejudice or hardship arises (ii) Payment made for hiring vehicles for the business of transportation of goods attracts TDS u/s 194C, (iii) Disallowance u/s 40(a)(ia) is not limited to the amount outstanding ("payable") but also to expenses that had already been incurred and "paid" by the assessee, (iv) Disallowance u/s 40(a)(ia) as introduced by the Finance (No.2) Act, 2004

w.e.f. 01.04.2005 is applicable to AY 2005-2006, (v) Benefit of amendment made in the year 2014 to s. 40(a)(ia) is not available to the facts of the appellant as the appellant has neither deducted the tax at source nor deposited the tax before filing of the return. (CA No. 7865 of 2009 dt 29-07-2020) (AY.2005-06)
Shree Choudhary Transport Company v. ITO (2020) 426 ITR 289 / 192 DTR 161 / 315 CTR 849 / 272 Taxman 272 (SC) www.itatonline.org
Editorial: Affirmed the order in Shree Choudhary Transport Company v. ITO [2009] 225 CTR 125 (Raj) (HC) (ITA No 117 /JU / 2008 dt 29-08-2008) followed, Palam Gas Service v. CIT (2017) 394 ITR 300(SC) Distinguished, CIT v. Hardarshan Singh [2013] 350 ITR 427/ 216 Taxman 283 / 263 CTR 466 (Delhi) (HC) PIU Ghosh v. DY CIT. [2016] 386 ITR 322/ 73 taxmann.com 226 /(2017) 295 CTR 340 (Cal) (HC), CIT v. Calcutta Export Company [2018] 404 ITR 654/ 255 Taxman 293 /302 CTR 201 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payee has shown the income in their return of income – No disallowance can be made. 750
Dismissing the appeal of the revenue the Court held that, the Tribunal is justified in deleting the addition as the payee has shown the in their return of income. Followed *CIT v. Rajinder Kumar (2013) 362 ITR 241 (Delhi)(HC CIT v. Ansal Land Mark Township Pvt. Ltd (2015) 377 ITR 635 (Delhi) (HC).*
PCIT v. Shivaai Industries (P.) Ltd. (2019) 112 taxmann.com 404 (Delhi)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Shivaai Industries (P.) Ltd. (2020) 269 Taxman 53 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest paid without deduction of tax at source – Second proviso is held to be applicable. 751
Dismissing the appeal of the revenue the Court held that applicability of the second proviso of Section 40 (a)(ia) of the Act to the Assessment Year 2010-11. This issue is also covered against the Revenue vide decision of this court in *Ansal Land Mark Township (P.) Ltd v. CIT (2015) 377 ITR 635 (Delhi)(HC)* (AY. 2010-11)
PCIT v. Noida Software Technology Park Ltd. (2020) 113 taxmann.com 144 (Delhi)(HC)
Editorial : SLP is granted to the revenue PCIT v. Noida Software Technology Park Ltd (2020) 269 Taxman 10 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to contractor – Belated filing of form No 26Q – No disallowance could be made for failure to deduct tax at source. [S. 194C(c)] 752
Dismissing the appeal of the revenue the Court held that though the assessee has filed belated form No 26Q no disallowance could be made for failure to deduct tax at source in respect of payment to contractors. (AY. 2012-13)
CIT v. Sri Parameswari Spinning Mills (P.) Ltd. (2020) 196 DTR 206 (Mad.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Amendment made to section 40(a)(ia) by Finance Act, 2010 inserting proviso therein would apply retrospectively with effect from assessment year 2005-06. 753
Dismissing the appeal of the revenue the Court held that amendment made to section 40(a)(ia) by Finance Act, 2010 inserting proviso therein would apply retrospectively from

date of inception of said section with effect from assessment year 2005-06. Followed *CIT v. Calcutta Export Co. (2018) 404 ITR 654 (SC).* (AY. 2005-06)
CIT v. Archean Granites (P) Ltd. (2020) 273 Taxman 511 (Mad.)(HC)

754 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Belated filing of form No.26Q – Matter remanded to Assessing Officer – No substantial question of law. [S. 194C(7)]**
Court held that Tribunal having not confirmed disallowance under s. 40(a)(ia) but remanded the matter to the AO to consider whether the assessee has filed Form No. 26Q belatedly and to examine as to whether the fee has to be collected, there is no ground to interfere with the order passed by the Tribunal; no substantial question of law arises for consideration. *CIT v. Valibhai Khanbhai Mankad (2013) 92 DTR 261 (Guj.) (HC)* distinguished (AY. 2012-13)
CIT v. Sri Parameswari Spinning Mills (P.) Ltd. (2020) 196 DTR 206 (Mad.)(HC)

755 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to contarctor – Failure to furnish form No 15J – PAN no of was collected at the time of payment – No dialloawance can be made. [S. 194C(7), R. 31A]**
Dismissing the appeal of the revenue the High Court held that Section 194C(6) & (7) are independent of each other and cannot read together to attract disallowance under Section 40(a)(ia) read with Section 194C of the Act. Referred *ACIT v. Arihant Trading Co. (2019) 176 ITD 397 (Jaipur)(Trib.)* (AY. 2012-2013).
CIT v. Shri Parameshwari Spinning Mills P. Ltd. (2020) 317 CTR 898 (Pat.)(HC)

756 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Non-resident – Interest – Usance charges paid on letters of credit issued by Indian Banks for import of raw materials – Income of non-Resident – Liable to deduct tax at source [S. 2(28A), 5(2), 9(1)(v)(b), 195(1)]**
Dismissing the appeals the Court held that since the usance charges for letters of credit were covered in the definition of interest under section 2(28A) the assessee was obliged to deduct tax at source under section 195(1). According to the definition in section 2(28A) the expression "interest" included any service fee or other charge in respect of any credit facility which has not been utilized. Therefore, the charges paid by the assessee in respect of the credit facility (letter of credit) amounted to interest. Distinguished *Gnanasigamani Nadar v. Canara Bank (1990) 1 MLJ 401, Dhakeshwari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC) and Esthuri Aswathiah v. CIT (1967) 66 ITR 478 (SC)*. Court also held that though the usance charges were paid to the Indian bankers by way of letter of credit charges and commission, nevertheless, such payments, were part of the transactions which involved purchase or import of raw material from non-residents. The issuing bank of the assessee had merely acted as its agent. The usance charges were the income of the non-resident as envisaged in the provisions of section 9(1)(v)(b) read with section 5(2) and therefore, the provisions of section 195(1) were attracted and the assessee was obliged to deduct tax at source before making such payment failing which, such expenditure, could not be deducted under section 40(a)(i). (AY.2009-10)
India Furniture Products Ltd. v. CIT (2020) 429 ITR 432 / 196 DTR 345 / (2021) 318 CTR 57 / 276 Taxman 427 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to pay tax deducted at source – Amendment by Finance Act, 2010 allowing deduction of payment where tax deducted in subsequent year, or during previous year but paid after due date for filing return – Amendment retrospective – Disallowance is held to be not valid. [S. 139(1)] 757

For the AY. 2005-06, the AO disallowed a sum of Rs. 55,17,037 in terms of s 40(a)(ia) of the Act. The assessee filed an appeal before the CIT(A) who held that the amendment brought about by the Finance Act, 2010 in S. 40(a)(ia) of the Act was retrospective in nature and deleted the addition. The Tribunal held that the provisions of S. 40(a)(ia) of the Act as amended by the Finance Act, 2010 were not retrospective in nature and reversed the order of the CIT(A) The Tribunal also dismissed the miscellaneous petition filed by the assessee. On appeal the court held that the Tribunal was wrong in holding that the amendment made by the Finance Act, 2010 in the provisions of S. 40(a)(ia) of the Act was not retrospective in operation. Followed *CIT v. Calcutta Export Co. (2018) 404 ITR 654 (SC).* (AY.2005-06)

A. Y. Garments International Pvt. Ltd. v. Dy. CIT (2020) 426 ITR 495 / 273 taxman 162 (Karn.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to truck owners towards freight charges – Commission agent – Form 15I was collected within time – Deletion of disallowance is held to be justified. [S. 194C] 758

Court held that in remand proceedings the assessee had filed on sample basis the details of the commission income earned by him, though not for the entire year, and the Assessing Officer during the remand proceedings had not controverted this nor pointed out any defect in the submission filed by the assessee, that the assessee merely acted as an agent, that all the details of the truck owners were furnished before the Assessing Officer and that the assessee was absolved of the liability to deduct tax at source once he had collected form 15I. Accordingly the Tribunal dismissed the appeal of the Department. On appeal by the revenue the Court held that an over view of the matter, the reasoning assigned by the Tribunal was convincing. No question of law arose. The Tribunal did not err in deleting the addition made under S. 40(a)(ia) on account of non-deduction of tax under S. 194C holding that the assessee was a mere commission agent.(AY. 2007-08)

PCIT v. Dilipkumar Bapusaheb Patole (2020) 422 ITR 426 / 107 CCH 456 / 275 Taxman 449 (Guj.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Recipient has declared the income – No loss to revenue – No disallowances can be made – Amendment with effect from 1-4-2013 is declarative and curative in nature. [S. 271C] 759

Court held that the provisions of section 40(a)(ia), as they existed prior to insertion of the second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. In order to cure these shortcomings of the provision, and thus obviate the unintended hardships, an amendment in law, was made. In view of the well-settled legal position to the effect that a curative amendment

to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of the second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. The insertion of the second proviso to section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from April 1, 2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004. It was not disputed that the payments made by the assessee to the sub-contractors had been offered to tax in their respective returns of income, uncontroverted by the authorities. There was no actual loss of revenue. Hence S. 40(a)(ia) was not applicable. (AY.2005-06)

CIT v. S.M. Anand (2019) 105 CCH 0508 / (2020) 422 ITR 209 (Karn.)(HC)

760 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractors – Provisions are not applicable where neither the assessee nor the party engaged by assessee was a contractor – No disallowances can be made. [S.194(c)]**

Assessee vide two separate agreements had agreed with owners to undertake projects of construction of Complex and Plaza. Terms of those agreements do not indicate that assessee was appointed as merely a contractor to construct those projects. AO held that provisions of S. 194C were attracted and assessee was obliged to effect tax deduction at source. CIT(A) as well as Tribunal deleted the addition. On appeal by the revenue the court held that the assessee had merely engaged its contractor neither assessee nor the contractor could be styled as contractors, not liable to deduct tax at source. Order of Tribunal is affirmed.

ACIT v. Alfran Construction Pvt. Ltd. (2020) 186 DTR 53 / 313 CTR 365 (Bom.)(HC)

761 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest paid to resident – Second proviso to S.40(a)(ia) is applicable – No disallowance can be made.**

High Court dismissed the appeal of the revenue by holding that,second proviso to S. 40(a)(ia) is applicable to relevant assessment year. Followed *Ansal Land Mark Township (P) Ltd v. CIT (2015) 377 ITR 635 (Delhi) (HC).* (AY. 2010-11)

PCIT v. Noida Software Technology Park Ltd. (2020) 113 taxmann.com 144 / 269 Taxman 11 (Delhi)(HC)

Editorial : SLP of revenue is admitted, PCIT v. Noida Software Technology Park Ltd. (2020) 269 Taxman 10 (SC)

762 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payee reflected the said amount as it tax liability – No disallowance can be made.**

AO made disallowance in respect of certain payments made by assessee on which tax had not been deducted at source. Tribunal deleted said disallowance on ground that payee had reflected said amount as its tax liability in its return. High Court affirmed the order of the Tribunal. Followed *CIT v. Rajinder Kumar (2014) 362 ITR 241 (Delhi) (HC), CIT v. Ansal Land Mark Township Pvt Ltd (2015) 377 ITR 635 (Delhi) (HC).*

PCIT v. Shivaai Industries (P.) Ltd. (2020) 269 Taxman 54 (Delhi) (HC)

Editorial : SLP is granted to the revenue ; PCIT v. Shivaai Industries (P.) Ltd. (2020) 269 Taxman 53 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest, commission – When exemption u/s 11 is denied the assessee is liable to deduct tax at source – Addition made by the AO is held to be justified. [S. 10(23AA), 11, 12A, 13] 763

AO applied the provision of S.40(a)(ia) and disallowed the exemptions. CIT(A) deleted the addition, which is affirmed by the Tribunal. On appeal by the revenue the Court held that,once exemption u/s 11 was denied, assessee is required to deduct TDS. Accordingly the order of the AO disallowances of the expenses is affirmed.

CIT v. Army Wives Welfare Association Lucknow (2020) 185 DTR 395 / 312 CTR 375 / 271 Taxman 139 / 116 taxmann.com 215 (All.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – TDS to be deducted on payment for sale promotion, legal and professional fees, etc. – Even if it was not credited to the respective parties account – Disallowance is confirmed. [S. 201(1), 201(IA)] 764

TDS on the year end provisions in respect of expenditures on account of sale promotion, legal and professional fees, internet and programming costs and further debited these provisions to its profit and loss account, was to be deducted on such expenditures even if the same was not credited to the respective parties account. (AY. 2009-10, 2010-11)

Tata Sky Ltd v. ACIT (2020) 195 DTR 177 / 208 TTJ 194 (Mum)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Sales rebate – Discount – No element of work as defined under clause (iv) of Explanation to Section 194C of Act – Not liable to deduct tax at source – No disallowance can be made. [S.194C, 194H] 765

The assessee simply sells its products to dealers/distributors who, in turn, sell them to the end users. Therefore, there was no element of work as defined under clause (iv) of Explanation to Section 194C of the Act. Therefore, under no circumstances, S. 194C of the Act would be applicable to the discount/rebate.(AY. 2016-17, 2017-18)

ASUS India Pvt. Ltd. v. ACIT (2020) 208 TTJ 1 (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to Tribal persons – Payments are not chargeable to tax – No disallowance can be made. [S.10 (26), 194C, 194I] 766

Amounts paid towards hiring of loader and excavator and land rent to Tribal persons not being chargeable to tax no disallowance can be made for failure to deduct tax at source. Referred *Chandra Mohan Snku & Ors v. UOI (2015) 118 DTR 65 / 276 CTR 385 (FB) (Tripura) (HC)* (AY. 2013-14)

Komorrah Limestone Mining Company Ltd. v. ACIT (2020) 203 TTJ 518 (Gauhati) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest other than interest on securities – Co-operative bank – Members – Not liable to deduct tax at source. [S. 194A(3)(v)] 767

Assessee, a co-operative bank, made payments towards interest to its members without deducting tax at source under section 194A of the Act. The Assessing Officer made disallowance under section 40(a)(ia) on ground that assessee ought to have deducted

tax at source under section 194A on interest paid to HUF and unregistered firms, as they were not legal members of assessee in accordance with bye-laws of assessee as definition of "person" in bye-laws did not include HUF and unregistered firms. Allowing the appeal the Tribunal held that these entities were admitted as members by way of an application made by them to bank and then passing of a resolution to extent of their admission as members of bank in assessee's board of directors meeting. Accordingly the disallowance was deleted (AY. 2013-14)

Nilkanth Urban Co-operative Bank Ltd. v. ACIT (2020) 194 DTR 137 / 207 TTJ 893 / (2021) 186 ITD 131 (Pune)(Trib.)

768 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission – Non-Resident – Matter remanded for verification. [S. 195]**

Tribunal held that neither the Assessing Officer nor the Commissioner (Appeals) had examined the actual nature of services rendered by the agents so as to bring them in the ambit of the fee for technical services. If the payment made by the assessee was not chargeable to tax in the hands of the recipient it was not liable for tax deduction at source merely because of the Explanation to section 195 as it is a prerequisite contention for invoking provisions of section 195 that the payment is chargeable to tax in India in the hands of the recipient. (AY. 2015-16)

Maharaja Shree Umaid Mills Ltd. v. Dy.CIT (2020) 83 ITR 498 (Jaipur) (Trib.)

769 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment Received as partner of joint venture – Amount paid to joint venture partner diverted by overriding title – Disallowance not sustainable.**

Tribunal held, that from the memorandum of understanding entered into by both the joint venture partners it was demonstrated that the parties were individually responsible for their respective share of services to the client and they individually assumed the risks. The respective parties were not entitled to the profit or loss arising from the services performed by the other party. The amount paid to H represented diversion of income by overriding title. The disallowance of the expenses invoking the provisions of section 40(a)(ia) of the Act was not sustainable. (AY. 2011-12)

Peartree Enterprises Pvt. Ltd. v. Dy.CIT (2020) 83 ITR 436 (Delhi) (Trib.)

770 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Shipping expenses in nature of freight – Agent acting on behalf of Non-Resident ship owner or Charterer – Not required to deduct tax at source. [S. 172, 194C, 195]**

Tribunal held, that Circular No. 723 dated September 19, 1995 provides that since the agent acts on behalf of the non-resident ship-owner or charterer, he steps into the shoes of the principal. Accordingly, the provisions of section 172 would apply and those of sections 194C and 195 would not apply. Therefore the disallowance was not required to be made. (AY. 2013-14)

Suresh Khatri v. ITO (2020) 82 ITR 29 (Luck.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment of gateway charges and other bank charges – Matter remanded to the Assessing Office. 771

Tribunal held that the issue of payment of gateway charges and bank charges was to be remitted to the Assessing Officer with a direction to decide the issue afresh in the light of the decision of the Tribunal in the assessee's case for the AY. 2009-10 and decide the issue in accordance with the facts and the law.(AY. 2007-08, 2008-09)

MakeMy Trip (India) Pvt. Ltd. v. Dy.CIT (2020) 82 ITR 71 (Delhi) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to deduct tax at source – Disallowance is restricted to thirty percent. 772

Tribunal held that the amendment brought to section 40(a)(ia) of the Income-tax Act, 1961 by the Finance Act, 2014 with effect from April 1, 2015, made it clear that the intent of the Legislature was to reduce the hardship, and that in the case of non-deduction or non-payment of tax deduction at source on payments made to residents as specified in section 40(a)(ia) the disallowance shall be restricted to 30 per cent. of the amount of expenditure claimed. Thus the Assessing Officer was directed to restrict the disallowance to 30 per cent made under section 40(a)(ia). (AY 2011-12)

Kendrapara Co-Operative Bank Ltd. v. ACIT (2020) 82 ITR 188 (Cuttack)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Transaction duly considered in Income – Tax returns of payee – No disallowance could be made – Advertisement – Franchisee news paper – Liable to deduct tax at source. [S. 194C, 201(1)] 773

Tribunal held that when Transaction duly considered in Income-Tax returns of payee, no disallowance could be made. The AO is directed to verify the return of payee. The Tribunal also held that the Explanation to section 194C defines the term "work" to include "advertising". Hence, the very fact that the assessee had given the advertisement material to constituted a contract entered into by the assessee hence, all the ingredients of section 194C were present and the assessee was liable for deduction of tax at source on the payment. (AY.2010-11)

Mehra Eyetech P. Ltd. v. Add. CIT (2020) 80 ITR 35 (SN) / 195 DTR 282 / 206 TTJ 769 (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – lease rentals – lease under finance lease arrangement, no tax at source was to be deducted – Disallowance is held to be not valid. [S. 194C, 194I] 774

Assessee contended that payment in question was not in nature of rent within meaning of section 194I and, therefore, no tax was to be deducted at source at time of making payment to finance company-Assessing Officer, however, held that amount paid was in nature of a payment to a contractor for execution of a work and assessee ought to have deducted tax at source under section 194C of the Act. On appeal the Tribunal held that payment of lease rentals under a finance lease would not attract provisions of section 194C hence disallowance is held to be not justified. (AY. 2008-09)

Texas Instruments (India) (P.) Ltd. v. ACIT (2020) 183 ITD 7 / 195 DTR 347 / 207 TTJ 586 (Bang.)(Trib.)

775 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Discount offered to distributors for promotion of sales – Not commission – Not liable to deduct tax at source – No disallowances can be made – Trade discount allowable as business expenditure. [S. 194H]**
Allowing the appeal, that the relationship between the assessee and HCL was that of principal to principal and not that of principal to agent. The discount which was offered to distributors was given for promotion of sales. This element could not be treated as commission under section 194H of the Act. The disallowance under section 40(a)(ia) was not called for. (AY.2008-09, 2012-13)
Nokia India Pvt. Ltd. v. Add.CIT (2020) 83 ITR 69 (SN) (Delhi)(Trib.)

776 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Deducting tax at one Per Cent instead of two per cent – No disallowance can be made.**
Tribunal held that the assessee had deducted tax on the sum the rate of one per cent instead of two per cent. Therefore there was no failure of deduction of tax. If there was any offence or violation it was deduction of tax at lower rates compared to what was prescribed. Relied on *CIT v. S. K. Tekriwal [2014 361 ITR 432 (Cal) (HC)* (AY. 2011-12)
Dy. CIT v. EXL Service.Com (India) Ltd. (2020) 83 ITR 11 (SN) (Delhi)(Trib.)

777 **S. 40(a)(ia) : Amount not deductible – Deduction at source – Fees for professional or technical services – Discount offered to distributors – Non-Resident – Not liable to deduct tax at source – Allowable as expenditure. [S. 9(1)(vi), 37(1), 194J, 195]**
Tribunal held that the relationship between the assessee and its holding company was that of Principal and Principal and not that of Principal and agent. The discount which was offered to the distributors was given for promotion of sales. This element could not be treated as commission. Accordingly no disallowance can be made for failure to deduct tax at source. (AY.2011-12)
Nokia India Pvt. Ltd. v. Add.CIT (2020) 82 ITR 16 (SN) (Delhi) (Trib.)

778 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Professional fees – Recipient paying tax on payment made – Disallowance is held to be not justified.**
Tribunal held the assessee fairly stated that the Assessing Officer could determine whether the recipient had already disclosed the receipt in its return and had paid due taxes thereon. This was a statutory claim made by the assessee in terms of the second proviso to section 40(a)(ia) which provides that once the recipient had already paid the taxes on a particular payment made by the assessee to the recipient, the disallowance under section 40(a)(ia) could not be invoked in the hands of the payer, i.e., the assessee. The Assessing Officer was directed accordingly. (AY.2014-15)
Trans Freight Containers Ltd. v. Dy.CIT (2020) 78 ITR 5 (SN) (Mum.)(Trib.)

779 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to deduct tax on interest paid on loan – Recipient had declared the interest in the return – The assessee is directed to substantiate that recipient has shown the interest in his return. [S. 194A, 201(IA)]**
Tribunal held that the considering the totality of the facts of the case and in the interest of justice the issue was restored to the Assessing Officer with a direction to grant

one opportunity to the assessee to substantiate that the recipient had filed its return declaring the interest amount in the income and paid due taxes thereon and decide the issue keeping in mind the provisions of section 201(1A). (AY.2010-11)
Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29 (SN) (Delhi) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to deduct tax on interest paid on loan – Recipient had declared the interest in the return – The assessee is directed to substantiate that recipient has shown the interest in his return. [S. 194A, 201(IA)] 780
Tribunal held that the considering the totality of the facts of the case and in the interest of justice the issue was restored to the Assessing Officer with a direction to grant one opportunity to the assessee to substantiate that the recipient had filed its return declaring the interest amount in the income and paid due taxes thereon and decide the issue keeping in mind the provisions of section 201(1A). (AY.2010-11)
Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29(SN) (Delhi) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Car lease rentals – Directed to furnish evidence that whether the payee had shown receipts as their income. [S.37(1)] 781
Tribunal held that as per the second proviso inserted in section 40(a)(ia) was declaratory and curative and was a retrospective effect from April 1, 2005. It is incumbent upon the assessee to furnish necessary evidence to demonstrate that the payees had shown receipts as their income. The assessee was directed to furnish necessary evidence and the Assessing Officer was directed to examine the evidence and decide the issue afresh. (AY.2012-13, 2015-16)
Avaya India Pvt. Ltd. v. Add. CIT (2020) 78 ITR 305 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Short deduction of tax at source – No disallowance can be made. [S. 194C] 782
The AO held that failure to deduct the whole or any part of the tax entails disallowance, the assessee having failed to deduct tax as required under the provisions of section 194C the disallowed the expenses, which is affirmed by the CIT(A). On appeal the Tribunal held that the disallowance under section 40(a)(ia) did not apply in a case involving short deduction of tax at source.(AY.2009-10)
A. K. Industries v. ACIT (2020) 78 ITR 462 (Kol.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to group companies – Reimbursement of expenses – Not liable to deduct tax at source. [S. 195] 783
Dismissing the appeal of the revenue the Tribunal held that the reimbursement of expenses paid to group companies, not liable to deduct tax at source hence no disallowance can be made. (ITA No. 5614/Del/ 2017 dt. 9-9-2020. (AY. 2013-14)
ACIT v. APCO Worldwide (India) Pvt Ltd (2020) BCAJ-October-P. 38 (Delhi)(Trib.)

784 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Scheduled Tribes – Not liable to deduct tax at source as the receipt is not taxable in their hands – Payments to other persons matter remanded to the AO to verify whether payees had included receipts in computation of their total income. [S.10(26), 195(7)]**

Dismissing the appeal of the revenue the Tribunal held that, Scheduled tribes are exempt from the provisions of the Act by virtue of section 10(26) of the Act. As a result, there was no occasion to deduct tax at source on the sum payable to them. No disallowance can be made for failure to deduct tax at source. As regards other payees had included the receipts in their computation of total income and return of income, it would be sufficient compliance with the provisions requiring deduction of tax at source and no disallowance should be made under section 40(a)(ia) of the Act. Matter remanded. (AY. 2013-14)

ITO v. S. S. Netcom Pvt. Ltd. (2020)84 ITR 67 (SN) (Gauhati) (Trib.)

785 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Freight payment to Transporters – Each goods receipt below prescribed limit – Not liable to deduct tax at source. [S. 194C]**

Tribunal held that there were separate goods receipts for every transportation sub-contracted by the assessee. Every goods receipt was therefore to be treated as a separate contract and with each such contract not exceeding the prescribed limit for tax deduction at source, there was no requirement of deducting tax at source. No disallowance can be made. AY. 2007-08)

Bal Krishan Sood v. ITO (2020)84 ITR 307 (Chd.) (Trib.)

786 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Export of computer software – Disallowance would increase profits of business eligible for deduction – Validity of initiation of reassessment proceedings not adjudicated. [S.10A, 10AA, 147, 148, 195]**

Tribunal held that even if the expenditure was disallowed, it would increase the profits of the business eligible for deduction under section 10A / 10AA of the Act and consequently the deduction should be allowed on such enhanced profits. This position had been confirmed by the Central Board of Direct Taxes in its Circular No. 37 of 2016, dated November 2, 2016 ([2016 388 ITR (St.) 62). Relied on *CIT v. Gem Plus Jewellery India Ltd(2011) 330 ITR 175 (Bom.),(HC) ITO v. Keval Construction (2013) 354 ITR 13 (Guj.)(HC) and CIT v. M. Pact Technology Services Pvt Ltd. (I. T. A. No. 228 of 2013, dated July 11, 2018) (Karn.) (HC)* Tribunal held that since there was no tax liability ultimately there was no necessity for adjudicating the validity of initiation of the reassessment proceedings.(AY.2009-10)

JCIT v. Mphasis Ltd. (2020) 84 ITR 630 (Bang.)(Trib.)

787 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Channel placement fees – Short deduction of tax at source – No disallowance can be made. [S. 9(1)(vi), 194C, 194J]**

Assessee was engaged in producing/promoting television programmes/movies and broadcasting of same on satellite television channels. It paid channel placement fees

to cable operators and submitted that it had deducted tax at source in terms of section 194C. Assessing Officer held that said charges would be covered within ambit of definition of term 'royalty' as per Explanation 6 in section 9(1)(vi) and, accordingly, held that same would fall within ambit of deduction of tax provisions as per section 194J instead of section 194C. Since, there was short deduction of tax at source, Assessing Officer disallowed differential sum under section 40(a)(ia). Tribunal followed *CIT v. Times Global Broadcasting Co. Ltd. [2019] 105 taxmann.com 313 (Bom.)* holding that when placement charges were paid by assessee to cable operators/MSOs for placing signals on a preferred band, it was a part of work of broadcasting and telecasting covered by sub-clause (b) of clause (iv) of Explanation to section 194C. Accordingly the Assessing Officer was directed to delete the disallowance. (AY.2013-14)
Star India (P.) Ltd. v. ACIT (2020) 185 ITD 559 / 81 ITR 8 (SN) (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Quantum of disallowance – Provision would cover payable but also those sum which are payable at any time during year. 788

Assessee had made payments to company on account of shipment expenses without deducting tax at source. Assessing officer disallowed 30 per cent of shipping expense for non-deduction of TDS. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee did not deduct TDS on full amount paid or payable during year under consideration, Assessing Officer had rightly made disallowance. (AY. 2015-16)
Amit Yadav v. ITO (2020) 185 ITD 353 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Exhibitor of film – Payment to distributor on revenue shared basis – Neither Contractual payment nor rent – Not liable to deduct tax at source. [S. 194C(1), 201(1)] 789

The assessee was exhibiting films and making payments to the distributor. The revenue was shared between the theatre owner and the film distributor and it was neither a contractual payment nor a rent payment. The assessee relied on Circular No. 681, dated March 8, 1994 (1994)206 ITR 299 (St) and Circular No. 736 dated February 13, 1996 (1996) 218 ITR 97 (St) to support the contention that the payment was neither in the nature of contractual payment nor rental payment but towards its share for screening the film. Tribunal held that the payment was made by the theatre owner who was exhibiting the films, and could not be held as rental payment. Similarly, the assessee was screening the films being the theatre owner, and it could not be held that the payment was a contract payment. Therefore, the Assessing Officer had not made out the case of either contractual payment or rental payment for holding that it attracted the tax deduction at source. The Department also did not make out a case that the assessee was in default for non-deduction of tax at source under section 201(1). Hence, the disallowance was unsustainable and accordingly, the addition was deleted.(AY.2013-14)
Sri Parameswari Projects P. Ltd. v. ITO (2020) 79 ITR 529 (SMC) (Vishakha)(Trib.)

790 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Placement fees under contract between Cable operators – Neither commission nor royalty – Not liable to deduct tax source – No disallowance can be made. [S. 9(1)(vi), 194C, 194J]**
Tribunal held that when services were rendered as per the contract by accepting the placement fee or carriage fee, the fees were similar to the services rendered against the payment of standard fees paid for broadcasting of channels on any frequency. The placement fees were paid under the contract between the assessee and the cable operators. Therefore, the carriage fees or placement fees were not in the nature of commission or royalty. The Assessing Officer was directed to delete the disallowance. (AY.2013-14)
Star India P. Ltd. v. ACIT (2020) 81 ITR 8 (SN) (Mum.)(Trib.)

791 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Principal to Principal – Supply of cellular mobile phones, benefit extended to distributors could not be treated as commission liable for withholding tax under S. 194H or u/s. 194J of the Act. [S. 194H, 194J]**
Assessee company was primarily engaged in business of trading and manufacturing of mobile handsets, spare parts and accessories. It entered into an agreement for supply of Cellular Mobile Phones with distributor HCL. Relationship between assessee and HCL was that of principal to principal and not that of principal to agent. Discount which was offered to distributors was given for promotion of sales-Whether in absence of a principal-agent relationship, benefit extended to distributors could not be treated as commission liable for withholding tax under S. 194H. Further the AO had not given any reasoning or finding to extent that there was payment for technical service liable for withholding under S. 194J, hence, merely making an addition under S. 194J without actual basis for same on part of AO was not just and proper. The addition was deleted. (AY. 2010-11)
Nokia India (P.) Ltd. v. DCIT (2020) 181 ITD 645 / 114 taxmann.com 442 (Delhi)(Trib.)

792 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest other than interest on securities – Form 15G/15H – Procedural defects – Disallowance is held to be not justified. [S. 194A, Form No. 15G/15H]**
During relevant years, assessee paid interest to depositors in excess of Rs. 10 thousand but no tax at source was deducted because depositors had furnished Form No. 15G/15H. AO held that apart from obtaining declaration in Form No. 15G/15H, assessee should have furnished those forms to Commissioner within prescribed period, since assessee failed to do so, AO disallowed the interest u/s 40(a)(ia) of Act. CIT(A) deleted the addition. Tribunal held that requirement of filing of Form 15G or 15H with prescribed authority viz., Commissioner, is only procedural and that cannot result in disallowance under S.40(a)(ia) of the Act. Followed *CIT v. Sri Marikamba Transport Co (2015) 379 ITR 129 (Karn.)(HC)* (AY. 2012-13, 2013-14)
JCIT v. Karnataka Vikas Grameena Bank. (2020) 181 ITD 672 / 79 ITR 207 (Bang.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Provision for expenses – Specific provision ascertained amount – Liable to deduct tax at source. [S. 37(1), 145] 793
Assessee airline made provision for certain expenditures such as airport handling expenses, crew accommodation expense, IT communication charges and provision for certain other expenses. Assessee had not deducted tax on source on above sum stating that it was provision and payees were not identified and assessee was following accrual system of accounting. AO held that as the assessee had made ascertained provision of expenditure and provision for expenditure was made under specified head thereby ascertaining amount, it could not be said that payee was not identified. The Appellate Tribunal held that the assessee was required to be deducted at said year-end provisions towards expenditure made by assessee. (AY. 2010-11, 2011-12)
Inter Globe Aviation Ltd. v. ACIT (2020) 181 ITD 225 / 194 DTR 81 / 207 TTJ 191 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – The amendment to S. 40(a)(ia) by the Finance (No.2) Act, 2015 w.e.f. 01.04.2015, which restricts the disallowance for failure to deduct TDS to 30% of the expenditure instead of 100%, is curative in nature and should be applied retrospectively. [S.194H] 794
The assessee is an individual who is engaged in the business of trading in fabric and job work. The AO disallowed the commission, incentives paid to employees and other for failure to deduct tax at source. Order of the AO is affirmed by the CIT(A). On appeal the Tribunal held that amendment to s. 40(a)(ia) by the Finance (No.2) Act, 2015 w.e.f. 01.04.2015, which restricts the disallowance for failure to deduct TDS to 30% of the expenditure instead of 100%, is curative in nature and should be applied retrospectively. (ITA NO 114 / Del/2019 dt 18-06-2020) (AY. 2014-15)
Muradul Haque v. ITO (2020) 117 taxmann.com 251 (Delhi) (Trib.) www.itatonline.org.

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Non-resident – Amendment made by Finance Act (No. 2) to section 40(a)(ia) with effect from 1-4-2015, is curative in nature and thus said provision has to be applied retrospectively. 795
Tribunal held that amendment made by Finance Act (No.2) to section 40(a)(ia) with effect from 01-04-2015 whereby disallowance of expenses under section 40(a)(ia) on account of TDS has to be restricted to 30 percent of expenses as against 100 percent, is curative in nature and thus same has to applied retrospectively. Where assessee made payments of commission in assessment year in question without deducting tax at source, said payments were to be disallowed to extent of 30 percent only. (AY. 2014-15)
Muradul Haque v. ITO (2020) 184 ITD 58 / 84 ITR 396 (Delhi) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission to foreign parties – Short deduction of tax at source – No disallowance can be made – Model OECD Convention – Art. 7. [S. 9(1)(i))] 796
Dismissing the appeal of the revenue the Tribunal held that commission was in nature of business income for recipient of income/payee/non-residents and was not taxable in India in terms of section 9(1)(i) in absence of business connection in India. The assessee was not liable for short deduction of tax at source and, therefore, disallowance under section 40(a)(ia) was not permissible.(AY. 2011-12, 2012-13)
DCIT v. DML Exim (P.) Ltd. (2020) 184 ITD 432 (Rajkot)(Trib.)

797 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest payment – Second proviso to section 40(a)(ia) coming into effect from 01-04-2012 by Finance Act, 2012, disallowance was to be deleted and, matter was to be remanded back for disposal afresh. [S. 201(1)]**

During assessment proceedings, Assessing Officer held that assessee had made payments of interest without deducting tax at source. He disallowed said payments. Assessee raised a plea before the Tribunal that since it had not been treated as assessee in default under section 201(1), disallowance under section 40(a)(ia) was not warranted. Tribunal held that in view of second proviso to section 40(a)(ia) coming into effect from 1-4-2012 by Finance Act, 2012 disallowance was to be deleted and, matter was to be remanded back for disposal afresh. (AY. 2013-14)

BBR Projects (P.) Ltd. v. ITO (2020) 184 ITD 842 (Hyd.)(Trib.)

798 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – When no deduction is claimed while computing business income, no disallowance can be made for failure to deduct tax at source. [S. 30, 38]**

Allowing the appeal of the assessee the Tribunal held that, when the assessee has not claimed the deduction while computing the business income, for failure to deduct tax at source,provisions of Section 40(a)(i) can not be invoked. (AY. 2015-16)

Interactive Avenues Pvt. Ltd. v. DCIT (2020) 196 DTR 249 / 208 TTJ 945 / (2021) 187 ITD 463 (Mum.)(Trib.)

799 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Labour charges – Failure to deduct tax at source – As per amendment brought to Finance Act, 2014 in s. 40(a)(ia) w.e.f. 01.04 2015, disallowance is restricted to 30% of amount of expenditure claimed – Amendment is applicable to retrospective effect. [S. 194C, 194H]**

The assessee had claimed labour charges, Architect Fees and towards expenses under head commission, which were in nature of payments made towards contract payment u/s. 194C, professional fees payment u/s 194H and commission payment u/s. 194H. Assessee had also failed to deposit TDS amount so deducted from payments made towards expenses on account of labour charges, professional fees and commission to Central Govt. A/c within specified time limit. AO made disallowance u/s. 40(a)(ia) of the Act. CIT(A) confirmed the disallowance. On appeal the Tribunal held that as per amendment brought to Finance Act, 2014 in s. 40(a)(ia) w.e.f. 01.04 2015 if 100% disallowance made u/s 40(a)(ia), that would be restricted to 30% only giving retrospective effect. Intent of legislature to reduce hardship, it was proposed that in case of non-deduction or non-payment of TDS on payments made to residents as specified in s. 40(a)(ia), disallowance should be restricted to 30% of amount of expenditure claimed. (AY. 2014-15)

Om Sri Nilamadhab Builders Pvt. Ltd. v. ITO (2020) 185 DTR 201 / 203 TTJ 229 (Cuttack) (Trib.)

800 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission paid to the foreign agents – Service rendered outside India – Not liable to deduct tax at source. [S. 9(1)(vii), 195]**

The ssessee had paid commission paid to the foreign agents. On a perusal of the MOU signed by the assessee with the agents, AO held that the nature of services to be provided

by the foreign agents are in the nature of managerial/technical services covered under S. 9(1)(viii) of the Act being paid by a resident and these are not being utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any sources outside India. The AO held that remittances made by the assessee on account of commission to foreign agent as "sales commission", are covered under the expression 'Fee for Technical Services' (FTS) as defined in S. 9(1)(vii)(b) of the Act and are to be deemed income of the payee accrued or arising in India and consequently is liable for withholding tax, and hence disallowed the expense under S.40(a)(i) of the Act. On appeal the Tribunal held that Cee-Jan Beevers is a non-resident Indian and resident of Belgium whereas MK group LLC is a resident of USA. M/s Cee-Jan Beevers is covered by the India Belgium Double Taxation Avoidance Agreement which if read with the protocol dated 26/4/1993 and the Treaty between India and the USA is applicable. So also case of M/s MK group LLC is covered by the Double Taxation Avoidance Agreement between India and USA. In either case the payment of commission would not be 'Fee for Technical Services' (FTS) since such services did not "make available" any technical knowledge, experience, skill, know-how or processes or consists of the development and transfer of technical plan or a technical design. The services rendered by these two foreign entities are outside India and in respect of the sales effected by them, and at the same time neither of these entities had any permanent establishment in India, not liable to deduct tax at source. (AY. 2009-10, 2010-11)
Sahasra Electronics P. Ltd. v. ACIT (2020) 185 DTR 193 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Income deemed to accrue or arise in India – Royalty – Payment to software – Not liable to deduct tax at source – DTAA-India-France. [S. 195, Art. 5, 12] 801

The Tribunal held that assessee was allowed the use of the software for its own business purpose and there was no permission to sub-licence the same. There is a specific bar on the assessee in not sub-licensing the software, which were to be used for its sole business needs. In other words, the consideration was for the use of software for its own business purpose and not for the use of, or the right to use, any copyright of software. As the consideration payable by the assessee for use of LARA, DIVA and Ocean was only for the use of the software for its own business purpose and not having right to copyright, the same will not constitute 'Royalties' within Article 13(3) of the DTAA. On the plain language of section 9(1)(vi) de hors the effect of Explanation 4, the consideration does not fall in the realm of 'royalty'. The Retrospective insertion of Explanation 4 to s. 9(1)(vi) cannot necessitate tax withholding during the period when the provision was actually not a part of the enactment, so as to warrant disallowance u/s 40(a)(i). (AY. 2012-13)
CMA CGM Agencies India P. Ltd. v. Dy.CIT (2020) 186 DTR 1 (Pune)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Service rendered by foreign agent – Contradictory finding – New workmen – Should be regular workmen employed in financial year relevant to assessment year – Matter remanded to the AO. [S. 80JJA, 195, 254(1)] 802

Tribunal held that there were contradicting finding by the lower authorities hence the matter remanded the AO for ascertaining factual facts. As regards the claim u/s. 80JJA

the Tribunal held that the new workmen should be regular workmen employed in financial year relevant to assessment year. Matter remanded to the AO. (AY.2014-15)
Aquarelle India P. Ltd. v. Dy. CIT (2020)77 ITR 2 (SN) (Bang.) (Trib.)

803 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Disallowance is applicable not only on payable amount but also on paid amount and under both circumstances TDS should be deducted – If payee had accounted for commission as his income and had shown it in his return of income and also paid tax thereon, then no disallowance could be made. [S. 201]**
AO disallowed commission payment made by assessee for non-deduction of TDS thereon. CIT(A) deleted disallowance on ground that said amount was shown as paid in balance sheet. Tribunal held that disallowance under S. 40(a)(ia) is applicable not only on payable amount but also on paid amount and under both circumstances TDS should be deducted. If payee had accounted for commission as his income and had shown it in his return of income and also paid tax thereon, then no disallowance could be made in terms of second proviso to S. 40(a)(ia) read with first proviso to S. 201 of the Act. Matter remanded. (AY. 2010-11)
ITO v. Swati Housing & Construction (P.) Ltd. (2020) 180 ITD 854 (Delhi)(Trib.)

804 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Failure to deduct tax at source – Filing Forms 15G and form no 15H before CIT(A) – Addition is unsustainable – CIT(A) ought to have verified from the banks – AO is directed to delete the addition. [S. 251]**
AO disallowed interest paid to two persons for failure by the assessee to deduct tax at source on the payments. The assessee filed form 15G and form 15H before the CIT(A) but the latter did not consider them. On appeal the Tribunal held assessee had filed form 15G or form 15H. The CIT(A) should have considered the evidence supplied by the assessee and if he was not satisfied, got it verified from the bank. The AO to delete the addition.(AY.2008-09)
Hiralal Jain v. ITO (2020) 77 ITR 333 (Indore) (Trib.)

805 **S. 40(a)(ii) : Amounts not deductible – Any rate or tax levied – Education cess is held to be deductible. [S. 246A, 254(1) Indian Income-tax Act, 1922, S. 10(4)]**
Court held that in the Indian Income-tax Act, 1922, S. 10(4) had banned allowance of any sum paid on account of "any cess, rate or tax levied on the profits or gains of any business or profession". In the corresponding section 40(a)(ii) of the Income-tax Act, 1961 the expression "cess" is quite conspicuous by its absence. In fact, legislative history bears out that this expression was in fact to be found in the Income-tax Bill, 1961 which was introduced in Parliament. However, the Select Committee recommended the omission of expression "cess" and consequently, this expression finds no place in the final text of the provision in section 40(a)(ii) of the Act. The effect of such omission is that the provision in section 40(a)(ii) does not include, "cess" and consequently, "cess" whenever paid in relation to business, is allowable as deductible expenditure. This is also the view of the Central Board of Direct Taxes as reflected in Circular No. F. No. 91/58/66-ITJ(19), dated May 18, 1967. The Central Board of Direct Taxes Circular, is

binding upon the authorities under the Act like the Assessing Officer and the appellate authority. The, education cess is held to be deductible. Though the claim to deduction of education cess and higher and secondary education cess was not raised in the original return or by filing a revised return, the assessee had addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the Appellate Tribunal, before whom such deduction was specifically claimed, was duty bound to consider such claim. Followed *CIT v. Orient (Goa) P Ltd [2010] 325 ITR 554 (Bom.) (HC)* (AY.2008-09, 2009-10) *Sesa Goa Ltd. v. JCIT (2020) 423 ITR 426 / 117 taxmmann.com 96 / 193 DTR 41 / 316 CTR 446 (Bom.)(HC)*

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Tax paid abroad – State (local) taxes paid by assessee in countries having DTAA with India which are not eligible for relief under s. 90 or 91 do not attract disallowance under s. 40(a)(ii) – Matter remanded to the Assessing Officer for verification – Commission payment outside India – Not liable to deduct tax at source – Purchase of software – Matter remanded. [S. 2(43), 9(1)(vii), 37(1), 40(a)(ii), 90, 91, 195] 806

Tribunal held that State (local) taxes paid by assessee in countries having DTAA with India which are not eligible for relief under s. 90 or 91 do not attract disallowance under s. 40(a)(ii)-Matter remanded to the Assessing Officer for verification. Relied *Reliance Infrastructure P. Ltd. v. CIT (2017) 390 ITR 271 (Bom.) (HC)*, Not followed *Dy. CIT v. Tata sons Ltd. (2010) 48 DTR 321 (Mum.) (Trib.)*. Tribunal also held that the commission paid outside India for service rendered out side India, not liable to deduct tax at source. As regards purchase of software the matter remanded to the Assessing Officer to ascertain the facts and decode accordance with the (AY. 2009-10)

ACIT v. Tata Consultancy Services Ltd (2020) 188 DTR 39 / 203 TTJ 146 (Mum.)(Trib.)

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess and higher and secondary education cess – No disallowance can be made. [S. 147, 148] 807

Tribunal held that education cess and higher and secondary education cess were eligible for deduction while computing income chargeable under the head of profits and gains of business. Though cess may be collected as part of Income-tax that did not render such cess either a rate or a tax on profits which could not be deducted in terms of provision of section 40(a)(ii). The Assessing Officer was not justified in disallowing the amount of cess paid on Income-tax. Followed *Sesa Goa Ltd. v. JCIT (2020) 117 taxmann.com 96 (Bom.) (HC)* (AY.2007-08)

Thomson Press India Ltd. v. ACIT (2020) 81 ITR 63 (SN) (Delhi) (Trib.)

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is allowable as deduction. 808

Tribunal held that education cess is not tax and hence allowable as deduction Referred the CBDT Circular No. 91/58/66-ITJ(19) dated 18-05-1967, wherein it has been clarified that the effect of omission of the word 'cess' from Sec. 40(a)(ii) of the Act is that only taxes paid are to be disallowed and not cess. Relevant extract of circular is as under:-

"Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions of s. 10(4) of the old Act and s. 40(a)(ii) of the new Act. The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under:

"(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of or otherwise on the basis of any such profits or gains". When the matter came up before the Select Committee, it was decided to omit the word 'cess' from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the years 1962-63 and onwards. The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided"

Chambal Fertilizers and Chemicals Ltd. v. JCIT (ITA No. 52/2018 dt 31-7-2018 which after taking into account aforementioned CBDT circular held that Sec. 40(a)(ii) applies only to taxes and not to education cess. Relevant extract of the decision is reproduced for ease of reference:-

"13. On the third issue in appeal no. 52/2018, in view of the circular of CBDT where word "Cess" is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the Cess is not tax in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no. 3 is required to be reversed and the said issue is answered in favour of the assessee."

ITC Limited v. ACIT (ITA No. 685/Kol/2014 dt28-11-2018 (AY,2009-10), Peerless General Finance & Investment Co. Ltd. v. DCIT (ITA No. 937/Kol/2018) dt 24-4-2019 (AY.2010-11) *Reckitt Benckiser (I.) Pvt. Ltd. v. Dy. CIT (2020) 81 ITR 577 (Kol.) (Trib.)*

809 **S. 40(a)(iib) : Amounts not deductible – Validity of provision – Exclusive Jurisdiction of High Court to consider – Cause of action for challenge to vires of provision arose on issue of show-cause notice – High Court is directed to dispose of writ petition on merits. [Art. 14, 226]**

The Assessing Officer disallowed the value added tax expense claimed by the on the ground that it was an exclusive levy by the State Government and therefore squarely covered by section 40(a)(iib) of the Act. On a writ petition, the High Court set aside the assessment order to the extent of the disallowance in terms of section 40(a)(iib), on the ground of violation of principles of natural justice. While the matter was pending before the Assessing Officer the assessee filed a writ petition challenging the validity of section 40(a)(iib) as discriminatory and violative of article 14 of the Constitution of India. The High Court dismissed the petition without deciding the validity of section 40(a)(iib) observing that the vires of the provision need not be entertained as the matter was still sub judice before the Income-tax authority. On appeal allowing the appeal, that when the vires of section 40(a)(iib) of the Act were challenged, which could be decided by the High Court alone in exercise of powers under article 226 of the Constitution of India, the High Court ought to have decided the issue with regard to the vires of section

40(a)(iib) on the merits, irrespective of whether the matter was sub judice before the Income-tax authority. The vires of a provision go to the root of the matter. Once the show-cause notice was issued by the Assessing Officer calling upon the assessee to show cause why the value added tax expenditure should not be disallowed in accordance with section 40(a)(iib), the cause of action arose for the assessee to challenge the vires of section 40(a)(iib) of the Act and the assessee might not have to wait till the assessment proceedings before the Income-tax authority were finalised. The stage at which the assessee approached the High Court and challenged the vires of section 40(a)(iib) of the Act could be said to be an appropriate moment. The High Court was to decide the writ petition on the merits and decide the question with respect to challenge to the vires of section 40(a)(iib) of the Act on the merits. Matter remanded. (AY.2017-18)
Tamil Nadu State Marketing Corporation Ltd. v. UOI (2020) 429 ITR 327 / 196 DTR 289 / 317 CTR 961 / (2021) 276 Taxman 378 (SC)

S. 40(a)(iib) : Amounts not deductible – Royalty, licence, fee, etc. (Gallonage fee, licence fee and shop rental (kist)) – Disallowable – licence granted to assessee for retail trade could not be sustained – Surcharge on sales tax – Surcharge on sales tax or turnover tax paid by assessee – company was not a 'fee or charge' coming within sweep of section 40(a)(iib), thus, same could not be disallowed. [S. 37(1)] 810
Assessee-company, a State Government Undertaking, was engaged in wholesale and retail trade of beverages within State. Assessee was holding FL-1 licence with respect to retail trade of foreign liquor in sealed bottles, without privilege of consumption within premises. It was also having FL-9 licence for wholesale of foreign liquor, which it was selling to FL-1, FL-3, FL-4, 4A, FL-11, FL-12 licence holders. Assessee claimed the said payment is not disallowable Assessing Officer held that gallonage fee, licence fee and shop rental (kist) levied with respect to said FL-9 licence being an exclusive levy imposed on assessee was to be disallowed under section 40(a)(iib) Order of the Assessing Officer is affirmed by the Appellate Tribunal. On appeal the Court held that in wholesale trade in foreign liquor under FL-9 licence was an exclusive trade in State permitted to assessee, therefore, levy of gallonage fee, licence fee and shop rental (kist) with respect to FL-9 licences granted to assessee would clearly fall within purview of section 40(a)(iib) and amount paid in this regard was liable to be disallowed. Court also held that gallonage fee, licence fee, or shop rental (kist) with respect to FL-1 licence granted to assessee for retail business in foreign liquor was not exclusively levied upon assessee as it was also levied upon one other State Government undertaking therefore, disallowance made in respect of gallonage fee, licence fee or shop rental (kist) paid with respect to FL-1 licence granted to assessee for retail trade could not be sustained. Court also held that surcharge on sales tax was introduced only as an increase in tax payable. A 'tax' cannot be equated with 'fee or charge' therefore, surcharge on sales tax or turnover tax paid by assessee-company was not a 'fee or charge' coming within sweep of section 40(a)(iib), thus, same could not be disallowed. (AY. 2014-15, 2015-16)
Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. v. ACIT (2020) 274 Taxman 12 / 191 DTR 267 / 316 CTR 180 (Ker.)(HC)

811 **S. 40(a)(iib) : Amounts not deductible – Value added tax – Violation of principle of natural justice – Writ petition dismissed on the ground of alternative remedy. [Art. 14, 19(1)(g), 226]**

Dismissing the petition the Court held in the present case, we are not inclined to entertain the writ petition at this stage without prejudice to the rights of the aggrieved parties to approach the appropriate forum in accordance with law in the event the occasion so finally arises Accordingly, the Writ Petition stands dismissed.

Tamil Nadu State Marketing Corpn. Ltd. v. UOI (2020) 196 DTR 293 / 217 CTR 965 (Mad.) (HC)

812 **S. 40(b)(iii) : Amounts not deductible – Working partner – Remuneration – Interest – Rejection of books of account and assessment adopting 8 Per cent of gross turnover as net profit – Separate deduction towards interest on partner's capital account and remuneration to partner is to be allowed, when net profit is estimated from gross receipts. [S. 133A]**

Tribunal held, that the partnership deed contained a provision for interest on capital at 12 per cent per annum and clause 17 provided for remuneration to whole time working partners and the method of computation of remuneration. By a supplementary deed the manner of paying remuneration to the working partners had been revised. In the assessment years 2009-10 to 2011-12, the assessee had claimed interest on capital and remuneration to the partners, which was verifiable from the computation of income. The AO was directed to allow remuneration to the partners and interest on capital as per the provisions of law. Interest on the partners' capital account and remuneration to partners was allowable as deduction even after estimation of the net profit from the gross receipts. (AY.2012-13)

Mayasheel Construction v. Dy. CIT (2020) 77 ITR 8 (SN) (Delhi) (Trib.)

813 **S. 40(b)(iv) : Amounts not deductible – Partner – Interest – Partners Declaring interest in their returns and assessments completed in their hands – Double taxation of same income both in hands of partners as well as firm – Interest payment is held to be allowable.**

Tribunal held that the partners of the assessee-firm had declared interest received from the assessee-firm in their returns of incomes and accordingly, the assessments were completed in the hands of the partners. This amounted to double taxation of the same income both in the hands of the partners as well as in the hands of the assessee-firm. Though the Commissioner (Appeals) had directed the Assessing Officer to rectify the assessments in the hands of the partners, this exercise may not be practical since the assessment order pertained to the assessment year 2007-08. Since the entire exercise done by the Assessing Officer in the facts and circumstances of the case was revenue neutral, interest paid to the partners based on the opening balance was to be granted deduction.(AY.2007-08)

Sangeeth Nursing Home v. ACIT (2020) 79 ITR 36 (SN) (Cochin)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – No reasonable cause shown – Disallowance is held to be justified. 814

Dismissing the appeal the Court held that; The contention of the assessee that the parties were identifiable and the transactions were genuine could not be accepted, as the contention was being raised for the first time in this appeal, which even otherwise was contrary to the material on record. The findings of the authorities were findings of fact and the court as a general rule would not interfere except in cases where the authorities had ignored the material evidence or had acted on no evidence, or drawn wrong inference from proved facts by applying the law erroneously. The assessee had not been able to show that its case fell in any of these categories. The disallowance was justified. (AY.2006-07)

Nam Estates Pvt. Ltd. v. ITO (2020) 428 ITR 186 / (2021) 277 Taxman 169 (Karn.)(HC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Discount and rate difference – Deletion is held to be justified. 815

Dismissing the appeal of the revenue the Court held that the Tribunal was right in upholding the order of the Commissioner (Appeals) deleting the disallowances on account of discount and rate difference and the disallowance made under S. 40A(2) of the Act. (AY.2011-12)

PCIT v. Western Agri Seeds Ltd. (2020) 424 ITR 244 / 192 DTR 142 / 316 CTR 590 (Guj.) (HC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Sub-contractors – Relatives of partners – 20% of disallowance up held by the Tribunal is affirmed. [S. 37(1)] 816

Tribunal allowed 80 per cent of expenses on ground that though works were not executed by these three sub-contractors, still related work was executed by some other persons and disallowed 20 per cent of expenses paid to these three sub-contractors. High Court affirmed the order of the Tribunal. (AY.2008-09, 2009-10)

Akrati Promoters and Developers v. DCIT (2020) 268 Taxman 83 (All.)(HC)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Interest free funds – Advance of loan – No disallowance can be made. 817

Tribunal held that once the unsecured interest-free loan amount was more than the advances given to those parties, the disallowance of interest was not justified. (AY.2015-16)

CIT v. Ashok Agarwal (HUF) (2020) 84 ITR 54 / 207 TTJ 608 (Jaipur)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Salary paid to Directors – Failure of the Assessing Officer to substantiate – Deletion of addition is held to be valid. 818

Tribunal held, that a plain reading of section 40A(2)(b) showed that the onus had been cast upon the Assessing Officer to bring on record comparable cases to demonstrate that the transactions of the assessee with the related parties were unreasonable and excessive. Admittedly, the Assessing Officer had failed to bring such comparable case

on record. The payees were also assessed to tax at the same rate of tax. The Central Board of Direct Tax Circular No. 6-P dated July 6, 1968 stated that no disallowance was to be made under section 40A(2) in respect of the payments made to relatives and sister concerns where there was no attempt to evade tax. There was no infirmity in the order of the Commissioner (Appeals). (AY. 2004-05)
IKEA Trading India Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 415 / (2021) 186 ITD 473 (Delhi) (Trib.)

819 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Real estate development – Collaboration agreement – Financial and technical assistance – Commercial expediency – Disallowance is held to be not valid.**
Dismissing the appeal of the revenue the Tribunal held that the amount paid as per collaboration agreement for financial and technical assistance on commercial expediency, disallowance is held to be not valid. (AY. 2010 11)
ACIT v. Vishnu Apartments (P.) Ltd. (2020) 183 ITD 63 / 204 TTJ 33 (UO) (Delhi)(Trib.)

820 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Transfer pricing – Royalty – Transfer pricing provision is specific provision – Assessing Officer was required to compare the royalty expenses paid in the case of the similar products by other companies during the relevant period – Disallowance is held to be not valid. [S. 92C].**
Allowing the appeal of the assessee the Tribunal held that the Assessing Officer had only questioned the fair market value of the expenses and not the legitimate need for the expenses or the benefit derived from the expenses. /The provisions of section 40A(2) (b) are general provision as compared to the specific provisions of the transfer pricing, the Assessing Officer was required to compare the royalty expenses paid in the case of the similar products by other companies during the relevant period. The Assessing Officer had not done any such exercise. The disallowance made out of royalty expenses amounting was deleted.(AY.2016-17)
De Diamond Electric India Pvt. Ltd. v. ACIT (2020) 81 ITR 32 (SN) / 195 DTR 97 / 207 TTJ 359 (Delhi)(Trib.)

821 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Bank account was attached – Disallowance of 20% is held to be not justified. [R. 6DD(j)]**
The assessee made cash payment for conversion work undertaken by a company (SLM). The AO made an addition under section 40A(3) being 20 per cent of total cash payment. The disallowance was affirmed by CIT(A). Tribunal allowed the appeal. On appeal by the revenue dismissing the appeal the Court held that banking facility was available but bank account of SLM could not be operated because of an order of attachment passed by ESI department and SLM requested to effect payment in cash. The AO was not justified in making addition. (AY. 2005-06)
PCIT v. Sumukha Synthetics (2020) 275 Taxman 418 / 195 DTR 445 (Mad.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Books of account not rejected – Transactions involving less than Rs. 20,000 – H Forms obtained – Deletion of addition is held to be justified. [S. 37(1)] 822

Dismissing the appeal of the revenue the Court held that both the Commissioner (Appeals) and the Tribunal had recorded concurrent findings on the issue of cash purchases. The cash purchases were around 2 per cent. of the total purchases. Such purchases were in a series of transactions which involved an amount of less than Rs. 20,000 and the books of account of the assessees were not rejected by the Assessing Officer. Order of Tribunal is affirmed. *Shree Choudhary Transport Co. v. ITO (2020)426 ITR 289 (SC)* distinguished. (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxmann 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Banking facilities available – No evidence of compelling circumstances justifying payments – Disallowance is justified. [R. 6DD] 823

Dismissing the appeals, that only 25 per cent of the payments effected by the assessees were in cash and the remaining 75 per cent were through banking channels, that is, by cheque or demand draft. The genuineness of the transaction was hardly a matter, which should weigh in the minds of the Assessing Officer while examining whether the assessees had violated section 40A(3). The disallowance was justified (AY.2014-15, 2015-16)

Vaduganathan Talkies v. ITO (2020) 428 ITR 224 / 275 Taxman 599 (Mad.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – No reasonable cause to make payment – Disallowance is held to be justified. [R. 6DD] 824

Dismissing the appeal the Court held that the assessee had not been able to show that its case fell in any of these categories. The disallowance was justified.(AY.2006-07)

Nam Estates Pvt. Ltd. v. ITO (2020) 428 ITR 186 / (2021) 277 Taxman 169 (Karn.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payments made in exceptional circumstances – Payments not disallowable. [R. 6DD] 825

Court held that the Tribunal was right in holding that the payments made by the assessee in cash exceeding Rs. 10,000 could not be disallowed by applying section 40A(3) as they were paid in exceptional circumstances. The findings on the issues were based on proper appreciation of evidence on record and were neither perverse nor arbitrary. (AY.1995-96)

CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 192 DTR 376 / 272 Taxman 224 (Karn.)(HC)

826 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Banking facilities available – No Evidence of compelling circumstances justifying payments – Disallowance justified. [R. 6DD]**
Dismissing the appeal the Court held that only 25 per cent of the payments effected by the assessees were in cash and the remaining 75 per cent were through banking channels, that is, by cheque or demand draft. These factors would work against the assessees because the assessees were fully aware of the legal position that over and above Rs. 20,000, the assessees would not be entitled to effect payment in cash in a day. The fact that the assessees had been regularly effecting payments in cash would be a circumstance which would work against the assessee. The genuineness of the transaction was hardly a matter, which should weigh in the minds of the Assessing Officer while examining whether the assessees had violated section 40A(3). The disallowance was justified and no substantial question of law arose from the order. (AY.2014-15, 2015-16)
Vaduganathan Talkies v. ITO (2020) 428 ITR 224 (Mad.)(HC)

827 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Commercial expediency – Not eligible deduction. [R. 6DD]**
The Madras High court was considering whether cash payment made for acquiring rights in Film in excess of limit specified in S. 40A(3) could be allowed (even though the same did not fall within any of the situations specified in Rule 6DD on the basis of commercial expediency and proof of identity since 75% of the payment to the same parties was made by cheque and balance 25% was made by cash. The court noting that the commercial expediency has to be decided on the facts of each case and in this case since the banking facilities were available in Chennai and the payments were made by cheque to the same parties, the assessee was not eligible to get the deduction for cash payments made by it. (AY.2014-15, 2015-16)
Vaduganathan Talkies v. ITO (2020) 428 ITR 224 / 275 Taxman 599 (Mad.)(HC)
Lena Talkies v. ITO (2020) 428 ITR 224 / 275 Taxman 599 (Mad.)(HC)

828 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – No compelling circumstances brought on record – Disallowance is held to be justified.**
It was held that the payment has been made in cash which was in violation to the provisions of S. 40A (3) of the Act, and no compelling circumstances brought on record. Therefore, the decision of AO and CIT(A) was upheld. (AY. 2010-11, 2011-12, 2012-13)
Grand Lilly Motels Limited v. ACIT (2020) 203 TTJ 30 (UO) (Amritsar) (Trib)

829 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payments were made by Cheques – Disallowance is held to be not justified.**
Tribunal held that the assessee had brought on record all necessary evidences to show that all payments made by assessee-company to suppliers were by way of cheques, said payments were not hit by section 40A(3) of the Act. (AY. 2009-10)
Ramesh Exports (P.) Ltd. v. DCIT (2020) 185 ITD 551 (Bang.) (Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Advance cash was returned back – Matter remanded. 830

Assessee was an authorized dealer of 'M&M' engaged in business of selling of vehicles/ automobiles/parts manufactured by 'M&M'. It made cash payment on account of adjustments of customer's accounts who come for purchase of new vehicles/automobiles in assessee's showroom. AO made an addition of said cash payment. Tribunal held that advance or security deposit so taken by assessee was returned back in cash to customer and, therefore, Assessing Officer had erred in treating advance/security deposit which was returned back to customer as expenditure. Matter remanded for verification. (AY. 2015-16)

Ashok Motors v. DCIT (2020) 184 ITD 525 (Gauhati)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – No banking facility was available at quarry site – Disallowance is held to be not justified – Cash expenditure – Disallowance is restricted to 5% of cash expenditure exceeding Rs.20000. [R. 6DD] 831

Tribunal held that there was no banking facility and assessee had also furnished certificates obtained from two Village administrative Officers to substantiate where quarries of assessee were Located were not serviced by any bank within 15 Km. radius. The disallowance is held to be not justified. Tribunal also held that as the expenditure incurred on cash is not verifiable, 5 percent of cash expenses exceeding Rs. 20000 was confirmed. (AY. 2012-13)

Kempsz Trading (P.) Ltd. v. DCIT (2020) 182 ITD 236 (Bang.)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – General remark that payment made in cash due to business exigencies is held to be not acceptable. [R.6DD] 832

The Tribunal held that the assessee had made payment in cash exceeding Rs. 20,000 to the three parties. The assessee had taken different stands before the Assessing Officer and the Commissioner (Appeals). Nothing was produced to substantiate that the suppliers had demanded cash and refused to accept demand draft or pay order or account payee cheque for the goods. The assessee had only made a general remark that due to business exigencies it had to purchase the coal from the suppliers. Since the business exigency was not backed by any documentary evidence to prove the commercial exigency and demand from the suppliers to supply coal only against payment in cash and since the assessee had violated the provisions of section 40A(3), the addition was justified. (AY.2010-11)

Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29(SN) (Delhi) (Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – General remark that payment made in cash due to business exigencies is held to be not acceptable. [R. 6DD] 833

The Tribunal held that the assessee had made payment in cash exceeding Rs. 20,000 to the three parties. The assessee had taken different stands before the Assessing Officer and the Commissioner (Appeals). Nothing was produced to substantiate that

the suppliers had demanded cash and refused to accept demand draft or pay order or account payee cheque for the goods. The assessee had only made a general remark that due to business exigencies it had to purchase the coal from the suppliers. Since the business exigency was not backed by any documentary evidence to prove the commercial exigency and demand from the suppliers to supply coal only against payment in cash and since the assessee had violated the provisions of section 40A(3), the addition was justified. (AY.2010-11)
Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29(SN) (Delhi) (Trib.)

834 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Travelling expenses – Prior period expenses – No documentary evidence was produced – Addition held to be justified – Payment to employees – Less than 20,000 each – Addition is held to be not valid.**
Tribunal held that, cash payments exceeding prescribed limits, Travelling expenses, prior period expenses. No documentary evidence was produced. Addition held to be justified. Payment to employees less than 20,000 each,addition is held to be not valid. (AY.2012-13)
Rajesh Passi v. ITO (2020) 78 ITR 221 (Delhi)(Trib.)

835 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Gold purchase – Making cash payments in different dates – Inserting some entries – Complete bills and vouchers not produced – Disallowance is held to be justified. [R. 6DD(J), 6DD(k)]**
Tribunal held that the cash payments had been made towards purchase of gold ornaments to parties who belonged to Cuttack where banking facilities were available. The assessee had made payments in cash on different dates. The assessee submitted that it had purchased goods with the help of a commission agent but had not debited any commission to his profit and loss account. Further the assessee had inserted some entries in the books of account with the support of some internal vouchers and complete bills and vouchers were not produced by him before the Revenue authorities. It was the duty of the assessee to prove whether particular payees had incorporated in their books for computing their profits on the respective sales or not. The disallowance was justified. (AY.2012-13)
Rajendra Kumar Saho v. ACIT (2020) 79 ITR 10 / (2021) 186 ITD 483 (Cuttack) (Trib.)

836 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Truck drivers and agents – After banking hours at a village there was no banking facilities – Disallowance is held to be not justified. [R. 6DD]**
Assessee-firm was engaged in business of running a brick kiln where coal was used as a primary fuel. AO disallowed certain amount towards cash payments made by assessee to truck drivers and to agents of coal suppliers who supplied coal through trucks at brick kilns of assessee firm. CIT(A) confirmed the disallowances made by the AO. On appeal the Appellate Tribunal held that since truck drivers and coal agents delivered coal at night because heavy vehicles could not ply during day time and insisted for cash payments, assessee was obliged to do cash payments as per business practice in that

area. Since payments were made after banking hours and that too at village where there were no banking facilities, disallowance held to be not justified. (AY. 2010-11)
New Kalpana Ent Udyog v. ITO (2020) 181 ITD 507 (Agra) (Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding specified limit – Assessee taking different stands before AO and CIT(A) – General remark that payment made in cash due to business exigencies not acceptable – Disallowance is held to be justified. 837
On appeal, the Tribunal held that, the assessee had made payment in cash exceeding Rs. 20,000 to three parties. The assessee had taken different stands before the Assessing Officer and the CIT(A). The assessee had only made a general remark that due to business exigencies it had to purchase coal from the suppliers on cash payment. Since such business exigency was not backed by any documentary evidence to prove that the suppliers demanded cash payment only to supply coal, it can be said that Assessee had violated the provisions of Section 40A(3) of the Act and the addition made was justified. (AY.2010-11)
Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29 (SN) (Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits-Cash paid for labour charges and purchases – Business in a remote area – Disallowance is held to be not valid-Machine hire charges-less than Rs. 20000 per day – AO is directed to verify and decide. [S. 40(a)(ia)] 838
Tribunal held that the assessee was doing the business in remote areas and the amounts were paid for making labour charges and for making certain purchases, where, it was very difficult to make payment through banking channels. The proviso attached to sub-S (3) of S. 40A is to rescue the assessee from the rigour of disallowance under S. 40A(3). No disallowance can be made. As regards of payment of machine charges, the AO is directed to verify whether the payment is less than Rs.20000 per day and decide the matter. (AY.2008-09)
Debjyoti Dutta v. ITO (2020) 77 ITR 17(SN) (Cuttack) (Trib.)

S. 40A(9) : Expenses or payments not deductible – Amount was paid for welfare of employees of assessee and not as contribution to any fund, trust, etc. – Provision is not applicable – Less than monetary limit – Appeal is not maintainable. [S. 268A] 839
Assessee-company paid a certain sum to two concerns for purpose of festival celebration and general welfare of its employees. The-Assessing Officer disallowed same by invoking section 40A(9) of the Act. The Tribunal held that since amount was paid for welfare of employees of assessee and not as contribution to any fund, trust, etc., provisions of section 40A(9) were not applicable. Disallowance was deleted. Where tax effect in appeal of revenue was below Rs. 50 lakhs, appeal was not maintainable because of low tax effect as per latest instructions of CBDT.(AY. 2011-12)
Karnataka State Industrial Infrastructure Development Corporation Ltd. v. DCIT (2020) 83 ITR 386 / 185 ITD 441 / (2021) 211 TTJ 362 (Bang.)(Trib.)

840 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Outstanding for more than three years – Addition cannot be made as cessation of liability.**

Dismissing the appeal of the revenue merely because liability had remained outstanding for more than three years and same was not written back in profit and loss account, application of provisions of section 41(1) could not be made to consider such liability as income of year under consideration without there being any remission or cessation of liability. (AY. 2012-13)

PCIT v. Adani Agro (P) Ltd. (2020) 273 Taxman 430 (Guj.)(HC)

841 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan does not amount to cessation of trading liability neither taxable under section 41 (1) nor under section 28(iv) of the Act. [S. 28 (iv)]**

Assessing Officer held that loan given by Government to assessee-company was waived off and he opined that waiver of principal amount would be considered as income falling under section 28(iv) being benefit arising for business of assessee and, accordingly, said amount was to be treated as income of assessee for year under consideration and taxable under sections 41(1) and 28(iv) of the Act. Tribunal held that since entire sum represented principal amount payable to Government and no part thereof comprised of waiver of any interest liability, it was not chargeable to tax either under section 41(1) or under section 28(iv) of the Act. High Court affirmed the order of the Tribunal. (AY. 2003-04)

PCIT v. Sicom Ltd. (2020) 274 Taxman 58 (Bom.) (HC)

Note : Also digested at page No. 250, Case No. 848

842 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Confirmation was filed – Deletion of addition is held to be justified.**

Dismissing the appeal of the revenue the Court held that there was material on record which also suggested that the confirmations from the trade creditors were received and filed by the assessees though there were contradictory findings by the Assessing Officer. Relied *CIT v. Chase Bright Steel Ltd. (NO. 2) [1989] 177 ITR 128 (Bom.) (HC)*.(AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020)429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

843 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Deferment of Sales tax under scheme of State Government – Amount paid on net present value basis – Difference between sales tax mount paid on net present value and future liability not business income [S. 28(iv)]**

Dismissing the appeal, that the Tribunal was right in holding that the difference between the sales tax loan amount and the amount paid on net present value basis under the sales tax deferral scheme of the Maharashtra Government was not a remission of liability under section 41(1) and the difference between the amount paid on the net present value basis and the future liability could not be taxed as income under section 28(iv)(AY.2011-12)

CIT v. Wheels India Ltd. (2020) 427 ITR 150 (Mad.)(HC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – State Government scheme for deferment of sales tax and Treating amount as loan for specified period – Surplus on account of prepayment of loan – Amount not assessable as income. [S. 4, 28(i)] 844

Dismissing the appeal of the revenue the Court held that the surplus arising on prepayment of deferred sales tax loan at the net present value was a capital receipt which could not be termed a remission or cessation of a trading liability Followed *CIT v. Sulzer India Ltd. [2014] 369 ITR 71 (Bom.)(HC) and CIT v. Bal Krishna Industries Ltd. [2018] 252 Taxman 375/300 CTR 209 (SC)* (AY.2004-05, 2005-06)

PCIT v. Mangalore Refinery and Petrochemicals Ltd. (2020) 426 ITR 266 / 272 Taxman 441 / 191 DTR 47 / 316 CTR 842 (Bom.)(HC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan – Neither the component of interest embedded therein nor the amount claimed as deduction earlier – Not assessable as business income. 845

Dismissing the appeal of the revenue the Court held that the amount of Rs. 8,07,35,116 credited to the capital reserve by the assessee pertained to the principal borrowed without there being any component of interest embedded therein. The waiver of the principal amount of loan by IDBI amounting to Rs. 8,07,35,116 under the one-time settlement scheme did not constitute a trading receipt, as it was never claimed by the assessee as deduction in the past. (AY.2009-10)

PCIT v. Gujarat State Financial Corporation (2020) 426 ITR 47 / (2021) 277 Taxman 99 (Guj.)(HC)

Editorial : SLP of revenue dismissed, PCIT v. Gujarat State Financial Corporation (2021) 280 Taxman 234 / 126 Taxmann.com 154 (SC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Commission claimed as expenditure – Write off of loan – Cannot be treated as revenue receipts. 846

Dismissing the appeal the Court held that the loan utilised by the assessee was for the capital purposes and the loan was given by the National Dairy Development Board. The assessee continued to remain liable to repay those amounts. The State instead of fully writing off the amounts had imposed a condition that they would be utilised only for capital or rehabilitation purposes. This was therefore a significant factor, i.e., the writing off was conditional upon use of the amount in the hands of the assessee which was for the purpose of capital. (AY.2004-05)

PCIT v. Rajasthan Co-Operative Dairy Federation Ltd. (2020) 423 ITR 89 (Raj.)(HC)

S. 41(1) : Profits chargeable to tax – Remission or Cessation of trading liability – Waiver of loan – OTS Scheme – Addition can not be made in to the income in respect of waiver of principal loan which was utilised for acquisition of capital assets. [S. 28(iv)] 847

The waiver of the principal amount of loan granted to the extent of Rs.29,63,27,000/- in terms of OTS Scheme is in the nature of capital receipt and not chargeable to tax. Hence, waiver of the principal amount of loan utilized for acquisition of capital assets

and not for the purposes of trading activity, no addition is attracted. (ITA No.477 of 2015, dt.18/08/2017)
CIT v. Rieter India Pvt. Ltd. (Bom.)(HC) (UR)
Editorial : SLP of revenue is dismissed (SLP No.12690 of 2019 (2019) 414 ITR 3(St.) (SC)

848 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Remission of loan by Government of Maharashtra cannot be assessed u/s. 28(iv) or 41(1) of the Act – Order of Tribunal is affirmed. [S. 28(iv)]**
Question before the High Court is "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that CIT(A) was correct in deleting Rs. 114.98 crores on account of remission of loan by Government of Maharashtra u/S. 41(1)/28(iv) without considering that the waiver of liability u/S. 41(1)/28(iv) is in character of stock-in-trade and certainly a trading liability?" Following the decision of Supreme Court in *CIT v. Mahindra A Mahindra Ltd (2018) 404 ITR 1 (SC)*, High court decided the issue in favour of the assessee. (AY.2003-04)
PCIT v. SICOM Ltd. (2020) 274 Taxman 58 (Bom.)(HC)

849 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Interest liability of State Government undertaking on Government Loans converted by order of State Government into equity share capital – No cessation of liability – Addition cannot be made.**
Dismissing the appeal of the revenue the Court held that, when there was no writing off of liabilities and only the sub-head, under which, the liability was shown in the account books of the assessee was changed, there could be no cessation of liability. When the assessee-company was liable to pay and it continued to remain liable even after change of entries in the books of account, no benefit would accrue to the assessee-company merely on account of change of nomenclature and consequently the question of treating it as profit and gain would not arise. (AY. 2001-02)
CIT v. Metropolitan Transport Corporation (Chennai) Ltd. (2020) 421 ITR 307 / 196 DTR 455 / 317 CTR 968 (Mad.)(HC)

850 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Premature payment – Sales tax – Not remission or cessation of Government liability – Provision for bad debt – Not claimed as deduction written back – Addition is not valid.**
Where assessee made premature payment of deferred sales tax at Net Present Value against total liability and credited balance amount to its capital reserve account, same could not be treated as remission or cessation of liability of assessee towards Government under S. 41(1). Where assessee had not claimed provision made for doubtful debts and advances as deduction in preceding years, same on being written back in subsequent year could not be added to its total income. (AY 2005-06 to 2007-08)
Caprihans India Ltd. v. Dy. CIT (2020) 203 TTJ 450 (Mum.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Not commenced business – Not trading liability – Nothing to show the liabilities ceased to exist 851

Where the impugned liabilities do not represent any trading liability since the assessee had never commenced business and had therefore never incurred any operational expense or earned any income. Further there is nothing on record to show that the liabilities ceased to exists. Therefore, the liabilities did not represent any expense rather an advance. (AY. 2014-15)

Brahma Steyr Tractors Ltd. v. ITO (2020) 203 TTJ 33 (Chd) (Trib,)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of principal amount of loan – Not chargeable to tax. 852

Assessing Officer brought principal amount of loan waived off to tax under section 41(1) of the Act. Commissioner (Appeals) deleted the addition. On appeal by the revenue the Tribunal held that assessee never claimed principal amount of loan as deductible expenditure in earlier assessment years, benefit received in respect of same could not be brought to tax. (AY. 2013-14)

ITO v. Sri Vasavi Polymers (P.) Ltd. (2020) 183 ITD 586 (Vishakha)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan is neither taxable u/s 41(1) nor u/s. 28(v) of the Act. [S. 28(v)] 853

Tribunal held that the assessee has not claimed any deduction in respect loans in any of the earlier assessment years hence provision of S.41(1) cannot be invoked. The Tribunal also held that to invoke the provisions of S.28(iv) the assessee should receive any benefit or perquisite other than cash or money. As the assessee received the benefit on account of waiver of loan which is in the form of cash S. 28(iv) cannot be invoked. Relied on *CIT v. Mahindra and Mahindra Ltd (2018) 404 ITR 1 (SC)* (ITA No. 606/Viz/ 2018 dt 5-6-2020) (AY. 2013-14)

ITO v. Sri Vasavi Polymers Pvt. Ltd. (2020) 117 taxmann.com 236 (Vishakha)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Waiver of loan is neither taxable u/s. 41(1) nor u/s. 28(v) of the Act. [S. 28(v)] 854

Tribunal held that the assessee has not claimed any deduction in respect loans in any of the earlier assessment years hence provision of S.41(1) cannot be invoked. The Tribunal also held that to invoke the provisions of S.28(iv) the assessee should receive any benefit or perquisite other than cash or money. As the assessee received the benefit on account of waiver of loan which is in the form of cash S. 28(iv) cannot be invoked. Relied on *CIT v. Mahindra and Mahindra Ltd (2018) 404 ITR 1 (SC) (ITA No. 606/Viz/ 2018 dt 5-6-2020)* (AY. 2013-14)

ITO v. Sri Vasavi Polymers Pvt. Ltd. (2020) 117 taxmann.com 236 (Vishakha) (Trib.)

S. 43(3) : Plant – Golf course – Eligible depreciation at 15%. [S.32] 855

Assessee is engaged in business of operation of golf course, construction of hotels and housing complex.-It claimed depreciation on golf course at rate of 15 per cent considering it as plant and machinery. The AO golf course was developed on land and

whatever improvement was made on that land, it remained as a land and land being not a depreciable assets, he disallowed depreciation. Tribunal held that golf course was a plant and machinery and assessee was eligible for depreciation thereon at rate of 15 per cent. (AY. 2013-14, 2014-15, 2016-17)
Landbase India Ltd. (2020) 80 ITR 580/185 ITD 40 (Delhi)(Trib.)

856 **S. 43(5) : Speculative transaction – Foreign exchange forward contract loss – Allowable as business loss and setoff against loss. [S.28(i)]**
Dismissing the appeal of the revenue Court held that, the Mark to Market Loss on account on foreign exchange forward contract loss, said loss was a notional loss and hence is allowable. (Arising out of ITA No.3757/Mum/2013 dt.24/06/2015)(ITA No.594 of 2016 dt.03/12/2018)
PCIT v. Rikin Exports (Bom.)(HC)(UR)
Editorial : SLP of revenue is dismissed. (SLP18517/2019 dt.24/02/2020)

857 **S. 43(5) : Speculative transaction – Hedge against loss – Exporter of cotton entering into forward contracts – Loss Incurred – Not a loss in speculative transaction – Entitled to deduction of loss. [S. 28(i)]**
Dismissing the appeal of the revenue the Court held that the assessee was not a dealer in foreign exchange, but was an exporter of cotton. Therefore, the Tribunal rightly took note of the transaction done by the assessee where, in order to hedge against losses, the assessee booked foreign exchange in the forward market with the bank. However, the export contracts entered into by the assessee for the export of cotton in some cases failed and therefore, the assessee was entitled to claim deduction in respect of the amount as business loss. Therefore, the Tribunal was right in holding that the loss incurred on account of cancellation of forward contracts was not speculative losses falling within the provisions of section 43(5) of the Act. (AY.2011-12)
CIT v. Celebrity Fashion Ltd. (2020) 428 ITR 470 (Mad.)(HC)

858 **S. 43(5) : Speculative transaction – Forward contract – Hedging currency – loss due to fluctuation in foreign exchange – Not speculative – Allowable as business loss. [S. 28(i), 37(1)]**
Assessee was engaged in business of trading of agricultural products, building construction and generation of power/energy. It claimed deduction as regards certain general administrative expenses. Assessing Officer held that general administrative expenses included fluctuation in foreign currency and held that same was speculative in nature. CIT(A) held that though assessee was not a dealer in foreign exchange it had entered into forward contracts with banks for purpose of hedging loss due to fluctuation of foreign exchange while implementing export contracts and such transaction was incidental to assessee's regular course of business, hence, loss was not speculative one hence hedging of currency was allowable as business expenditure. (AY. 2011-12, 2012-13)
DCIT v. DML Exim (P.) Ltd. (2020) 184 ITD 432 (Rajkot)(Trib.)

S. 43(5) : Speculative transaction – Transactions in Derivatives in Futures and Options segments of National Stock Exchange – Marked to Market Loss – Not to be assessed speculative loss. 859

Tribunal held that in the statement of facts filed with the memorandum of appeal before the Commissioner (Appeals), the assessee had specifically stated that it had carried out its transactions in derivatives in the futures and options segments of the National Stock Exchange. The Commissioner (Appeals) completely overlooked the factual position while observing that the assessee had entered into derivatives transaction and not in any recognised stock exchanges, while treating it as speculative loss under section 43(5). Further in the subsequent years the Assessing Officer had consistently allowed the assessee's claim of marked to market loss. The marked to market loss of Rs. 5,96,510 was not in the nature of speculation loss. (AY.2007-08, 2008-09)

Darashaw and Co. Pvt. Ltd. v. Dy. CIT (2020) 78 ITR 553 (Mum.)(Trib.)

S. 43(5) : Speculative transaction – Hedge – Export business – Foreign currency derivate contracts are speculative in nature and loss arising out of the same has to be treated as speculative loss – The AO was directed to restrict the actual loss in lieu of actual export after verification of contract notes, etc. and the assessee was also directed to cooperate with the Department by producing all particulars. 860

The assessee had entered into Forward Contract with the bank in order to hedge its foreign exchange risk. Due to adverse foreign exchange movement, the bank had debited the loss to the assessee's account. Thus, the loss debited by the bank in the assessee's account had crystallized and was a realistic loss suffered by the assessee. It was stated that only money changers and banks are allowed to trade in foreign currency and the assessee was neither a money changer nor a bank. Tribunal held that on perusal of the appellate order, assessee had submitted the details of the forward contracts entered into and the CIT(A) had tabulated the same revealing that the assessee has utilized the services of various banks in order to iron out the loss arising out of foreign currency fluctuation risk by entering into forex derivative contract. It was found, bank wise statement of deals executed by the assessee submitted before the CIT(A) indicated that the total export turnover of the assessee during the year was 13.9 million USD amounting to Rs.63 crores and there were 213 export invoices. On verification of the statement of bank wise deals executed for the year, the CIT(A) had observed that all the derivative contracts executed were cancelled before the due date and even a single contract was not honoured. The number of contracts was very high in number. The approximate value of derivative contracts for the year was about 5 times the export turnover along and about 3.5 times the export and import turnover. Thus, the abnormally high figures indicated that the assessee was trading much more than genuine requirement for hedging. Accordingly, the AO was directed to restrict the actual loss in lieu of actual export after verification of contract notes, etc. and the assessee was also directed to cooperate with the Department by producing all particulars. (AY. 2009-10, 2010-11, 2011-12)

Thiagarajar Mills (P) Ltd. v. JCIT (2020) 185 DTR 121 / 203 TTJ 367 (Chennai)(Trib.)

861 **S. 43(6) : Written down value – Depreciation – Block of assets – Assessing Officer to reduce only sale proceeds from written down value of block of assets and allow depreciation on balance of written down value. [S. 2(11), 45, 50]**

Tribunal held that under section 43(6) of the Income-tax Act, 1961 the written down value of the block of assets was to be reduced by the sale proceeds received on sale of one or more of the assets from the block and not the entire written down value of the assets. Therefore, the Assessing Officer was to reduce only the sale proceeds of Rs. 26,782 from the written down value of the block of the assets and allow the depreciation on the balance of the written down value.(AY. 2004-05)

Shakti Hormann Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 515 (Hyd.) (Trib.)

862 **S. 43(6) : Written down value – WDV of building had been revised on account of disallowance of depreciation in past years – Depreciation on such higher revised opening WDV of building was to be allowed. [S. 32]**

Assessee claimed deprecation on a part of building which became disallowable for period from assessment years 2004-05 to 2007-08. Accordingly amount so disallowed was required to be added to WDV of building as on 1-4-2008. However, since Tribunal order for assessment years 2004-05 to 2007-08, confirming disallowance, came to be passed on 28-3-2012, it had not been possible for assessee to have revised WDV of building for claiming higher depreciation in return of income filed by assessee on 28-9-2009. Tribunal held that deprecation on higher revised opening WDV of building by revising it on account of disallowance of depreciation in past years was to be allowed. (AY. 2009-10)

ACIT v. Crompton Greaves Ltd. (2019) 75 ITR 17 (SN) / (2020) 181 ITD 40 / 203 TTJ 94 (Mum.)(Trib.)

863 **S. 43(6) : Written down value – Depreciation – Amalgamation – Written Down Value of assets in hands of amalgamated companies has to be calculated without considering unabsorbed depreciation of amalgamating companies for which set off was never allowed. [S. 32(2), 72A]**

In the return of income, filed by the assessee for the year of amalgamation i.e assessment year 2006-07, the assesee had computed WDV, in respect of the assets transferred by the amalgamating companies by reducing the amount of deprecation (actually allowed) in assessment year 2005-06 in accordance with the provisions of Explanation (2) to section 43(6). AO Officer determined the WDV of assets acquired on amalgamation after considering normal depreciation allowed on assets of two amalgamating companies and consequently, disallowed excess depreciation. CIT(A) directed the AO to allow depreciation on the increased written down value of the assets. Tribunal held that the order of the CIT(A) Followed *CIT v. Doom Dooma India Ltd. [2009] 310 ITR 392 (SC), CIT v. Silical Metallurgic Ltd. [2010] 324 ITR 29 (Bom.) (HC) (SLP rejected No 19054 of 2008, EID Parry India's v. CIT [2012] 209 Taxman 214 (Mad.) (HC)* (AY. 2006-07)

ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 (Mum.)(Trib.)

S. 43A : Rate of exchange – Foreign currency – Business loss – Rate of Exchange of foreign currency – loss on settlement of forward contract – Held to be allowable. 864
Dismissing the appeal of the revenue the Court held that, loss on account of settlement of forward contracts is held to be allowable as deduction. (AY.2005-06)
CIT v. JSW Steel Ltd (2020) 424 ITR 227 / 275 Taxman 587 (Karn.)(HC)

S. 43A : Rate of exchange – Foreign currency – Loss on conversion of outstanding foreign exchange currency into Indian rupees at end of year on account of outstanding unsecured loans – Matter remanded to Assessing Officer to examine facts whether loss was on capital account or revenue account. [S. 254(1)] 865
Tribunal held that regarding the allowability of foreign exchange loss arising on conversion of outstanding balance in foreign exchange at the end of the year into Indian currency on account of outstanding unsecured loans, it is not clear whether the loans were raised towards acquisition of capital assets or for working capital requirements, nor whether the assets acquired were within India or in other countries; as section 43A of the Act starts with the non-obstante clause and is mandatory in nature, foreign exchange loss has to be treated thereunder provided the conditions given in the section are met. (AY.2011-12)
Shin-Etsu Polymers India P. Ltd. v. Dy. CIT (2020) 83 ITR 64 (SN) (Chennai) (Trib.)

S. 43A : Rate of exchange – Foreign currency – Depreciation – Forward foreign exchange contracts were taken for acquiring capital assets, profits/loss arising on settlement of such contracts had to be adjusted against cost of concerned capital asset in terms of S. 43A, and depreciation was to be allowed on such adjusted value of capital assets. [S.32] 866
The assessee had borrowed various foreign currency loans for the purpose of purchase of certain plant and machinery from outside India. For safeguarding its interest from foreign exchange fluctuations, the assesee had entered into forward contracts with authorized dealers for receiving foreign currency at the rates specified in contract, at future stipulated dates to enable repayment of instalments of foreign currency loans. The assessee added loss on cancellation of forward contract to the written down value and claimed depreciation on written down value. AO rejected the claim. CIT(A) deleted addition. Tribunal affirmed the order of CIT(A). Followed *ACIT v. Elecon Engg. Co. Ltd. [2010] 3 taxmann.com 2/189 Taxman 83 (SC).* (AY. 2006-07)
ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 (Mum.)(Trib.)

S. 43B : Deductions on actual payment – Leave encashment – Method of accounting – Section does not place any embargo upon the autonomy of the assessee in adopting a particular method of accounting, nor deprives the assessee of any lawful deduction. It merely imposes an additional condition of actual payment for the availment of deduction qua the specified head – Provision is not unconstitutional – Interpretation of taxing statutes – Legislature has larger discretion – Enactment invalidated by Court – Legislature free to diagnose law and alter invalid elements – Does not mean legislature declares opinion of court invalid. [S. 37(1), 43B(f), 145, Art. 14] 867
Court held that, argument (inter alia) that s. 43B(f) is unconstitutional because it supersedes the judgement of the Supreme Court in *Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC)* is wrong. S. 43B does not place any embargo upon the autonomy of

the assessee in adopting a particular method of accounting, nor deprives the assessee of any lawful deduction. It merely imposes an additional condition of actual payment for the availment of deduction qua the specified head. Court also held that while interpretation of taxing statutes, the legislature has larger discretion. Though the enactment invalidated by Court the Legislature free to diagnose law and alter invalid elements, it does not mean legislature declares opinion of court invalid.
UOI v. Exide Industries Ltd. (2020) 425 ITR 1 / 189 DTR 62 / 315 CTR 62 / 273 Taxman 189 (SC)

868 **S. 43B : Deductions on actual payment – The credit of Excise Duty earned under MODVAT scheme is not sum payable by the assessee by way of tax, duty, cess – unutilised credit under MODVAT scheme does not qualify for deduction – Sales tax paid by the appellant was debited to a separate account titled 'Sales Tax recoverable account' and is liable for disallowance. [S. 145]**
The scheme of S. 43B is to allow deduction when the sum is actually paid. (i) The credit of Excise Duty earned under MODVAT scheme is not sum payable by the assessee by way of tax, duty, cess. It is merely the incident of Excise Duty that has shifted from the manufacturer to the purchaser and not the liability to the same. Consequently, the unutilised credit under MODVAT scheme does not qualify for deduction u/s 43B. (ii) The sales tax paid by the appellant was debited to a separate account titled 'Sales Tax recoverable account' and is liable for disallowance u/s 43B. (AY. 1999-2000)
Maruti Suzuki India Ltd. v. CIT (2020) 421 ITR 510 / 114 taxmann.com 129 / 270 Taxman 75 / 186 DTR 353 / 313 CTR 113 (SC)
Editorial : Order in Maruti Udyog Ltd v. CIT (2017) 88 taxmann.com 98 /(2018) 253 Taxman 60/ 406 ITR 562 /161 DTR 1/ 308 CTR 682(Delhi) (HC) is affirmed.

869 **S. 43B : Deductions on actual payment – Mercantile system of Accounting – Securities Transaction Tax – Amount not deposited with authorities or returned to person from whom deducted – Disallowance of the amount – Neither perverse nor illegal. [Art. 226]**
The ITO disallowed the amount deducted as securities transaction tax against a trading transaction on the ground that the amount was not deposited with the authorities and therefore, the provisions of section 43B of the Act. The Commissioner (Appeals) affirmed the order. On a writ petition challenging the vires of the provisions of section 43B dismissing the petition, the Court held that the assessee had not deposited the amount deducted as securities transaction tax with the authorities nor paid it back or returned it to the person from whom it was deducted. The assessee followed the mercantile system of accounting. The orders were neither perverse nor illegal to be interfered with. (AY.2006-07)
Magadh Stock Exchange Association v. CIT (2020) 429 ITR 75 / 195 DTR 22 / 317 CTR 434 / 275 Taxman 45 (Pat.)(HC)

870 **S. 43B : Deductions on actual payment – Custom duty – Allowable in year in which actually paid.**
Court held that the Tribunal was justified in holding that the sum of customs duty paid and included in the closing stock was allowable in view of section 43B. The assessee

had not raised such issue for the first time before the Tribunal as it had taken the ground before the Commissioner (Appeals). (AY.1995-96)
CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 192 DTR 376 / 272 Taxman 224 (Karn.)(HC)

S. 43B : Deductions on actual payment – Service tax – Neither included this amount of service tax in the turnover/revenue receipts - nor claimed as deduction in the profit and loss account – No disallowance can be made. 871
When the assesse has not claimed the deduction u/s. 28 to 42 then the question of invoking the provisions of S. 43B either for disallowance or for claiming the deduction on the event of payment does not arise. (AY. 2012-13)
Den Futuristic Cable Networks Pvt. Ltd. v. ITO (2020) 206 TTJ 7 (UO)(Jaipur) (Trib.)

S.43B : Deductions on actual payment – Not claimed any deduction on account of service tax payable – Disallowance is held to be not justified. 872
Since the assessee did not claim any deduction on account of service tax payable, there can be no occasion to invoke provisions of S. 43B of the Act. (AY. 2010-11, 2011-12)
DCIT v. Alstom India Ltd (2020) 207 TTJ 932 (Mum.) (Trib.)
Alston Projects (India) Ltd v. ITO (2020) 207 TTJ 932 (Mum.) (Trib.)

S. 43B : Deductions on actual payment – Employees' contributions to provident fund and employees' State Insurance Contribution – Paid before due date of filing return – Entitle to deduction. [S.139 (1)] 873
Tribunal held that the amendment to the second proviso to section 43B as introduced by the Finance Act, 2003 was curative in nature and is required to be applied retrospectively with effect from April 1, 1988. The Commissioner (Appeals) had rightly allowed the deduction in respect of the employees' contribution to provident fund and the employees' State insurance which had been admittedly remitted on or before the due date for filing the return. Therefore, there was no infirmity in his order. (AY. 2013-14 to 2017-18)
MANI Square Ltd. v. ACIT (2020) 83 ITR 241 (Kol.)(Trib.)

S. 43B : Deductions on actual payment – Contribution towards provision for pension fund – Allowable – Provision for leave encashment – Disallowance confirmed. [S. 43B(f)] 874
The Assessing Officer disallowed the contribution made to its employees pension fund trust of Rs. 215.56 crores which the assessee claimed to be its legitimate business expenditure. The Commissioner (Appeals) deleted the addition. On appeal the Tribunal held that expenditure towards provision for pension fund were allowable as business expenditure. (AY. 2013-14)
Dy. CIT v. Punjab National Bank (2020) 82 ITR 95 (Delhi)(Trib.)

S. 43B : Deductions on actual payment – VAT and excise duty – Closing balance of earlier years cannot be added back. 875
The assessee filed its return wherein certain amount was offered disallowance in respect of VAT and excise duty payable. The Assessing Officer enhanced amount of disallowance. Tribunal held that the amount enhanced by assessee merely represented

closing balance of earlier years that was brought forward to year under consideration hence same could not have been disallowed. (AY. 2013-14)
Futura Polyster Ltd. v. ITO (2020) 184 ITD 158 (Mum.)(Trib.)

876 **S. 43B : Deductions on actual payment – Payment of Employees' contributions to provident fund beyond period stipulated – Allowable as deduction.**
Tribunal held that payment of Employees' contributions to provident fund beyond period stipulated is allowable as deduction. Followed *CIT v. Sabari Enterprises (2008) 298 ITR 141 (Karn.) (HC)* (AY.2011-12, 2012-13)
Dy. CIT v. Coffee Day Global Ltd. (2020) 83 ITR 41 (SN) (Bang.) (Trib.)

877 **S. 43B : Deductions on actual payment – Service tax – Amount neither paid nor added in computation of income.**
Tribunal held that there was amount of Rs. 3,60,214 which had not been paid by the assessee nor added in the computation of income. Accordingly, the addition made by the Assessing Officer was restricted to the amount of Rs. 3,60,214 as against the addition of Rs. 20,80,139. (AY.2012-13)
Rajesh Passi v. ITO (2020) 78 ITR 221 (Delhi)(Trib.)

878 **S. 43B : Deductions on actual payment – Employees State insurance – Evidence not produced – Disallowance justified.**
Tribunal held that even at the time of hearing before the Tribunal, evidence had been brought on record on behalf of the assessee to show that the employees' State insurance payable was paid before the due date of filing of the return for the year 2011-12. The disallowance was justified. (AY.2011-12)
Satern Griha Nirman P. Ltd. v. ITO (2020) 79 ITR 359 (Kol.) (Trib.)

879 **S. 43B : Deductions on actual payment – Provident Fund and Employees' State Insurance Contribution – Making contribution before due date for filing return – Allowable as deduction. [S. 36(1)(va)]**
Tribunal held that in the assessee's case for the assessment year 2006-07 had held that the issue pertaining to contribution towards provident fund and employees' State insurance was decided against the Department in *CIT v. State Bank of Bikaner and Jaipur (2014) 363 ITR 70 (Raj) (HC)*. The Department had preferred a special leave petition against the decision before the Supreme Court. The appeals were to be disposed of making them subject to that final judgment of the Supreme Court on the question in the pending special leave petition. Relying on the order of the Tribunal in the assessee's case there was no interference.(AY.2007-08)
Dy.CIT v. Jaipur Vidyut Vitaran Nigam Ltd. (2020) 81 ITR 72 (SN) (Jaipur)(Trib.)

880 **S. 43B : Deductions on actual payment – Prior period expenses – Depositing Employees' State Insurance payment for earlier year and for relevant assessment Year – Allowable in year in which actually paid. [S.37(1)]**
Tribunal held that depositing Employees' State Insurance payment for earlier year and for relevant assessment Year, allowable in year in which actually paid. (AY.2014-15)
Arvind Metals and Minerals P. Ltd. v. ACIT (2020) 81 ITR 648 (Kol.)(Trib.)

S. 43B : Deductions on actual payment – Employees' contribution to provident fund and employees' state insurance fund – Payment was made before due date of filing of return – Entitle to deduction. [S.139(1)] 881

Tribunal held that payments made to employees' contribution to provident fund and employees' state insurance fund before due date of filing of return is entitle to deduction. (AY.2011-12 to 2015-16).

Arihant Constructions v. ACIT (2020) 77 ITR 171 (Vishakha.) (Trib.)

S. 43B : Deductions on actual payment – Employees' share of contribution towards PF and ESI is paid before due date of filing return – No disallowances can be made. [S. 139(1)] 882

Tribunal held that where employee's share of contribution towards PF and ESI is paid before filing of return of income then it would be a sufficient compliance of Act and no disallowance would be made. (AY. 2008-09)

Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

S. 43CA : Transfer of assets – Other than capital assets – Full value of consideration – stock in trade – Percentage completion method adopted – Stamp valuation – Free cost to tenant – Addition on the basis of stamp valuation is up held – Difference between the value adopted by the stamp valuation authority and the actual sale consideration was less than 15%, – Addition is held to be justified – Amendment is only with effect from 1-04-2019. [S. 50C] 883

The assessee company during the year under consideration had transferred Flats for a sale consideration of Rs.42,40,000/-. The AO observed that sale consideration was lower than the value of Rs. 74,23,500/-that was adopted by the Sub-registrar, Government of Maharashtra and issued show cause notice to add the difference as deemed income. In response to notice the assesseee contended that 'agreements' were registered in respect of the additional area purchased by the tenants besides the area to which they were entitled free of cost pursuant to the re-development agreement that was entered into by them with the society. It was the claim of the assessee that the stamp duty value comprised of the cost of construction of the area which was agreed to be given free of cost to the tenants, and also the cost of land, building and the construction cost of the additional area that was purchased by the said tenant. On the basis of his aforesaid claim, it was submitted by the assessee that as the sale consideration as per the "agreement" was only in respect of the additional area purchased by the tenants, therefore, what could be considered for the purpose of applying S. 43CA was the stamp duty value of such additional area, which as per the assessee worked out at Rs.46,88,350/-and not Rs.74,23,500/-. It was also contended that as the aforesaid difference worked out to 9.56% of the stamp duty value which was less than 15%, was to be ignored and no addition was called for in its case. Alternatively, it was submitted by the assessee, that if at all the deemed income of Rs.4,48,350/-was to be assessed, the same could be brought to tax only in the year when the revenue was recognised in respect of the aforesaid flats as per the method of accounting regularly followed by the assessee. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that, there is no substance in the claim of the

assessee that as per the pre-amended provision of S..43CA, in case the difference between the value adopted by the stamp valuation authority and the actual sale consideration was less than 15%, then the same was to be ignored and no addition on the said count was called for in the hands of the assessee. As per the doctrine of statutory interpretation, no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision unless the same had specifically been therein provided for. As observed by us hereinabove, it is only vide the Finance Act, 2018, w.e.f 01.04.2019, that as per the 'proviso' incorporated in S. 43CA(1) that the legislature in all its wisdom had provided for a tolerance limit of 5% as regards the difference between the value adopted by the stamp valuation authority and the actual consideration received or accruing as a result of transfer of the asset (other than a capital asset). As such, it is only w.e.f 01.04.2019, if the value adopted or assessed or assessable by the stamp valuation authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer of the asset (other than a capital asset), then the consideration so received or accruing as a result of the transfer, for the purposes of computing the profits and gains from transfer of such asset, was to be deemed to be the full value of consideration. Accordingly, as long as the difference between the value adopted by the stamp valuation authority and the actual consideration received or accrued to the assessee on the transfer of the asset (other than a capital asset) is not in excess of five percent, then such difference is to be ignored and the profits and gains on transfer of the asset has to be worked out on the basis of the actual consideration received or accruing to the assessee. In case, the aforesaid claim of the assessee that if the difference between the value adopted by the stamp valuation authority and the actual consideration received or accruing as a result of transfer of the asset (other than a capital asset) does not exceed 15%, then no addition would be called for under S.43CA is accepted, then we are afraid that the same would render the aforesaid 'proviso' to S. 43CA(1) as had specifically been made available on the statute vide the Finance Act, 2018 w.e.f A.Y. 2019-20 would be rendered as meaningless. (AY. 2015-16)

Welfare Properties (P) Ltd. v. Dy.CIT (2020) 180 ITD 591 / 190 DTR 53 / 205 TTJ 668 (Mum.)(Trib.)

884 **S. 43D : Public financial institutions – Co-Operative Bank – Real income – Interest on non-performing assets cannot be taxed on accrual basis – Amendment should apply to pending matters. [S. 80P(4), 145]**

The Assessing officer did not accept the explanation of the assessee that the Reserve Bank of India guidelines provided that the income on non-performing assets was not to be credited to the profit and loss account but instead to be shown as receivable in the balance-sheet, that it was to be taken as income in the profit and loss account only when the interest was actually received, that according to the Reserve Bank of India norms, the interest on assets not received in 180 days and the interest which was not received for earlier years was taken to overdue interest reserve and only the interest received during the year was credited to the profit and loss account and offered to tax. CIT(A) affirmed the order of the AO. Tribunal allowed the appeal of

the assessee. On appeal by the revenue the Court affirmed the order of the Tribunal. (AY.2009-10)
PCIT v. Solapur District Central Co-Operative Bank Ltd. (2019) 261 Taxman 476 / (2020) 428 ITR 306 (Bom.)(HC)
PCIT v. Laxmi Co-Operative Bank Ltd. (2019) 261 Taxman 476 / (2020) 428 ITR 306 (Bom.)(HC)
Note : Also digested at page No. 261, Case No. 885

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PCIT v. Solapur District Central Co-Operative Bank Ltd. (2019) 261 Taxman 476 / (2020) 428 ITR 306 (Bom.)(HC)
PCIT v. Laxmi Co-Operative Bank Ltd. (2019) 261 Taxman 476 / (2020) 428 ITR 306 (Bom.)(HC)

S. 43D : Public financial institutions – NHB guidelines will not bring automatic corresponding change in rule 6EB since, discretion is left to rule making authority to follow or not follow NHB guidelines as and when they are revised – Addition is held to be not valid. [S.145, R. 6EB] 886
The assessee did not offer the interest income on debts which remained due for past 90 days as against the period of 180 days as prescribed in Rule 6EB.The AO disallowed same and added back an amount as worked out by the assessee, in the alternative to the income of the assessee. On appeal, the CIT(A) held that NHB guidelines could not override the provisions of the act and, therefore, upheld the stand of the AO. Tribunal deleted the addition confirmed by the CIT(A). (AY. 2004-05, 2005-06)
LIC Housing Finance Ltd. (2020) 180 ITD 45 (Mum.)(Trib.)

S. 44 : Insurance business – Loss from Jeevan Suraksha fund cannot be added while computing the income from insurance business. [S. 10(23AAB)] 887
Dismissing the appeal of the revenue the Court held that, the loss incurred from the pension fund like Jeevan Suraksha Fund had to be excluded while determining the actuarial valuation surplus from the insurance business u/s. 44 of the Act. (Arising out of ITA No.4874/MUM/2014 dt.24/02/2016)(ITA No.131 of 2017 dt.12/03/2019). (AY.2010-2011)
PCIT v. Life Insurance Corporation of India. (Bom.)(HC)(UR)
Editorial : SLP granted to the revenue (CA No.7335 of 2019 dt.06/09/2019)(2019) 418 ITR 14 (St.)(SC)

888 **S. 44 : Insurance business – Income from shareholders' accounts to be assessed as insurance business – Actuarial valuation – Norms regarding actuarial valuation not altered – Dividend exempt – Disallowance is not applicable. [S. 10(34), 14A, 37(1), 80G, Insurance Act, 1938, 3(4)(f)]**

Tribunal held that the investments made out of shareholders' funds was an integral and inextricable part of the life insurance business and not an independent business. Hence, the Assessing Officer was to take the profits shown in the shareholders' profit and loss account as part of the income derived from life insurance business. The accrual surplus or deficit had to be determined in the manner provided in old forms G, H and I. Held, admitting the additional ground, that the issue was to be remitted to the Assessing Officer with a direction to verify the claim of the assessee under section 80G of the Act. Matter remanded. Held, that the assessee was entitled to exemption under section 10(34) for the dividend income. Relating to applicability of section 14A for disallowance of expenditure in respect of income not forming part of total income, since section 44 created a specific exception to the applicability of sections 28 to 43B, the purpose, object and purview of section 14A had no applicability to profits and gains of an insurance business. (AY. 2014-15)

Max New York Life Insurance Company Ltd. v. Dy. CIT (2020) 83 ITR 145 (Delhi)(Trib.)

889 **S. 44AD : Presumptive taxation – Construction Business – Appellate Tribunal remanding the matter – The Assessing officer not following the direction of the Appellate Tribunal – Directed the Assessing Officer to follow the direction – Availability of alternative remedy is not bar to entertaining the writ petition. [S. 44AB, 144, 251(1), Art. 226]**

Allowing the petition the Court held that, when the matter remanded the matter to the Assessing Officer, he ought to have followed the direction of the Appellate Tribunal. The directions issued by the Tribunal were plain and simple as it took the view that section 44AD was not applicable and directed the assessee to attend the assessment proceedings and justify its case on lower rate of profit in accordance with its books of account. Followed *CIT v. Chhabil Dass Agarwal (2013) 357 ITR 357 (SC)*. The Court held that availability of alternative remedy is not bar to entertaining the writ petition. Matter remanded. (AY. 2004-05)

Engineering Professional Co. Pvt. Ltd. v. Dy.CIT (2020) 424 ITR 253/ 186 DTR 33 / 313 CTR 272 / 270 Taxman 242 (Guj.)(HC)

890 **S. 44AD : Presumptive taxation – Turnover exceeded Rs 1 crore – Accounts not Audited – Net profit shown 0.99% of turnover – Assessing Officer estimated at 8% of turnover – Assessing Officer cannot make estimation of income without rejecting the books of account. [S. 44AB, 144]**

Assessee, running a hardware store, filed its return declaring net profit of 0.99 per cent of turnover. Assessing Officer found that turnover of assessee's business was more than Rs. 1 crore but assessee had failed to get accounts audited under section 44AB. He applied provisions of section 44AD and estimated business profit at 8 percent of assessee's turnover. On appeal the Tribunal held that on facts, Assessing Officer could have ventured into estimation only after rejecting books of account of assessee and

thereafter make best judgment assessment under section 144 since Assessing Officer had gone for estimation of income without rejecting books of account of assessee, impugned order passed by him was to be set aside. (AY. 2014-15)
Sayqul Islam v. ITO (2020) 195 DTR 154 / 207 TTJ 490 / (2021) 186 ITD 260 (Gauhati) (Trib.)

S. 44AD : Presumptive taxation – Cash flow statement – Most of applications of income directly linked to business of assessee – Addition not warranted. 891
The Tribunal held that the Assessing Officer had also not considered the opening cash and bank balances as on April 1, 2010 and only the profits declared were considered as inflow in the cash flow prepared by him. The cash flow statement prepared by the Assessing Officer was based on assumption and was to be rejected. Moreover, in the cash flow statement, the Assessing Officer had added household expenses to the tune of Rs. 1,50,000. The estimation made by the Assessing Officer for household expenses was totally arbitrary and without any supporting evidence especially when in the hands of the assessee's husband a sum of Rs. 2,50,000 was estimated as household expenses. (AY. 2011-12)
Honey Rahulan (Smt.) v. ITO (2020)79 ITR 41 (SN) (Cochin)(Trib.)

S. 44AD : Presumptive taxation – Trader in medicine – Undisclosed cash credits – Bank account – Addition is held to be not justified. [S. 68, 69A, 115BBE] 892
Assessee, a small trader in medicine, declared return of income under S 44AD at 8 per cent of his turnover. AO made addition under S. 68 in respect of unexplained cash credit found in assessee's bank. On appeal, CIT(A) held that since assessee did not maintain books of account, said unexplained deposits could not be taxed under S. 68 but under S. 69A of the Act. On appeal the Tribunal held that since scheme of presumptive taxation had been formed in order to avoid long drawn process of assessment in case of small traders or in case of businesses where incomes were almost of static quantum of all businesses, AO could have made addition under S. 69A, once he carved out case out of glitches of provisions of S. 44AD, and in instant case no such exercise being done by AO addition made under section 69A was to be deleted. (AY. 2015-16)
Thomas Eapen v. ITO (2020) 180 ITD 741 / 193 DTR 270 / 206 TTJ 724 (Cochin)(Trib.)

S. 44BB : Mineral oils – Computation – Non – resident – Royalty and fees for technical services – Matter remanded to the file of Commissioner (Appeals) – Interpretation of taxing statutes – Strict interpretation – when there are two provisions in an enactment which cannot be reconciled with each other, the doctrine of harmonious construction should be applied and attempt should be to interpret the provisions, if possible, giving effect to both – DTAA-India-Australia. [S. 44DA, 115A, Art. 12] 893
Court held that the assessee had not segregated its activities into supply of software and maintenance and support services. The entire income derived under the contracts was offered for taxation under section 44BB. Whether the services of updating the software and renewal of licence or warranty services or maintenance of software were inextricably and essentially linked to the supply of the software and were ancillary

services was a question of fact that would require determination after examining the dominant purpose of such contracts. There was no factual clarity on this aspect. No distinction or segregation could be inferred with respect to the receipts in the hands of the assessee under the contracts executed by it. The Commissioner being a fact-finding body had failed to give a reasoned order with respect to the nature of income and its subsequent application. Matter remanded to the Commissioner to assess the assessee's income and tax payable thereon by first determining the nature of the income/receipts in the hands of the assessee. Court also held that it is well settled that when there are two provisions in an enactment which cannot be reconciled with each other, the doctrine of harmonious construction should be applied and attempt should be to interpret the provisions, if possible, giving effect to both. (AY. 2012-13)
Paradigm Geophysical Pvt Ltd. v. CIT(IT) (2020) 424 ITR 521 / 115 taxmann.com 254 / 189 DTR 260 / 315 CTR 522 (Delhi)(HC)

894 **S. 44BB : Mineral oils – Computation – Royalty – Substance of contract – Matter remanded – DTAA-India-Singapore. [S. 9(1)(vi), Art. 5, 12]**
Tribunal held that since neither Assessing Officer nor DRP had examined applicability of section 44BB by looking into whether pith and substance of each of contract/ agreement entered by assessee was inextricably connected with prospecting, extraction or production of mineral oil, matter was to be remanded to pass an order afresh after examining each of contract/agreement. (AY. 2015-16)
Maritime Vanguard Pte. Ltd. v. ACIT(IT) (2020) 182 ITD 339 (Mum.)(Trib.)

895 **S. 44D : Foreign companies – French airlines – Shipping, inland waterways transport and air transport – Technical services – Handling services – Pool member and providing service in that capacity to guest members would come under purview of Article 8(2) of DTAA between India and France – DTAA-India-France-Addition confirmed by the CIT(A) was deleted. [S. 9(1)(vii), 90, 115A, Art. 7, 8(2)]**
Assessee French airlines was a member of International Airlines Technical Pool (IATP). It derived income from (i) Carriage of passage, (ii) Carriage of cargo, (iii) Interest income from funds directly connected with the operation of aircraft in International Traffic and (iv) Income from technical handling to other IATP Pool Members. The Assessing Officer passed an assessment order treating the Technical Income as "fee for technical services" at Rs. 1.82 crore covered under section 115A, read with section 44D and taxed the same at 20 per cent of the gross receipts. CIT(A) partly allowed the appeal. Tribunal held that IATP manual clearly set out that there is no bar on member airline to provide service to non IATP Pool Member and in fact, even non IATP Pool members if takes such service from a pool would be considered as a pool service to them; thus, assessee being a pool member and providing service in that capacity to guest members would come under purview of Article 8(2) of DTAA between India and France. Therefore CIT(A) was not right in sustaining the taxability to the extent of Rs. 3,70,098 under Article 7 of the DTAA. Appeal of the assessee was allowed. (AY. 2004-05, 2005-06, 2006-07)
Air France v. ACIT(IT) (2020) 82 ITR 301 / 184 ITD 412 / 208 TTJ 912 (Delhi)(Trib.)

S. 44D : Foreign companies – Non – Resident – Fees For Technical Services – Technical experts on deputation to India – Not entitled to deduction – Ruling given by Authority not binding either on department or Tribunal – Fees for included services taxable – Not entitled to deduction. [S. 10B] 896

Tribunal held that that the ruling of the Authority for Advance Rulings clearly gave the mandate to the authorities to examine the factual situation in appropriate proceedings because it did not have information or material to show or examine what services were actually rendered by the employees. The Authority on the services rendered by the vice-president was a general non-conclusive finding, rather the power was given to the authorities to examine the transaction and actual conduct of parties. Once the ruling had not given any categorical finding or conclusion, the finding could not have binding effect on the Department or on the Tribunal. The assessee was called upon by the authorities to produce the evidence by way of service agreement with the vice-president but the assessee had not produced it. It was the responsibility of the assessee, in terms of the covenants in the management provision agreement, to make available the executive personnel for marketing and assembly and manufacturing activities. The technology and expertise lies in the technical mind of an employee not in the company and if the key employee having the requisite knowledge, experience and expertise of technology were transferred from one tax jurisdiction to the another tax jurisdiction, it was transfer of technology and not transfer of employees. The execution and implementation of technology in India could be possible even if the person knowing the technology was transferred to India or there was a technological transfer agreement for which the royalties were paid by the Indian counterpart to the assessee. In the garb of sending the technical experts in India, the assessee could not be permitted to say that they were merely employees and the cost was reimbursed by the Indian counterpart to the assessee for the services rendered by such employee. In fact, the technology was transferred through the expert experienced technocrat by the assessee to the Indian counterpart and therefore, the assessee was liable to tax on fees for included services. Tribunal held that the benefit of article 7(3) of the Double Taxation Avoidance Agreement was subject to the limitation provided under the domestic law. Section 44D of the Income-tax Act, 1961 clearly provided that for the purpose of computation of income by way of royalty, fees for included services, the assessee was not entitled to any deduction. Once the domestic law prohibited allowing any deduction for the purpose of calculating fees for technical services or fees for included services, then, the same was not an allowable deduction and, therefore, the assessee was liable to be taxed on gross basis rather than on net basis. There was no contradiction between the treaty provision or domestic law, rather the treaty provisions provided by incorporation the applicability of domestic laws for computing the profit of the assessee. The assessee was not entitled to deduction That the Transfer Pricing Officer for the subsequent years had not computed the profit marking-up 10 per cent. on the amount received by the assessee. Further, the analysis of the Transfer Pricing Officer was not premised on the applicability or otherwise of the method provided under the rules framed under Chapter X of the Act. The authorities had not benchmarked the transactions on the basis of any comparable instances or otherwise. The benchmarking of transactions needed to be done using any of the prescribed methods in rule 10B of the Income-tax Rules, 1962 which in the instant case was admittedly not done by the authorities. (AY.2004-05, 2008-09 to 2010-11)

General Motors Overseas Corporation v. ACIT (IT) (2020) 80 ITR 478 (Mum.)(Trib.)

897 **S. 44DA : Non-residents – Royalties – Computation – Prevails over S. 44BB after the amendment w.e.f. 01.04.2011 DTAA-India-Australia. [S. 9(1)(vii), 44BB, Art. 12(3), Art.226]**

Allowing the petition the Court held that, income from provision of services through high end customized software does not constitute "Fees For Technical Services" u/s 9(1) (vii) as the definition excludes income from "mining or like project". The Q whether income from composite software and maintenance services constitutes "royalty" for purposes of s. 44DA would have to be decided from the nature of services. The assessee is eligible to take benefit of the definition of 'royalty' as per the DTAA for the purpose of applicability of S. 44DA of the Act. S. 44DA prevails over S.44BB after the amendment w.ef 1-04 2011.

Paradigm Geophysical Pvt. Ltd. v. CIT(IT) (2020) 115 taxmann.com 254 / 189 DTR 260 / 315 CTR 522 (Delhi) (HC) www.itatonline.org

898 **S. 45 : Capital gains – Accrual – Protective assessment – Rule of consistency – Department not bound by rule of consistency – Lease – Completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government – However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before – To be more specific, in such cases, capital gains shall be deemed to have accrued: (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17 [Land Acquisition Act, 1984, S. 4, 6, 16, 17, Transfer of Property Act, 1882, 108(q), 111(a), 116]**

Asset of assessee were taken up by way of notification dated 15-5-1968 and award of compensation was made on 29-9-1970-But, at time of issuance of initial notification for acquisition, subject land was already in possession of beneficiary college under a lease even after expiry of lease on 31-8-1967-Assessee contended that transfer, leading to capital gains, took place on very date of preliminary notification (15-5-1968) because, possession of land in question was already with beneficiary College.-Revenue contended that transfer reached its completion, resulting in capital gains, only on date of award (29-9-1970). Court held that instant case, assessee continued to carry its status as owner of land in question and that status was not lost only because a part of land remained in possession of College, accordingly the contention that land vested in Government on date of initial notification remains totally baseless and was to be rejected. Further, neither on date of notification i.e., 15-5-1968 nor until date of award, Government took over possession of land in question and if at all possession of College was to result in vesting of land in Government, such vesting happened only on date of award i.e., 29-9-1970 and not before, therefore, transfer of capital asset (land in question), for purposes of S. 45 of Act was complete only date of award and not on date of notification for acquisition under section 4 of Act of 1894. Accordingly the AO had rightly assessed tax liability of assessee on long-term capital gains arising on account of acquisition, on basis of amount of compensation allowed in award dated 29-9-1970 as also enhanced amount of compensation accrued finally to assessee; and as regards interest income, had

rightly made protective assessment on accrual basis. Department not bound by rule of consistency. *Berger Paints India Ltd. v. CIT (2004) 266 ITR 99 (SC)* distinguished. (AY. 1971-72)
Rajpal Singh v. CIT (2020) 427 ITR 1 / 118 taxmann.com 508 / 273 Taxman 375 / 193 DTR 97 / 316 CTR 225 (SC)

S. 45 : Capital gains – Transfer – Permission to builder to start advertising, selling, construction on land – Licence to builder not amounting to possession of asset – Memorandum of compromise in 2003 under which agreement confirmed, and receipt by assessee of part of agreed sale consideration confirmed – Gains arose in previous year in which memorandum of compromise entered into, and taxable in that assessment year. [S. 2(47)(v), 2(47)(vi), Transfer of Property Act, 1882, S. 53A] 899

The assessee entered into an agreement to sell with Vijay Santhi Builders Ltd on May 15, 1998 for a total sale consideration of Rs. 5.5 crores. The agreement provided, inter alia, that both parties were entitled to specific performance of the agreement. Under the agreement the assessee gave permission to the builder to start advertising, selling, and make construction on the land. Pursuant to the agreement, a power of attorney was executed on November 27, 1998, by which the assessee appointed a director of the builder-company to execute, and join in execution of, the necessary number of sale agreements or sale deeds in respect of the schedule mentioned property after developing it into flats. The power of attorney also enabled the builder to present before all the competent authorities such documents as were necessary to enable development on the property and sale thereof to persons. Subsequently, a memorandum of compromise dated July 19, 2003 was entered into between the parties, under which the agreement to sell and the power of attorney were confirmed, and a sum of Rs. 50 lakhs was reduced from the total consideration of Rs. 6.10 crores. Clause 3 of the compromise deed confirmed that the assessee had received a sum of Rs. 4,68,25,644 out of the agreed sale consideration. Clause 4 recorded that the balance Rs. 1.05 crores towards full and final settlement in respect of the agreement entered into would be paid by seven post-dated cheques. Clause 5 stated that the last two cheques would be presented only upon due receipt of the discharge certificate from one Pioneer Homes. The assessee not having filed any return for the assessment year 2004-05 the assessment of the assessee for this year was reopened. Since the assessee did not respond to notices and limitation was running out the Assessing Officer passed an order of best judgment assessment treating the entire sale consideration as capital gains and bringing it to tax. The CIT(A) dismissed the assessee's appeal therefrom. The Appellate Tribunal agreed with the CIT(A). High Court also affirmed the order of the Tribunal. On further appeal affirming the order the Court held that, agreement to sell, such licence could not be said to be "possession" within the meaning of section 53A of the Transfer of Property Act, 1882, which is a legal concept, and denotes control over the land and not actual physical occupation of the land. This being the case, section 53A of the 1882 Act could not possibly be attracted to the facts for this reason alone. As on the date of the agreement to sell, the owner's rights were completely intact both as to ownership and to possession even de facto, so that section 2(47)(vi) of the 1961 Act equally, could not be said to be attracted. That the finding of the Tribunal was that all the cheques mentioned in the compromise deed had, in fact, been encashed. This being the

case, the assessee's rights in the immovable property were extinguished on the receipt of the last cheque and the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property in question. The transaction fell under S. 2(47)(ii) and (vi) of the 1961 Act. (AY. 2004-05)
Seshasayee Steels P. Ltd. v. ACIT (2020) 421 ITR 46 / 313 CTR 375 / 187 DTR 241 / 275 Taxman 187 (SC)
Editorial : Decision in Seshasayee Steels P. Ltd. v Asst. CIT (2020) 421 ITR 46 (Mad.) (HC) affirmed. Tax Case (Al) No. 461 of 2011 dt 25-1 2012.

900 **S. 45 : Capital gains – Builder – Sale of land kept as investment – Assessable as capital gain and not as business income. [S.28 (i)]**
Dismissing the appeal of the revenue the Court held that land had been shown as investment in assessee's books of account. Inspector who was deputed by Assessing Officer to verify correctness of assessees's claim found that land was being held as an investment as no construction activity was carried out on same. Tribunal was justified in treated income received on sale of non-agricultural land as long-term capital gain instead of business income. (AY. 2008-09)
PCIT v. Jogani and Dialani Land Developers and Builders (2020) 117 taxmannn.com 139 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Jogani and Dialani Land Developers and Builders (2020) 272 Taxman 111 (SC)

901 **S. 45 : Capital gains – Purchase and sale of land – Assessable as capital gains and not as business income. [S. 28 (i)]**
Assessee purchased a land and subsequently entered into an agreement for sale of land and received sale consideration. Assessing Officer treated income arising from property as business income and not as capital gain. Tribunal however held that transaction was a capital transaction and had to be treated as long-term capital gain and not as business income. On appeal by the revenue the Court held that it was found that in accounts up to year 2004, property was mentioned as an asset and from perusal of enteries in accounts it was evident that assessee had not conducted any other activity other than holding land as investment. Tribunal on basis of meticulous appreciation of evidence on record had recorded a finding that assessee had rightly disclosed income from property as long-term capital gains instead of business income. Order of Tribunal is affirmed. (AY. 2005-06)
CIT v. Kishan House Builders Association (2020) 273 Taxman 451 (Karn.)(HC)

902 **S. 45 : Capital gains – Business income – Dealing in land – Industrial building – Outright purchase and sale – Assessable as short term capital gains and not as business income – Question of fact. [S. 28(i), 260A]**
Assessee, engaged in manufacturing and printing of packaging material, purchased land for development/construction of gala (industrial building) on same under an agreement. It earned profit on sale of gala and treated it as business income on ground that said agreement was only in respect of development rights and ownership did not pass on to assessee. However, Tribunal after examining terms of said agreement treated profit earned by assessee as short-term capital gain on ground that assessee had purchased

said land along with rights and it was an outright purchase. High Court affirmed the order of Tribunal. (AY. 2010-11)
Vipin Mehta v. CIT (2020) 270 Taxman 67 (Bom.)(HC)

S. 45 : Capital gains – Investment in shares – High turnover of shares – Assessable as capital gains and not as business income. [S. 28(i)] 903
The assessee which is engaged in manufacturing of chemicals and gases has claimed gain arising from sale and purchase of shares as capital gains. The AO held that turn over of sale of shares is more than the turnover of sale of gas assessed the gains on sale of shares as business income. Appellate Authority allowed claim of assessee. On appeal by revenue the Court held that that memorandum of association of assessee-company clearly showed that business of purchase and shares and securities was not main object of company and assessee had also maintained distinction between trading assets and non-trading assets in books of account and only net surplus or loss arising out of shares and securities was reflected in profit and loss account and since the assessee had continuously treated transaction in shares and securities as investment, Assessing Officer could not have treated same as business transaction so as to treat surplus as business income. (AY. 2005-06 to 2011-12).
PCIT v. Gujrat Fluorochemicals Ltd. (2020) 275 Taxman 366 (Guj.)(HC)

S. 45 : Capital gains – Year of taxability – Capital gains rightly taxed in which sale deeds were executed in respect of transfer of undivided share of land in favour of nominees of the Developer – Directed the Assessing Officer to give effect to the orders passed by the Tribunal by modifying the orders for the assessment years 1999 – 2000 upto 2003 – 04. [S. 2(47)(v), 147] 904
The appellant/assessees are Hindu Undivided Families, which owned properties at Chennai. Both the assessees entered into a Development Agreement with a builder, in terms of which, the assessees were entitled to 60% of the total built up area to be constructed by the developer at its cost and in consideration, the developer was entitled to 40% of undivided share in the land and entitled to retain proportionate 40% of the built up area. The land owners received a non-refundable security deposit of Rs.10,00,000/- each, during the previous year relevant to the assessment year 1996-97. According to the assessees, from the assessment year 1999-2000, the developer commenced selling the built up area and directed the land owners to execute sale deeds in respect of undivided share of the land to the nominees/purchasers of flats from the builder. The land owners offered capital gains in each of their hands in respect of the land transferred by them during each of the assessment years starting from 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04. The assessees admitted that the developer handed over possession of 60% of built up area to the land owners during the assessment year 2000-01. The assessment for the year 1996-97 was completed and the same was re-opened and the re-assessment proceedings were completed vide order dated 23.03.2004 including the entire capital gains in that year on the ground that the possession of the land was handed over by the owners to the developer in that year. For the assessment year 2001-02, the Assessing Officer had completed the assessment protectively on the capital gains offered by the assessees in respect of the undivided share of land sold during that year. On appeal the

CIT(A) quashed the reassessment on technical ground of non-complinace of section 151 of the Act. The CIT(A) directed the Assessing Officer to treat the protective assessment order dated 23.03.2004 for the assessment year 2001-02 as a substantive one and assess capital gains accordingly. On appeal the Tribunal dismissed the appeal of the assessee by common order. High court affirmed the order of the Tribunal and held that for all the years, the assessee has offered capital gains for taxation, which is from the assessment year 1999-2000 upto 2003-04 and in fact, these particulars are noted in the orders passed by the CIT(A) dated 30.11.2005. From paragraph 7.1 of the orders passed by the CIT(A), we find that the assessees offered the capital gains for taxation upto 2003-04. The Tribunal, while granting the relief, should have granted relief to the assessee for the assessment years 1999-2000 upto 2003-04. The Assessing Officer is directed to give effect to the orders passed by the Tribunal by modifying the orders for the assessment years 1999-2000 upto 2003-04. (AY. 2000-01)

C. Sudarsana Srinivasan (HUF) v. ACIT (2020) 317 CTR 908 (Mad.) (HC)

C. Venkatachakam (HUF) v. ACIT (2020) 317 CTR 908 (Mad.)(HC)

905 **S. 45 : Capital gains – Stock option is a capital asset – Gains on exercising option – Stock option given to consultant – Assessable as capital gains – Rule of consistency to be followed when other assesses assessment the claim was accepted as capital gains. [S. 2(14), 2(42A), 2(47), 17(2)(iia)]**

The assessee in the assessment exercised his right under the stock option plan by way of cashless exercise and received a net consideration of US $ 283,606 and offered the gains as a long term capital gains as the stock options were held nearly for ten years. The AO assessed the gain as salary which was confirmed by the CIT(A) and Tribunal. On appeal ,the High Court held there was no relationship of employer and employee between the U. S. company and the assessee. The assessee never received the shares in the stock options. At the time of grant of options to the assessee in the year 1996, section 17(2)(iia) of the Act was not there in the statute. The difference between the option/exercise price of the stock option and the fair market value of the shares on the date of exercise of the stock option was assessable as capital gains. Court also held , revenue in case of the several other assessee's had accepted the facts that on cashless exercise of option, there arises income in the nature of capital gains. In the case of the assessee the aforesaid stand was not taken. The revenue could not be permitted to take a different view. (AY.2006-07)

Chittharanjan A. Dasannacharya v. CIT (2020) 429 ITR 570 / 195 DTR 433 / (2021) 318 CTR 74 / 276 Taxman 433 (Karn.)(HC)

906 **S. 45 : Capital gains – Unabsorbed depreciation – Set off against long-term capital gains is permissible – Block of assets – Sale of land and building – Land and building valued separately – Held to be proper. [S. 2(11), 32(2), 71, 72, 73]**

Dismissing the appeal of the revenue the court held that the, unabsorbed depreciation can be set off against long-term capital gains is permissible. Court also held that valuation adopted by the Tribunal sale of land and building separately is held to be proper. (AY.2008-09)

PCIT v. Gunnebo India Pvt. Ltd. (2020) 428 ITR 233 (Bom.)(HC)

S. 45 : Capital gains – Block of assets – Land and building – Valued separately – Held to be justified. [S. 2(11)] 907

The assessee sold land along with the building. The assessee had valued the land and the building separately and claimed depreciation on the constructed property. The assessee offered the sale consideration attributed to the building to tax and claimed depreciation on the constructed property. The Assessing Officer assessed the entire sale consideration to capital gains. On appeal the Tribunal accepted such depreciation, however subject to rider of revaluation of another property which also formed part of the block of depreciable assets. On appeal High Court affirmed the order of the Tribunal. (AY.2008-09)

PCIT v. Gunnebo India Pvt. Ltd. (2020) 428 ITR 233 (Bom.)(HC)

S. 45 : Capital gains – Business income – Non-Banking financial Institution – Conversion of shares and securities held as stock-in-trade into investment – Sale of shares – Income cannot be assessed as business income. [S. 4, 28(i)] 908

Allowing the appeal the Court held that the Tribunal had erred in treating the income that arose on sale of shares held as capital asset after conversion from stock-in-trade as business income. The assessee had converted stock-in-trade into investments. Prior to introduction of the Finance Bill, 2018 by which provisions of the Act had been amended to provide for taxability in cases where stock-in-trade was converted into capital asset, there was no provision to tax the transaction. In the absence of any provision in the Act, the transaction in question could not have been subjected to tax. The order of the Tribunal was quashed.(AY.2004-05, 2005-06)

Kemfin Services Pvt. Ltd. v. ACIT (2020) 425 ITR 684 / 315 CTR 336 / 272 Taxman 372 (Karn.)(HC)

S. 45 : Capital gains – Land – Survey – Statement – There was no building on the land which was subject to depreciation – Rent was received only in respect of land – Provision of S.50 cannot be applied merely on the basis of statement in the course of survey. [S. 50, 133A, 194I] 909

During the period relevant to the assessment year 2010-11, the assessee sold a piece of land and offered the consideration to long term capital gain. During the survey operation, the AO recorded a statement of the representative of the assessee company indicating that there was a factory building situated on the land. The revenue therefore contended that such building would be subject to depreciation and for the purpose of charging capital gain the depreciated value of the super structure should be taken in to consideration. The statement was promptly retracted. On appeal the Tribunal held that there was no super structure on the land which could be subjected to depreciation. Tribunal held that the provision of S.50 cannot be applicable to the facts of the appellant. On appeal by the revenue,dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that there did not exist any building on the sold property especially in view of the fact the specification in agreement of sale and incriminating material found in survey confirmed existence of super structure on sold property. (Arising out of ITA. No.6224/Mum/2012 dt.22/01/2016)(ITA NO. 124 of 2017, dt.12/03/2019) (AY. 2010-11).

PCIT v. Firoz Tin Factory (Bom.)(HC)(UR)

Editorial : SLP of revenue is dismissed (SLP No.21694 of 2019 dt. 06/09/2019) (2019) 417 ITR 56 (St.)(SC)

910 **S. 45 : Capital gains – No cost of acquisition of TDR (Development rights) – Not liable to capital gain tax. [S. 4]**

There was no cost of acquisition of the TDR, hence in absence of the cost of acquisition of the development rights, the TDR cannot be taxed as a capital gain. (Arising out of ITA No.7582/Mum./2014 dt.09/10/2015)(ITA No.822 of 2016, dt.07/01/2019)

PCIT v. Manohar H. Kakwani. (Bom.)(HC) (UR)

Editorial : SLP of revenue is dismissed (SLP No.18498 of 2019 dt.02/08/2019)(2019) 416 ITR 125 (St.)(SC)

911 **S. 45 : Capital gains – Surrender of tenancy rights – Assessable as capital gains and not as income from other sources – Invested in capital bonds is eligible for exemption u/s 54EC of the Act. [S. 48, 54EC, 56]**

The assessee is an HUF on surrender of tenancy rights received compensation of Rs 50 lakhs which was invested in capital bonds and claimed exemption u/s 54EC of the Act. The AO treated the amount received on surrender of tenancy rights as income from other sources and denied the exemption u/s 54EC of the Act. Order of the AO is affirmed by the Tribunal. On appeal by the assessee allowing the appeal of the High Court held that the assessee had disclosed the amount of Rs.50 lakhs received from M/s. Carlton Coats Pvt. Ltd. for settlement of its claim to the property and had further disclosed that the said amount was invested in capital bonds. The said amount was received by the assessee as long term capital gains in view of surrender of rights by the assessee vis-a-vis the property in question. In the circumstances, merely on the basis of suspicion, the revenue authorities ought not to have rejected the claim of the assessee that the said amount was received as long term capital gains but to treat the said amount as income from other sources. (AY. 2009-10)

Amol C. Shah (HUF) v. ITO (2020) 423 ITR 408 / 274 Taxman 519 (Bom.)(HC)

912 **S. 45 : Capital gains – Carry forward of long term capital loss on sale of shares to be set of in subsequent years – long term capital loss on sale of the shares being exempt u/s. 10(38) of the Act – Question of law is admitted by the High Court. [S. 2(14)(a), 2(29B), 10(38), 72, 260A]**

On appeal by the revenue the following question of law is admitted by High Court.

"Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in directing to allow the claim for carry forward of long term capital loss on sale of shares to be set of in subsequent years without appreciating that the long term capital loss on sale of the shares being exempt u/s. 10(38) of the Income Tax Act, 1961 the loss was not liable to be set of against the taxable long term capital gains on sale of other assets or to be carried forward for set of against taxable long term capital gains in the subsequent assessment years ?"

PCIT v. Vibhadeep Investments & Trading Ltd. (Bom.) (HC) (UR)

Editorial : Tribunal followed Raptakos Brett & Co. Ltd.(ITA Nos. 3317/Mum/2009 and 1692/Mum/2010 10.06.2015 dismissed by High court ITA No 357 of 2016 dt 98-08-2018 for want of non-prosecution. Also refer, Royal Calcutta Turf Club.v CIT (1983)144 ITR 709 (Cal) (HC) favour to assessee. Kishorebhai Bhikhabhai Virani v ACIT (2015)367 ITR 261 (Guj.) (HC), against the assessee.) (ITA No. 4751/Mum/2012 dt 28-10-2016 (AY. 2005-06.) (ITA NO. 1176 of 2017 dt 27-01-2020)

S. 45 : Capital gains – Capital asset – Agricultural land – Not able to show any crop produced and expenses incurred – Assessable as capital gain. [S. 2(14)(iii), 10(1)] 913

Assessee sold a land and claimed that said land was an agricultural land and, thus, proceeds were exempt from tax. Assessing Officer assessed gain as liable to capital gains tax. On appeal the Tribunal held that there was no evidence of agriculture produce having been sold by assessee, further, land was situated in area which was an upcoming residential area with many upcoming private residential flats to be built therefore on facts, land sold by assessee could not be considered as agricultural land and same was to be treated as a capital asset liable to be taxed. (AY. 2007-08)

G. Vijay Padma (Smt.) v. ITO (2020) 208 TTJ 530 / (2021) 186 ITD 109 (Bang.)(Trib.)

S. 45 : Capital gains – Relative occupying a Flat on licence basis – Flat Sold after demise of occupier – Amounts received by assessee as consideration for not interfering in possession of transfer – Not chargeable to tax as capital gains – No transfer of tenancy rights. [S. 48] 914

The assessee's mother-in-law occupied a flat on the second floor of a building on licence basis. She had two sons. After her demise, her son occupied the flat with his family. The building was purchased by HME. For vacating the premises, it filed a suit against the occupier of the building. An out of court settlement was entered into under which the assessee received Rs. 25 lakhs for not interfering with the possession of HME. The Assessing Officer held that the amount of Rs. 25 lakhs were consideration in respect of giving up the claim, vacating the premises and handing over possession of the premises, that it was capital gains, which had accrued to the assessee in lieu of relinquishment of rights in the premises. Accordingly, he brought to tax Rs. 25 lakhs in the hands of the assessee as long-term capital gains. The CIT(A) confirmed the addition. Tribunal held that Commissioner (Appeals) confirmed the action of the amounts received by the assessee as consideration for transfer of possessory rights was not chargeable to tax as capital gains and no transfer of tenancy rights was involved.(AY. 2013-14)

Yogini Mohit Sahita v. ITO (2020) 82 ITR 15 / 208 TTJ 741 / (2021) 197 DTR 388 (SMC) (Mum.)(Trib.)

S. 45 : Capital gains – Agricultural Land – sold was too small – No evidence was produced for the agricultural activities carried on – Assessable as capital gains. [S. 2(14)(iii)] 915

Dismissing the appeal of the assessee the Tribunal held that the land sold by assessee was too small for carrying out agricultural operations and no evidence of agricultural operations carried out on said land was produced. Assessing the gain as capital gain is affirmed. (AY. 2013-14)

Jairam G Kimmane v. Dy.CIT (2020) 185 ITD 511 (Bang.) (Trib.)

S. 45 : Capital gains – Slump sale – Amount kept in Escrow account – Payable in five instalments on fulfilment of certain obligation – Entire capital gains cannot be taxed in the relevant year. [S. 50B] 916

Assessee-company was engaged in business of manufacturing and marketing pharmaceutical products. During previous year, it sold its marketing division to

another company through Business Purchase Agreement (BPA) by way of slump sale. Under Business Purchase Agreement, gross consideration was agreed at Rs. 567.07 crores, out of which Rs. 477.62 crores accrued and became payable upon transfer and balance of Rs. 89.44 crores were placed in Escrow Account and would accrue to assessee annually in five equal instalments of Rs. 17.89 crores each. In the return of income the assessee offered a lump-sum payment of Rs. 477.30 crores as well as Rs. 17.89 crores which accrued to assessee during previous year and balance (Rs. 71.56 crores) was offered in four subsequent assessment years. Assessing Officer treated business purchase agreement and Escrow Agreement independent to each other and held that Escrow Account could not be linked to agreement and, therefore, entire consideration had accrued to assessee in assessment year itself and he brought amount, kept in Escrow Account to tax as income of assessee for assessment year under consideration. On appeal the tribunal held that Escrow account was executed in furtherance of BPA and amount in Escrow Account would accrue to assessee only on fulfilment of certain condition and deposit in Escrow Account was intrinsic and integral to transfer of marketing division under business purchase agreement and without it, sale would be incomplete. Income which did not accrue to assessee was not liable to tax during the year. (AY. 2012-13)

Universal Medicare (P.) Ltd. v. DCIT (2020) 185 ITD 250 (Mum.) (Trib.)

917 **S. 45 : Capital gains – Sale of land – Possession was not handed over – Execution of cancellation deed – No Transfer not liable to capital gains tax – Capital gain is not liable to be taxed though offered in the return of income. [S. 2(47)(v), Transfer of Property Act, 1882, S. 53A]**

The assessee entered into an agreement to sell a piece of land. Assessee filed its return declaring certain amount as long term capital gain from sale of land. Assessing Officer made certain addition in capital gain declared by assessee. In appellate proceedings, assessee raised a new plea that agreement to sell was subsequently cancelled and, thus, in absence of any valid transaction relating to sale of land in existence, nothing could be brought to tax as long term capital gain. Commissioner (Appeals) remanded matter back to Assessing Officer to verify genuineness of aforesaid plea raised by assessee. On appeal the Tribunal held that the possession of land was never handed over by assessee to third party and, on said count alone, provisions of section 2(47)(v), read with section 53A of Transfer of Property Act, 1882, would not be applicable. Tribunal also held that agreement to sell being an unregistered document, same would exclude applicability of section 2(47)(v), read with section 53A of 1882 Act. The addition was deleted. (AY. 2013-14)

Futura Polyster Ltd. v. ITO (2020) 184 ITD 158 (Mum.)(Trib.)

918 **S. 45 : Capital gains – Transfer – Sale deed executed – Sale transaction could not materialise – Posted cheque issues dishonoured – Not liable to capital gain tax. [S. 2(47)(v)]**

Assessee entered into two sale deeds for sale of its land whereby sale consideration had been discharged by issue of post dated cheques. The AO has held that the assessee was liable to capital gain tax. CIT(A) deleted the addition. On appeal by the revenue

the Tribunal held that there was no transfer of land in terms of section 2(47)(v) and no real income which had accrued or arisen to assessee as there was no receipt of full sale consideration and in absence thereof, assessee would not be exigible to capital gains tax.(AY. 2013-14)
ACIT v. Ijyaraj Singh. (2020) 183 ITD 237 /207 TTJ 953 (Jaipur)(Trib.)

S. 45 : Capital gains – Relinquishing rights to claim specific performance by conveyance in respect to an immovable property – Assessable as capital gains and not as income from other sources [S.2(14), 2(47), 56] 919
On 09-02-2005, assessee entered into an agreement to purchase a vacant site for Rs.27.60 lakh. Assessee paid an advance of Rs.2.75 lakh and agreed to pay remaining sum at time of registration of sale deed. Under said agreement, vendor was required to make out a marketable title to property and assessee had a right to enforce terms of agreement by way of specific performance. On 08-12-2011, vendor and assessee as confirming party sold said property to a third party. As per sale deed Rs.44.50 lakh was paid to vendor while Rs.48.30 lakh was paid to assessee as instructed by vendor towards full and final satisfaction of entire sale consideration amount. The AO assessed the said amount as income from other sources. Tribunal held that-in *CIT v. H Anil Kumar (2011) 242 CTR 537 (Karn.)(HC)* has held that giving up of a right to claim specific performance by conveyance in respect to an immovable property amounts to relinquishment of capital asset and there would be a transfer of capital asset within meaning of Act. Accordingly amount received by assessee in lieu of giving up right to claim specific performance would constitute capital gain and it would exigible to tax accordingly. (AY. 2012-13)
Chandrashekar Naganagouda Patil v. DCIT (2020) 183 ITD 457 / 194 DTR 249 / 207 TTJ 762 (Bang.)(Trib.)

S. 45 : Capital gains – Sale of shares – Long term capital gains – Purchase and sale of shares through security broker by online portal and, Securities transaction tax was also paid – Addition cannot be made as cash credits – Denial of exemption is not justified – Reassessment is held to be valid. [S. 10(38) 68, 147, 148] 920
During relevant year, assessee declared long term capital gain on sale of shares and claimed exemption under section 10(38) of the Act. Assessing Officer held that share transaction in question was bogus, added said amount to assessee's taxable income under section 68 of the Act. On appeal the Tribunal held that the assessee had purchased shares through a stock broker by online portal which were duly reflected in assessee's Demat account, subsequently, assessee sold those shares through same broker by online portal and securities transaction tax was also paid. Accordingly share transactions in question were to be regarded as genuine and, thus, impugned addition was to be deleted. As regards the reassessment proceeding is held to be valid. (AY. 2011-12)
Suresh Kumar Agarwal v. ACIT (2020) 183 ITD 463 (Delhi) (Trib.)

921 **S. 45 : Capital gains – Foreign Institutional Investor (FII) – Income deemed to accrue or arise in India – Status of beneficiaries or constituents of tax transparent entities is relevant for purpose of determining treaty protection to trustee in representative capacity – Capital gains, on sale of shares in hands of assessee and investors, it represents as trustee, were treaty protected from taxation in India. DTAA – India Netherlands. [S. 9(1)(i), Art. 13]**

Assessee was a trustee of ING Emerging Markets Equity Based Funds (INGEMEF) established in Netherlands which was registered with Securities and Exchange Board of India as a sub-account of ING Assets Management BV, a registered Foreign Institutional Investor (FII). Assessee earned Short-Term Capital Gains (STCG) on sale of shares in India and claimed that they were treaty protected from taxation in India, under article 13 of India Netherlands Double Taxation Avoidance Agreement (DTAA).Assessing Officer and Commissioner(Appeals) rejected plea of assessee and held that as it was a non-taxable entity in Netherlands, therefore benefit of article 13 could not be extended to it. Tribunal held that assessee was a tax transparent entity, in sense that while INGEMEF was not taxable in its own right, constituents of INGEMEF i.e. three participant investors were taxable in respect of their respective shares of earning. As the income in question had actually accrued to taxable entities on Netherlands, which, according to approach adopted by Assessing Officer, was sine qua non for tax treaty protection the treaty protection had indeed been wrongly declined to assessee. If assessee was to be taxed as a trustee in representative capacity, clearly, beneficiaries were three investors all of which were taxable entities in Netherlands. Accordingly capital gains, on sale of shares in hands of assessee and investors, it represents as trustee, were treaty protected from taxation in India. (AY. 2007-08)

ING Bewaar Maatschappij I BV v. DCIT (IT) (2019) 202 TTJ 1049 / 184 DTR 321 / (2020) 182 ITD 529 (Mum.)(Trib.)

922 **S. 45 : Capital gains – Long-term capital gains – Sale of property taking place 11-4-2011 – Capital gains assessable in the year 2012-13 and not in the year 2008-09. [S. 2 (47)]**

Tribunal held that the sale deed showed the date of sale as April 11, 2011. Hence the addition could not made in the Assessment Year 2008-09 because the property was sold on April 11, 2011. The capital gains could be assessed only in the assessment Year 2012-13.(AY.2008-09)

Suresh Bansal v. Dy. CIT (2020) 82 ITR 43 (SN) (Delhi)(Trib.)

923 **S. 45 : Capital gains – Development rights – Business assets – Accrual of income – Provisions of Section 2(47) r.w.s 53A of the Transfer of property Act 1882 are not applicable to transfer of development rights held by assessee as business assets. [S. 2(47)(v),44AD, 145, Transfer of Property Act, 1882, S.53A]**

Tribunal held that the assessee is civil contractor and income earned from the project has been assessed as business income and development rights were held as business assets. The term transfer as defined in S.2(47)(v) would not apply since the said section is applicable only in case of capital asset held by the assesee. The Tribunal also held that the terms of joint venture agreement only part income accrued to the assesssee on

the execution of the project agreement. The balance consideration was a conditional receipt and will accrue only in obligation under the agreement. It is evidenced that the details furnished that the payments received in subsequent years have already been offered to tax. Appeal of the revenue is dismissed. (ITA No. 5851/Mum/ 2018 dt. 6-7-2020) (AY. 2009-10)
ITO v. Abdul Kayam Ahmed Moham Tamboli (2020) The Chamber's Journal-August P. 119 (Mum.)(Trib.)

S. 45 : Capital gains – Reduction in share capital – Compensation received by an existing partner on reduction of his share in the partnership firm is not liable gains tax. [S. 2(47), 4, 45(1), 45(4)] 924
The assessee surrendered his profit sharing ratio to the extent of 5% share in favour of existing partners and received Rs.400 as compensation from them. The share was reduced from 30% to 25%. The assessee has the said receipt as not taxable as a capital receipt. The AO has not agreed with the submission of assessee and asseseed as revenue receipt. Order of the AO is affirmed by the CIT(A). On appeal allowing the appeal of the assessee the Tribunal held that the compensation received by the assesssee from the existing partners on mere reduction of its share of profits in the partnership firm does not amount to any transfer u/s 2 (47) of the Act and consequently, does not give rise to capital gains. Referred *CIT v. P. N. Paunwani (2013) 356 ITR 676 (Karn.) (HC)* (ITA No. 7189/Mum/ 2014 & 5324 / Mum/2016 dt. 19-3 2020.(AY. 2010-11 & 2012-13)
Anik Industries Ltd. v. DCIT (2020) 116 taxmann.com 385 (Mum.) (Trib.)

S. 45 : Capital gains – Long – term capital gains – Allotment letter – Subsequent letter and premises ownership agreement – Improvement in rights which already created – Date of acquisition of right not date of registration but date of allotment letter – Holding of property more than 36 months – Assessable as long term capital gains – Entitled to Indexation benefit – Entitled to exemption on reinvestment in new flat. [S. 2(42A), 54, 54F] 925
Tribunal held that what was acquired by the assessee and what had ultimately been sold by the assessee was in pari materia. The date of acquisition of the right could not be taken as June 22, 2010. The assessee acquired the right on October 14, 2006 which was ultimately sold on September 18, 2010. Therefore, since the holding period of the property was more than 36 months, the resultant gains would be long-term capital gains. Consequently, the benefits of indexation would be available since the financial year 2006-07. The assessee submitted that the assessee's deduction claim would fall under section 54F and not under section 54 since what had been sold was merely a certain right in the property. The facts were brought to the notice of the Commissioner (Appeals) also. Therefore, the alternative claim as made by the assessee under section 54F would be admissible. The Assessing Officer was directed to verify the assessee's claim under section 54F and recompute the income. (AY. 2011-12)
Raju Dayal Sahani v. ITO (2020) 78 ITR 35 (SN) (Mum.)(Trib.)

926 **S. 45 : Capital gains – Long – term capital gains – Transfer of land – Fair market value – As on 1-4-1981 was directed to be adopted.**

Tribunal held that normally the fixation of minimum value of land is well below the fair market value. The Sub-Court had fixed land value at Rs. 8,000 per cent in 1982 and this was upheld by the High Court. Therefore, the valuation report submitted by the Valuation Officer could not be taken as totally correct. The Assessing Officer had initially proposed Rs. 9.30 lakhs as the fair market value as on April 1, 1981 and considering that this was a very old case, the sum of Rs. 9.30 lakhs as the fair market value as on April 1, 1981 was adopted. The sum of Rs. 9.30 lakhs would include cost of improvement such as compound wall, two wells, fruit bearing trees etc. Therefore, the fair market value adopted as on April 1, 1981 would be Rs. 9.30 lakhs instead of Rs. 6 lakhs adopted by the Commissioner (Appeals) for the purpose of computation of long-term capital gains.(AY.1995-96)

Catherene Thomas (Smt.) v. ACIT (2020) 78 ITR 18 (SN) (Cochin) (Trib.)

927 **S. 45 : Capital gains – Long-term capital gains – Land held for more than thirty-six months – Treatment given in books of account immaterial – Converting Stock-in-trade into capital asset – Gains assessable as long-term capital gains and not business income – Entitled to set off gains against brought forward long-term capital loss – Entitled to indexation. [S. 2(42A), 74]**

Tribunal held that the land was held for the period from December 3, 2005 to September 16, 2010 by the assessee, as legal owner of the asset. Therefore, under the definition of section 2(42A) of the Income-tax Act, 1961 the underlying asset held by the assessee was land which was held for more than 36 months and the title or treatment given by the assessee in the books of account was immaterial for the holding period of this asset was concerned. The assessee had converted his stock-in-trade into a capital asset and sold the asset after its conversion. The gains arising therefrom were required to be taxed as long-term capital gains and not as business income. Since the assessee had reconverted the stock-in-trade into capital asset as on April 1, 2010, there was no bar in law for reconversion of the business asset into a capital asset and vice versa. Since the asset sold had been considered as capital asset in the books of account, when the capital asset was sold, the gains therefrom were assessable as long-term capital gains. Consequently, the assessee would be entitled to set off brought forward long-term capital loss of Rs. 16,40,564. The Assessing Officer was directed to allow deduction on account of indexation after verification of records.(AY.2011-12)

Rameshchandra Chhabildas Tamakuwala v. JCIT (2020)78 ITR 148 (Surat)(Trib.)

928 **S. 45 : Capital gains – Transfer of property with co-owners – Consideration not received sale consideration – No capital gains could be taxed – Assessing Officer directed to verify non-receipt of consideration. [S. 2(47)**

Tribunal held that no part of the consideration was received till date and the assessee would be offering the amount of capital gains to tax as and when the sale consideration was actually received. The issue was remitted to the Assessing Officer for verifying the assessee's contention about non-receipt of sale consideration. In case such contention was found to be correct, nothing should be charged to tax in the hands of the assessee

for the year 2012-13 and the resultant computation of capital gains should be made and included in the total income for the year in which the assessee actually received the consideration. (AY. 2012-13)
Mohanrao Vishwanath Gaikwad v. ITO (2020) 79 ITR 42 (SN) (Pune)(Trib.)

S. 45 : Capital gains – Business income – Expenditure – Taxable as capital gains and not as business income. [S. 2(13), 28(i), 48] 929
Tribunal held that certain aspects required consideration before arriving at a conclusion whether the assessee were carrying out any activity in the nature of trade. These : (i) the intention of the assessee at the time of acquisition of the land, (ii) the period of holding of such land by the assessee, and (iii) the treatment made by the assessee in the books of account with respect to such land. There was nothing on record on these aspects but the Assessing Officer had arrived at the conclusion that the assessee had been carrying on the business of property development on the basis that the assessee had been incurring the expenditure on continuous basis for the development of the land. Thus, the income generated by the assessee from the sale of the property was taxable under the head capital gains.(AY.2006-07)
Anil Dye Chem Industries Pvt. Ltd. v. Asst. CIT (2020) 79 ITR 30 (SN) (Ahd.)(Trib.)

S. 45 : Capital gains – Sale of shares – Penny stock – Assessment in search cases – Unexplained Income – Purchase of shares and sale transactions through Online Mode – Merely on presumption addition cannot be made – The presumption needs to be corroborated by some evidence to establish the same. [S. 10(34), 68, 69, 132(4), 132(4A)] 930
Allowing the appeal of the assessee the Tribunal held that sale transactions took place through recognized stock exchange and statutory Securities Transaction Tax (STT) was paid on sale transactions. In the online platform, the identity of the seller as well as purchaser would not be known. The shares were delivered in demat form though clearing mechanism of the stock exchange. Therefore, unless any link is established, the assessee could not be held to be part of the group indulging into rigging shares prices of the scrips. The sale proceeds were realised through banking channels. There was no evidence of any cash exchange. The findings as well as conclusion of Ld.AO were based on mere suspicion, surmises and hearsay as against settled proposition of law that suspicion howsoever strong could not partake the character of legal evidence. The entire case of Ld.AO was based on mere presumption that the assessee ploughed back its own unaccounted money in the form of bogus LTCG. The perusal of record would reveal that the assessee purchased certain shares of an entity namely M/s STL as early as September, 2011. The shares were converted into demat form in assessee's account during the month of March, 2012. The transactions took place through banking channels. The investments were duly reflected by the assessee in financial statements of respective years. The copies of financial statements of M/s STL for FYs 2009-10 & 2010-11 which led to investment by the assessee in that entity was also furnished during the course of assessment proceedings. Subsequently, M/s STL got merged with another entity viz. M/s SAL pursuant to scheme of amalgamation u/s 391 to 394 of The Companies Act, 1956. The Scheme was duly approved by Hon'ble Bombay High Court vide order dated 22/03/2013, a copy of which

is on record. Consequently, the shares of M/s STL held by the assessee got swapped with the shares of M/s SAL and new shares were allotted to the assessee during June, 2013 pursuant to the approved scheme of amalgamation. M/s SAL is stated to be listed public company Group 'A' shares signifying high trades with high liquidity. The assessee has sold these shares through its stock broker namely M/s Unique Stockbro Private Limited in online platform of the recognised stock exchange during the month of March, 2014. The selling price was in the range of Rs.489/-to Rs 491 per share. The transactions took place through online mechanism after complying with all the formalities and procedure including payment of STT. The delivery of the shares was through clearing mechanism of the stock exchange and sale consideration was received through banking channels. The transactions are duly evidenced by contract notes, demat statements, bank statements and other documentary evidences. The key person of assessee group, in his statement, maintained the position that trading transactions were genuine transactions carried out through stock exchange following all process and legal procedures. The assessee also filed trading volume data and price range of the scrip for a period of more than 2 years i.e. from Jan, 2013 to July, 2015. The shares reflected healthy trading volume and the price range reflected therein was in the range of Rs.360/-to Rs.600/-per share. The price range was stated to be in the same range for 15 months after the period of sale of shares by the assessee, which has not been disputed by the revenue. On the basis of all these facts, it could be gathered that the assessee had duly discharged the onus casted upon him to prove the genuineness of the stated transactions and the onus had shifted on revenue to rebut the same. The presumption needs to be corroborated by some evidence to establish the same. (AY. 2014-15)

Dipesh Ramesh Vardhan v. Dy CIT (2020) 81 ITR 91 (SN) / 195 DTR 161 / 208 TTJ 318 (Mum.)(Trib.)

931 **S. 45 : Capital gains – Family settlement – The amount received on re-alignment of shareholding pursuant to family settlement arrangement is held to be liable to capital gains tax – on facts Owelty be claimed as part of family settlement is not exempt from capital gains tax. [S. 2(47), 47]**

The issue before the appellate tribunal was " That on the facts and circumstances of the case and in Law, the A.O./CIT(A) erred in not holding that the amount received on re-alignment of shareholding pursuant to family settlement arrangement was not liable to capital gains tax under section 45 of the Income Tax Act, 1961."

The assessee contended that the impugned amount of Rs.93,88,81,656/-received by the assessee through Family Settlement is an Owelty in nature and is, therefore, not taxable and is liable to be excluded from the total income so offered for taxation. Considering the submissions , the Tribunal held that ;

1) The family settlement must be a bonafide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(3) The family arrangement may be even oral in which case no registration is necessary:

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between

a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of s. 17(2) of the Registration Act and is, therefore, not compulsorily registerable.

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property. It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole 9 owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same:

(6) Even if bonafide disputes, present or possible, which may not involve legal claims are settled by a bonafide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

Owelty is an equalisation charge. It is the amount that one co-owner must pay to another after a Lawsuit to Partition real estate, so that each co-owner receives equal value from the property.

The Webster Law Dictionary defines Owelty "A Lien created or a peculiar sum paid by Order of the Court to effect an equitable partition of property when such partition in kind would be impossible, impracticable or prejudicial to one of the parties of an Owelty Award." The legal definition of the Owelty defines the difference which is paid or secured by one coparcener to another, for the purpose of equalising the partition.

Family Arrangements involve settlement of disputes, relating to family property in which Members must have an antecedent title or claim. Family Settlement Memorandum, once acted upon, is binding on the parties despite being unregistered. The literal interpretation of Family Settlement would imply an existence or anticipation of a dispute between the Members of Family.

From the taxation perspective, the Family Settlement is in the nature of 'Partition' which is not regarded as Transfer' under section 2(47). When there is no transfer, there is no capital and, therefore, no tax on capital gain is liable to be paid. Using Family Settlement for the purpose of tax planning is not outside the purview of Law. However, Family Settlement should always be undertaken with a bonafide intention of Resolution of Disputes in a family and that it results in tax planning should be an extra benefit and not a primary concern. She has not received this amount as owelty as there were no division of assets. She had to forego her assets for a consideration and she did not receive any asset/right in reciprocation nor was the money paid for equalisation of the interest. Thus, the money received by her though indirectly were the sale consideration of transfer of her rights and not owelty. Thus, it is clear that assessee received the impugned amount on sale of the shares. Therefore, it would be transfer of capital asset within the meaning of Section 2(47 of the Act. Accordingly the order of lower authorities affirmed.(ITANo.1286/Del./2020 dt.28-9-2020) (AY. 2009-10)

Soni Sonu (Smt.) v. ACIT (Delhi) (Trib.) www.itatonline.org

932 **S. 45 : Capital gains – Bogus capital gains from penny stocks – The AO has not discharged the onus of controverting the documentary evidences furnished by the assessee and by bringing on record any cogent material to sustain the addition as cash credits – Entitle to exemption – Addition as estimated commission income also deleted. [S. 10(38), 68]**

The assessee made investment in the shape of 62,500 Equity Shares of an entity namely Santoshima Tradelink Ltd. (STL) during the month of September, 2011. The face value of the share was Rs.10/-per share with premium of Rs.10/-per share and accordingly, the assessee paid a sum of Rs.12.50 Lacs to acquire the same. The shares were duly allotted in due course and the shares certificates were received in physical form and the shares were ultimately dematerialized in assessee's account during March, 2012. Meanwhile, M/s STL got amalgamated with another entity namely M/s Sunrise Asian Ltd. (SAL) pursuant to a scheme of amalgamation u/s 391 to 394 which was duly approved by Hon'ble Bombay High Court. As per the scheme of amalgamation, share swap ratio was fixed as 1:1 and accordingly, the shares of STL were swapped with the shares of SAL which were credited in assessee's demat account during the month of June, 2013. M/s SAL was a public limited company and its shares were listed on Bombay Stock Exchange as Group 'A' shares signifying that the shares were highly traded having highest degree of liquidity. The assessee sold these shares through online platform (BOLT) provided by recognized stock exchange and delivered the shares in demat form to the clearing house and received sale consideration through its stock-broker in the month of March, 2014. The sale consideration was received through banking channels. Since the investment was held for more than 1 year and the sale transactions were undertaken through recognised stock exchange on which Securities Transactions Tax (STT) was paid, the assessee apparently fulfilled the conditions laid down in S.. 10(38) and accordingly claimed exemption of the gain. The LTCG earned on these transactions was worked out to be Rs.293.88 Lacs. The AO denied the exemption applying the ratio in *Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)*. CIT(A) confirmed the order of the AO.On appeal the Tribunal held that The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and other entities. The whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee's position that that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.

As against the assessee's position, the primary material to make additions in the hands of assessee is the statement of Shri Vipul Bhat and the outcome of search proceedings on his associated entities including M/s SAL. However, there is nothing on record to establish vital link between the assessee group and Shri Vipul Bhat or any of his group entities. The assessee, all along, denied having known Shri Vipul Bhat or any of his group entities. However, nothing has been brought on record to controvert the same and establish the link between Shri Vipul Bhat and the assessee. The opportunity to cross-examine Shri Vipul Bhat was never provided to the assessee which is contrary to the decision of Hon'ble Supreme Court in *Andaman Timber Industries v. CCE (2015) 127 DTR 241/ 281 CTR 241 (SC)* wherein it was held that not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statement of those

witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounts to violation of principal of natural justice because of which the assessee was adversely affected. Tribunal held that considering the entirety of facts and circumstances, we are not inclined to accept the stand of Ld.CIT(A) in sustaining the impugned additions in the hands of the assessee. Resultantly, the addition on account of alleged Long-Term Capital Gains as well as estimated commission against the same, stands deleted. The grounds of appeal, to that extent, stand allowed. (ITA No, 7648/Mum/2019 dt 11-8-2020 (AY. 2014-15))
Dipesh Ramesh Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Ramesh Babulal Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Manju Ramesh Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Vishal Ramesh Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Rajesh Babulal Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org

S. 45 : Capital gains – Full value of consideration – Valuation report of DVO was less than the stamp valuation – Valuation report given by the DVO cannot be ignored and directs that the value as determined by the DVO be adopted for the purpose of determining the full value of consideration received on transfer of capital asset for computing LTCG as laid down in S..50C(3) of the Act. [S. 50C(2)(b), 50C(3)] 933
Tribunal rejected the CIT(A)'s view that the conditions for making a valid reference u/s.50C(2) did not exist as the purchaser of the property had disputed the valuation adopted by the registering authorities for the purpose of levy of stamp duty. The Tribunal held that "the fact that the purchaser of the property filed a letter before the Inspector General of Registration and Controller of Stamps, would not be sufficient to conclude that the value adopted for the purpose of stamp duty by the registering authorities had been disputed in an appeal revision before an authority as contemplated under Sec.50C(2)(b)"; Besides, notes that the AO made reference to the DVO before the date of the aforesaid letter filed by the purchaser and infers that "Thus as on the date on which the AO referred the question of valuation of the property to the DVO, there was no bar in terms of S..50C(2)(b)"; Accordingly, opines that "the valuation report given by the DVO cannot be ignored" and directs that the value as determined by the DVO be adopted for the purpose of determining the full value of consideration received on transfer of capital asset for computing LTCG as laid down in S..50C(3) of the Act. (ITA No.23(Bang.)/2020 dt 26-06-2020 (AY. 2016-17)
Benedicta Mary Mendonce (Ms.) v. ITO (Bang.)(Trib.) www.itatonline.org

S. 45 : Capital gains – Sale of shares – STT paid – Sale of shares through a registered share broker in a recognised stock exchange – Addition cannot be made as cash credits – Entitle to exemption. [S. 10(38), 68] 934
Assessee purchased shares of two companies. Later, these shares were sold through a registered share broker in a recognised stock exchange-Assessee claimed exemption under S. 10(38) in respect of long term capital gain (LTCG) derived from sale of shares. AO held that in absence of sound financial result prices of shares were artificially hiked to create non-genuine LTCG to beneficiaries. AO also referred to statements recorded in other cases of various brokers by investigation wing and held that transactions of

assessee were sham transactions and LTCG declared was unexplained cash credit. CIT(A) affirmed the order of the AO. On appeal the Appellate Tribunal held that transactions of assessee of purchase of shares in question, holding of shares for more than one year and sale of shares through registered share broker in a recognised stock exchange and payment of Securities Transaction Tax (STT) thereon, all were supported by documentary evidences and revenue could not point out any specific defect with regard to documents so submitted by assessee. Alleged report of investigation wing was neither confronted to assessee nor was there any inquiry from where it transpired that assessee was beneficiary of any bogus long-term capital gain. Addition as cash credit was deleted. (AY. 2014-15)
Swati Luthra v. ITO (2019) 76 ITR 432 / (2020) 181 ITD 603 (Delhi)(Trib.)

935 **S. 45 : Capital gains – Long-term capital gains – Transfer of land – Reference to Valuation officer – FMV as proposed by AO to be adopted for purposes of computation of capital gains. [S. 48, 49]**
For computing the long-term capital gains on sale of the property, the assessee calculated the fair market value (FMV) as on April 1, 1981 at Rs. 14.50 lakhs. The Assessing Officer proposed to value the land at Rs. 7,500 per cent which worked to Rs 9.30 lakhs for the entire land. On no consensus, matter was referred to the Valuation Officer who worked out FMV at Rs. 5,33,800 (which included the cost incurred for improvement of the property). The CIT(A) enhanced the FMV to Rs 6 lakhs thereby increasing the valuation of trees as cost of improvement by Rs. 66,200. On appeal, the Tribunal held that normally the fixation of minimum value of land is well below the FMV. The Sub-Court had fixed land value at Rs. 8,000 per cent in 1982 and this was upheld by the High Court. Hence, Valuation Officer's report could not be taken as totally correct. Considering the fact that Assessing Officer had initially proposed Rs. 9.30 lakhs as the FMV and this being very old case, FMV to be adopted should be Rs. 9.30 lakhs (which would include cost of improvement such as compound wall, two wells, fruit bearing trees etc) for computing long-term capital gains. (AY.1995-96)
Catherene Thomas (Smt.) v. ACIT (2020) 78 ITR 18 (SN) (Cochin)(Trib.)

936 **S. 45 : Capital gains – Investment in foreign exchange – Deduction of tax at source – Principally – Taxation of business profits was expressly dealt with by article, those business profits could not be taxed in source jurisdiction for want of satisfying fundamental condition precedent for its taxability, i.e., existence of a PE in source jurisdiction – DTAA-India-Spain. [S. 56, Art. 7, 14(1), 14(5), 23(3)]**
The assessee had earned a profit on account of transactions in foreign exchange but claimed same as exempt under article 14 of India-Spain DTAA. The AO held that the assessee, as a FII in India, was permitted to invest in shares or trade in derivatives only, and that assessee was not permitted to invest in foreign exchange. Accordingly the AO held that as an investor, assessee could not carry out any business activity" and accordingly, it was held that receipt on account of foreign exchange transactions were in nature of income from other sources, or other income, which was taxable in India as per Article 23(3) of India-Spain DTAA. CIT(A) held that Article 23 would not come into play for taxation of income which had not been taxed under Articles 6-22, even though it could have been taxed under one of those articles but for non-satisfaction of

conditions precedents for taxability under related article. If a Spanish tax resident was to make gains by entering into forward exchange contracts in India, and such a Spanish tax resident had a PE in India from which such activities were to be carried out, profits of such an adventure would have been taxable in India under Article 7. While taxability of such gains, i.e., capital gains, was covered by Article 14, gains were not taxable in source jurisdiction, as conditions precedents to taxability in source jurisdiction, i.e., coverage by Article 14(1) to 14(5), were not satisfied. Dismissing the appeal of the revenue the Tribunal held that taxation of business profits was expressly dealt with by article, those business profits could not be taxed in source jurisdiction for want of satisfying fundamental condition precedent for its taxability, i.e., existence of a PE in source jurisdiction. Tribunal also held that the sale of shares in only such companies are covered as hold, directly or indirectly, at least fifty percent of the aggregate assets consisting of immovable property. Just because a company is dealing in real estate development does not imply, or even suggest, that over fifty percent of its aggregate assets consist of immovable properties. It is not the case that predominant part or fifty percent, of aggregate of assets of these companies consist of immovable properties. The AO has made no efforts whatsoever to demonstrate, or even indicate, that the assets held by these companies constituted "principally" the immovable properties. The AO has apparently proceeded on the presumption that just because these companies are dealing in real estate development, the assets of these companies "principally" consist of immovable properties. Such an approach cannot get any judicial approval. (AY. 2013-14)
JCIT(IT) v. Merrill Lynch Capital Market Espana SA SV (2020) 180 ITD 627 / 187 DTR 313 / 204 TTJ 597 (Mum.)(Trib.)

S. 45 : Capital gains – Business income – Selling three flats and parking lot – Flats appearing in the balance sheet as investments – Assessable as capital gains and not as business income. [S. 28(i)] 937

The assessee sold three flats and a parking lot. AO treated the gain as business income. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the assets appeared under investments in the balance-sheet of the assessee. The character of a transaction cannot be determined solely on the application of any abstract rule, principle or test but must depend upon all the facts and circumstances of the case. If the assessee, even at the time of acquisition, had a clear intention to resell it, that would be material but not a decisive consideration. On the totality of the facts and circumstances of the case, the treatment given by the assessee in his return as gains/loss from sale of such flats under the head capital gains was correct. (AY.2013-14)
Haresh Khiamal Nanwani v. ACIT (2020) 77 ITR 24 (SN) (Mum.)(Trib.)

S. 45 : Capital gains – Sale of assets used for research and development – Not eligible to claim short – term capital loss or long – term capital loss on sale of assets used for research and development activities for which deduction under S 35 had already been allowed. [S. 2(29A), 2(29B), 2(42B), 35] 938

Tribunal held that the assessee is not eligible to claim short-term capital loss and long-term capital loss on sale of assets used for research and development activities for which deduction under S. 35 had already been allowed. (AY. 2004-05)
Mahindra & Mahindra Ltd. v. DCIT (2020) 180 ITD 776 (Mum.)(Trib.)

939 **S. 45 : Capital gains – Long term capital loss – A reduction of capital results in an extinguishment of rights in the shares and constitutes a transfer – The fact that the percentage of shareholding remains unchanged even after the reduction is irrelevant. The loss arising from the cancellation of shares is entitled to indexation and is allowable as a long-term capital loss. [S. 2(22)(d), 2(47), 10(34), 48, 49(2), 115A, 1150]**
The assessee is a company incorporated in and a tax resident of United States of America (USA). It made investments to the extent of 64769142 equity shares of face value of Rs 10 each of Carestream Health India Private Limited (CHIPL), its wholly owned Indian Subsidiary. During the Asst Year 2011-12, CHIPL undertook a capital reduction of its share capital pursuant to a scheme approved by the Hon'ble Bombay High Court. Under the capital reduction scheme, 29133280 share (out of total holding of 6,47,69,142 shares) held by the assessee were cancelled and total consideration amounting to Rs 39,99,99,934/-was received by assessee towards such cancellation / capital reduction. This consideration sum of Rs 39,99,99,934/-worked out to Rs 13.73 for every share cancelled by CHIPL. This was also supported by an independent share valuation report. As per the provisions of section 2(22)(d) of the Act, out of the total consideration of Rs 39,99,99,934/-, the consideration to the extent of accumulated profits of CHIPL i.e Rs 10,33,11,000/-was considered as deemed dividend in the hands of assessee. Accordingly, Dividend Distribution Tax on such deemed dividend @ 16.609% amounting to Rs 1,71,58,924/-(10,33,11,000 * 16.609%) was paid by CHIPL. Since the aforesaid sum of Rs 10,33,11,000/-suffered Dividend Distribution Tax u/s 115-O of the Act, the assessee claimed the same as exempt u/s 10(34) of the Act in the return of income. The balance consideration of Rs 29,66,88,934/-was appropriated towards sale consideration of the shares and capital loss was accordingly determined by the assessee as prescribed in Rule 115A to Rs 3,64,84,092/-and return was filed claiming such long term capital loss. Accordingly, the assessee had claimed long term capital loss of Rs 3,64,84,092/-upon cancellation of the shares held by it in CHIPL pursuant to reduction of capital in the return of income for the year under consideration. The AO held that there was no transfer within the meaning of section 2(47) of the Act in the instant case. He observed that the assessee was holding 100% shares of its subsidiary company and during the year, it had reduced its capital. The assessee company had 100% shares in the subsidiary company and after the scheme of reduction of capital also, the assessee was holding 100% of the shares. This clearly establishes that by way of reduction of capital by cancellation of the shares, rights of the assessee do not get extinguished. The assessee before and after the scheme was having full control over its 100% subsidiary. The conditions of transfer therefore are not satisfied. Further the shares have been cancelled and are not maintained by the recipient of the shares. The assessee also took an alternative argument of treating the same as a buy-back before the ld AO. The AO in this regard observed that since the assessee had taken approval from the Hon'ble High Court for reduction of capital, the same cannot be treated as a buy-back. He therefore disallowed the claim of long term capital loss in the sum of Rs 3,64,84,092/-due to indexation, and also did not allow it to be carried forward. The assessee filed objections before the ld DRP against this denial of capital loss. The DRP disposed off the objections of the assessee by holding that the issue in dispute is covered by the decision of the Special Bench of Mumbai *Bennett Coleman & Co Ltd v. Add. CIT (2011) 133 ITD 1 (SB)*

(Mum.) (Trib.)) Applying the ratio laid down in the said decision, the DRP observed that the share of the assessee in the total share capital of the company as well as the net worth of the company would remain the same
even after capital reduction/ cancellation of shares. There is no change in the intrinsic value of the shares and the rights of the shareholder vis a vis the other shareholders as well as the company. Thus, there is no loss that can be said to have actually accrued to the shareholder as a result of the capital reduction. Pursuant to this direction of the DRP, the AO passed the final assessment order on 23.12.2015
disallowing the long term capital loss of Rs 3,64,84,092/-claimed by the assessee in the return of income. On appeal the Tribunal held that a reduction of capital results in an extinguishment of rights in the shares and constitutes a transfer. The fact that the percentage of shareholding remains unchanged even after the reduction is irrelevant. The loss arising from the cancellation of shares is entitled to indexation and is allowable as a long-term capital loss. (*Bennett Coleman & Co Ltd v. Add. CIT (2011) 133 ITD 1 (SB)(Mum.) (Trib.)*) distinguished.) (ITA No.826/Mum/2016, dt. 06.02.2020)(AY. 2011-12)
Carestream Health Inc v. DCIT (Mum.)(Trib.), www.itatonilne.org

S. 45 : Capital gains – Sale of shares – Joint venture in India – Shell company – Selling part of share holding – Liable to tax in India – Inter – passing was to avoid tax in India – DTAA-India-Mauritius. [Art. 13(4)] 940
AAR held that the applicant was incorporated a few days before joint venture was formed in India and had no independent source of funds or sources of income nor had any fiscal independence. The AAR held that the applicant is a shell company in Joint Venture and dominant purpose of inter-passing was to avoid tax in India, therefore the applicant is not entitled to the benefit of Article, 13(4) of the India-Mauritius DTAA in regard to gains arising from transaction of sale of shares.
Bid Services Division (Mauritius) Ltd, in Re (2020) 275 Taxman 244 / 114 taxmann.com 434 (AAR)

S. 45 : Capital gains – Sale of shares – BD Mauritius – Not taxable in India – DTAA -India-Mauritius. [Art. 13] 941
AAR held that capital gains on sale of shares of BD India by BD Mauritius to Singapore company would not be chargeable to tax in the hands of the applicant in considering the provisions of India-Mauritius Tax Treaty.
Becton Dickinson (Mauritius) Ltd, In re (2019) 110 taxmann.com 291 (AAR)

S. 45 : Capital loss – Capital asset – Advance given to subsidiary – Loss – Held to be allowable as short term capital loss. [S. 2(14)(a), 2(42A), 2(47), 28(i)] 942
Dismissing the appeal of the revenue the Court held that, advance given to subsidiary which was written off is held to be allowable as short term capital loss.(Arising from ITA No.3833/Mum/21,dt.31/03/2016)(ITA No.1366 of 2017 dt.26/08/2019)(AY. 2002-03)
CIT v. Siemens Nixdorf Information Systems Gmbh (2020) 114 taxmann.com 531 (Bom.) (HC)

943 **S. 45(2) : Capital gains – Conversion of a capital asset in to stock-in-trade – Shares as investment – Valued the stock at lower of cost – Matter remanded to the Assessing Officer. [S. 45]**

Assessee was holding certain shares as investments while she was a minor. On attaining majority, she converted shares into stock-in-trade and valued them on fair market value as on 1-4-2003 as per section 45(2). Assessing Officer disallowed assessee's claim for treating shares as stock-in-trade and determined income. Tribunal by an order dated 17-9-2010 remanded matter to Assessing Officer to re-compute profits by valuing closing stock at net realizable value of shares as on 31-3-2004 or at value of opening stock determined and adopted by assessee, i.e., conversion cost, whichever was lower. In remand proceedings, Assessing Officer valued closing stock at lower of cost (conversion cost) or net realizable value of shares. Both Commissioner (Appeals) and Tribunal upheld order of Assessing Officer. On appeal the High Court directed the Assessing Officer to decide matter afresh in light of direction contained in order dated 17-9-2010 passed by Tribunal as well as principle laid down by Supreme Court in case of *CIT v. Groz-Beckert Saboo Ltd. (1979 116 ITR 125 (SC).* (AY. 2004-05)

Deepa S. Pai (Smt.) v. Dy. CIT (2020) 270 Taxman 148 (Karn.)(HC)

944 **S. 45(2) : Capital gains – Conversion of a capital asset in to stock-in-trade – Asset received under family arrangement treated as stock in trade – Addition cannot be made as capital gains. [S.2(14), 49(1)]**

The asseee has treated the lands received under family arrangement as stock in trade in the books of account. The AO applied the provision of S.45(2) and assessed as long term capital gains. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the properties were held as stock in trade by the joint family before they were allotted to the assessee on partition and the asssessee continued to carry on real estate business even after partition. There was no conversion of capital assets in to stock in trade either by the assessee or the joint family hence provisions of S. 45(2) of the Act were not attracted. On appeal by the revenue the High court affirmed the order of the Tribunal. Relying on the decision of Supreme Court in Kalooram Govindram (1965) 57 ITR 355 (SC) the court observed that except in the case of fraud, collusion, inflation, and deflation of value for ulterior purposes, the cost of the asset to a divided member must necessarily be its cost to him, at the time of partition whether mentioned in the partition deed ascertained aliunde. (AY. 2006-07)

CIT v. C. Ramaiah Reddy (2020) 272 Taxman 342 / 117 taxmann.com 540 / 192 DTR 425 / 316 CTR 370 (Karn.)(HC)

945 **S. 45(2) : Capital gains – Conversion of a capital asset in to stock-in-rade – Year of taxability – Capital gains arising from such conversion was to be brought to tax when transfer/sale of such asset took place and not on date of converting capital asset into stock-in-trade. [S. 45]**

Assessee was an owner of land. It entered into a joint development agreement with two associate companies for development of its land into a multi-storeyed office complex. Out of total constructed area assessee was entitled to certain area of land together with proportionate undivided interest in land and 96 reserved car parks. During year,

assessee had converted its undivided interest in land into stock-in-trade. AO held that capital gains arose on conversion of asset into stock-in-trade. The assessee contended that AO could not brought to tax capital gains in year under consideration merely on conversion of capital asset into stock-in-trade. It was also explained that in subsequent year assessee sold its share of land and had voluntarily offered to tax income arising form capital gains as per S. 45(2) of the Act. Tribunal held that by merely converting capital asset into stock-in-trade, liability to capital gains on date of conversion would definitely arise but same would postponed and was to be paid in assessment year when such asset was sold/transferred. Matter was to be restored to AO for passing de novo assessment. (AY. 2002-03)

Union Company (Motors) (P.) Ltd. v. ACIT (2020) 180 ITD 799 / 204 TTJ 11 (UO) (Chennai)(Trib.)

S. 45(3) : Capital gains – Transfer of capital asset to firm – Capital contribution – Amount recorded in books of account of firm deemed to be full value of consideration – Deeming fiction provided in S. 50C cannot be extended to compute full value – One deeming section cannot be extended by importing another deeming section. [S. 45, 48, 50C] 946

The assessee transferred its land to a partnership in which it was one of the partners. The Assessing Officer held that the value of the land for the proposes of stamp duty as apparent from the relevant agreement submitted by the assessee was Rs. 9,77,32,000. He worked out the long-term capital gains at Rs. 28,09,992 as against long-term capital loss computed by the assessee at Rs. 4,49,22,008. He substituted the value under the provision of section 50C of the Income-tax Act, 1961 and made an addition of Rs. 96,31,700 as against the long-term capital gains computed by the assessee at Rs. 5,94,57,338 for the assessment year 2014-15. The Commissioner (Appeals) decided in favour of assseessee. On appeal the Tribunal held that section 45(3) comes into operation only in special cases of transfer between a partnership and its partners and in such circumstances, the amount recorded in the books of account of the firm shall be taken as full value of consideration. Since the Act provides for deeming consideration to be adopted for the purpose of section 48 another deeming fiction provided by way of section 50C cannot be extended to compute the deemed full value of consideration as a result of transfer of a capital asset. Where profits or gains arise from the transfer of a capital asset by a partner to a firm in which he is or becomes a partner by way of capital contribution, then for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be the full value of consideration received or accruing as a result of transfer of a capital asset. The Assessing Officer could not import another deeming fiction created for the purpose of determination of full value of consideration as a result of transfer of a capital asset by importing the provisions of section 50C.(AY.2010-11, 2014-15)

ACIT v. Amartara P. Ltd. (2020) 78 ITR 46 (SN) (Mum.)(Trib.)

947 **S. 45(3) : Capital gains – Transfer of capital asset to firm – AOP – Introduction of development rights by way of capital contribution – Even though a transfer but it is not a sale because there neither any receipt nor any accrual of any consideration – Provisions of section 50C of the Act could not be applied to sale development rights – When there is inconsistency in special provision and general provision – Special provision will prevail. [S. 50C]**

Where the assessee purchased development rights, entered into a Joint Venture agreement, and agreed to contribute the said development right as 'capital contribution' at an agreed consideration to the AOP. The Assessing Officer while framing assessment treated transfer of the development rights under Section 50C of the Act.

The Tribunal held that the introduction of development rights by way of capital contribution under section 45(3) of the Act by the assessee is even though a transfer but it is not a sale because there neither any receipt nor any accrual of any consideration, as held by the Hon'ble Supreme Court in the case of *Sunil Siddharthbhai v. CIT (1985) 156 ITR 509 (SC).* Further this Tribunal case of *Voltas Ltd v. ITO [2016] 74 taxmann.com 99 (Mumbai),* wherein it is held that the provisions of section 50C of the Act could not be applied to sale development rights of land owned by the assessee. Therefore, the provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied. Followed *Shri Sarrangan Ashok v. ITO*, ITA No. 544/Chny/2019 dated 19.08.2019 for assessment year 2015-16 *ACIT v Moti Ramanand Sagar,* ITA No. 2049/Mum/2017 dated 28.02.2019 for assessment year 2012-13; and, DCIT v. Amartara Pvt. Ltd., ITA No. 6050/Mum/2016 dated 29.12.2017 for assessment year 2012-13." *Voltas Ltd v. ITO [2016] 74 taxmann.com 99 161 ITD 199 (Mum.) (Trib.)*(*CIT v. Carlton Hotels Pvt. Ltd (2017) 399 ITR 161 (All) (HC)* is distinguished). (AY. 2012-13)

Network Construction Company v. ACIT (2020) 185 ITD 318 / 119 taxmann.com 186 / (2021) 209 TTJ 900 / 197 DTR 433 (Mum.)(Trib.)

948 **S. 45(5A) : Capital gains – Joint development agreement – Area – Sharing agreement – Land owner required to pay tax on capital gains at time of entering into development agreement and giving possession of land to developer for construction – Consideration to landlord would be cost of construction to developer. [S.45]**

Tribunal held that land owner required to pay tax on capital gains at time of entering into development agreement and giving possession of land to developer for construction. Consideration to landlord would be cost of construction to developer. Section 45(5A) was introduced by the Finance Act, 2017 effective from the assessment year 2018-19, prescribing the taxability of area-sharing arrangement under a development agreement in the hands of the land owner, according to which the cost of acquisition of the share in the project being land or building or both, in the hands of the land owner shall be the stamp duty value which was to be the deemed full value of consideration. Hence, it could be presumed that prior to the amendment, the deemed consideration to the landlord would be the cost of construction to the developer. T he Assessing Officer had to adopt the cost of construction in the hands of the developer to ascertain the capital gains.(AY.2009-10)

ITO v. Pakki Prabhakar Rao and others (2020) 78 ITR 52 (SN) (Vishakha)(Trib.)

S. 47(iv) : Capital gains – Transaction not regarded as transfer – Subsidiary – Parent company is not holding whole share capital of subsidiary – Capital gains on buy back is taxable. [S.45 46A] 949

Tribunal held that where parent company was not holding whole of share capital of subsidiary company along with nominees, transaction of buy back of shares was not covered under S. 47(iv) of the Act. Accordingly gains arising on buy back of shares is taxable under section 46A and not under S. 45 which is charging section to bring capital gains to tax under Act. (AY. 2014-15)

Acciona Wind Energy (P.) Ltd. v. DCIT (IT) (2020) 180 ITR 792 / 185 DTR 280 / 203 TTJ 377 (Bang.)(Trib.)

S. 47(v) : Capital gains – Transaction not regarded as transfer – Subsidiary to holding company – Not necessarily whole of the shares of the subsidiary company is held by holding company – A construction which results in rendering a provision redundant must be avoided – Entitle to exemption. [S. 2(47), 28, 45, 47(iv)] 950

Tribunal held that in view of the provisions of the Companies Act, 1956, it is not possible for the PFIPL to have less than two shareholders. As a matter of fact, there cannot be any company in India which has less than two members i.e. shareholders. Now the requirement of Section 47(v) is that the whole of the share capital of the subsidiary company should be held by the holding company. The whole of the share capital being held by the holding company is certainly not the same thing as whole of the share capital being held in the name of the holding company. In fact, that situation is a legal impossibility in India. In case one is to proceed on the basis that entire share capital of the subsidiary company should be held in the name of the holding company, there cannot be any situation in which section 47(v) can apply. That is certainly not an interpretation which can be termed as *ut res magis valeat quam pereat,* i.e. to make the statute effective rather than making it redundant. As held by Hon'ble Supreme court, in the case of *CIT v. Teja Singh (1959) 35 ITR 408 (SC)* a construction which results in rendering a provision redundant must be avoided. For this reason alone, the interpretation canvassed by the revenue is to be rejected. On appeal the High Court affirmed the order of the Tribunal. (AY.2007-08)

CIT v. Shardlow India Ltd. (2020) 193 DTR 73 / 316 CTR 297 (Mad.)(HC)

S. 47(vii) : Capital gains – Transfer by a share holder in a scheme of amalgamation – Gains assessable as business income if shares held as stock-in-trade – No factual finding regarding nature of holding – Matter remanded. [S. 2(47), 28, 45] 951

The assessee was holding shares in Jindal Ferro Alloy Ltd.(JFAL) Consequent to the scheme of amalgamation sanctioned under sections 391 to 394 of the Companies Act, 1956, JFAL was amalgamated with Jindal Strips Ltd (JSL) and the assessee received shares in JSL. In terms of the scheme of amalgamation, the shareholders of JFAL were to be allotted 45 shares in JSL in lieu of 100 shares in JFAL. The assessee claimed that the transaction was exempt from capital gains tax under section 47(vii). The Assessing Officer adopting the value of JSL shares at Rs. 218 per share, calculated the profit on receipt of the JSL shares under the scheme of amalgamation at Rs. 5,31,28,579, and taxed it as "business income". The appellate authority upheld the action of the Assessing Officer. In

further appeal before the Tribunal, the Tribunal without recording a categorical finding as to whether the shares qualified as "capital asset" or "stock-in-trade", allowed the appeals holding that no profit accrued when shares in the amalgamated company were received in lieu of shares in the amalgamating-company. On appeal the Court held that although under the scheme of amalgamation, the amalgamating-company got extinguished in the sense that the surviving entity now was only the amalgamated company the shares that were with the assessees had undergone the amalgamation process whereby they were replaced with new shares which would be valued entirely on different fundamentals. Subsequent to the amalgamation it was not the same stock in the inventory of the assessees. Under the Companies Act, the dissenting shareholders are given the option of receiving cash or equivalent kind as the price for the shares on the basis of the exchange ratio. In other words, the dissenting shareholders receive the value of their shareholding while the approving shareholders receive the same value in the form of shares in the amalgamated company. The process of amalgamation in its legal effect from the taxation viewpoint would apply equally, irrespective of the status of the shareholder. The taxable event is not just a matter of entries made in the account books of the assessee but is essentially one of substance and of the real nature of what transpired in the transaction. The income generated from the transaction has to be charged to Income-tax as per provisions of law. The fundamental principle to be followed is that the basic substance of the transaction has to be separated from the form and the taxing statute has to be applied accordingly. The decision of the Tribunal was plainly erroneous. The matter needed to be remanded to the Tribunal since the factual dispute between the parties had not been decided.(AY.1997-98)

CIT v. Nalwa Investment Ltd. (2020) 427 ITR 229 / 192 DTR 393 / 316 CTR 97 / 273 Taxman 276 (Delhi)(HC)

CIT v. Abhinandan Investments Ltd. (2020) 427 ITR 229 / 192 DTR 393 / 316 CTR 97 / 273 Taxman 276 (Delhi)(HC)

CIT v. Jindal Equipment Leassing Consultancy Services Ltd (2020) 427 ITR 229 /192 DTR 393 / 316 CTR 97 / 273 Taxman 276 (Delhi)(HC)

CIT v. Mansarovar Investments Ltd. (2020) 427 ITR 229 / 192 DTR 393 / 316 CTR 97 / 273 Taxman 276 (Delhi)(HC)

Editorial : Notice issued in SLP filed by the assessee, operation of judgement and order presently under challenge shall remain stayed Jindal Equipment Leassing Consultancy Services Ltd v. CIT (2021) 280 Taxmann 3 / 127 taxmann..com 278 (SC)

952 **S. 47(xiv) : Capital gains – Transaction not regarded as transfer – Sole proprietary concern succeeded by a company – Full value of consideration received on sale were same figure, no capital gains had accrued or were received – Capital gains cannot be levied – Provisions of section 56(2)(vii)(c) are not applicable when subject matter of transfer is immovable property. [S. 45, 56(2)(vii)(c), Rule 11U]**

The assessee had transferred his business to a private Limited Company by way of an agreement dated 27-3-2012. All assets and liabilities belonging to assessee, as specified in agreement had been transferred for a consideration of Rs. 2.71 crores. The assessee claimed that there was no transfer in view of section 47(xiv), hence transaction was not exigible to levy of tax as capital gains. The AO assessed the total income at Rs.

1.39 crores, inter alia, denying the benefit claimed by the assessee under S. 47 (xiv), in respect of transfer of assets and liabilities of the proprietary concern to a Private Limited Company. Alternatively, the AO computed the income in question under the head Income from other sources, by invoking the provisions of section 56(2)(vii)(c). A sum of Rs. 1.25 crores were brought to tax. CIT(A) confirmed the order of the AO. On appeal the Appellate Tribunal held that, when the assessee has been allotted certain shares as consideration for property transfer, then the question of value of those shares by invoking S. 56(2)(vii)(c), does not arise. Appellate Tribunal also held that when a value is fixed for a share allotted, it reflects the market value of asset transferred. It is not the case of the AO that the assessee has not valued the assets while transferring the same to the company. What is to be considered is that this exchange/barter is on a particular date. When the exchange was on 27-3-2012 and when the shares were allotted on 27-3-2012, the AO seeks to value the already allotted 40,000 equity shares at a premium of premium of Rs. 400 per share which gave the company premium of Rs.1.56 crores. This is not permissible. Such method of computation is not laid down under any provision of the Act. The addition was deleted. (AY. 2012-13)
Ravi Jalan v. DCIT (2020) 181 ITD 284 / 193 DTR 175 / 207 TTJ 38 (Kol.)(Trib.)

S. 48 : Capital gains – Computation – Industrial building – Failure to produce confirmation – Expenses in relation to cost of construction of gala is held to be not allowable as deduction. [S. 45, 260A] 953

Assessee was aggrieved by disallowance of expenditure incurred for construction of gala (industrial building) while computing capital gains. CIT(A) and Tribunal held that in absence of confirmation from parties from which material was purchased contention of assessee was not acceptable. On appeal the Court held that issue being a question of fact, appeal of assessee did not give rise to any substantial question of law. (AY. 2010-11)
Vipin Mehta v. CIT (2020) 270 Taxman 67 (Bom.)(HC)

S. 48 : Capital gains – Cost of acquisition – Encumbrance – Property received under settlement deed – Land mortgaged to bank – Proportionate OTS amount paid to clear encumbrances allowable as deduction. [S. 45, 49, 55] 954

Assessee received 3 acres of land under a settlement deed out of total land of 11.53 acres belonging to various family members from his grandmother, However entire land was earlier mortgaged by various joint owners of property including with Bank and upon default in payment matter went to DRT and subsequently settled land in an OTS before DRT and land was sold. Assessee claimed deduction of proportionate part of OTS amount paid to bank as cost of acquisition under section 55 of the Act. Assessing Officer as well as Tribunal rejected claim of deduction. On appeal the Court held that encumbrance by way of mortgage whether by way of direct mortgage or as collateral security, had to be cleared off by legal heir or person in whose favour property had been settled like assessee and thus, amount paid by assessee to clear that encumbrance had to be treated as part of cost of acquisition or cost of improvement under sections 48/49 of the Act. Order of Tribunal is reversed.(AY. 2010-11)
N. Rajarajan v. ACIT (2020) 275 Taxman 196 (Mad.)(HC)

955 **S. 48 : Capital gains – Cost of acquisition – Refundable deposit – Relinquishment of rights – If refundable deposit is considered as sale consideration – Refundable deposit is to be considered as cost of acquisition. [S. 45]**

The assessee sold its property for Rs 4. 58 crores and while computing capital gains claimed Rs 23. 31 lakhs as cost of acquisition. The AO added Rs 1.86 crores to sale consideration being refundable deposit made with State Industries Promotion Corporation at the time of obtaining lease which was now returned. The amount is assessed as short term capital gains on as relinquishment of its rights in property. On appeal the Tribunal held that if the said amount is considered as sale consideration the assessee is entitle it as cost of acquisition. Order of the Tribunal is affirmed by the High Court. (AY. 2008-09)

PCIT v. Sygenta Bioscience (P) Ltd. (2020) 268 Taxman 422 (Bom.)(HC)

956 **S.48 : Capital gains – Computation – Sale of ancestral property – Capital gain shall be calculated by taking amount received towards extinguishment of his right in the property – Matter remanded. [S.45]**

Where the assessee earned capital gain on sale of his ancestral property which was partitioned before it was sold, AO was directed to consider income chargeable under head capital gain in hands of assessee by taking only amount received by him towards extinguishment of his right in the property at time of sale. Matter remanded. (AY. 2012 -13)

Sitaram Rakhmaj Bankar v. Dy. CIT (2020) 195 DTR 297 / 207 TTJ 771 (Pune) (Trib.)

957 **S. 48 : Capital gains – Computation – 2% of sale Commission payment held to be allowable as expenditure – Amount paid to furniture is held to be not allowable as the claim was not made before the lower authorities. [S. 45, 54]**

Assessee sold a residential house which she had acquired from her grandmother through a registered gift deed. She claimed deduction on account of commission paid to an agent in respect of transfer of property. The AO disallowed same for want of documentary evidence. Tribunal held that, preparation of documents being sale deed, purchase of stamp duty, etc., and other formalities required assistance and help of a person who had experience of such work, therefore, there was also a prevailing practice of charging 2 per cent of sale consideration by real estate agents for providing service of documentation, scrutiny of documents and assisting party in registration of document. The AO was directed to allow 2 per cent of sale consideration as expenditure on account of commission paid to real estate agent. Tribunal held that as regards payment made towards furniture and fixtures purchased along with new house property as part of investment made in new residential house for purpose of exemption since assessee had not made such claim either before Assessing Officer or Commissioner (Appeals), such a plea which was completely new and required investigation of new facts not brought before lower authorities could not be accepted at this stage. (AY. 2012-13)

Fozia Khan (Ms.) v. ITO (2020) 185 ITD 446 (Jaipur)(Trib.)

S. 48 : Capital gains – Cost of improvement – Development expenses incurred on land before its sale was required to put property in saleable condition would be allowable – Transfer of land along with wells, baories, road, boundary wall etc. as these were attached to land, proportionate cost of these structures against full value of consideration in terms of sale deed so executed would be allowable – Legal expenses incurred for filing of two court cases in respect of invalid sale deeds – Not allowable as deduction [S.45] 958

Dismissing the appeal of the revenue the Tribunal held that Development expenses incurred on land before its sale was required to put property in saleable condition would be allowable. Transfer of land along with wells, baories, road, boundary wall etc. as these were attached to land, proportionate cost of these structures against full value of consideration in terms of sale deed so executed proportionate cost of these structures (after indexation) against full value of consideration in terms of sale deed so executed would be allowable. Legal expenses incurred for filing of two court cases in respect of invalid sale deeds would not be allowable as said sale deeds were not subject to capital gains tax and therefore expenses incurred for same could not have been allowed while computing capital gains in respect of other sale transaction which had been brought to tax. (AY. 2013-14)

ACIT v. Ijyaraj Singh (2020) 183 ITD 237 / 207 TTJ 953 (Jaipur) (Trib.)

S. 48 : Capital gains – Cost of acquisition – Valuation of land and building – Property let out – Valuation should be on basis of rent capitalisation method. 959

Tribunal held that the existence of the rental agreement, the receipt of rent and the rental advance were not disputed. Therefore, the value of the land and building should be determined on the basis of the rent capitalisation method. The assessee had quantified the value at Rs. 8,28,750, which may be rounded off to Rs. 10 lakhs. Therefore, the Assessing Officer was directed to adopt Rs. 10 lakhs as the cost of acquisition for the land and building as on April 1, 1981 and proceed to determine the cost of indexation accordingly, for the determination of capital gains in the assessee's hands.(AY.2005-06)

R. Rosalin Vasanthi (Smt.) v. ITO (2020) 80 ITR 525 (Chennai) (Trib.)

S. 48 : Capital gains – Computation – Cost of acquisition – Accrued – Value of equity share capital – All other items of balance – sheet other than equity capital and free reserve be considered in net asset value of equity shares – Capitalisation of interest cost – Not part of cost of acquisition. [S. 45, 50C, 50D, 55(2)(aa), 56(2)(x)] 960

That the word "accrued" in S. 48 means there has to be a right to receive the income arising from contractual obligation between the parties and such a right has to be with a corresponding liability of the other party from whom the income becomes due to pay that amount.. What had accrued to the assessee was the price of the shares which was to be determined in terms of the mechanism provided in the framework agreements, which stipulated the fair market value of VIL. S. 50D would not be applicable on the facts and circumstances of the case and if at all it could have been brought to tax in the hands of the transferor under the deeming fiction of S. 50CA or S. 56(2)(x), and the sections were not applicable for the year 2014-15 as these provisions were applicable from the assessment year 2017-18. The value of shares in terms of the fair market

value of VIL would be Rs. 131.86 per share and accordingly the AO was to compute the capital gains taking the sale value at Rs. 131.86 per share. The AO was required to value the equity share capital. To value the equity share capital, all other items of the balance-sheet other than equity capital and free reserve were required to be considered in the net asset value of those equity shares. That as per the provisions of S. 55(2)(aa) read with sub-clause (iii) thereto, in the case of rights shares the cost of interest expenditure could not be allowed as deduction as cost of acquisition for computing the capital gain. The capitalisation of interest cost was not part of the cost of acquisition while calculating capital gains on the sale of shares. (AY.2014-15)
Neelu Analjit Singh (Mrs.) v. Add. CIT (2020) 77 ITR 220 / 189 DTR 163 / 204 TTJ 540 (Delhi)(Trib.)

961 **S. 48 : Capital gains – Computation – VAT payment made by assessee at time of transfer of trademark is allowable as deduction. [S. 45, 48]**
The assessee had sold one of its registered trademark for certain consideration and paid VAT to State Government on sale consideration. Since VAT was paid wholly and exclusively in connection with 'transfer' of trademark, said amount was claimed as deduction under S. 48 of the Act. AO held that cost of such capital asset was to be deemed as 'NIL' and, therefore, expenditure on VAT could not be allowed as deduction while computing capital gains. CIT(A) deleted the addition. Tribunal held that since assessee had to mandatorily pay statutory levy at time of transfer of intangible to transferee, said expenditure was incurred wholly and exclusively in connection with transfer of capital asset and was allowable as deduction. (AY. 2008-09)
Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

962 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Indexed cost – Indexed Cost of acquisition was to be Computed by taking year of acquisition as 1988 i.e when property was acquired by previous owner and not year when property was gifted. [S. 45]**
Assessee acquired as residential house property from her grandmother in 2008 through a registered gift deed. During year, assessee sold said residential house for a consideration of Rs. 1.98 crores. She computed long-term capital gain of Rs. 63.17 lakhs after claiming cost of indexation. The AO re-calculated indexed cost by considering actual cost of acquisition and stamp duty paid by grandmother of assessee at time of acquisition in 1988. He had also considered JDA development expenses incurred by assessee's grandmother as well as construction cost of property, however, he had taken indexation only from date of gift till sale of property as against from date of acquisition of property by grandmother of assessee. Tribunal held that indexed cost of acquisition was to be computed by taking year of acquisition as 1988. When property was acquired by previous owner (grandmother of assessee) and not from year when property was gifted to assessee i.e. 2008. (AY. 2012-13)
Fozia Khan (Ms.) v. ITO (2020) 185 ITD 446 (Jaipur)(Trib.)

963 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Financial asset – Period of holding – Brand name – Transfer of intangible assets with right to carry on business – Holding period should be determined including period of holding of previous owner, ie. Amalgamating Company – No transfer taking place on appointed date of Amalgamation – Period of holding more than 36 months – Receipt taxable as long – term capital gains. [S. 2(11), 2(42A), 45, 49(1), 55(2)(a)(ii)]**

Dealing with the issue of period of holding for computing capital gains the Tribunal held that "financial asset" has been described in the Act as share or security and the assets transferred by the assessee did not fall in the category of "financial asset". Section 2(11) which defines the term "block of assets" for the purpose of depreciation includes intangible assets. Since intangible assets were covered in the definition of "block of assets" eligible for depreciation, they could not be again covered under the definition of "financial asset" as per Explanation (1)(i)(d) to section 2(42A). Therefore, the period of holding could not be determined under Explanation 1(i)(e) but in terms of Explanation 1(i)(b) to section 2(42A) to determine whether or not an asset is a short-term capital asset. The assessee's case was a scheme of amalgamation and the assessee was an Indian company. Therefore, it was not correct for the Assessing Officer to consider April 1, 2008 as the date on which the assets were acquired because the brand name was already there with the amalgamated company which was registered with the Trade Marks Registry. Therefore, there was no transfer taking place on April 1, 2008. The period of holding was much more than 36 months when the relinquishment or sale took place (on May 18, 2010). Therefore, the Assessing Officer ought not to have taxed the receipts as short-term capital gains but should have taxed them as long-term capital gains. The Explanation to section 49(1) is a benevolent provision to extend applicability of the term "previous owner" to cover cases like the assessee's. Here the previous owner was the amalgamating company and this company did not acquire the assets in a mode referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of section 49(1). However, as no purchase price was paid by the amalgamating company, the cost of acquisition was taken as nil as required under S. 55(2)(a)(ii). (AY.2011-12)

ACIT v. Feroke Boards Ltd. (2020) 79 ITR 22 / 207 TTJ 106 / 185 ITD 910 / 192 DTR 264 (Cochin)(Trib.)

964 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Acquisition of immovable asset by succession of partnership – Subsequent amendment with retrospective effect providing for cost to be taken as cost to previous owner – Law prevailing at the time of filing of return applicable and not provision amended with retrospective effect. [S. 45, 49(iii)(e)]**

The assessee had succeeded to a partnership. The value of the property was enhanced in the balance-sheet of the partnership to Rs. 3,70,00,000 and thereafter when the assessee took over the business of the partnership under succession it took the book value of the asset at Rs. 3,81,62,525. The assessee sold the property for a consideration of Rs. 2,00,00,000 in the previous year relevant to the assessment year 2009-10 and declared a short-term capital loss of Rs. 1,81,62,525 taking the cost of acquisition at Rs. 3,81,62,525. The AO did not accept the revaluation done by the partnership and the consequent book value taken by the assessee in its balance-sheet and recomputed the short-term capital

gains considering the cost of acquisition in the hand of the partnership at Rs. 2,50,000. The CIT(A) held that the cost of the property for determining the capital gains in the hands of the assessee was to be worked out in terms of S. 49(1)(iii)(e) of the Act as amended by the Finance Act, 2012 with retrospective effect from April 1, 1999. On appeal the Tribunal held that the amendment was not brought to clarify the existing provision but a new clause creating a tax liability by itself. This amendment in the provisions of S. 49(1)(iii)(e) though with retrospective effect could not be applied in this case. Further, the assessee had filed the return under the provisions of the Act prevailing at that time and the subsequent amendment by the Finance Act, 2012 cannot be applied on the return filed prior to the amendment. The assessee could not be asked to perform an impossible act to comply with a provision not in force at the time of filing of return but introduced later with retrospective amendment. The amended provisions of S. 49(1)(iii)(e) could not be applied in the case of the assessee simply because at the time of filing of the return the provision was not in force hence the addition sustained by the CIT(A)) by applying the amended provisions of S. 49(1)(iii)(e) is deleted. (AY.2009-10)
Utsav Cold Storage Pvt. Ltd. v. ITO (2020) 77 ITR 69 (Jaipur) (Trib.)

965 **S. 50B : Capital gains – Slump sale – Complete code – Deletion of addition is held to be valid. [S. 2(19AA), 2(42C), 48, 49]**
Dismissing the appeal of the revenue the Court held that the Appellate Tribunal considering the agreement as whole held that it was slump sale and so long as the undertaking is owned and held by the assessee for a period of more than 36 months, the capital gain arising from its slump sale is considered as long term capital gain notwithstanding the period for which its individual assets were owned and held. Order of the Appellate Tribunal is affirmed. (AY.2010-11)
PCIT v. Wockhardt Hospitals Ltd. (2020) 192 DTR 289 / 316 CTR 157 (Bom.)(HC)

966 **S. 50B : Capital gains – Slump sale – Assets transferred to Subsidiary – Allotment of Shares – Scheme approved by High Court – Not slump sale for purposes of capital gains Tax – The transfer, pursuant to approval of a scheme of arrangement, was not a contractual transfer, but a statutorily approved transfer and could not be brought within the definition of the word sale – Claim which was not raised in return or revised return – Appellate authorities must consider the claim if facts are on record – No estoppel in taxation law. [S. 2(42C), 45, 54EC, Companies Act, S. 393, 394, Transfer of property Act, 1882, S.118, Sale of Goods Act, 1930, S.2(10)]**
The Court held that the assessee was non-suited primarily on the ground that it had accepted the transfer to be a sale falling within the provisions of S. 50B of the Act, and approached the bond issuing authorities for investment in certain bonds in terms of S. 54EC of the Act to avoid payment of capital gains tax. The Assessing Officer, the Commissioner (Appeals) and the Tribunal had committed a fundamental error in shutting out the contention raised by the assessee solely on the ground that the assessee approached the bond issuing authorities for availing of the benefit under S. 54EC. In the assessee's case, all the relevant facts were available even before the Assessing Officer while the scrutiny assessment was in progress. Therefore, there was no estoppel on the part of the assessee to pursue its claim. The fundamental legal principle is that

there is no estoppel in taxation law. An alternative plea can be raised and it can even be a plea which is contradictory to the earlier plea. Court also held that the Tribunal had committed a factual mistake in referring to a valuation report not concerning the transaction, which was the subject matter of assessment. In the statement filed under S. 393 of the Companies Act before the High Court. In the scheme of arrangement there was no monetary consideration, which was passed on from the transferee-company to the assessee, but there was only allotment of shares. There was no suggestion on behalf of the Revenue of bad faith on the part of the assessee-company nor was it alleged that a particular form of the transaction was adopted as a cloak to conceal a different transaction. The mere use of the expression consideration for transfer was not sufficient to describe the transaction as a sale. The transfer, pursuant to approval of a scheme of arrangement, was not a contractual transfer, but a statutorily approved transfer and could not be brought within the definition of the word sale.(AY.2006-07)

Areva T & D India Ltd. v. CIT (2020) 428 ITR 1 / 195 DTR 361 / 317 CTR 633 (Mad.)(HC)

S. 50B : Capital gains – Slump sale – Windmills – Separate undertaking – Sale along with liabilities – Capital gains to be computed as capital slump sale. [S. 2(19), 2(42C), 45, 50, 80IA] 967

The assessee had not maintained separate books of accounts for windmills, separate ledger accounts were maintained. Deduction under section 80IA was claimed separately for income generated from individual units each year. The assessee has claimed the sale of windmill along with liabilities as slump sale. The AO denied the exemption. CIT(A) allowed the claim of the assessee. On appeal by the revenue the Tribunal held that since assessee had sold windmills along with assets and all liabilities, it fell in definition of slump sale under section 2(42C) of the Act hence capital gains was to be computed as a slump sale under section 50B (2) of the Act. (AY. 2013-14)

ACIT v. Devi Sea Foods Ltd. (2020) 183 ITD 341 / 191 DTR 1 / 206 TTJ 503 (Vishakha) (Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Amendment with effect from 1-4-2017-Statutory amendment is made to remove an undue hardship – Amendment retrospective. [S. 45] 968

The assessee entered into an agreement for sale on August 4, 2012 agreeing to sell a property for a total sale consideration of Rs. 19 crores and in terms of the conditions contained therein, the assessee received a sum of Rs.6 crores as advance consideration by cheque payment from the purchaser. The Assessing Officer found that on the date of execution and registration of the sale deed, i.e., on May 2, 2013, the guideline value of the property as fixed by the State Government was Rs. 27 crores. By adopting the full value of consideration at Rs. 27 crores he recomputed the capital gains. Appeal was allowed by the CIT(A) and was affirmed by the Tribunal. Appeal of the revenue is dismissed.(AY.2014-15)

CIT v. Vummudi Amarendran (2020) 429 ITR 97 / (2021) 277 Taxman 243 / 199 DTR 137 / 319 CTR 437 (Mad.)(HC)

969 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Sale consideration more than District level committee rate – Addition is held to be not justified. [S. 45]**

During year the assessee and his co-owners sold agriculture land by executing registered sale deed. In registered sale deed, description of land was agricultural land and at point of sale, land was not converted or developed. Value of land as per District Level Committee (DLC) rate was 3.66 crores However, sale value declared by assessee was Rs. 4.92 crores. Stamp duty authority levied stamp duty by assessing value at rate of 150 per cent of value declared in sale deed. The Assessing Officer made by applying deeming provisions of section 50C, being difference of sale consideration and value assessed by stamp duty authority for levy of stamp duty. On appeal the Tribunal held that where the assessee having declared sale consideration more than DLC, there was no justification for making any addition under section 50C of the Act. In case the Assessing Officer did not agree with explanation of assessee with regard to consideration disclosed by him then he should have referred matter to DVO for valuation purpose. (AY. 2015-16)

Om Prakash Agarwal v. DCIT (2020) 194 DTR 199 / 207 TTJ 121 / (2021) 187 ITD 499 (Jaipur)(Trib.)

970 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Sale deed not registered – 50% sale in agricultural land – Addition cannot be made on the basis of deemed sale consideration. [S. 45]**

Assessee sold her 50 per cent share in an agriculture land along with other co-owners of 50 per cent for a sale consideration of Rs. 60 lakhs in 2009 and received Rs. 30 lakhs as his share. The sale deed was registered on 23-6-2010 value shown was at Rs. 1.56 crores and 50 per cent share of assessee amounted to Rs. 78.12 lakhs. The AO made addition for balance amount of Rs. 48.12 lakhs to assessee's income. On appeal the Tribunal held that section 50C would not be applicable where property was sold otherwise than by registered sale deed, therefore, deemed sale consideration of Rs. 1.56 crore as per section 50C could not be invoked impugned addition made to assessee's income by Assessing Officer was to be deleted. (AY. 2011-12)

Alka Jain (Smt.) v. ACIT (2020) 80 ITR 464 / 185 ITD 224 / 207 TTJ 1013 (Delhi)(Trib.)

971 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Disputing the stamp valuation – Matter should be referred to DVO for valuation of the said property. [S. 45]**

Assessee had sold property for a sale consideration but stamp duty valuation of said property was found to be at higher side. Assessing Officer made addition under section 50C alleging that assessee did not contest valuation of said property before stamp duty valuation authorities. Assessee had categorically stated that though circle rate of vicinity area was higher than prevailing market rate but land in question was adjacent to cremation ground which adversely affected market rate of said property, and, therefore, property could not fetch circle rate and was sold at lower price. It was submitted that only buyer can contest stamp value of property before Valuation Authority. Tribunal held that, matter should have been referred to DVO for valuation of property when assessee had disputed stamp duty valuation, accordingly Matter remanded. (AY. 2013-14)

Anant Raj Ltd. v. ACIT (2020) 184 ITD 820/191 DTR 32/206 TTJ 101 (Delhi)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Agreement fixing amount of consideration and date of registration of property is different – Stamp valuation on date of agreement was to be taken for purposes of computing full value of consideration. [S. 45] 972

Assessee sold an immovable property and declared capital gain. AO made valuation of said property on basis of stamp duty valuation as on date of registration. On appeal the Tribunal held that when date of agreement of sale fixing amount of consideration and date of registration of property were different, value adopted by stamp valuation authority on date of agreement be taken for purposes of computing full value of consideration of such transfer. On the facts, valuation of property had been determined on basis of stamp duty valuation as on date of registration without referring matter to DVO, impugned addition made by Assessing Officer was to be deleted (AY. 2011-12)

Ramesh Govindbhai Patel v. ITO (2020) 184 ITD 731 (Ahd.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Lease hold rights – 99 years lease – Provision is not applicable – Addition is deleted. [S. 45, 48, Wealth-tax Act, 1957, S. 5(1)(xxxii)] 973

Allowing the appeal of the assessee the Tribunal held that since neither Land or Building or both had been transferred but leasehold rights in property were transferred provision of S. 50C is not attracted. The addition was deleted. S. 50C Could not be attracted. Followed, *CIT v. Amarchand N. Shroff (1963) 48 ITR 59 (SC))* wherein in the Court held that the scope of a deeming provision and came to hold ta it cannot be extended beyond the object for which it is enacted. (AY. 2016-17)

Ritz Suppliers (P.) Ltd. v. ITO (2020) 182 ITD 227 / 187 DTR 175 / 204 TTJ 383 (SMC) (Kol.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Agricultural land – Not a capital asset – A sale consideration more than the district committee rate – Addition cannot be made – Revision is held to be bad in law. [S. 2(14), 45, 263] 974

Tribunal held that the land held by the assessee was agricultural land which was not a capital asset which excludes agricultural land out of the definition of capital asset. The Tribunal also held that the assessee had sold the agricultural land at a consideration which was more than the District level Committee rate. Accordingly, there was no justification for making any addition under S. 50C of the Act. Revision is held to be bad in law. (AY.2015-16)

Satish Kumar Agarwal v. PCIT (2020) 82 ITR 40 (SN) (Jaipur) (Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Property purchased from the funds of the firm – Procuring agent and not owner – Addition cannot be made – Matter remanded for verification. [S. 45] 975

Tribunal held that the assessee was only a procurement agent and entitled to commission and the original owners were provided the funds and after conversion to non-Agriculture ands, the assessee had executed a registered sale deed in favour of firm.

The issue was remitted for limited purpose to the Assessing Officer for examination and verification of the claims.(AY. 2010-11)
B. S. Leelavathi (Smt.) v. ITO (2020) 82 ITR 45 (SN) (Bang.) (Trib.)

976 **S. 50C : Capital gains – Full value of consideration – Stamp valuation Assessing Officer to get valuation done through District Valuation Officer – Matter remanded. [S. 45, 50C(2)]**
Tribunal held that, irrespective of the fact whether the assessee objects to the stamp duty valuation or not, the Assessing Officer has to get the valuation done through the District Valuation Officer in terms of S. 50C(2). The assessee had filed the valuation report obtained from a registered valuer valuing the property at Rs. 27,20,000. The valuation was not before the Departmental authorities. The valuation done by the registered valuer had to be examined by the Assessing Officer and the District Valuation Officer. Therefore, the issue was remanded to the Assessing Officer for fresh adjudication after complying with the provisions of S. 50C(2) by referring the valuation of the property to the District Valuation Officer. (AY.2013-14)
Nafisa Abizar Banatwala v. ITO (2020) 78 ITR 59 (SN) (Mum.) (Trib.)

977 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Transfer of litigated property – Directed to compute capital gains based on actual sale consideration received – Not established that the property was acquired – Denial of exemption is justified. [S. 54F]**
Tribunal held that since the property sold by the assessee was a litigated property, the market value of the property could not exceed the actual sale consideration received by the assessee of Rs. 7,56,250. Hence, it was not appropriate to adopt the Sub-Registrar Office value for the purpose of computation of the capital gains in the hands of the assessee. Rather it would be appropriate to adopt the actual market value of the property taking into consideration of the litigation involved in the property, which was nothing but the actual sale consideration received by the assessee. Therefore, the AO was directed to compute the capital gains in the hands of the assessee based on the actual sale consideration received by the assessee of Rs. 7,56,250. As regards the deduction under section 54F the assessee had not produced any evidence to prove that she had invested in another residential house property. The claim of the assessee that she had invested in residential house property for Rs. 27,50,000 by way of payment through cheque to her spouse alone would not establish that she had actually acquired the residential house by complying with all the other provisions of the Act. Therefore, the assessee was not entitled to exemption.(AY.2006-07)
Aruna Kommuri v. ACIT (2020) 81 ITR 20 (SN (Hyd.)(Trib.)

978 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Variation is only 1.49% – Value declared to be adopted – Amendment brought in section 55A(a) by Finance Act, 2012, has to be read prospectively; such amendment shall apply to transactions which are effected during period started on or after 1-7-2012. [S. 45, 55A(a)]**
Dismissing the appeal of the revenue the Tribunal held that5, variation between sale consideration adopted by assessee and value determined by stamp valuation authority

was only 1.49 per cent, value so declared by assessee should be adopted as full value of consideration and addition made on basis of valuation made by stamp valuation authority was to be deleted. Amendment brought in section 55A(a) by Finance Act, 2012, has to be read prospectively; such amendment shall apply to transactions which are effected during period started on or after 1-7-2012. (AY. 2011-12)
ITO v. Bajaj Udyog (2020) 180 ITD 77 / 204 TTJ 5 / 189 DTR 246 (Jaipur) (Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of two residential properties in different locations – Entitled to exemption – Amendment substituting "A" By "One" – Applies prospectively. [S. 45] 979
The assessee declared long-term capital gains and claimed the deduction admissible under S. 54 in respect of two properties purchased in different locations. The AO restricted the claim for deduction to acquisition of one residential building and accordingly allowed deduction in respect of the higher value of investment in respect of such property. The CIT(A) and Tribunal affirmed the order of the AO. On appeal the Court held that that the assessee was entitled to the benefit of exemption under section 54(1). The courts had interpreted the expression "a residential house" and the interpretation that it included the plural were binding. Court also held that to give a definite meaning to the expression "a residential house", the provisions of section 54(1) of the Income-tax Act, 1961 were amended with effect from April 25, 2015 by substituting the word "a residential house" with the word "one residential house". The amendment specifically applied only prospectively with effect from the AY. 2015-16. The subsequent amendment of section 54(1) fortifies the need felt by the Legislature to give a definite meaning to the expression "a residential house", which was interpreted as plural by various courts taking into account the context in which the expression was used. It is well settled in law that an amending Act may be purely clarificatory in nature and intended to clear a meaning of a provision of the principal Act, which was already implicit. Relied on *CIT v. Ram Kishan Dass [2019] 413 ITR 337 (SC)* (AY: 2003-04)
Arun K. Thiagarajan v. CIT (Appeals) (2020) 427 ITR 190 / 193 DTR 153 / 272 Taxman 235 (Karn.)(HC)

S. 54 : Capital gains – Profit on sale of property used for residence – Construction of new residential house need not begin after sale of original house – Booking the flat under construction is considered as construction of house – Deletion of addition made for alleged receipt of maintenance charges was held to be justified. [S. 4, 45] 980
The assessee disclosed capital gains but claimed deduction under S. 54 of the Act. The AO disallowed the deduction on the ground that the assessee had entered into an agreement dated February 10, 2006 and the date of the agreement was to be treated as the date of acquisition, which fell beyond the one -year period provided under S. 54 and was also prior to the date of transfer. The Commissioner (Appeals) held that the assessee had booked a semi-furnished flat and was to make payments in instalments and the builder was to construct the unfinished bare shell of a flat. Under these circumstances, the Commissioner (Appeals) considered the agreement to be a case of construction of new residential house and not purchase of a flat. He observed that since the construction has been completed within three years of the sale of original asset, the

assessee was entitled to relief. Tribunal affirmed the order of the CIT(A). On appeal by the revenue the Court held that Section 54 of the Income-tax Act, 1961, requires an assessee to purchase a residential house property either one year before or within two years after the date of transfer of long-term capital ; or construct a residential house. It is not stipulated or indicated in the section that the construction must begin after the date of sale of the original or old asset. As regards alleged addition of maintenance charges the court held that consistent factual finding arrived at by the Commissioner (Appeals) and the Tribunal did not give rise to any question of law.(AY.2012-13)
PCIT v. Akshay Sobti (2020) 423 ITR 321 / 188 DTR 158 / 316 CTR 880 (Delhi)(HC)
PCIT v. Pradeep Sobti (2020) 423 ITR 321 / 188 DTR 158 / 316 CTR 880 (Delhi)(HC)
PCIT v. Seema Sobti (Smt.) (2020) 423 ITR 321 / 188 DTR 158 / 316 CTR 880 (Delhi)(HC)

981 **S.54 : Capital gains – Profit on sale of property used for residence – Assessee sold two house properties and purchased one property with the proceeds of both – Entitle to exemption. [S.45]**
Where assessee has claimed exemption u/s.54 for re-investment made in residential house. The Section nowhere restricts the claim of the assessee that he should have sold only one property and claimed exemption u/s.54 for one property. It was noted that prior to the amendment made in Section 54 which came into effect from Finance (No.2) Act, 2014 w.e.f. A.Y.2015-16, the very same Section provided for exemption even if assessee had re-invested in more than one residential house. It nowhere prohibited the assessee to sell more than one residential house. In the instant case, the assessee has sold two residential properties and re-invested in one residential property. Hence, entire conditions of S. 54 both prior to amendment as well as subsequent to amendment, had been duly satisfied. Hence, the same is allowed. (AY. 2011-12)
ACIT v. Sabir Mazhar Ali (2020) 196 DTR 254 / 208 TTJ 949 (Mum.)(Trib.)

982 **S. 54 : Capital gains – Profit on sale of property used for residence – Two residential units modified to one – Entitle to exemption. [S. 45]**
Tribunal held that admittedly, the assessee had purchased two residential flats and had modified those flats and converted two units as one residential unit. This fact was also mentioned in the statement of facts and by the Assessing Officer in the assessment order. The assessee had further sold both the flats through two separate sale deeds. It was an admitted fact that the assessee had purchased the new residential flat within the permitted time period from the sale of the residential flats. Thus, the assessee was entitled to exemption under section 54 of the Act. Hence, the orders of the authorities were to be set aside and the entire addition was to be deleted. (AY. 2009-10)
Vijay Kumar Wanchoo v. ITO (2020) 84 ITR 268 / (2021) 187 ITD 283 (Delhi)(Trib.)

983 **S. 54 : Capital gains – Profit on sale of property used for residence – Amount utilised for construction of house – Additional evidence – Matter remanded. [S. 54(2), 254(1), R.46A]**
Assessee claimed exemption in respect of capital gain on sale of property. The AO denied benefit of deduction under section 54 for reason that assessee had not deposited unutilized capital gain in a specified bank account within due date for filing return of

income as contemplated under section 54(2) of the Act. Before the Tribunal the assessee filed additional evidence to show that within a period of 3 years from date of transfer of capital asset, it had put up construction of residential house and, therefore, requirement of deposit of unutilized capital gain in a specified bank account did not arise for consideration. The matter was remanded to the file of AO for verification. (AY. 2014-15)
R. Lakshmamma v. ITO (2020) 185 ITD 547 (Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Substantially complied with provisions – Some delay in depositing amount in CGAS – Denial of exemption is held to be not justified. [S. 45, 139(1)] 984

Assessee received her share from sale of an immovable property on 19-10-2015. In return of income, assessee claimed deduction under section 54, being amount utilized towards purchase of new house on 26-08-2016. The Assessing Officer held that the assessee had not deposited amount in Capital Gain Account Scheme within due date of filing return under section 139(1) hence rejected the claim. CIT(A) allowed the claim. On appeal by the revenue the Tribunal held that assessee had substantially complied with provisions of section 54(1) by purchasing new house property within prescribed time period, a mere non-compliance of procedural requirement under section 54(2) i.e. some delay in depositing amount in CGAS, could not stand in way of assessee in getting benefit under section 54 of the Act. (AY. 2016-17)
ITO v. Rekha Shetty (Smt.) (2020) 184 ITD 38 / 81 ITR 1(SN) (Chennai)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Capital gains not utilised within period of three years – Chargeable to capital gain year in which period of 3 years from date of transfer of original asset expires. [S. 45] 985

Return of income was filed claiming said LTCG as exempt under section 54 of the Act. House was not constructed hence offered long term capital gain to taxation in assessment year 2016-17. Assessing Officer, disallowed exemption claimed on ground that assessee had not constructed house property within period of 3 years. On appeal the Tribunal held that held that if amount of capital gain was not utilised towards construction of residential house within a period of 3 years from date of transfer of original asset, then, it would be charged to capital gain under section 54 in year in which period of 3 years from date of transfer of original asset expires. The Assessing Officer was directed to grant exemption of said long term capital gain and chargeable to tax in the assessment year 2016-17. Followed *Sri Prasad Nimmagadda v. Dy. CIT [2013] 32 taxmann.com 5/56 SOT 473 (Hyd.) (Trib.).* (AY. 2013-14)
Deepak Bhardwaj v. ITO (2020) 184 ITD 470 (Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Depositing entire sale proceeds in savings bank account – construction of house – Not depositing the amount in specified bank account – Technical breach – Entitled to exemption. [S. 45, 54(2), 54F] 986

Tribunal held that the amount remained as deposit in a nationalised bank until it was utilised for the construction of the residential house. The assessee had proceeded to comply with the provisions of S. 54 but had only made a small technical breach which

should not disentitle the assessee for the benefit of S.54. Therefore, the Assessing Officer was directed to grant the benefit of S. 54 to the assessee. (AY.2014-15)
ACIT v. Justice T. S. Arunachalam (2020) 78 ITR 290 (Chennai)(Trib.)

987 **S. 54 : Capital gains – Profit on sale of property used for residence – As on date of transfer of original asset – Not owning more than one residential house – Capital gains deposited in capital gains savings account – Completion of construction within two years from date of sale of original asset – Entitled to exemption. [S. 45, 54F]**
Tribunal held that the authorities had misled themselves on the basis of wrong facts in holding that the purchase of the flat was out of the sale proceeds of the original asset. The capital gains had been utilised for construction of the house at Delhi and according to the provisions of the Act, the assessee did not have more than one house which was chargeable to tax under the head "Income from house property" other than the residential house owned on the date of sale of the original asset. Hence, the addition made by the authorities was unwarranted.(AY.2012-13)
Sunil Malhotra v. ACIT (2020) 80 ITR 372 (Delhi)(Trib.)

988 **S. 54 : Capital gains – Profit on sale of property used for residence – New property acquired in Son's name – Exemption cannot be denied. [S. 45]**
Tribunal held that the assessee had demonstrated that the property was in the name of his son was acquired by him through the consideration received from the sale deed of the old property. The bank statement and the cheque issued to the builder as well as the confirmation received from the builder demonstrated that the payment was made by the assessee for purchase of the new property within the stipulated time as prescribed under section 54. The exemption could not be denied if the entire investment had come out of proceeds of the old property.(AY.2010-11)
Bhagwan Swaroop Pathak v. ITO (2020) 80 ITR 89 (Delhi)(Trib.)

989 **S. 54 : Capital gains – Profit on sale of property used for residence – Cost of improvement – Not able to establish – Indexation denied. [S. 45, 48]**
Tribunal held that the agreement with the contractor and subsequent affidavit of the contractor did not inspire any confidence and could not be accepted. Unless the assessee was able to demonstrate with verifiable evidence that there was actual construction on the property sold, the agreement and affidavit could not come to the aid of the assessee. The agreement was only an understanding between the two parties to carry out certain work and could not be relied on to support the actual construction on the part of the plot of land sold by the assessee. The assessee had failed to discharge the necessary onus placed on him in support of his claim of construction on the property at the time of sale and the cost of construction as claimed had therefore rightly been rejected by the authorities.(AY.2010-11)
Ashok Kumar Dusad v. ITO (2020) 81 ITR 19 (SN) (Jaipur)(Trib.)

990 **S. 54 : Capital gains – Profit on sale of property used for residence – Exemption cannot be denied when the property was purchased in the name of spouse. [S.45, 54F]**
Tribunal held that exemption cannot be denied when the property was purchased in the name of spouse. Followed *CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi) (HC)*. referred the

decision of the Delhi High Court in *CIT v. AARBEE Industries (2013) 357 ITR 542 (Delhi) (HC)* where in the Court held that it is the date on which the appeal is filed which would be the material point of time for considering as to which court of appeal is to be filed. Decision of Jurisdictional High Court of Delhi is binding and not the judgement of Punjab and High Court in *CIT v Dinesh Verma (2015) 233 Taxman 409 (P&H) (HC)* (ITA No 8478 /de/ 2019 dt 2-3-2020) (AY. 2014-15)
Rampal Hooda v. ITO (2020) BCAJ-April-34 (Delhi) (Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Exemption cannot be denied when the property was purchased in the joint name of assessee and others. [S. 45, 54F] 991
Allowing the appeal of the assessee the tribunal held that entire consideration towards purchase of the new residential house had flown from the bank account of the assessee. Merely because the name of assessee's husband was mentioned in the purchase document exemption cannot be denied. (Followed *DIT v. Mrs. Jennifer Bhide [2012] 349 ITR 80 (Karn.) (HC), Bhatkal Ramaro v. ITO [2019] 175 ITD 144 (Bang.) (Trib.)(ITA No. 2493 /Bang/ 2019 dt. 8-5-2020)* (AY. 2016-17)
Subhalakshshmi Kurada v. ACIT (2020) BCAJ-June-44 (Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of residential house – Land purchased admeasuring 4973.125 square Feet – Building constructed of 150 square feet – only 25 per cent of total plot area to be considered as land appurtenant thereto. [S. 45] 992
The assessee held a plot of land of 4973.125 square feet. It had building of 220 square feet on the plot of land which was even less than 5 per cent of the total plot of land. Thus, it could not be said that the rest of the plot of land was appurtenant to the building of 220 square feet existing on the plot of land for enjoyment of the building. The assessee had claimed that there was open space which was used for car park, septic tank, garden, etc. These open spaces may be an integral part but certainly these were not required to enjoy the building of 220 square feet on the plot of land of 4973.125 square feet. Both the authorities had concurred that 25 per cent. of the total plot area to be considered land appurtenant thereto. It could not be said that the estimation done by the authorities was perverse or without any reasonable basis. (AY.2013-14)
Maduranthagam Selvaraj Ravi v. Dy. CIT (2020) 77 ITR 6 (SN) (Chennai)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – No requirement that construction of house should have been completed within specified time – Matter remanded for verification. [S. 45] 993
Tribunal held that the requirement of S. 54 of the Act is for the assessee to have either purchased a residential house, being a new asset, within the stipulated period or constructed a residential house within a period of three years from the date of transfer. The section does not prescribe the completion of construction of residential house and the thrust was on the investment of net consideration received on sale of original asset and start of construction of a new residential house. It was incorrect to insist that the

assessee should establish that the residential house was complete and then ask for benefit under S. 54. Since no documentary evidence had been furnished and only a claim had been made, the issue was restored to the file of the AO. (AY.2013-14)
Rakesh Kumar Kalra v. ITO (2020) 77 ITR 36 (SN) (Delhi)(Trib.)

994 **S. 54 : Capital gains – Profit on sale of property used for residence – Surrender of old flat and received new residential flat after development – Not offering the capital gain in return and claiming under wrong section would not disentitle from claiming deduction under section 54F of the Act. [S. 45, 54F]**
Assessee entered into a development agreement and surrendered said old flat. He received new residential flat after development. In return of income assessee neither offered capital gain nor claimed any deduction under section 54F. However, in course of assessment proceedings, assessee offered capital gain and claimed deduction under wrong section 54F.On appeal the Tribunal held that merely because assessee had not offered or disclosed capital gain on transfer of flat in his return of income, it would not disentitle him from availing statutory deduction if he was entitled to it. Since Revenue Authority had no doubt that flat that was transferred and received back after re-development was residential property, merely because assessee claimed deduction under wrong provision of section 54F, his claim could not be disallowed if it was allowable under an appropriate provision. Accordingly the assessee was entitled to deduction under section 54.of the Act. (AY. 2012-13)
Satish S. Prabhu v. ACIT (2020) 181 ITD 63 (Mum.)(Trib.)

995 **S. 54B : Capital gains – Land used for agricultural purposes – Sale of land to builder – Order of the AO is set aside. [S. 45, 264, Art. 226]**
Assessee claimed deduction under S 54B in respect of capital gain arising from sale of agricultural land. AO rejected assessee's claim on ground that purchaser of land was a builder and, thus, said piece of land was not agricultural land. The assessee filed petition u/s. 264 of the Act which is rejected by the CIT. On writ the Court held that the order of the AO while rejecting assessee's claim was not in consonance with requirements made under S. 54B of the Act. The order was set aside and, matter was remanded back to AO for disposal afresh keeping in view conditions imposed under S. 54B of the Act. (AY. 2015-16)
S. Sundaramurthy v. PCIT (2020) 269 Taxman 107 (Mad.)(HC)

996 **S.54B : Capital gains – Land used for agricultural purposes – Exemption not allowed as the assessee is not owner of property sold – No computation of capital gain in assessee's hands – Matter remanded to verify the extinguishment of rights in the property and to assessee the capital gains. [S.45]**
Once it has been established that the assessee was not owner of the property there can be no question of computing any capital gain in his hands from the transfer of the same property. Matter remanded to verify the extinguishment of rights in the property and to assessee as capital gains. (AY. 2012-13)
Shivaram Rakhmaj Bankar v. Dy. CIT (2020) 195 DTR 297 / 207 TTJ 771 (Pune) (Trib.)

S. 54B : Capital gains – Land used for agricultural purposes – Agricultural land was sold by assessee on 12-10-2011 and new agricultural land was purchased on 26-8-2013 – Denial of exemption is held to be not justified. [S. 45, 54B(2), 139(4)] 997

Assessee sold agricultural land on 12-10-2011 and filed its return of income declaring long term capital gains after claiming exemption under section 54B towards purchase of another agricultural land. Assessing Officer denied assessee's claim under section 54B on ground that she did not deposit amount of capital gains in designated capital gains account maintained with a bank before due date of filing return under section 139(1). CIT(A) affirmed the view of Assessing Officer. On appeal the Tribunal held section 139 was to be read here as section 139(4) and not to be confined to section 139(1) alone. As the time under section 139(4) was available up to 31-3-2014. Assessee opened a bank account under designated Capital gain account scheme on 3-8-2013 and purchased a new property on 26-8-2013 which was well within given period of two years from date of transfer. Accordingly the assessee having complied with requirement of section 54B(2) in light of time limit as per section 139(4) denial of exemption is held to be not justified. (AY. 2012-13)

Uddhav Krishna Bankar v. ITO (2020) 196 DTR 129 / 208 TTJ 1005 / (2021) 186 ITD 309 (SMC) (Pune)(Trib.)

S. 54B : Capital gains – Land used for agricultural purposes – Neither Depositing amount in capital gains account nor using net consideration for purchase of land before prescribed date – Not entitled to exemption. [S. 45] 998

Tribunal held that the asseessee neither deposited in the capital gains account scheme nor was it used for purchase of land before the prescribed date nor a new land is purchased within a period of three years or the amount is deposited in a designated capital gains account scheme. Not entitled to exemption.(AY.2014-15)

Bhagwan Keshu Sakhare v. ITO (2020) 80 ITR 10 (SN) (Pune) (Trib.)

S. 54B : Capital gains – Land used for agricultural purposes – Purchase of new agricultural land prior to due date of filing return – Entitle to exemption. [S. 45, 139(1)] 999

Assessee's claim under section 54B was disallowed only on ground that assessee had failed to prove that agriculture activities were carried on land in two immediately preceding years. Assessee submitted that he had cultivated agriculture crops on land sold but incurred loss after meeting of all expenditure and loss was debited directly to capital account and, therefore, agricultural income was not shown in return of income for previous two assessment years. Assessee furnished copy of agricultural income certificate issued by Department of Revenue which evidenced that only agricultural income was derived from land sold. Tribunal held that in absence of any challenge, presumption of correctness was attached with agriculture income certificate issued to assessee by Revenue Department of State and since assessee had purchased new agricultural land much prior to due date of filing return under section 139, the assessee is entitle to exemption. (AY. 2016-17)

Anil Kumar Nuwal v. ACIT (2020) 184 ITD 760 / 196 DTR 113 / 208 TTJ 637 (Jodhpur) (Trib.)

1000 **S. 54EC : Capital gains – Investment in bonds – Time limit for investment is six months from date of transfer – Two financial years – Entitle to exemption – Amendment by Finance (No. 2) Act, 2014 applies prospectively. [S. 45]**
Tribunal held that the assessee had invested Rs. 71 Lakhs in two different Financial years and within six months from the date of transfer of the capital assets. The limit of Rs. 50 Lakhs was per the Financial Year. Hence, the assessee was eligible for deduction of Rs. 71 Lakhs under S. 54EC of the Act. Amendment by Finance (No. 2) Act, 2014 applies prospectively..(AY.2013-14)
Ramesh V. Shetty v. ACIT (2020) 82 ITR 36 (SN) (Bang.)(Trib.)

1001 **S. 54F : Capital gains – Investment in a residential house – Invested sale proceeds of old asset in new property before due date of filing belated return and took possession within three years – Entitled to exemption though she had not invested sale proceeds in Capital Gain Account Scheme before due date of filing of return under section 139(1). [S. 45, 139(1)]**
Assessee sold property and invested sale proceeds in new property before due date of filing belated return and took possession within three years from date of transfer/sale of original asset. Assessee, however, had not invested sale proceeds in Capital Gain Account Scheme before due date filing of return under section 139(1). Tribunal allowed the claim of the assessee. On appeal by the revenue the Court held that since assessee had complied with conditions under section 54F(1), she was entitled for availing benefit of exemption under section 54F of the Act. (AY. 2005-06)
CIT v. Umayal Annamalai (Smt.) (2020) 273 Taxman 146 (Mad.) (HC)

1002 **S. 54F : Capital gains – Investment in a residential house – A part of amount deposited in Capital Gains Account Scheme was utilized for construction or purchase of a new asset within specified time of three years – Remaining unutilized amount is chargeable to tax in previous year in which period of three years expired – Entitle to withdraw the amount deposited in the capital gains Account subject to deduction of tax applicable. [S. 45, 54F(4), Art. 226]**
Assessee sold an immovable property and deposited capital gains of Rs. 1.15 crore in Capital Gain Account Scheme, 1988 and claimed exemption under S. 54F of the Act. Assessee purchased a premises for price of Rs. 21.32 lakhs before expiry of three years from date of transfer of original capital assets. Notice was issued with a view to bring the unutilised capital gains tax after the expiry of three years from the date of transfer of the original capital asset was proposed to be subjected to tax u/s 45 of the Act. On writ the single judge held that the appellant is entitle to withdraw the amount deposited in the capital gains Account subject to deduction of tax applicable. High Court affirmed the order of the single judge.(WP No. 3031 of 2019 dt 9-10-2019) *P.N. Shetty. v ITO (2019) 181 DTR 97/ 310 CTR 359 / 266 Taxman 15 (Karn.*) (HC)(AY. 2016-17)
P.N. Shetty v. ITO (2020) 268 Taxman 226 / 186 DTR 165 / 314 CTR 892 (Karn.)(HC)

1003 **S. 54F : Capital gains – Investment in a residential house – Purchase or construction need not be made out of sale consideration for capital asset. [S. 45]**
Allowing the appeal of the assessee the Court held that the investment in the new asset for the purpose of deduction under section 54F need not be out of the sale

consideration received on sale of the original asset. Section 54F encourages investment in residential houses and is required to be interpreted in such manner as not to nullify the object. The intention of the Legislature was that the assessee should either purchase before or after the date of sale and the word purchased or constructed used in the Notes on clauses amply makes the intention clear. Section 54F of the Act nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilised for the purchase or construction of a house property.(AY.2013-14)
Moturi Lakshmi (Ms.) v. ITO (2020) 428 ITR 462 / 274 Taxman 286 / 194 DTR 417 / (2021) 318 CTR 462 (Mad.)(HC)

S. 54F : Capital gains – Investment in a residential house Sale of capital asset and construction or purchase of residential house within stipulated time – Purchase or construction need not be made out of sale consideration for capital asset. [S. 45, 54(1)] 1004
Allowing the appeal the Court held that ; the investment in the new asset for the purpose of deduction under section 54F need not be out of the sale consideration received on sale of the original asset. Section 54F encourages investment in residential houses and is required to be interpreted in such manner as not to nullify the object. The intention of the Legislature was that the assessee should either purchase before or after the date of sale and the word "purchased" or "constructed" used in the Notes on Clauses amply makes the intention clear. Section 54F of the Act nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilised for the purchase or construction of a house property. (AY.2013-14)
Moturi Lakshmi (Ms.) v. ITO (2020) 428 ITR 462 / 194 DTR 417 / 274 Taxman 286 (Mad.) (HC)

S. 54F : Capital gains – Investment in a residential house – Claim of exemption cannot be denied even though the House property which the assessee had purchased as co-owner had been demolished before completing 3 years of purchase and no new house property was constructed – Does not violate section 54F(3) of the Act. [S. 2(47), 45, 54F(3)] 1005
The dispute between the parties is whether the assessee is entitled to benefit of S. 54E of the when the asset is demolished within a period of three years from its purchase. AO disallowed the claim. CIT(A) allowed the claim which was affirmed by the Tribunal. On appeal by the revenue, dismissing the appeal, the Court held that claim of exemption cannot be denied even though the House property which the assessee had purchased as co-owner had been demolished before completing 3 years of purchase and no new house property was constructed it does not violate S. 54F(3) of the Act. Judgement in *Vania Silk Mills P. Ltd. v. CIT (SC) 191 ITR 647 (SC)* distinguished on facts. (ITA NO (L) 1583 of 2012 dt 24-1-2013) Editorial : Refer *Dilip M.Parikh v. Dy CIT (2016) 178 TTJ 513 (Mum.) (Trib.)*
Chhaya B. Parekh (Ms.) v. CIT (Bom.)(HC) www.itatonline.org

1006 **S. 54F : Capital gains – Investment in a residential house – The usage of the property has to be considered – Several independent residential units in the same building have to be treated as one residential unit and there is no impediment to allowance of exemption u/s. 54F(1). [S.45]**

The assessee sold the shares and invested the capital gains for purchase of residential house and claimed exemption u/s 54F of the Act. The AO held that the assessee owns nine residential flats in his name and that he is deriving the income from the residential flats and declared the same under the head income from house property during AY 2006-07 and is therefore, not eligible to claim exemption by invoking proviso (a)(i) and (b)to Section 54F(1). The assessing officer further recorded a finding that properties owned by the appellant aren5 residential apartments. Accordingly, exemption under S. 54F of the Act was denied. Order of the AO is up held by the CIT(A) and Tribunal. On appeal the High Court held that in determining whether the assessee owns more than one residential property, the usage of the property has to be considered. If an apartment is sanctioned for residential purposes but is in fact being used for commercial purposes as a serviced apartment, it has to be treated as commercial property. Alternatively, several independent residential units in the same building have to be treated as one residential unit and there is no impediment to allowance of exemption u/s 54F(1)(AY. 2006-07)

Navin Jolly v. ITO (2020) 424 ITR 462 / 192 DTR 385 / 316 CTR 329 / 272 Taxman 348 (Karn.)(HC)

1007 **S. 54F : Capital gains – Investment in a residential house – Joint Ownership cannot come in way of claiming exemption. [S. 45]**

Assessee i.e. late husband of Smt Savita Bhasin sold land and earned long term capital gains. Assessing Officer denied exemption u/s 54F on ground that assessee on date of transfer of original asset had two residential house, although both assets were jointly owned with his wife. Assessee, however, claimed that second residential house was already sold to his son before sale of land. The ITAT held that the agreement to sell residential house between assessee and his son was duly registered and rental income from said property was mentioned in ITR of assessee's son and hence said house cannot be said to be owned by Assessee. Further, assessee was having only 50 per cent share in the impugned residential property which was sold to the son of the assessee. Therefore, the Assessing Officer could not deny exemption under section 54F to the assessee. (AY. 2014-15)

Savita Bhasin (Smt.) v. ITO (2020) 84 ITR 602 / (2021) 186 ITD 195 (Delhi)(Trib.)

1008 **S. 54F : Capital gains – Investment in a residential house – Ex parte order – Farmer and Senior citizen – Matter remanded. [S. 254 (1)]**

Tribunal set aside the ex parte order passed by the CIT A) and directed that the issue of deduction under section 54F of the Act was required to be considered and decided after considering the facts of utilization of the sale proceeds in construction of a new residential house. The matter was to be restored to the Assessing Officer for deciding the issue afresh after giving due and reasonable opportunity of hearing to the assessee. Matter remanded.(AY. 2010-11)

Pyare Lal Saini v. ITO (2020) 84 ITR 428 (Jaipur)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Purchase of land under four deeds and one land by different sale deed – Merged to single plot – construction of house – Eligible for exemption for entire investment. [S. 45] 1009

The assessee purchased four plots of land under four separate sale deeds and constructed a residential house on one of the plots. The AO restricted the exemption to the investment made for one plot of land and construction of the house. According to him, the other three plots of land could not be considered as land appurtenant to the residential house. This was confirmed by the Commissioner (Appeals).. On appeal the Tribunal held that the property, though purchased from two different persons by virtue of four different sale instances in the shape of four different parcels of land, constituted one single residential unit or house of the assessee. What was relevant was the purchase of land and construction of house and not how many land parts were purchased by the assessee. The assessee was eligible for exemption under section 54F for the entire investment made in the plot of land as well as construction of house instead of only part of the land. Accordingly, in the facts and circumstances of the case the entire land through four separate sale deeds and construction of house on the same.(AY. 2009-10)

Rohan Agarwal v. ACIT (2020) 82 ITR 39 (Jaipur)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Mere name of the assessee in the purchase deed cannot be ground to reject the claim of exemption. [S. 45] 1010

Assessee had sold shares and sale proceeds were deposited by assessee in bank account maintained in joint name of assessee and his wife. He invested sale consideration in purchase of new residential house and accordingly, claimed deduction under section 54F of the Act. The Assessing Officer disallowed same on ground that assessee was owner of two other residential properties, thus, as per proviso (ii) of section 54F assessee could not be allowed exemption. Tribunal held that one of those properties was a commercial property and remaining one was residential property which was fully owned by wife of assessee and merely name of assessee was included in purchase deed. The Tribunal also held that there was no doubt that purchase consideration for property which was claimed to be jointly owned by assessee and his wife was completely paid by his wife as she had sufficient own funds which were received as her share in sale proceeds of shares. Denial of exemption is held to be not justified. (AY. 2013-14)

Anil Dev v. DCIT (2020) 185 ITD 418 / 82 ITR 19(SN) / (2021) 198 DTR 150 / 209 TTJ 920 (Bang.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Invested in capital gain account scheme – Gains along with minor children – Sale of equity shares of Pvt. Ltd. Company – Entitle to exemption – More than one house – Matter remanded for very. [S. 45, 64] 1011

Assessee earned long term capital gain along with his minor children on sale of equity shares of a private limited company and claimed exemption u/s 54F of the Act. Assessing Officer clubbed income/capital gain of both minors with assessee, without allowing the deduction u/s 54F of the Act. Tribunal held gains earned by minors were invested in CGAS and after investment made by minor children under section 54F, there was no chargeable capital gain which could be clubbed under section 64(1A) of the Act. The AO was directed to allow the claim u/s. 54F of the Act. (AY. 2013-14)

Hemant Shah v. ACIT (2020) 185 ITD 68 (Mum.)(Trib.)

1012 **S. 54F : Capital gains – Investment in a residential house – Possession of flat was taken within period of two years from date of transfer of original asset – Entitled for benefit. [S.45]**

Assessee earned long term capital gains on sale of shares and claimed exemption under section 54F on basis that it had purchased a flat. The AO held that share transaction took place on 17-8-2011 and assessee had entered into buyer agreement with dealer on 29-9-2009, held that purchase of flat was beyond period, accordingly, disallowed exemption u Tribunal held that since full consideration of flat was paid in 2012 and possession of flat was also taken in 2012, it was to held that new asset i.e., residential house, had been purchased within two years from date of transfer of original asset i.e., shares, and thus, assessee was entitled for benefit (AY. 2012-13)

Rajiv Madhok v. ACIT (2020) 184 ITD 378 / 80 ITR 427 (Delhi)(Trib.)

1013 **S. 54F : Capital gains – Investment in a residential house – Possession was not taken – Unfit for habitation – Owner of more than one house – Not eligible to claim deduction. [S. 45]**

Assessee had earned long term capital gains from sale of property and claimed deduction under S. 54F of the Act. Assessing Officer had held assessee to be ineligible for claim of deduction under section 54F on ground, that as on date of sale of original' asset, assessee owned more than one residential property. It was claim of assessee that possession of other property could not be taken by him, as same was unfit for human habitation and therefore, it would be incorrect to conclude that assessee was owner of said property. Tribunal held that though said property was not occupied by him due to its poor quality of construction, same continued to be a residential house which was owned by him and, therefore, being an owner of more than one residential house, he was ineligible to claim deduction under section 54. (AY. 2013-14)

Chandramohan Manohar Potdar v. CIT (2020) 184 ITD 907 / 208 TTJ 112 (Mum.)(Trib.)

1014 **S. 54F : Capital gains – Investment in a residential house – No evidence to show that investment in house property – Denial of exemption is held to be valid – Reassessment is held to be valid. [S. 45, 147, 148]**

Assessee claimed deduction account of expenses incurred expenditure in construction of residential house, however, documents produced by assessee showed that house was got constructed under MOU between father of assessee and Architect and there was no evidence to show that said construction was financed by assessee. The AO denied the exemption-On appeal the Tribunal held that even in additional evidences which were sought to be filed by assessee, there was nothing to show that assessee had invested money in construction of house. The order of the AO is affirmed. Tribunal also affirmed the reassessment proceedings (AY. 2009-10)

Arpit Khairari v. ITO (2020) 183 ITD 737 (Jaipur)(Trib.)

1015 **S. 54F : Capital gains – Investment in a residential house – Joint account – Denial of exemption is held to be not justified. [S. 45]**

Allowing the appeal of the assessee the Tribunal held that,where a property is purchased by a person, mere inclusion of his or her name in the purchase deed is not enough because this may happen for various reasons including that the other person who

is really purchasing the property wanted to include the name of his relative in the purchase deed for some emotional issues. Hence denial of exemption is not justified. Referred *DIT (IT) v. Mrs. Jennifer Bhide 2011 (9) TMI 161 (Karn.) (HC) Shri Raghuram P Nambyar and Smt. Veena Nambyar v. ACIT 2018 (3) TMI 581-ITAT (Bang.).* (AY.2013-14)
Anil Dev v. Dy. CIT (2020) 82 ITR 1 (SN) / 185 ITD 418 / 119 taxmann.com 328 / (2021) 198 DTR 150 / 209 TTJ 920 (Bang.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Vacant land – Not residential property – Entitle to exemption – Cost of acquisition – Fair market value ass on 1-4-1981 – Higher than guidelines value – Estimate is held to be reasonable. [S. 45, 55(2)(b)(1)] 1016

Allowing the appeal of the assessee the Tribunal held that owning a vacant land is cannot be considered as owning of residential property hence investment is residential house is eligible for deduction. Fair market value as on 1-4-1981 which is higher than guidelines value has to be considered for determining gthe market value as on 1-4-1981 Followed, *Krishna Bajaj (Smt.) v. ACIT[2014) 267 CTR 172 (Karn.) (HC).* (AY.2012-13)
Devika Gunasheela (Dr.) v. JCIT (2020) 82 ITR 23 / 185 ITD 408 (SN) (Bang.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – amount deposited in capital gains accounts scheme before filing of return under section 139(4) – Entitled to exemption. [S. 45, 139(4)] 1017

Tribunal held that as the whole of the sale consideration was deposited in the Capital Gains Accounts Scheme and was utilised in purchase of another property and was not used for any other purposes. In terms of the time frame of depositing in the Capital Gains Accounts Scheme, the deposits were made on December 3, 2011 and thereafter, the assessee filed her return on December 14, 2011 within the time limit prescribed under section 139(4), the amount would be eligible for deduction under section 54F.(AY.2011-12)
Renu Jain v. ITO (2020) 79 ITR 621 / (2021) 186 ITD 175 (Jaipur)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Purchased within two years from the date of transfer of original asset – Entitled to exemption. [S. 45] 1018

Tribunal held that residential house was purchased within two years from the date of transfer of original asset. Entitled to exemption.(AY.2012-13)
Rajiv Madhok v. ACIT (2020) 80 ITR 427, 184 ITD 378 (Delhi) (Trib.)

S. 54F : Capital gains – Investment in a residential house – Failure to deposit unutilised portion of consideration in capital gains scheme – Procedural requirement – Benefit cannot be denied. [S. 45, 54(2)] 1019

Tribunal held that mere non-compliance with a procedural requirement under section 54(2) itself could not stand in way of the assessee getting benefit under section 54, if, otherwise, he was in a position to satisfy that the mandatory requirement under section 54(1) was fully complied with within the time-limit prescribed therein. Therefore, the Assessing Officer was to allow the total investments made by the assessee under section 54F after satisfying whether the investment was utilised for the construction of the house within the time-limit specified under section 54F. (AY.2012-13)
Kasi Viswanathan Ramanathan v. ITO (2020) 80 ITR 461 (Chennai)(Trib.)

1020 **S. 54F : Capital gains – Investment in a residential house – Date of transfer of land was date of joint development agreement and on this date no flats owned by assessee – Bar does not apply. Acquisition of new residential house can be more than one – More than one unit of residential house eligible for exemption. [S. 45]**
Tribunal held that date of transfer of land was date of joint development agreement and on this date no flats owned by assessee hence bar does not apply under the unamended provisions of S. 54F, the assessee has to invest in a residential house by way of purchase within two years or by way of construction within three years after the date of transfer of the original asset. The acquisition of the new residential house can be more than one under the unamended provisions of S. 54F and more than unit of residential house was also eligible for exemption under S. 54F.(AY.2012-13)
Prathap Kumar N. v. CIT (2020) 77 ITR 66 (SN) (Bang.)(Trib.)

1021 **S. 54F : Capital gains – Investment in a residential house – Purchase of flat – Mere fact that assessee was one of associated parties in said concern which was developing housing project, could not be a ground to deny benefit of deduction. [S. 45]**
Assessee filed its return claiming deduction in respect of purchase of flat from builder. AO held that the assessee had entered into unregistered agreement for purchase of flat from a concern in which he was an interested party and the assessee had not received possession of flat within specified time limit hence not entitle to deduction. Tribunal held that there was no dispute about genuineness of transactions entered into between assessee and builder, mere fact that assessee was one of associated parties in said concern which was developing housing project, could not be a ground to deny benefit of deduction.(AY. 2012-13)
Lalitkumar Kesarimal Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 190 DTR 424 / 205 TTJ 753 (Pune)(Trib.)
Kruti Lalit Kumar Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 190 DTR 424 / 205 TTJ 753 (Pune)(Trib.)
Pranay Lalit Kumar Jain v. DCIT (2020) 77 ITR 394 / 180 ITD 832 / 190 DTR 424 / 205 TTJ 753 (Pune)(Trib.)

1022 **S. 54F : Capital gains – Investment in a residential house – Perpetual lease – Purchase of property – Entitle for exemption. [S. 2(47)(vi) 45, 269UA]**
Tribunal held that in view of definition as mentioned in S. 2(47)(vi), transaction of perpetual lease agreement by which assessee took possession of property for unlimited period, has to be construed as purchase of property within meaning of S. 54F of the Act. Tribunal also held that even otherwise, in terms of S. 269UA(2)(iii)(f), acquisition of property by perpetual lease exceeding period of twelve years, has to be construed as purchase within meaning of S. 54F of the Act hence eligible for deduction. (AY. 2014-15)
N. Ramaswamy v. ITO (2020) 180 ITD 702 / 190 DTR 374 / 205 TTJ 803 (Chennai)(Trib.)

S. 54F : Capital gains – Investment in a residential house – The words "in India" cannot be read into section 54F when Parliament in its legislative wisdom has deliberately not used the words. The assessee is entitled to exemption of the Act though he has acquired house property in a foreign country – The amendment to s. 54F by the Finance Act, 2014 w.e.f. 2015 is applicable only prospectively. [S. 45] 1023

The assessee is an individual. He sold a site and claimed deduction u/s. 54/54F of the Act on the capital gain on sale of the property as he invested the capital gain in purchase of a residential house in Texas on 12.7.2013. The AO denied the exemption. On appeal the Tribunal held that words "in India" cannot be read into section 54F when Parliament in its legislative wisdom has deliberately not used the words. The assessee is entitled to exemption of the Act though he has acquired house property in a foreign country-The amendment to S. 54F by the Finance Act, 2014 w.e.f. 2015 is applicable only prospectively. (ITA No 2015 of 2019 dt 10-1 2020). (AY.2013-14)

Rajasugumar Subramani v. ITO (Bang.)(Trib.) www.itatonline.org

S. 54F : Capital gains – Investment in a residential house – Letting out property on rent – Two adjacent bungalows – Two registered deed – Used as one unit – Entitle to exemption. [S.22,45] 1024

The assessee purchased two adjacent bungalows and claimed exemption u/s 54F of the Act. AO allowed the exemption in respect of only one bungalow which was affirmed by the CIT(A). On appeal the Tribunal held that 2 units bearing separate numbers which were purchased by the assesee out of long-term capital gain income. Both the units are adjacent to each other and the same are single residential unit. Exemption was granted though there were two registries of the properties. Followed *CIT v. Shri D. Anand Basappa (2009) 309 ITR 329/ 180 Taxman 4 (Karn.)* (HC)(AY. 2015-16)

Mohammadanif Sultanali Pradhan v. DCIT (2020) 181 ITD 238 /194 DTR 348 / 207 TTJ 1128 (Ahd.)(Trib.)

S. 54G : Capital gains – Shifting of industrial undertaking from urban area – Sale of magazine and as per scheme of Explosive Act, 1884 a magazine would be equivalent to a godown and qualify to be a place used for purpose of business of an industrial undertaking – Eligible to claim deduction on sale of godown in an urban area. [S. 45, Explosive Act, 1884] 1025

Assessee-company sold its godown situated in an urban area and which had been relocated in a non-urban area, and claimed deduction. AO held that property sold by assessee was only a godown and used for storing fireworks and held that it could not be interpreted to mean an industrial undertaking. Accordingly the claim was disallowed. Tribunal allowed the claim of the assessee. On appeal High Court held that the AO failed to take note of vital factor, namely, that property which was sold by assessee was a magazine and as per scheme of Explosive Act, 1884, a magazine would be equivalent to a godown and qualify to be a place used for purpose of business of an industrial undertaking and, thus, assessee was eligible deduction. (AY. 2014-15)

PCIT v. Standard Fireworks (P) Ltd. (2020) 122 taxmann.com 91 (Mad.)(HC)

Editorial : SLP of revenue is dismissed (2021) PCIT v. Standard Fireworks (P) Ltd (2021) 276 Taxman 190 (SC)

1026 **S. 54G : Capital gains – Shifting of industrial undertaking from urban area – Notification in April 2006 – Notification did not have retrospective effect – Not entitled to exemption.**

Dismissing the appeal the Court held that the notification no inference could be drawn that it has any retrospective operation. The notification came into force on the date of its publication in the Official Gazette. Order of the Tribunal is affirmed. (AY. 1998-99)

Fabsun Engineering Pvt. Ltd. v. ITO (2020) 429 ITR 540 / (2021) 278 Taxman 328 (Karn.) (HC)

1027 **S. 55 : Capital gains – Cost of acquisition – Justified in claiming capital loss by taking as cost of acquisition of shares – On the next working day – AO has wrongly adopted the weighted average price of next day. [S. 45, 55(2)(ac), 115AD]**

The assessee is an approved sub-account of The Master Trust Bank of Japan Limited, a Foreign Institutional Investor (FII) registered with Securities and Exchange Board of India (SEBI). Accordingly, provisions of S. 115AD of the Act are applicable for taxing the income earned by the assessee. For the assessment year the AO found that the assessee had issued GDRs against underlying shares of Bajaj Hindustan Limited to non-residents on 27.01.2006. The holders of said GDRs wanted to redeem them against underlying shares and, ultimately, GDRs were cancelled on 11.04.2006 and underlying shares were released which were sold in Bombay Stock Exchange (BSE) on 11.04.2006. Since, the date of release of shares as on 11.04.2006 was a public holiday and the Indian share markets were closed, the assessee took cost of acquisition of shares of Bajaj Hindustan Limited at Rs 523.95 being the opening price of shares as on the next working day i.e. 12.04.2006. After considering the claim of the assessee vis-a-vis the facts on record, the AO though, agreed with the assessee that the applicable day for considering the cost of acquisition of shares is 12.04.2006, since, the stock markets were closed on the date of release i.e. 11.04.2006, however, he did not agree with the assessee in so far as the cost of acquisition taken by the assessee at Rs 523.94. On the basis of information from the BSE, the AO found that on 12.04.2006, though, the opening price of shares of Bajaj Hindustan Limited was quoted at Rs 523.95, however, it went up to a highest price of Rs 525 and lowest price of Rs 490-during the day and ultimately closed on closing price of Rs 494.20/-. Considering the above, the AO concluded that in view of varying price of shares of Bajaj Hindustan Limited during the applicable day, the opening price of shares towards cost of acquisition, as considered by the assessee, is incorrect. According to him, in view of fluctuating price of shares during the day, the weighted average price of shares computed at Rs 504.10 should be considered as cost of acquisition. Accordingly, applying the cost of acquisition of shares at Rs 504.10, he computed the short term capital loss, which resulted in a difference of Rs 1,19,10,000 between the Short term capital loss computed by the assessee and as determined by the AO. Thus, this differential amount was considered for addition to the income of the assessee. Though, the assessee challenged the aforesaid addition before learned CIT(A) however, it did not succeed. Tribunal held that,what ideally should have been taken as the cost of acquisition/FMV of shares of Bajaj Hindustan Ltd., for computing the short term capital gain/loss is the aforesaid price. However, considering the fact that the revenue authorities have agreed with the assessee with regard to the applicable date for cost

of acquisition as 12.04.2006. Tribunal considering the facts of the case the assessee is justified in adopting the cost of acquisition of shares at Rs 523.95. Accordingly directed the AO to accept the short term capital loss computed by the assessee. (AY. 2007-08)
Nomura India Investment Fund Mother Fund v. ADIT(IT) (2020) 186 DTR 212 / 203 TTJ 660 (Mum.)(Trib.)

S. 56 : Income from other sources – Shares – Method of valuation – Discounted Free Cash Flow Method – Net Asset Value – Deletion of addition is affirmed. [S. 56(2)(viib), R. 11UA(ii)] 1028

The assessee a Pvt ltd Company issued the shares of face value of Rs.100 at a premium of Rs 1000 per share by valuing the shares at Discounted Free Cash Flow Method. The AO has adopted the value as per net asset value and added the difference as income from other sources. On appeal the CIT(A) deleted the addition which was affirmed by the Tribunal on the ground Assessing Officer had not pointed out any flaw in the method of calculation of the value of shares adopting the free cash flow method and accordingly the deleted the addition made by the AO. On appeal by the revenue dismissing the appeal the Court affirmed the order of the Tribunal. (AY.2013-14)
CIT v. VVA Hotels Pvt. Ltd. (2020) 429 ITR 69 / (2021) 276 Taxman.330 (Mad.)(HC)

S. 56 : Income from other sources – Capital gains – Acquisition of Land – Interest on enhance compensation – Assessable as income from other sources – Language of section plain and unambiguous – External aids cannot be adopted to interpret provision. [S. 10(38), 45, 56(2)(viii), 145A, 264, Land Acquisition Act, 1894, S. 28, Art. 226] 1029

The assessee's land was acquired in the previous years relevant to the assessment years 2007-08 and 2008-09. Enhanced compensation was received on March 21, 2016. In his return for the assessment year 2016-17 the assessee treated the interest received under section 28 of the Land Acquisition Act, 1894, as income from other sources and claimed deduction of 50 per cent. under section 57(iv). The return was processed under section 143(1) of the Act. The assessee filed an application under section 264 of the Act claiming that he had treated the interest income as income from other sources by mistake whereas it was part of enhanced compensation. The revisional authority rejected the application. On a writ dismissing the petition the Court held that the interest received on compensation or enhanced compensation by the assessee under section 28 of the 1894 Act for acquisition of land was to be treated as income from other sources and not under the head capital gains. The language of sections 56(2)(viii) and 57(iv) of the 1961 Act is plain, simple and unambiguous. There is no scope for taking outside aid for giving an interpretation to the newly inserted sub-sections and clauses. (AY. 2016-17)
Mahender Pal Narang v. CBDT (2020) 423 ITR 13 / 194 DTR 253 / 316 CTR 906 / 275 Taxman 222 (P&H)(HC)
Editorial : SLP of assessee is dismissed, Mahender Pal Narang v. CBDT Mahender Pal Narang v. CBDT (2021) 279 Taxman 74 (SC)

1030 **S. 56 : Income from other sources – Relative – Gift from brother in law is relative – Cash credits – No addition can be made as cash credits – Genuineness is established. [S. 56(2)(vii), 68, 132]**
Dismissing the appeal of the revenue the Court held that the Tribunal took into consideration the details of the donor, more particularly, the PAN number, capital gain statement, bank statements and the other relevant documents. Upon perusal of the same, the Tribunal concurred with the findings recorded by the CIT(A) as regards the genuineness of the transaction. The tribunal, thereafter, looked into the S. 56 of the Act. Court also held that plain reading of S. 56(2)(vi), more particularly, the explanation (e) of the provision would indicate that the assessee, would fall within the definition of the term relative as explained under S. 56 of the Act.(AY. 2008-09)
PCIT v. Arvind N. Nopany (2020) 185 DTR 369 / 313 CTR 87 (Guj.)(HC)

1031 **S. 56 : Income from other sources – Builder – Holding of amount for future settlement – Not assessable as income from other sources. [S.4, 5, 28(1)]**
Where assessee collected certain amount from flat purchasers for purpose of maintaining building and payment of taxes etc. and only part of said money was handed over to society, while unutilised amount was shown as outstanding liability in its books of account which was to be handed over to society at time of settlement of accounts, said amount collected by assessee could not be assessed as its income for year under consideration. (AY. 2005-06 to 2007-08)
Caprihans India Ltd. v. Dy. CIT (2020) 203 TTJ 450 (Mum.)(Trib.)

1032 **S. 56 : Income from other sources – DCF method – Substantiated value of shares issued by fair market value which was more than issue price – Addition cannot be made. [S.56 2)(viib), 68]**
The assessee had produced all valuation reports based on DCF method as well as fair market value of assets as on date of issue of shares. Observation of Commissioner that assessee had failed to exercise option of adopting method was contrary to record. When assessee had substantiated value of shares issued by fair market value which was more than issue price, then no addition was called for under Section 56(2)(viib) of Act. Addition was deleted.(AY. 2014-15)
Nabh Multitrade Pvt. Ltd. v. ITO (2020) 208 TTJ 787 (Jaipur)(Trib.)

1033 **S. 56 : Income from other sources – Valuation report – Appointment of independent valuer – DCF method for valuation to be followed – Matter remanded. [S.56(2)(viii)(b)]**
It was held that AO was entitled to scrutinize the valuation report as well as undertake a fresh valuation or appoint an independent valuer for the same provided that the basis of valuation is DCF method. Reliance was placed on the High Court order in case of *Vodafone M-Pesa Ltd. v. Pr. CIT (2018) 256 Taxman 240 (Bom) (HC),* where the matter was restored with AO for a fresh decision where AO was directed to follow DCF method and was not allowed to change the method opted by the assessee. Followed *Innoviti Payment Solutions Pvt Ltd v. ITO (2019) 175 ITD 10 (Bang) (Trib.)* (AY. 2016-17)
VBHC Value Homes P. Ltd. v. ITO (2020) 192 DTR 129 / 206 TTJ 595 (Bang.)(Trib.)

S. 56 : Income from other sources – Income from house property – Leasing of workstations – Where the letting was inseparable – Income shall be treated under head income from other sources and not as income from house property [S. 22, 24(a)] 1034
It was observed that the workstation in the form of plant and machinery are inseparable from the building and for exploitation or use of the workstation, the use of the building is incidental. The reliance is placed on the decision of the jurisdictional High Court in the case of *Garg Dyeing and Processing Industries v. ACIT (2013) 2012 Taxman 160 (Delhi) (HC)* wherein it was held that the Hon'ble High Court has held that where the letting was inseparable, section 56(2)(iii) was rightly invoked. It was held that the lease rental income should be taxed under the head income from other sources. (AY. 2012-13)
Telekan Media (P) Ltd v. ITO (2020) 194 DTR 1 / 207 TTJ 383 / 81 ITR 3 (SMC) (Delhi) (Trib)

S. 56 : Income from other sources – No fresh money received during the year – No addition can be made. [S.56(1)] 1035
It was held that the fact that no fresh monies have come into the books of account. The addition made under section 56(1) is deleted. (AY. 2010-11, 2011-12, 2012-13)
Dy. CIT v. BMI Whole sale Trading (P) Ltd (2020) 203 TTJ 797 (Mum.) (Trib.)
Dy. CIT v. Brand Marketing (India) (P) Ltd (2020) 203 TTJ 797 (Mum.) (Trib.)

S. 56 : Income from other sources – Purchase of vacant land – Addition on the basis of guideline value – Law cannot operate in vacuum de-horse ground realities which under surrounding circumstances – Amendment is prospective – Addition was deleted. [S. 50C, 56(2)(vii)] 1036
The assessee purchased the vacant land. Assessing Officer invoked provisions of S..56(2)(vii) and held that guideline value of said property is required to be adopted as value for which property has been acquired by assessee and differential between guideline value and sale consideration is to be brought to tax under provisions of Section 56(2)(vii) of the Act. Assessing Officer also held that since valuation report was not received by AO on date of framing scrutiny assessment, AO made additions in hands of assessee. Addition was confirmed by the CIT(A). On appeal the Tribunal held that amendments were made in guideline value in tune with market price albeit in 2017 while Tribunal is concerned for 2016-17, and no incriminating evidence is brought on record by Revenue which could evidence that assessee in fact paid higher sale consideration than actual sale consideration recorded in registered sale document albeit Section 56(2) is deeming section and Revenue is not obligated to bring on record any incriminating material in such circumstances to prove that actual sale consideration paid by tax-payer is higher than that recorded in sale document, thus keeping in view cumulative effect of aforesaid reasonings, additions as were made by AO which was later confirmed by CIT(A) are deleted as law cannot operate in vacuum de-horse ground realities which under surrounding circumstances in instant case lead to one and only one irresistible conclusion that additions as were made by authorities below are not sustainable in eye of law. (AY. 2016-17)
Palaniappan Lakshumanan Chettiar v. ACIT (2020) 187 DTR 169 / 204 TTJ 248 (Chennai) (Trib.)

1037 **S. 56 : Income from other sources – Foreign company – DCF Method – Receipt of property less than aggregate fair value of the property – S. 56(2)(viia) cannot apply to a foreign company as Rule 11U(b)(ii) (prior to 01.04.2019) which defines "balance sheet" was not applicable to a foreign company – If the computation provisions cannot apply, the charging section cannot apply. The amendment to Rule 11U with effect from 1.4.19 is prospective in nature – Rejection of DCF method is held to be not proper. [S. 56(2)(viia), Rule 11UA(b)(ii)]**

The AO made addition u/s 56(2)(viia) of the Act by treating the difference between the fair value of the shares and the purchase price of shares of the shares by the assessee. CIT(A) confirmed the order of the AO. Tribunal held that rejection of DCF method is held to be not proper. Tribunal held that S. 56(2)(viia) cannot apply to a foreign company as Rule 11U(b)(ii) (prior to 01.04.2019) which defines "balance sheet" was not applicable to a foreign company. If the computation provisions cannot apply, the charging section cannot apply. The amendment to Rule 11U with effect from 1.4.19 is prospective in nature. (Followed *CIT v. B. C. Srinivasa Shetty (1981) 128 ITR 294 (SC), CIT v. Official Liquidator Palai Central Bank Ltd (In liquidation) (1985) 1 SCC 45)*.(AY. 2015-16)

Keva Industries Pvt. Ltd. v. ITO (2020) 186 DTR 134 / 203 TTJ 672 (Mum.)(Trib.)

1038 **S. 56 : Income from other sources – Purchase of flat – Gift – Stamp valuation and actual consideration – Addition was set a side. [S. 56 (2)(vii)]**

Assessee purchased a flat for a total consideration of Rs. 40 lakhs Assessing Officer held that stamp duty valuation of flat was Rs. 2.20 crores, but assessee had shown to have purchased it only for Rs. 40 lakhs. During assessment proceedings assessee filed valuation report of a government registered valuer, who valued flat at Rs. 82.60 lakhs disputing valuation made by Stamp Valuation Authority. However, Assessing Officer did not refer matter of valuation to District Valuation Officer and made addition of Rs. 1.80 crores under section 56(2)(vii) in hands of assessee. Addition was confirmed by Commissioner (Appeals). On appeal the Tribunal held that the Assessing Officer mechanically applied provisions of section 56(2) to difference between stamp duty value and actual sale consideration paid by assessee without making any efforts to find out actual cost of property when in fact assessee stated that property when purchased was under semi-construction stage and there were disputes between builders and purchasers and ultimately builder had abandoned project and left. Further, assessee also stated that there was dispute in area acquired by assessee. Accordingly the addition was deleted. (AY. 2014-15)

Mohd. Ilyas Ansari v. ITO (2020) 196 DTR 185 / (2021) 186 ITD 407 (Mum.)(Trib.)

1039 **S. 56 : Income from other sources – Appellate Tribunal – Additional grounds – Shares in excess of fair market value of shares – Start-Up Companies – Consolidated circular of Central Board of Direct Taxes dealing with assessment of Start-Up Companies – Matter remanded to CIT(A). [S. 56(2)(viib), 254(1)]**

Tribunal admitted the additional grounds, that the additional documents including the consolidated Circular No. 22 dated August 30, 2019 (2019) 417 ITR 2 (St), of the Central Board of Direct Taxes in respect of exemption from section 56(2)(viib) of the Act, 1961 for start-up companies recognized by the Department for Promotion of Industry and Internal Trade, were not placed before or considered by the Assessing Officer and the Commissioner (Appeals). Hence the additional grounds raised by the assessee were to be admitted and the

issue was to be remanded to the Commissioner (Appeals) to be considered in the light of the circular and other documents filed by the assessee. (AY. 2014-15)
Istar Skill Development Pvt. Ltd. v. ITO (2020) 84 ITR 6 (SN) (Bang.)(Trib.)

S. 56 : Income from other sources – Real estate developer – Stock in trade – Capital asset – Consideration less than stamp valuation – Addition cannot be made. [S. 2(14), 56(2)(vii)(b)] 1040

The assessee is engaged in business as real estate developers. The assessee purchased immovable properties. Since the consideration shown by the assessee was less than the value for stamp duty purposes, the Assessing Officer proposed to make an addition under section 56(2)(vii) of the Act on account of difference between the purchase price shown by the assessee and the District Level Committee rate of the land in the area. CIT(A) deleted the addition made by the Assessing Officer on the ground that the land in question was not a capital asset as the assessee had purchased the land as stock-in-trade and, therefore, the provisions of section 56(2)(vii)(b) of the Act were not applicable. On appeal by revenue the Tribunal affirmed the order of the CIT(A) Relied on *Prem Chand Jain v. ACIT (2020) 82 ITR 522 (Jaipur) (Trib.)* (AY.2015-16)
CIT v. Ashok Agarwal (HUF) (2020) 84 ITR 54 / 207 TTJ 608 (Jaipur)(Trib.)

S. 56 : Income from other sources – Allotment of shares – Valuation Discounted Cash Flow Method – Assessing Officer cannot change the method of valuation – Matter remanded. [S. 56(2)(viib)] 1041

Tribunal held that the Assessing Officer could scrutinise the valuation report and he could determine a fresh valuation either by himself or by calling for a determination from an independent valuer to confront the assessee but the basis had to be the discounted cash flow method and he could not change the method of valuation which had been opted by the assessee. The order of the Commissioner (Appeals) was to be set aside and the issue was to be restored to the Assessing Officer with a direction to the Assessing Officer to follow discounted cash flow method only. Mater remanded.(AY. 2015-16)
Signure Technologies Pvt. Ltd. v. ACIT (2020) 83 ITR 521 / (2021) 187 ITD 368 (Bang.) (Trib.)

S. 56 : Income from other sources – Valuation of shares – Premium on shares – If assessee can substantiate higher value than the Valuation as per Rules higher value should be considered – Matter remanded. [S. 56(2)(viib), R. 11UA] 1042

Tribunal held that if the assessee could substantiate that the fair market value of its shares was higher than the valuation determined in accordance with the rules, the higher value should be considered for working out the income under section 56(2) of the Act. However, the satisfaction of the Assessing Officer was required for working out the fair market value of shares. This issue was remanded to the file of the Assessing Officer with a direction to the assessee to substantiate the fair market value of its shares by incorporating the market value of the listed equities owned by it. The Assessing Officer may examine the claim of the assessee on the merits of the case and then decide the fair market value of the shares of the assessee-company as on the date on which the new issue of shares had been allotted to the new allottees.(AY. 2013-14)
Abhinav International P. Ltd. v. Dy. CIT (2020) 82 ITR 258 (Delhi)(Trib.)

1043 **S. 56 : Income from other sources – Notional interest – Security deposit – Only incomes falling under deeming provisions explicitly mentioned in Act can be brought to tax – Burden on revenue – Addition was deleted. [S. 4, 22]**

The assessee owned a property and received a security deposit for leasing the premises. The property had been sold in the year 2013-14, hence no income from rentals had been offered to tax. However, the assessee continued to hold the security deposit. The Assessing Officer brought to tax the interest deemed to have derived from the security deposit under the head Income from other sources. The Commissioner (Appeals) confirmed this. On appeal the Tribunal held that the addition was based on the sole premise, that the assessee had the security deposit must have earned the interest. In order to tax any amount, the Revenue had to prove that the amount had indeed been earned by the assessee. Only the incomes falling under the deemed provisions which had been explicitly mentioned in the Act could be brought to tax. Accordingly the additions made by the Assessing Officer were to be deleted. (AY.2017-18)

Harvansh Chawla v. ACIT (2020) 82 ITR 160 (Delhi)(Trib.)

1044 **S. 56 : Income from other sources – Capital asset – Agricultural land – If agricultural land does not fall in definition of capital asset, difference between district level committee value and sales consideration cannot be brought to tax – Matter remanded. [S. 2(14)(iii), 56(2)(vii)(b)]**

Tribunal held that if agricultural land does not fall in definition of capital asset, difference between district level committee value and sales consideration cannot be brought to tax. Matter remanded. (AY. 2014-15)

Prem Chand Jain v. ACIT (2020) 183 ITD 372 / 82 ITR 522 / 194 DTR 37 / 207 TTJ 629 (Jaipur) (Trib.)

1045 **S. 56 : Income from other sources – Business income – Director of company purchased one unit in a Hotel, had given for being run by a managing company, said unit could not be construed to be a business of assessee – Loss from hotel unit assessed under head income from other sources and not as business loss. [S. 28(i), 57]**

The Assessee was whole time Director of company in India also owner of one unit in a Hotel in USA, on which he incurred loss and claimed said loss under head 'income from other sources' and sought to set off loss against salary income of same year. The Assessing Officer considered said loss as business loss, CIT(A) also confirmed. Tribunal observed that, assessee had entered into hotel maintenance and operation agreement in respect of Hotel Unit owned by him and under this agreement, Hotel Unit was operated as a part of Hotel by an appointed Managing Company. The control of affairs of assessee's unit like to whom unit was to be let out. Tribunal held that the unit under consideration could not be considered to be a business undertaking of assessee. Loss from Hotel Unit in USA was to be assessed under head income from other sources and not as business loss. (AY. 2016-2017)

Rohit Kapur v. Add.CIT (2020) 80 ITR 7 (SN) / 191 DTR 11 / (2021) 186 ITD 466 (Delhi) (Trib.)

S. 56 : Income from other sources – Valuation of shares – Share premium – As per rule 11UA(1)(c)(b), it is prerogative of assessee to estimate fair market value of shares issued by it by adopting one method out of two methods i.e. discounted cash flow method or book value method, and that revenue authorities cannot force assessee to adopt particular method for valuing fair market value of share. [S. 56(2)(viib), R. 11UA] 1046

During year, assessee issued equity shares. It took valuation per equity share computed on basis of discounted cash flow method which was arrived at Rs. 80 per share. Assessing Officer applied book value method and, accordingly, he adopted fair market value of shares at Rs. 49.22 per share and taxed excess receipt of Rs. 130.78 (Rs. 180-Rs. 49.22) as income of assessee to be taxed under section 56(2)(viib) as income from other sources. Tribunal held that as per rule 11UA(1)(c)(b), it is prerogative of assessee to estimate fair market value of shares issued by it by adopting any one method out of two methods i.e. discounted cash flow method or book value method, and that revenue authorities could not force assessee to adopt particular method for valuing fair market value of share revenue authorities cannot force assessee to adopt particular method for valuing fair market value of share-Held, yes-Whether, further, since as a matter of fact assessee had issued shares at Rs. 180 per share as against fair market value of Rs. 189, no addition was to be made in hands of assessee under section 56(2)(viib).(AY. 2013-14)

ITO v. Ashoka Industries Ltd. (2020) 185 ITD 629 (Cuttack) (Trib.)

S. 56 : Income from other sources – Deemed gift – Agreement for purchase of flat – Stamp duty valuation or fair market value of immovable property was to be considered as on date of payment made by assessee towards booking of flat. [S. 56(2)(viii)] 1047

Assessee purchased a flat for a consideration of Rs. 1.38 crores on 17-9-2014 whereas Sub-Registrar, Mumbai determined market value for purpose of stamp duty at Rs. 1.53 crores. The AO made addition by invoking provisions of section 56(2)(vii) to make addition of differential amount shown in sale documents and stamp duty valuation taken by Sub-Registrar. Tribunal held that there was an agreement between parties regarding purchase and sale of flat in question at time of booking of said flat and part payment was made by assessee on 10-10-2010 and 14-10-2010 through cheque. Booking of flat and part payment by assessee constituted agreement between parties and terms and conditions which were reduced in writing in agreement registered on 16-9-2014 related to performance of both parties right from beginning i.e. date of booking of flat therefore second proviso to section 56(2)(vii) carve out exception for taking stamp duty value on date of agreement prior to date of registration if an amount of consideration or part thereof has been paid by any mode other than cash before date of agreement for transfer of such immovable property, therefore, stamp duty valuation or fair market value of immovable property was to be considered as on date of payment made by assessee towards booking of flat. (AY. 2015-16)

Radha Kishan Kungwani v. ITO (2020) 185 ITD 433 (Jaipur)(Trib.)

1048 **S. 56 : Income from other sources – Share premium – Method of valuation – Discounted cash flow method, or book value method – Choice is with assessee – Revenue cannot force assessee to adopt particular method for valuing fair market value of share. [S. 56(2)(viib), R. 11UA(1)(c)(b), 11UA(2)(B)]**

Assessee had issued 2,00,000 equity shares of face value of Rs.10 each at Rs.180 per share which included premium of Rs.170 per share. Assessee has adopted the fair market value as per valuation in accordance with rule 11UA(2)(B) of the Rule. The AO held that market value of shares was required to be determined as per rule 11UA(1)(c)(b). Accordingly, he adopted fair market value of shares at Rs.49.22 per share and taxed excess receipt of Rs.130.78 (Rs.180 minus Rs.49.22) as income of assessee to be taxed under section 56(2)(viib) as income from other sources. Tribunal held that it was prerogative of assessee to estimate fair market value of shares issued by it adopting one method out of two methods i.e. discounted cash flow method or book value method, and that revenue authorities could not force assessee to adopt particular method for valuing fair market value of share. Therefore no addition was to be made in hands of assessee under section 56(2)(viib) of the Act.

ACIT v. Anala Anjibabu. (2020) 185 ITD 1 / 193 DTR 377 / 207 TTJ 239 (Vishakha) (Trib.)

1049 **S. 56 : Income from other Sources – Shares – Valuation – Net Asset Value (NAV) method – Discounted Cash Flow (DCF) method – Choice is with assessee – Assessing Officer can determine a fresh valuation but cannot change method of valuation which has been opted by assessee – Matter remanded [S.56(2)(viib), R.11UA]**

Assessee company had issued 6.15 lakh equity shares of Rs. 10 each at a premium of Rs. 80 per share to six persons and collected share premium of Rs. 4.92 crores. The Assessing Officer rejected DCF method of valuation adopted by assessee and took view that share valuation had to be arrived on basis of book value, i.e., Net Asset value (NAV) method. The Tribunal held that, an assessee has two choices and he may adopt either Net Asset Value (NAV) method or Discounted Cash Flow (DCF) method; Assessing Officer can determine a fresh valuation but cannot change method of valuation which has been opted by assessee. (AY. 2014-15)

I-Exceed Technology Solutions (P.) Ltd. (2020) 185 ITD 8 (Bang.)(Trib.)

1050 **S. 56 : Income from other sources – Stamp valuation – Objection raised first time before CIT(A) – Valuation of property – Power of CIT(A) is coterminous powers with Assessing Officer, matter should have been referred for valuation to Departmental Valuation Officer – Matter remanded to the file of CIT(A) with the direction to refer the matter to Departmental Valuation Officer (DVO). [S.45, 55A, 56(2)(ii)(b)]**

Assessee had purchased immovable property and there was a difference of value as disclosed by assessee and adopted by Stamp Valuation Authority. Assessing Officer treated difference as deemed income under section 56(2)(ii)(b) and added it to income of assessee. The assessee had not objected before Assessing Officer regarding valuation adopted by Stamp Valuation Authority but first time made objection before Commissioner (Appeals) regarding valuation of property. Tribunal held that since Commissioner (Appeals) has conterminous powers with Assessing Officer, matter should have been referred for valuation to Departmental Valuation Officer (DVO). Accordingly

the matter was set aside to file of Commissioner(Appeals) for deciding afresh after referring matter to DVO. (AY. 2015-16)
Jaykishan Parchani v. ITO (2020) 184 ITD 323 (Indore)(Trib.)

S. 56 : Income from other sources – Shares allotted in lieu of purchase consideration for an acquired asset – May adopt either NAV method or DCF method – Assessing Officer can determine fresh valuation but cannot change method of valuation opted by Assessee. [S. 56(2)(viib), Rule 11UA(2)(b)] 1051
Tribunal held that an assessee has two choices and he may adopt either Net Asset Value (NAV) method or Discounted Cash Flow (DCF) method; Assessing Officer can determine a fresh valuation but cannot change method of valuation which has been opted by assessee. Whether at time of valuing shares during allotment, actual results of later years would not be available; therefore, what is required for arriving at fair market value by following DCF method are expected and projected revenues and, accordingly, valuation is done on basis of estimates of future income contemplated at point of time when valuation is made. For scrutinizing valuation report, facts and data available on date of valuation only has to be considered. Matter remanded. (AY. 2013-14)
Flutura Business Solutions (P.) Ltd. v. ITO (2020) 183 ITD 446 / 80 ITR 33 (SN) / 207 TTJ 257 (Bang.)(Trib.)

S. 56 : Income from other sources – Non-resident – Additional evidence filed first time before Appellate Tribunal – Matter remanded. [S. 6, 56(2)(viib), 254(1)] 1052
Tribunal held that in order to invoke provisions of section 56(2)(viib), it is essential that excess amount is received by company from a resident and this should be examined first. As there was no discussion in assessment order on aspect as to whether person from whom amount in question was received by assessee-company was a resident in India or not in relevant year and passport of person in question was filed as additional evidence for first time before Tribunal, matter was to be remanded to Assessing Officer. (AY. 2015-16)
Antariksh Softtech (P.) Ltd. v. ITO (2020) 183 ITD 577 / 192 DTR 145 / 206 TTJ 612 (Bang.)(Trib.)

S. 56 : Income from other sources – Compensation from Tenant for not letting out two units without the consent – Assessable as income from other sources and not as income from house property. [S. 22, 23] 1053
Tribunal held that compensation received from tenant under an option agreement that other two units of property would not be let out to third party without consent of tenant for a period of 9 months and received a compensation for same is assessable as income from other sources and not as income from house property. (AY. 2011-12)
Redwood IT Services (P.) Ltd. v. ITO (2020) 182 ITD 1 (Mum.)(Trib.)

S. 56 : Income from other sources – Income from house property – Lease – Assets – Assessable as income from other sources. [S. 22, 24(a), 56(2)(iii)] 1054
Tribunal held that the lease agreement between the parties, the demised premises had been mentioned as workstation in the building. Use of the building was incidental to the main object of leasing of workstation by the assessee. The assessee had given

the ground and the first floor of the building on rent to another party separately and income therefrom had been offered by the assessee under the head "Income from house property" and this had not been disturbed by the Assessing Officer. Thus, the prime objective was exploitation of the asset in the form of workstation installed by the assessee and not the building or any part thereof. The use of easement and common areas by the second party was incidental to the lease of exploitation of workstation. The workstation in the form of plant and machinery were inseparable from the building and for exploitation or use of the workstation, the use of the building was incidental. The Order of CIT(A) is affirmed. (AY.2012-13)
Telekon Media India P. Ltd. v. ITO (2020) 81 ITR 3 (SN) (Delhi)(Trib.)

1055 **S. 56 : Income from other sources – Immovable property is considered to be transferred on date of execution of registered document and not on date of delivery of possession – Rectification of mistake – Tribunal has no power of review. [S. 56(2)(vii)(b), 254(2)]**
Assessee purchased a flat and received 'letter of allotment' on 27-4-2012. Agreement for sale' was executed on 10-9-2014. According to assessee since he acquired property during assessment year 2013-14, pre-amended provision of S. 56(2)(vii)(b) had to be considered and same would not apply to facts as immovable property was not purchased without consideration. Tribunal held that transfer of property takes place on date of execution of registered document and not on date of delivery of possession or date of registration of document. On facts since 'agreement for sales' was executed on 10-9-2014, assessee acquired property during assessment years 2014-15 and amended S. 56(2)(vii)(b)(ii) as applicable with effect from 1-4-2014 would apply to instant case. Dismissing the rectification application the Tribunal held that, Tribunal being creature of statute cannot review and amend its own decision unless it is permitted to do so by statute. (AY. 2015-16)
Sujauddian kasimsab Sayyed v. ITO (2020) 181 ITD 564 (Mum.)(Trib.)

1056 **S. 56 : Income from other sources – Family settlement – Release deed Property from his brothers on account of Family Settlement – No commercial transaction addition cannot be as income from other sources. [S. 56(2)(vii)(b)]**
As per the memorandum of family settlement (MFS) the assessee had acquired Bungalow at New Delhi, due to relinquishment of rights in said property by three brothers of assessee for Rs.NIL. AO brought to tax that property had been purchased by assessee from brothers for Rs. 12 crore and there being difference of Rs. 28 crores, in stamp value determined by Registrar for this property made addition of difference under S. 56(2)(vii)(b) of the Act. CIT(A) confirmed the addition. On appeal the Appellate Tribunal held that in pursuance of Family Settlement, assessee and his three brothers had distributed various properties among themselves and necessary rights and title were transferred in favour of each brother which would show that parties had entered into genuine transaction. Further, release deed was also executed, in which it was nowhere recorded that assessee paid any consideration to his other three brothers. The Appellate Tribunal held that there being no commercial transaction in distribution of property, provisions of S. 56(2)(vii)(b) were not attracted. (AY.2015-16)
Govind Kumar, Khemka v. ACIT (2020) 181 ITD 586 / 193 DTR 341 / 207 TTJ 393 (Delhi) (Trib.)

S. 56 : Income from other sources – Sale of shares to non-resident – Valuation of shares – Share premium in excess of value of shares as determined under rule 11UA cannot be assessed as income of the assesseee. [S. 56(2)(viib), R. 11UA] 1057

During year, assessee sold shares to a foreign company, namely, MSRL at rate of Rs. 380.53 per share. The AO held that share premium in excess of value of shares as determined under rule 11UA and, accordingly, he treated share premium as income of assessee as per provision of S. 56(2)(viib) of the Act. On appeal the Tribunal held that those very shares were sold in next financial year at much higher amount after proper due diligence to a non-resident buyer. The addition was deleted. (AY. 2014-15)

Clearview Healthcare (P.) Ltd. v. ITO (2020) 181 ITD 141 / 185 DTR 369 / 77 ITR 39 (S.N.) / 203 TTJ 349 (Delhi)(Trib.)

S. 56 : Income from other sources – Market value of shares – Share premium – Discount cash flow method (DCF) – Valuation by merchant banker – Revenue authorities cannot evaluate accuracy of valuation at time of assessment – Addition was deleted. [S. 56(2)(viib), R. IIUA] 1058

Assessee company had issued shares of face value of Rs. 10/- each at a premium of Rs. 14.70 per share and, accordingly, received share premium. Shares were issued after duly valuing shares based on Discount Cash Flow (DCF) method and valuation was done by a merchant banker. AO held that valuer had not independently valued prospects of assessee company and merely relied on information supplied by assessee and; accordingly, he proceeded to value fair market value of shares based on Net assets value added method. CIT(A) accepted DCF method adopted by assessee, however, he proceeded to compare projections adopted by valuer with actual results or actual performance of assessee company in subsequent years and arbitrarily he held that business was growing at 40 per cent and, hence, enterprise value of assessee should also be taken up by merchant banker. CIT(A) determined share value at Rs. 11.17 per share and excess of amount received by assessee was treated as addition under S. 56(2)(viib) of the Act. On appeal the Tribunal held that the AO and CIT(A)were trying to evaluate accuracy of valuation at time of assessment, and this was not proper and also factual results of company were based on so many factors subsequent to adoption of projection and valuation and, thus, finding of AO and CIT(A) could not be upheld.

Vodafone M-Pesa Ltd. v. DCIT (2020) 181 ITD 242 (Mum.)(Trib.)

S. 56 : Income from other sources – Consideration for issue of shares – Excess of the face value of shares – Market value – Method of valuation – The Assessee has the choice to choose a prescribed method for ascertaining the market value of the shares transferred – If the assessee has chosen one method of valuation provided under Rule 11UA (i.e. DCF method), the AO has no power or jurisdiction to change that method to another method – Addition is deleted. [S. 56(2)(viib), R. 11UA] 1059

The CIT(A) has upheld that order of the AO wherein the AO held that the share premium received from the shareholders on issue of equity shares and preference shares as income for the year under consideration is taxable u/s. 56(2)(viib) of the Income-tax Act. The issue before the Appellate Tribunal was whether the premium of Rs. 3,96,54,531/-received from shareholders via-a-vis issue of equity shares and preference shares as income u/s.

56(2)(viib) of the Income-tax Act, 1961. Allowing the appeal of the assessee the Tribunal held that, the assessee has the choice to choose a prescribed method for ascertaining the market value of the shares transferred. If the assessee has chosen one method of valuation provided under Rule 11UA (DCF method), the AO has no power or jurisdiction to change that method to another method. Addition is deleted. (AY. 2014-15)
Karmic Labs Pvt. Ltd v. ITO (2020) 81 ITR 78 (SN) (Mum.)(Trib.)

1060 **S. 56 : Income from other sources – Deeming income from receipt of immovable property without consideration – Not applicable to a purchase transaction of immovable property prior to amendment for which full consideration is paid – Registration at a later date – Amended provision is not applicable. [S. 56(2)(viib)]**
Tribunal held that the pre-amended provisions of S. 56(2)(vii)(b) of the Act, applied where an individual or Hindu undivided family received from any person any immovable property without consideration. The provisions were however substituted by the Finance Act, 2013 and made applicable to assessment year 2014-15 onwards. According to the amended provisions, the scope of the substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well. The purchase transactions of immovable property were carried out in the financial year 2011-12 for which full consideration was also parted with to the seller. Mere registration at a later date would not cover a transaction already executed in the earlier years and in respect of which substantial obligations had already been discharged and a substantive right had accrued to the assessee therefrom. The pre-amended provisions were applicable and the Department was debarred to cover the transactions where inadequacy in purchase consideration was alleged. Tribunal directed the AO to delete the additions made under S. 56(2)(viib) of the Act. (AY.2014-15)
Bajrang Lal Naredi v. ITO (2020) 77 ITR 91 (SN) / 203 TTJ 925 / 187 DTR 49 (Ranchi) (Trib.)

1061 **S. 56 : Income from other sources – Estimation of business income and also making separate addition as income from other sources – Held to be not valid. [S. 28(i)]**
Tribunal held that once the business income was estimated, there was no reason to make a separate addition on account of interest as income from other sources unless the interest was a separate source of receipt other than from the source of business. Accordingly the addition is directed to be deleted. (AY.2010-11)
ACIT v. Nadella Venkata Nageswara Rao (2020) 77 ITR 94 (SN) (Vishakha)(Trib.)

1062 **S. 56 : Income from other sources – Share premium – Two shareholders holders – Brothers – Excess benefit was passed on to assessee was out of shareholding held by his brother – Provisions of S. 56(2)(viii)(c)(ii) would not apply – Balance sheet – Previous Balance Sheet which is audited and approved in AGM has to be taken into consideration, before allotment of shares. [S. 56(2)(viii)(c)(ii), R.11U, 11UA].**
Assessee acquired certain shares of a company at face value of Rs. 10 per share. As cost of acquisition of shares appeared to be much lesser than Fair Market Value (FMV), AO estimated FMV as per previous year balance sheet of company, and worked out taxable income under S 56(2)(vii)(c)(ii), as per rules 11U & 11UA. CIT deleted the addition. On

appeal by revenue the Tribunal held that since prior to allotment of shares, existing shareholders, were only assessee and his brother, and whatever excess benefit was passed on to assessee was out of interest of shareholding held by his brother, provisions of S. 56(2)(viii)(c) (ii) would not apply. In case balance sheet is not drawn up on date of allotment, for arriving at FMV of shares under S. 56(2)(vii)(c)(ii), previous Balance Sheet which is audited and approved in AGM has to be taken into consideration, before allotment of shares. In case balance sheet is not drawn up on date of allotment, for arriving at FMV of shares under S 56(2)(vii)(c)(ii), previous Balance Sheet which is audited and approved in AGM has to be taken into consideration, before allotment of shares. (AY. 2014 15)

ACIT v. Y. Venkanna Choudary (2019) 180 ITD 166 / (2020) 186 DTR 239 / 203 TTJ 891 (Vishakha)(Trib.)

S. 56 : Income from other sources – Share premium – Approved valuer report was furnished – Addition is held to be not valid. [S. 56(2)(viib), R. 11UA] 1063

The assessee company charged premium on issue of shares. The AO treated the difference between the share premium received in excess of valuation as determined under Rule 11UA of the Act amounting to Rs. 16 x 57,477 (Shares issued to resident shareholders namely Sh. Kamal Batra, Sh. Pankaj Sudan and Sh. Pravin Jain) = Rs. 9,19,632/- was treated as income of the assessee as per the provisions of section 56(2) (viib) of the Act and added the same to the income of the assessee as income from other sources u/s. 56(2)(viib) of the Act. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that, the legislative intent is to apply S. 56(2)(viib) where unaccounted money received in garb of share premium. The AO has not made out a case that stated money is not clean money. Also, the assessee has given approved valuer (CA) report justifying share premium raised based on valid and prescribed method being DCF and said report is in accordance with ICAI norms. AO has not countered the said report by substitute valuation. Also, if the shares are sold in next FY at much higher amount, the premium cannot be said to be excessive (*Lalithaa Jewellery Mart Pvt. Ltd. v. ACIT (2019))178 ITD 503 (Chennai) (Trib.*) followed). (AY. 2014-15)

Clearview Healthcare P. Ltd. v. ITO (2020) 181 ITD 141 / 185 DTR 369 / 77 ITR 39 (SN.) / 203 TTJ 349 (SMC) (Delhi)(Trib.)

S. 57 : Income from other sources – Deductions – Fixed deposits – Interest payment for earning income is held to be deductible. [S. 56, 57(iii)] 1064

Allowing the appeal of the assessee the Court held that in order to cover the cost of interest payable to the creditors for the unpaid period, invested the surplus in fixed deposits and earned interest. The amount earned by way of interest was paid to the lenders and creditors. There was a nexus between the interest paid to the creditors on the unpaid balance and interest earned on the deposits. The interest expenditure was incurred wholly and exclusively for the purpose of earning the interest income and therefore, the assessee was entitled to deduction of the interest income under section 57(iii).(AY.2005-06, 2006-07)

Best Trading and Agencies Ltd. v. Dy.CIT (2020) 428 ITR 52 / 275 Taxman 550 / (2021) 203 DTR 269 / 321 CTR 373 (Karn.)(HC)

1065 **S. 57 : Income from other sources – Deductions – Interest expenditure to be set off against interest earned. [S. 28(i), 36(1)(iii), 56, 57(iii)]**
The Tribunal held that the Interest expenditure had to be set off against the interest earned and offered under the head Income from other sources. The effect of allowance of interest expenditure whether from income from other sources or business income would be tax neutral, it was not necessary to decide whether it should be allowed against business income or income from other sources.(AY.2014-15)
Ajay Narendra Bansal v. Dy.CIT (2020) 79 ITR 8 (SN) (Mum.)(Trib.)

1066 **S. 57 : Income from other sources – Deductions – Interest paid on borrowed money – Advanced to earn interest – Though no interest is earned on money lent, interest paid is allowable as deduction. [S. 56, 57(iii)]**
The assessee borrowed funds and utilised them for lending money to various parties. AO disallowed the interest paid. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that, interest paid by assessee on money borrowed was to be allowed under S. 57(iii) even if it did not earn interest income on money lent by it. Followed *CIT v. Rajendra Prasad Moody (1978) 115 ITR 519 (SC).* (AY. 2015-16)
Akash Goyal v. ACIT (2020) 180 ITD 551 (Agra)(Trib.)

1067 **S. 57 : Income from other sources – Deductions – Co-Operative Housing Society – Administrative expenses are allowable against the interest on fixed deposit. [S. 56]**
Allowing the appeal of the assessee the Tribunal held that, the interest income is to be adjusted against the expenditure incurred by the assessee during the year, accordingly the professional fees paid to its chartered Accountant is held to be allowable as deduction. Interest on deposit is not per se a separate source of income and must be taxed only after allowing administrative expenses of a society. Followed *Nivedita Garden Condominium v ITO (ITA No. 120/PN. 2009 (ITA No 1390 /Pun/ 2019*, dt 21-01-2020 (AY. 2014-15)
Maharashtra Police Mega City Co-Operative Society Ltd. v. ITO (Pune)(Trib.) (2020) CTCJ-Feb-P.122

1068 **S. 57 : Income from other sources – Deductions – Deduction of payment of interest made to earn interest income – Allowable as deduction [S.56, 57(iii)**
The interest received by the assessee is treated as taxable under the head Income from other sources then still the deduction on account of interest paid by the assessee to the parties from whom the assessee taken loan and utilized to advance the money to persons from whom interest is received is allowable as deduction. (AY. 2011-12)
ACIT v. Career Point Infra Ltd. (2020) 207 TTJ 1 ((UO) (Jaipur) (Trib.)

S. 61 : Revocable transfer of assets – Association of person – Revocable Trust – Beneficiaries unknown – Write back of provision – liquidating/recovering NPAs acquired from banks – Trust cannot be assessed as an Association of persons – Revocable trust provisions of section 61 to 63 is applicable – When names of beneficiaries of assessee – trust and their respective shares were known since inception and also proceeds had been distributed as per their respective shares, assessee – trust could not have been considered as an indeterminate trust – Write – back of a provision could be made taxable only if same was claimed as a deduction in earlier year when it was created. [S. 2(31)(v), 4, 62, 63, 164 (1), SARFAESI Act] 1069

Assessee-trust was set up by Asset Reconstruction Co. (India) in pursuance to SARFAESI Act and RBI Guidelines for purpose of liquidating/recovering NPAs acquired from banks. Assessing Officer assessed assessee-trust treating it as an association of persons. Tribunal held that all necessary ingredients for formation and existence of trust had been fulfilled, and RBI guidelines had duly been followed by assessee-trust and there was no material on record to suggest that there was a concerted effort by beneficiaries to earn income jointly. The Trust cannot be assessed as an Association of person. Assessing Officer held that assessee-trust was not in nature of a revocable trust as its contributions could be revoked only with consent of contributors holding 75 per cent of units; and that, contributors had practically no control over income arising out of activities of fund accordingly benefit of sections 61 to 63 is not applicable. Tribunal held that on a literal interpretation of statutory provisions of sections 61 to 63, it was nowhere stated that if transfer was explicitly revocable, provisions of sections 61 and 63 would not apply. Clause 5 of trust deed made it clear beyond any scope of doubt that contribution made by beneficiaries were revocable. Therefore, it was to be held that assessee-trust was a revocable trust, and thus, provisions of sections 61 to 63, would be applicable to it. Tribunal also held that merely because income of beneficiaries of assessee-trust flowed through books of account of assessee trust, it would not mean that it was income in hands of assessee trust. Tribunal also held that where names of beneficiaries of assessee-trust and their respective shares were known since inception and also proceeds had been distributed as per their respective shares, assessee-trust could not have been considered as an indeterminate trust. Tribunal held that where reversal of impairment provision created by assessee in earlier years in respect of financial asset was merely a book entry without any corresponding amount payable by anybody or any possibility of receiving any benefit or money or money's worth, write-back of impairment provision could not have been treated as income of assessee. (AY. 2013-14)

ITO v. Scheme A1 of ARCIL CPS 002 XI Trust (2020) 207 TTJ 777 / (2021) 186 ITD 136 (Mum.)(Trib.)

S. 64 : Clubbing of income – Spouse – Wife invested gifted amount in business of Futures and Options (F&O) – Loss incurred by wife is Liable to be clubbed in hands of assessee for the purpose of set off. [S. 64(1)(iv)] 1070

In the return of income the assessee has clubbed loss from the business of his spouse in view of the provisions of section 64 of the Act which she has suffered in the business of Futures and Options (F & O), which was disallowed by the AO. On appeal the Tribunal held that in view of Explanation 3 To Section 64(1)(Iv) entire amount of loss resulting

from business of F&O incurred by assessee's wife was liable to be clubbed in hands of assessee for purpose of set off. (AY. 2014-15)
Uday Gopal Bhaskarwar v. ACIT (2020) 182 ITD 216 / 186 DTR 65 / 203 TTJ 776 (Pune) (Trib.)

1071 **S. 64 : Clubbing of income – Set-off of business loss of the wife in the assessment of husband – Entire amount of loss resulting from the business started by wife with the gifts received from her husband is liable to be clubbed in the hands of the assessee. [S. 64(1)(iv)]**
The assessee filed return declaring total income of Rs.4,59,830/-comprising, inter alia, Business income. During the course of assessment proceedings, the AO observed from the computation of total income that the assessee clubbed loss from the business of his spouse amounting to Rs.31,56,429/-in view of the provisions of S. 64 of the Act. On being called upon to justify such a claim, the assessee submitted that during the year under consideration he gifted a sum of Rs.94.50 lakh to Mrs. Priti Bhaskarwar, his wife, who started business of Futures and Options (F&O) on 18-09-2013. The assessee claimed that she incurred loss of Rs.31,56,429/-in such business, which was clubbed in his hands. The AO accepted the primary claim of the assessee of his wife having incurred loss of Rs.31.56 lakh in the business of F&O, which was set up on 18-09-2013 and further that loss from such business was eligible for set off against the income of the assessee in terms of S. 64(1)(iv) read with Explanation 3 thereto. He, however, did not accept the assessee's contention that the entire loss of Rs.31.56 lakh be set off against the assessee's income. CIT(A) also affirmed the order of the AO. On appeal the Tribunal held that, entire amount of loss resulting from the business started by wife with the gifts received from her husband is liable to be clubbed in the hands of the assessee. (AY. 2014-15)
Uday Gopal Bhaskarwar v. ACIT (2020) 186 DTR 65 / 203 TTJ 776 (SMC) (Pune)(Trib.)

1072 **S. 68 : Cash credits – Bogus purchases – Unregistered dealers – Penalty proceedings producing affidavits and statements of unregistered dealers and establishing their credentials – Penalty set aside – Addition is held to be not justified. [S. 143(3), 144, 271(1)(c)]**
The AO treated the purchases as "Cash credits" under S.68 of the Act.
Aggrieved, the appellant/assessee preferred an appeal before the CIT(A) who allowed the appeal of the assessee partially. Tribunal Confirmed the order of the AO. On appeal to High Court, The High Court dismissed the appeal vide impugned judgment and order dated 21.8.2008, as being devoid of merits. The High Court opined that the amount shown as credits was nothing but bogus entries and was justly added to the income of the appellant/assessee. The Court also noted other reasons to dismiss the appeal. On appeal the Supreme Court held that though the assessee failed to prove the genuineness of the purchases during the assessment proceedings, he filed affidavits and statements of the dealers in penalty proceedings. That evidence fully supports the claim of the assessee. The CIT(A) accepted the explanation of the assessee and recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the assessee.. Consequently, the quantum addition

will also have to be deleted. The addition of Rs.2,26,000/ by the Officer under S. 68 of the 1961 Act, towards cash credit amount shown against the names of concerned unregistered dealers for the assessment year 1998-1999, is hereby set aside. The rest of the assessment order dated 30.11.2000 as modified by the CIT(A) vide order dated 9.1.2003, shall remain undisturbed. (AY.1998-99)
Basir Ahmed Sisodiya v. ITO (2020) 424 ITR 1 / 188 DTR 20 / 314 CTR 1 / 116 taxmann.com 375 / 271 Taxman 247 (SC)

S. 68 : Cash credits – Share application money – Investment was sufficiently explained – Deletion of addition is held to be justified. [S. 69] 1073
Dismissing the appeal of the revenue the Court held that the assessee has sufficiently explained the source of investment accordingly the order of Tribunal is affirmed. (AY. 2007-08)
PCIT v. A.I. Developers (P.) Ltd. (2020) 117 taxmann.com 147 (Delhi)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. A.I. Developers (P.) Ltd. (2020) 272 Taxman 105 (SC)

S. 68 : Cash credits – Commission – Received through banking channels – Deletion of addition by Tribunal is held to be valid. [S. 260A] 1074
Dismissing the appeal of the revenue the Court held that commission received from Airlines through banking channels cannot be assessed as cash credits.
PCIT v. Manishaben N. Mashru (2020) 117 taxmann.com 119 (Guj.)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. Manishaben N. Mashru (2020) 272 Taxman 94 (SC)

S. 68 : Cash credits – Share capital – Genuineness of identities of investor companies is established – Deletion of addition is held to be justified. 1075
Dismissing the appeal of the revenue the Court held that the asseessee has established the genuineness of identities of investor companies is established. Deletion of addition by the tribunal is held to be justified. (AY. 2009-10)
PCIT v. Emm Vee Infrastructures (India) (P.) Ltd (2020) 114 taxmann.com 194 (All.) (HC)
Editor : SLP of revenue is dismissed due to low tax effect, PCIT v. Emm Vee Infrastructures (India) (P.) Ltd (2020) 269 Taxman 470 (SC).

S. 68 : Cash credits – Share capital – Identity and genuineness is established – Deletion of addition is held to be valid. 1076
Assessing Officer made addition in hands of assessee-company on account of failure of assessee to prove identity and genuineness of persons who had introduced share capital and on account of failure to prove capacity of loan creditors as well as genuineness of transactions-Commissioner (Appeals) held that shareholders were all private limited companies who had made investments out of their share capital and reserve through banking channels and assessee had filed a confirmation from loan creditors, regarding advancing of loan by them along with confirmation date, cheque No. and other relevant information along with PAN of companies. Accordingly, he deleted additions. Order of CIT(A) is affirmed by the Tribunal. On appeal dismissing the appeal the Court held that

since question of genuineness of investors who introduced share capital and capacity of persons from whom loan was borrowed and genuineness of transactions, had been considered at length by first appellate authority and revenue had failed to point out any infirmity in fact or law, no question of law arose for consideration. (AY. 2009-10)
PCIT v. Amravati Infrastructures Developers (P) Ltd. (2020) 272 taxman 133 (P&H)(HC)

1077 **S. 68 : Cash credits – Sales from Kiran business – Cash deposit in bank account – Failure to produce any material – Addition is held to be justified.**
Dismissing the appeal the Court held that where assessee had failed to produce any material to authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee. (AY. 2010-11)
Ravinder Kumar v. ITO (2020) 273 Taxman 369 (Delhi)(HC)

1078 **S. 68 : Cash credits – Burden of proof – Relevant evidence produced first time before High Court – Matter remanded the Assessing Officer to consider the evidence and pass appropriate order. [S. 260A]**
The addition was made as cash credits for failure to produce the evidence. The assessee has produced relevant evidence before High Court. High Court directed the Assessing Officer to reconsider matter afresh by considering said evidence and pass appropriate order. (AY. 2006-07)
Crescent Control P. Ltd. v. ACIT (2020) 274 Taxman 403 (Uttarakhand)(HC)

1079 **S. 68 : Cash credits – Share application money – Opening balance – Substantial loan was received in earlier year – Addition cannot be made – Sufficient evidence was produced as regards additional amount received during the year – Deletion of addition is held to be justified. [S. 260A]**
Assessee was engaged in business of dealing in property and trading in shares and stock. Assessing Officer held that in relevant previous year assessee had received an amount from one shareholder as share application money but had failed to discharge onus of establishing genuineness of transaction and creditworthiness of same and treated said amount as unexplained cash credit. Commissioner (Appeals) held that substantial part of said sum was received in earlier assessment year and, thus, it could not be added in impugned assessment year and also held that as regards balance sum, sufficient evidence was produced in respect of identity and genuineness of shareholder and he, accordingly, deleted said addition. Tribunal confirmed the order of CIT(A). On appeal by the revenue High Court affirmed the order of the Tribunal (AY. 2007-08)
PCIT v. Realvalue Realtors (P) Ltd. (2020) 269 Taxman 64 (Bom.)(HC)
Note : Also digested at Page No. 342, Case No. 1095

1080 **S. 68 : Cash credits – Failure to give an opportunity of cross examination – Tribunal remanding the matter to CIT(A) – Order of Tribunal is affirmed. [S. 254(1)]**
Assessee received certain amount on account of sale transaction. Assessing Officer made addition as cash credit relying on the statement of the third party. Opportunity of cross examination was not given to the asseessee. Tribunal Remanded the matter to the file

of CIT(A) to give an opportunity of cross examination. On appeal High court affirmed the order of the Tribunal (AY. 2012-13)
Ponmani Suresh v. Dy.CIT (2020) 275 Taxman 20 (Mad.)(HC)

S. 68 : Cash credits – Payments for purchases – Deletion of addition is held to be justified. 1081
During year, assessee had claimed to make purchases of certain amount from several parties. AO made additions on account of said amount paid by assessee to said parties for purchases on ground that two of such parties did not respond to notices or otherwise appear and confirm purpose for which such payments were made and, thus, same were fictitious entities. On appeal the Tribunal held that payments were made to these two entities by cheques and same was in respect of certain purchases. Accordingly deleted the addition. On appeal by the revenue, High court affirmed the view of the Tribunal. (AY. 2008-09)
CIT v. Mukhtar Minerals (P.) Ltd. (2020) 195 DTR 393 / (2021) 432 ITR 152 / 321 CTR 30 / 276 Taxman 218 (Bom.)(HC)

S. 68 : Cash credits – Advances received in cash for supply of materials – Confirmation letter furnished along with PANo – Deletion of addition is held to be justified. [S. 131] 1082
Dismissing the appeal of the revenue the Court held that the Tribunal had examined the matter on the basis of the evidence available on record and arrived at the findings of fact that the cash credits in question were advances made by the creditor against purchase of materials from the assessees, who were engaged in the business of cashew nuts. Nothing prevented the assessing authority from examining the matter further and even summoning the creditor. (AY.2014-15)
CIT v. T. Ani Chandra Kala (Smt.)(2020) 429 ITR 179 (Mad.)(HC)
CIT v. Pauldhas Regin (2020) 429 ITR 179 (Mad.)(HC)

S. 68 : Cash credits – Source of source – Cash deposited – Brother in law and close friends – How money was transferred from Bangalore to Goa was not satisfactorily explained – Addition is held to be justified. [S. 153A] 1083
Assessing Officer made addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores. CIT(A) affirmed the order of the AO. On appeal, Tribunal accepted assessee's explanation that said amount was transferred into assessee's bank account from out of bank accounts of his brother-in-law and a close friend and, further, that said creditors confirmed to have made payment to assessee and deleted the addition. On appeal by the revenue the Court held that the Tribunal ignored vital facts emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount and also that they were not clear about their precise role in transaction involving said amount. The Court also observed that merely pointing out to a source and the source admitting that it has made the payments is not sufficient to discharge the burden placed on the assessees by s. 68. The explanation has to be plausible and backed by reliable

evidence. 'Fantastic or unacceptable' explanations are not acceptable. (TXA NO.18 & 19-2014 dt 14-10-2020).
CIT v. Sadiq Sheikh (2020) 429 ITR 163 / 122 taxmann.com 39 / (2021) 276 Taxman 292/ 197 DTR 191/ 318 CTR 382 (Bom.)(HC) (Goa Bench), www.itatonline.org
CIT v. Sadia Sheikh (2020) 429 ITR 163 / 122 taxmann.com 39 / (2021) 276 Taxman 292/ 197 DTR 191 / 318 CTR 382 (Bom.)(HC)
Editorial: SLP of assessee is dismissed, Sadiq Sheikh v. CIT (2021) 277 Taxman 594 (SC)

1084 **S. 68 : Cash credits – Firm – Partner – Capital brought in by partner – Agricultural income – Addition cannot be made in the assessment of the firm. [S. 2(31)(iv)]**
Allowing the appeal the Court held that partners have shown the agricultural income in their personal returns of the past years which had been accepted by the department as such. The partners are all identifiable and separately assessed to tax. The source of investment having been explained, in the event the Assessing Officer was not satisfied the addition could have been considered in the hands of the partners and not in the hands of the firm. Decision in *CIT v. Kapur Brothers (1979) 118 ITR 741 (All) (HC)* distinguished. (ITA No. 17 of 2007 dt. 24-2-2020). (AY. 1999-2000)
Keharwani Sheetalaya Sahsaon v. CIT (2020) 116 taxmann.com 382 / 274 Taxman 25 /191 DTR 339 / 315 CTR 815 (All.)(HC)

1085 **S. 68 : Cash credits – Must prove identity of creditor, Creditworthiness and genuineness of transaction – Source of source need not be proved – Duty of Income – Tax Authorities to conduct enquiry – No Enquiry by Income-Tax Authorities – Addition not justified.**
Allowing the appeal of the assessee the Court held that the assessee in support of identity, genuineness of transaction and creditworthiness had supplied a copy of the balance-sheet and profit and loss account to the Assessing Officer. The assessee had also filed a copy of the return of income as well as a copy of the information letter. The assessee having proved the identity and creditworthiness of the party as well as the genuineness of the transaction had discharged its burden and it was for the Revenue to conduct an enquiry and to prove that the transaction in question was not genuine and the identity of the creditor was not established and it had no credit worthiness. The Revenue had not conducted any enquiry and had failed to discharge its burden. The addition was not justified. (Distinguished *CIT v. P.R. Ganapathy (2012) 210 Taxman 572 / 254 CTR 336 (SC), PCIT v. NRA Iron & Steel Pvt Ltd (2019) 412 ITR 161 (SC)* (AY.2005-06)
Kumar Nirman and Nivesh Pvt. Ltd. v. ACIT (2020) 425 ITR 486 (Karn.)(HC)

1086 **S. 68 : Cash credits – Unexplained money – Estimation of gross profit – Day to day stock register is maintained – Deletion of addition is held to be justified. [S.153A]**
The AO made additions on account of unaccounted stock, unaccounted purchase, unexplained credits under S. 68, estimation of gross profit on sale of gold bars and estimation of silver bars. The CIT(A) confirmed the addition made on account of unexplained credits under S. 68 and granted partial relief to the assessee on account

of estimation of gross profit on sale of gold and silver bars. Both the assessee and the Department filed appeals before the Tribunal. The Tribunal held that the prevailing gold and silver rates were verifiable and available to every customer, that the assessee made most of the purchases from reputed dealers, that very few documents that pertained to the assessment year 2011-12 which suggested that the assessee had indulged in unrecorded trading were seized, that for the recorded purchases the assessee maintained a day-to-day stock register with quantities and purchase vouchers, that the payments were made through banking channels and that the enhancing of the turnover by 17.5 per cent by the CIT(A) for all the three assessment years was unjustified. On appeal by the revenue dismissing the appeals, that the Tribunal as the last fact -finding authority had given detailed findings in favour of the assessee after scrutinising the facts on record. The matter had been decided by the Tribunal judiciously. The CIT(A) also had decided the issue in favour of the assessee and there were concurrent findings of fact arrived at by both the appellate authorities. No question of law was involved.(AY. 2009-10, 2010-11, 2011-12)

PCIT v. Omprakash Dhanwani (2018) 103 CCH 0493 / (2020) 422 ITR 315 (MP)(HC)

S. 68 : Cash credits – Affidavit filed by the asesssee was not rebutted – Arbitrary rejection of explanation is not proper – Duty Assessing Officer to conduct proper enquiry – Matter remanded. 1087

Allowing the appeal the Court held that,from the record of the assessing authority, it was clear that there was no examination of these affidavits or cross-examination by the assessing authority of these persons. In the absence of any cross-examination or rebuttal or controverting of these affidavits, the assessing authority could not have concluded that the assessee had failed to adduce the evidence to prove the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. The appellate authorities enjoying co-extensive powers, also could have undertaken the exercise, but failed to do so. Matter remanded to the Assessing Officer. (AY.2005-06)

Adhithiya Gears P. Ltd. v. ACIT (2019) 106 CCH 0435 / (2020) 422 ITR 218 / 275 Taxman 350 (Mad.)(HC)

S. 68 : Cash credits – Share Application Money – In the absence of incriminating material found during search – No addition can be made. [S. 132, 153C] 1088

No incriminating material was found to support additions made by the AO u/s. 68 on account of share application money in the assessments u/s. 153C r/w S. 143(3). Addition done by the AO is unsustainable in law. Followed *CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd (2015) 374 ITR 645 (Bom.) (HC)/ CIT v. Gurinder Singh Bawa (2017) 386 ITR 483 (Bom.) (HC)* (Arising out of ITA No.8628/M/2010 dt.12/10/2015)(ITA No. 73 of 2017 dt.06/03/2019)(AY. 2001-2002)

PCIT v. Dhananjay International Ltd. (2020) 114 taxmann.com 317 (Bom.)(HC)

Editorial: SLP granted to the revenue. (tagged along with 4090 of 2016) (CA No. 7600 of 2019, 16/09/2019)(2019) 418 ITR 17(St.)(SC) / (2020) 114 taxmann.com 351 (SC)

1089 **S. 68 : Cash credits – Commission business – Accommodation entries – Failure to explain the source of deposits in the bank – Addition cannot be made as cash credits – Estimation of commission income by the Tribunal is held go be justified. [S. 132]**
The assessee was in the business of providing accommodation entries. The assessee was charging commission of 0.15 %. The AO made entire credit in the bank as cash credits u/ s 68 of the Act as unexplained cash credits. On appeal CIT(A) directed the AO to adopt only 0.15% as income of the total credits. Tribunal also affirmed the view of the CIT (A.) On appeal to the High Court the revenue contended that in view of the judgement of the Supreme Court in PCIT v.NRA Iron & Steel Ltd (2019) 412 ITR 161 (SC) entire credit of Rs the total cash deposits of Rs.4,78,94,000.00 was to added to the total income of the assessee as unexplained income from undisclosed sources under S.68 of the Act. Dismissing the appeal of the revenue the Court held that decision of PCIT.v NRA Iron and Steel Ltd (supra) is not applicable to the facts of the assessee. Accordingly, the order of the Tribunal is affirmed. (AY.2003-04)
PCIT v. Alag Securities Pvt. Ltd. (Formerly known as Mahasagar Securities and Richmond Securities Pvt. Ltd.) (2020) 425 ITR 658 / 192 DTR 88 / 315 CTR 905 / 272 Taxman 241 (Bom.)(HC)

1090 **S. 68 : Cash credits – Share capital – Share premium – Confirmation filed – Companies appeared before AO through a representative and made submissions in support of their investments – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that the share applicants have filed the confirmation and companies appeared before AO through a representative and made submissions in support of their investments. Accordingly the deletion of addition is held to be justified. (Order of ITAT dt 18-10-2016) (AY. 2008-09)
PCIT v. Shree Rajlakshmi Textile Park (P.) Ltd. (2020) 268 Taxman 405 (Bom.)(HC)

1091 **S. 68 : Cash credits – Share application money – Kolkata parties – Bank accounts in Delhi – Failed to discharge onus of establishing the genuineness of transaction and creditworthiness of investors/creditors – Only disclosed identity of investors, who too remained faceless despite notices to them – Addition is held to be justified. [S. 131, 133(6)]**
During relevant assessment year the assessee had received fresh share application money from 16 entities. AO held that just before debit entry favouring assessee, there was credit entry of similar amount and in some cases even cash was deposited just before debit entry. In some cases, confirmation was given by Companies in respect of purchase of shares as against said confirmation, assessee had shown only receipt of share application money pending allotment in names of those Companies. AO also held that. SCL. and. SCEL were having their Offices in Ludhiana and have been filing returns in Ludhiana, but, auditors who conducted statutory audit of both those companies were situated in Kolkata and Bank Account, through which, investment was made were maintained in New Delhi. In response to notice u/s 133(6) of the Act the assessee failed to produce Principal Officers of Companies situated in Delhi for verifying genuineness of transaction. Summons issued could not be served. Accordingly the AO held that the Assessee failed to explain identity, creditworthiness of investors and genuineness of

transaction in matter hence made addition u/s 68 of the Act. CIT(A) allowed assessee's appeal however, ITAT confirmed the order of the AO. On appeal the High Court affirmed the order of the Tribunal. (AY. 2004-05)
Vashulinga Finance Pvt. Ltd. v. DCIT (2020) 185 DTR 99 / 313 CTR 179 (Delhi)(HC)

S. 68 : Cash credits – The expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned – If the cash credits are credited in the FY 2006 – 07, it cannot be brought to tax in a later AY.2009-10. [S. 3] 1092
The question before the High Court was "On the facts and in the circumstances of the case and in law, whether the Tribunal was right in sustaining the additions made of old outstanding sundry credit balances" Allowing the appeal of the assessee the Court held that, the expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned. If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10. Followed *CIT v. Bhaichand H. Gandhi (1983), 141 ITR 67 (Bom.) (HC) CIT v. Lakshman Swaroop Gupta & Brothers (1975), 100 ITR 222 (Raj) (HC) Bhor Industries Ltd v. CIT AIR 1961 SC 1100* (AY. 2009 10)
Ivan Singh v. ACIT (2020) 422 ITR 128 / 195 DTR 227 / 272 Taxman 36 (Bom.)(HC)

S. 68 : Cash credits – Loans from a person outside India – Failure to prove creditworthiness of creditor – Certain documents produced first time before High Court – Addition is held to be justified. [S. 260A] 1093
During year, assessee-partnership firm received certain amount of unsecured loan from person outside India. AO held that since assessee had failed to produce relevant document to prove identity and creditworthiness and genuineness of loan transaction, this unsecured loan received by assessee was bogus and, accordingly, made additions. Addition was confirmed by CIT(A) and Tribunal. On appeal certain documents produced by assessee for first time to demonstrate that creditor had creditworthiness to advance loan could not be taken into consideration. Court held that genuineness of transaction could not be said to be proved merely on strength of bank statement or identity y way of her copy of passport, PAN No. etc. which were produced by assessee during instant appeal. Accordingly the addition is confirmed.(AY. 2013-14, 2014-15)
Siddharth Export. v. ACIT (2020) 268 Taxman 121 (Delhi)(HC)

S. 68 : Cash credits – Entries found in the books of account seized from premises – Failure to explain – Addition is held to be valid. 1094
Dismissing the appeal of the assessee the Court held that, once assessee accepted documents which were seized from his premises, and once he had owned entries and undertaken to explain them in next financial year and had not offered any explanation whatsoever, said amounts had rightly been added to other income of assessee. (AY.1989-90)
Balbir Chand Virmani (2020) 268 Taxman 196 (P&H)(HC)

1095 **S. 68 : Cash credits – Share capital – Substantial part of share application money was received in earlier assessment years – Balance amount sufficient evidence was produced such as identity and genuineness – Deletion of addition is held to be valid.**
Dismissing the appeal of the revenue, the Court held that, substantial part of share application money was received in earlier assessment year accordingly the amount could not be added in impugned assessment year Balance amount sufficient evidence was produced such as identity and genuineness. Order of Tribunal is affirmed. (Arising from ITA No. 4836/Mum/ 2011 dt 30-06 2016)(AY. 2007-08)
PCIT v. Realvalue Realtors (P) Ltd. (2020) 113 taxmann.com 62 / 269 Taxman 64 (Bom.) (HC)

1096 **S. 68 : Cash credits – Share capital – Identity of the investors were not in doubt – Furnished PAN, copies of the income tax returns of the investors as well as copy of the bank accounts in which the share application money was deposited in order to prove genuineness of the transactions – Not required to prove source of the source – Deletion of addition by the Tribunal is held to be justified.**
Dismissing the appeal of the revenue the Court held that, the identity of the investors were not in doubt. The assessee had furnished PAN, copies of the income tax returns of the investors as well as copy of the bank accounts in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, the bank accounts of the investors showed that they had funds to make payments for share application money. The assessee was not required to prove source of the source. Nonetheless, the inquiries through the investigation wing of the department at Kolkata proved source of the source (*PCIT v NRA Iron & Steel (2019) 412 ITR 161 (SC)* distinguished.)
PCIT v. Ami Industries (India) P. Ltd. (2020) 424 ITR 219 / 116 taxmann.com 34 / 271 Taxman 75 / 188 DTR 133 / 315 CTR 753 (Bom.)(HC),

1097 **S. 68 : Cash credits – Identity of creditor established – Need not explain the source of the source – Addition confirmed by the Tribunal is deleted.**
The assessee had taken unsecured loan from various persons. The Assessee has filed the confirmation letters. The AO has doubted the genuineness of the loan and made addition as cash credits. The Tribunal is also confirmed the addition. On appeal by the assessee allowing the appeal the Court held that the assessee need not prove the source of the source. Accordingly the addition was deleted. Followed *PCIT v Veedhata Tower Pvt Ltd (2018) 403 ITR 415 (Bom.) (HC).* (ITA NO. 6160 /Mum/2016 dt 11-05 2017 (AY. 2010-11)
Gaurav Triyugi Singh v. ITO (2020) 423 ITR 531 / 188 DTR 128 / 315 CTR 748 (Bom.)(HC)

1098 **S. 68 : Cash credits – Share application money and share premium – Identity, genuineness of transaction, creditworthiness is proved – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that, the assessee has proved, identity, genuineness of transaction, creditworthiness of the share application money and share premium hence deletion of addition by the Tribunal is held to be justified.

Addition cannot be made as cash credits. (ITA No 4607 /Mum/2012 AY. 2008-09 dt 18-10 2016) (ITA No 991 of 2017 dt 4-11-2019)
PCIT v. Shree Rajalakshmi Textile Park Pvt. Ltd. (2020) BCAJ-January-P. 46. (Bom.)(HC)

S. 68 : Cash credits – Not providing an opportunity to cross examine the witness – Violation of principles of natural justice – when all the requisite documents and information is provided by the assesse onus shifts to the Revenue to cross verify the details furnish – otherwise no addition can be made. [S. 132, 147, 148] 1099

Reassessment proceeding under section 147 was initiated on the basis the basis of information received during search conducted under section 132 on the premises of a third person, Mr. P by the Assessing Officer. In response, Assessee furnished all the requisite documents and requested for cross-examination of Mr. P since the entire addition of Rs. 29,82,89,600/-as unexplained cash credit under section 68 was proposed to be made on the statement of Mr. P a.k.a. the witness. It was observed that the Assessing Officer did not provide a copy of such statement of the witness neither did it provide an opportunity to the Assessee to cross-examine such witness. It also did not bring anything on record to rebut the factual position and explanation provided by the Assessee.

The CIT(A) as well as the Tribunal held that the order passed by the Assessing Officer is illegal and the entire addition solely based on such statement is likely to be deleted as there was a violation of principle of natural justice. The Tribunal held that if the Assessing Officer intends to rely, for the purposes of making addition to the total income of the assessee, on the statement of the third party as a witness, then he has to summon such witness, record his statement, offer that witness to the assessee for cross examination in order to rebut the material on the basis of which the Assessing Officer intended to proceed.

On the merits of the case, the Tribunal observed that the Assessee by furnishing the necessary details has discharged its onus, if such details are not cross verified by the department, then the Department cannot go on to hold addition under section 68 in the facts and circumstances of the case. *CIT v. Eastern Commercial Enterprises [1994] 210 ITR 103; Kalra Glue Factory v. Sales Tax Tribunal [1987] 167 ITR 498; CIT v. Pradeep Kumar Gupta [2008] 303 ITR 95 (Delhi); PCIT v. Best Infrastructure (India) (P.) Ltd. [2017] 84 taxmann.com 287 (Delhi); Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3/52 GST 355 (SC); CIT Vs. Chanakya Developers reported in 43 taxmann.com 91; CIT v. Orissa Corp. (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80 (SC); Deputy CIT v. Rohini Builders [2002] 256 ITR 360/[2003] 127 Taxman 523 (Guj.)* (AY. 2009-10)
ACIT v. El Dorado Biotech Pvt. Ltd. (2020) 208 TTJ 817 / (2021) 186 ITD 661 (Ahd.)(Trib.)

S. 68 : Cash credits – Compensation – Land acquisition – Land held as stock in trade – Not undisclosed income. [S.143(3)] 1100

Where compensation received by assessee on account of acquisition of its land by Government, which formed part of its stock-in-trade was duly accounted for in its sales for year under consideration, Assessing Officer was unjustified in assessing same as undisclosed income/receipts in hands of assessee. (AY. 2005-06 to 2007-08)
Caprihans India Ltd. v. Dy. CIT (2020) 203 TTJ 450 (Mum.)(Trib.)

1101 **S. 68 : Cash credits – Long term capital gains – Accommodation entries – Transactions were proven bogus by revenue – Addition as cash credits justified [S. 45, 10(38)]**
Where assessee claimed exemption under section 10(38) on long term capital gain they claimed to have earned is not allowed, as the share transactions from which such capital gain was claimed to be derived were not proven legitimate, and Revenue provided sufficient evidences to prove the transactions as bogus. Addition is held to be justified. (AY. 2014-15)
Suman Poddar v. ITO (2020) 191 DTR 19 / 206 TTJ 393 (Delhi)(Trib)

1102 **S. 68 : Cash credits – Creditworthiness and genuineness of transaction proved – Deletion of addition is held to be justified.**
The assessee has proved creditworthiness and genuineness of transaction. Deletion of addition is held to be justified. (AY .2012-13, 2013-14)
DCIT v. R.M. Commercial Pvt. Ltd. (2020) 204 TTJ 940 (Kol.) (Trib.)

1103 **S. 68 : Cash credits – Inspector's report not furnished and opportunity of cross examination not provided – Violation of principle of natural justice – Addition was deleted. [S.131, 133(6)]**
Tribunal held that Inspector's report not furnished and opportunity of cross examination not provided moreover, the creditors were worth several crores of rupees and there was no reason to doubt their creditworthiness or the genuineness of the transactions. Mere declaration of low income in the return of income was no ground to reject the genuineness of the creditors. The assessee had discharged the burden upon it and the Assessing Officer failed to make enquiries on the documentary evidence submitted by the assessee. The addition was to be set aside. (AY.2015-16)
Thirubala Chemicals Pvt. Ltd. v. ITO (2020) 84 ITR 8 (SN) (Delhi)(Trib.)

1104 **S. 68 : Cash credits – Issue of shares at premium – Based on share valuation – Identity and creditworthiness is established – Addition is held to be not valid. [S.133(6)]**
Dismissing the appeal of the revenue the Tribunal held that all the applicants had responded to notice issued under section 133(6). No further enquiry was also conducted by the Assessing Officer. The report of the Inspector that these companies did not exist at the given address could not be a valid ground for making the addition under section 68 of the Act especially when the Assessing Officer was fully aware that all these companies were group companies except A Ltd. which was a listed company and in earlier and subsequent assessment years their investment had been accepted in the order passed under section 143(3). The assessee before the Commissioner (Appeals) had given the average of book value and earnings per share -based share valuation at Rs. 3,812. The Department had not brought any material to show that such valuation was incorrect. Therefore, the allegation of the Assessing Officer that the premium charged by the assessee-company was exorbitantly high was not tenable. Order of CIT(A) is affirmed. (AY.2011-12, 2012-13)
Dy.CIT v. Garg Acrylics Ltd. (2020) 84 ITR 537 (Delhi)(Trib.)

S. 68 : Cash credits – Share capital – Identity, creditworthiness and genuineness established – Addition deleted – Enhancement by CIT(A) was quashed. [S. 131, 251(2)] 1105
Allowing the appeal of the assessee the Tribunal held that, all share have filed the replies to notices issued by the Assessing Officer with confirmations and documents to substantiate their identity and creditworthiness and genuineness of share transaction. Amounts Transferred through banking channels and no cash deposits in accounts of investor companies. Assessing Officer satisfied with explanation given by assessee and accepting share capital raised by assessee as genuine. Order of CIT(A) enhancing the assessment and making addition as nongenuine is held to be based on suspicion and held to be not sustainable. (AY. 2012-13)
Matarani Vintrade Pvt. Ltd. v. ITO (2020) 84 ITR 432 (Kol.)(Trib.)

S. 68 : Cash credits – Advance paid for acquisition of Lands through mediator – Refund of money – Addition cannot be made as cash credits. 1106
Tribunal held that the advocate had filed a confirmation specifically mentioning that the lands originally belonging to the scheduled castes and scheduled tribes and later on had been purchased by the present owners which was not regularised, that the assessee had already shown in his balance-sheet in respect of the land advance of Rs. 20 lakhs. Thus the transaction was a genuine transaction and the amount was arranged by the mediator. Though the names of the land owners who wanted to sell the land not mentioned, the fact remained that the advocate who was the mediator had arranged for the refund. Therefore it could not be disbelieved that the identity of the parties was not proved. It was a fact that the assessee had advanced the amount and that the transaction did not materialise because the legality of the agricultural land was in issue. It was also a fact that the mediator had arranged repayment of the amount. Therefore the addition made by the Assessing Officer and confirmed by the Commissioner (Appeals) was not correct and was to be deleted.(AY.2009-10)
Dr. P. Visweswara Rao v. ITO (2020) 84 ITR 423 (Vishakha)(Trib.)

S. 68 : Cash credits – Purchases – Credit balance outstanding – Deleted the addition. 1107
Tribunal held, that the Assessing Officer had simply added the balance as on March 31, 2004 without realizing that the entire credit balance was the outcome of the purchases made during the year. In the immediately succeeding years the outstanding had been paid by the assessee. Once the purchases had been accepted as genuine and no adverse inference had been drawn, the authorities were not justified in making the addition of the balance outstanding as on March 31, 2004. Hence, the entire addition made by the Assessing Officer was to be deleted. Since the additional evidence was transmitted to the Assessing Officer and the Assessing Officer responded thereto submitting two remand reports, it could not be said that the Assessing Officer was not given any opportunity of being heard. (AY. 2004-05)
IKEA Trading India Pvt. Ltd. v. Dy.CIT (2020) 83 ITR 415 / (2021) 186 ITD 473 (Delhi) (Trib.)

1108 **S. 68 : Cash credits – Identity, genuineness and creditworthiness established – Deletion of addition is held to be justified – Unintended mistakes – Remand report – Deletion of addition is held to be justified. [S. 69C]**

Dismissing the appeal of the revenue the Tribunal held that the assessee has proved identity, genuineness and creditworthiness of creditors hence deletion addition is held to be justified. As regards unintended mistakes in the remand report unintended mistakes were admitted and the AO has verified hence deletion is held to be valid. (AY. 2012-13)

ACIT v. Deepak Soni (2020) 82 ITR 324 (Indore)(Trib.)

1109 **S. 68 : Cash credits – Cash deposited of sales – Sales cannot be assesse as cash credits – Only gross profit can be estimated – Ad hoc disallowance of 1/5 of expenses is held to be not justified. [S. 37(1), 143(3)]**

Tribunal held that since the purchases and sales made by assessee of other connected parties were routed through the bank account of the assessee, they could not be treated as sales and purchases of the assessee. Even if there was some excess sales declared by the assessee, the entire sales could not be treated as unaccounted income of the assessee. As against the undisclosed or unaccounted sales, only the profit rate should be applied to make the addition. As the purchases were routed through the account of the assessee addition cannot be made as cash credits in respect of cash deposited. As reagrds expenses debited the Assessing Officer had not pointed out as to which of the vouchers of the expenditure had not been produced by the assessee. No details of the amount had also been mentioned. Therefore, disallowing one-fifth of the expenditure claimed of the assessee would amount to ad hoc addition which could not be sustained in law. (AY. 2013-14)

ITO v. Darshan Lal (2020) 82 ITR 154 (Delhi)(Trib.)

1110 **S. 68 : Cash credits – Undisclosed bank accounts – Grocery business – Cross deposits and withdrawals – Combined peak credit of both bank accounts to be taken to work out element of undisclosed investments for undisclosed transactions.**

Tribunal held that there were cross-deposits and withdrawals. Since the withdrawals from the banks had not been found to have been spent for any other purpose or invested in any immovable or movable property and having regard to the cash flow statement of both the undisclosed bank accounts, the combined peak credit of both the bank accounts needed to be taken to work out the element of undisclosed investments made by the assessee for the undisclosed transactions. From the opening balances in both the banks, this was not the initial year, wherein the assessee had made the undisclosed transaction. However, since this was the assessment year in which the fact of undisclosed bank accounts was discovered, the undisclosed investment needed to be taxed separately. Therefore, the combined peak credit in respect of both accounts needed to be taken to find out the undisclosed investments made by the assessee for the undisclosed transaction in both banks which was which needed to be added in the hands of the assessee the Assessing Officer was directed to apply the gross profit rate at 8.81 per cent. of the total deposits, therefore, the amount of towards combined peak credit for investment made by the assessee and the gross profit rate of 8.81 per cent. of total deposits was sustained and the balance of the addition was deleted. (AY.2016-17)

Laxmi Yadav (Smt.) v. ITO (2020) 80 ITR 22 (SN) (Kol.)(Trib.)

S. 68 : Cash credits – Excise contractor – Demand drafts taken from certain parties – Not furnishing Permanent Account Number not a reason for making addition. [S. 69A] 1111
Tribunal held that merely because the permanent account number was not furnished, no addition could be made however the additions made by the Assessing Officer towards demand drafts claimed to have received from the two parties were confirmed. (AY.2001-02)
Venkatesh K. I. v. ACIT (2020) 80 ITR 40 (SN) (Bang.)(Trib.)

S. 68 : Cash credits – Share capital – Investors had sufficient net worth – Addition is held to be not justified. 1112
Tribunal held that net worth chart revealed that all investor entities had sufficient net worth to make investment in assessee-company, accordingly the addition was directed to be deleted. (AY. 2011-12)
Bini Builders (P.) Ltd. v. DCIT (2020) 185 ITD 236 (Mum.)(Trib.)

S. 68 : Cash credits – Share application money – Share premium – Identity, creditworthiness and genuineness of share applicants were established – Addition is held to be not justified. 1113
Assessee received share capital and share premium money amounting to Rs. 16 crores from two private limited companies. AO held that the assessee had introduced its undisclosed income in guise of share application money. On appeal the Tribunal held that share applicants were regular income tax assesses. Share application Form and allotment letter were available on record-PAN details, bank account statements, audited financial statements and Income Tax acknowledgements of directors and shareholders of share subscribing entities were placed on record. Payments were made by account payee cheques. In none of transactions, cash was deposited in bank accounts of any of applicant companies before issuing cheques to assessee company. Share applicants were having substantial creditworthiness which was represented by a capital and reserve. Both share applicant companies could not be termed as jama-kharchi companies. In case, Assessing Officer was dissatisfied about source of cash deposited in bank accounts of creditors, proper course would be to assess such credit in hands of creditors after making due enquiries from such creditors. Since identity, creditworthiness and genuineness of transaction were established and Assessing Officer had not disproved materials placed before him, addition was not warranted. (AY. 2012-13)
Satyam Smertex (P.) Ltd. v. DCIT (2020) 184 ITD 357 (Kol.) (Trib.)

S. 68 : Cash credits – Cash deposit in bank – Reflected in cash book and tallied with sales register – Addition cannot be made as cash credits. [S. 145] 1114
Tribunal held that cash deposited in bank was duly reflected in cash book and said sum tallied with sales register addition cannot be made as cash credits. (AY. 2011-12)
ITO v. Yashovardhan Tyagi (2020) 184 ITD 461 (Delhi)(Trib.)

1115 **S. 68 : Cash credits – Shares at high premium – Genuineness of transaction and identity and creditworthiness of share applicants were proved – Addition is held to be not justified – Income from other sources – Provisions of section 56(2)(viib) inserted by Finance Act, 2012 with effect from 1-4-2013 to examine justification of share premium would apply prospectively from assessment year 2013-14. [S. 56(2)(viib)]**

Assessee issued shares of face value of Rs. 10 at a very high premium of Rs. 190 per share. Assessing Officer had no doubt about genuineness of source of funds of share applicant and he accepted identity and creditworthiness of share applicants, still he had drawn adverse inference merely on ground that assessee company's performance did not justify high value of share premium. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that addition as undisclosed income is held to be not justified. Tribunal also held that provisions of section 56(2)(viib) inserted by Finance Act, 2012 with effect from 1-4-2013 to examine justification of share premium would apply prospectively from assessment year 2013-14. (AY. 2012-13)

ITO v. Singhal General Traders (P.) Ltd. (2020) 183 ITD 397 (Mum.)(Trib.)

1116 **S. 68 : Cash credits – Cash deposited – Bank – Sale of Agricultural land – Gift – Failed to show the creditworthiness – Addition is held to be justified – Enhancement without giving an opportunity of hearing is held to be bad in law. [S. 251]**

Tribunal held that the assessee has failed to show creditworthiness of the depositors against sale of Agricultural land as well as gift hence addition is confirmed. As regards the enhancement made by the CIT(A) without giving an opportunity of hearing is held to be bad in law.(AY. 2009-10)

Jagdish Prasad Sharma v. ITO (2020) 182 ITD 246 (Delhi)(Trib.)

1117 **S. 68 : Cash credits – Share capital – Mere submission of name and address of creditor, income tax returns, balance sheet/statement of affairs of creditor and bank statement of creditor is not sufficient.**

Dismissing the appeal of the assessee the Tribunal held that mere submission of name and address of creditor, income tax returns, balance sheet/statement of affairs of creditor and bank statement of creditor is not sufficient. The Assessing Officer can go to enquire/investigate into truthfulness of assertion of assessee regarding nature and source of credit in its books of account and in case Assessing Officer is not satisfied with explanation of assessee with respect to establishing identity and creditworthiness of creditor and genuineness of transactions, he is empowered to make additions as unexplained cash credits. (AY. 2011-12)

Shantananda Steels (P.) Ltd. v. ITO (2020) 182 ITD 434 / 195 DTR 417 / 208 TTJ 672 (Chennai)(Trib.)

1118 **S. 68 : Cash credits – Cash deposited in bank account – Peak credit – Failure to decide the source of deposit and purpose of withdrawal – Not entitle to benefit of peak credit.**

Tribunal held that since the assessee was unable to explain the source of deposits or furnish details regarding the corresponding disbursements, he was not entitled to get the benefit of peak credit. (AY.2011-12)

Varun Gupta v. ITO (2020) 83 ITR 82 (SN) (Delhi)(Trib.)

S. 68 : Cash credits – Share premium – Valuation report was filed – Assessing Officer failing to examine bank accounts from where investment routed to investigate creditworthiness of creditors, identity of subscribers and genuineness of transaction – Deletion of addition is held to be justified. 1119

Tribunal held that the the assessee had submitted a valuation report during the assessment proceeding for charging the premium but it had neither been mentioned nor controverted in the assessment order by the Assessing Officer. If the Assessing Officer had any doubts regarding the source of investment of the subscribers, he could have examined the bank accounts from where the investment was routed. The Assessing Officer was duty bound to investigate the creditworthiness of the creditors and subscribers, verify the identity of the subscribers and ascertain whether the transaction was genuine or were bogus entries of name lenders. But this was not properly done. Hence, the findings of the Commissioner (Appeals) warranted no interference. (AY.2009-10)

ITO v. Aravali Prime Consultants P. Ltd. (2020) 83 ITR 2 (SN) (Jaipur)(Trib.)

S. 68 : Cash credits – Share application money – Share premium – Not establishing the creditworthiness – Investment through conduit of investor companies – Addition is held to be justified. 1120

The Tribunal held that, the assessee could not produce the parties before the Assessing Officer. The assessee volunteered and submitted the whereabouts of the investor companies were within the knowledge of the assessee. When such entities were not to be found at the addresses furnished by the assessee, it was incumbent upon the assessee to produce them before the Assessing Officer to prove their creditworthiness and genuineness of the transaction. The burden is shifted to the assessee. Accordingly it was held that the action of the Assessing Officer was legal and the inference drawn by him that the assessee had routed its own money in the books of account through the conduit of investor companies was justified. (AY. 2010-11)

ITO v. KNS Realtors Pvt. Ltd. (2020) 82 ITR 9 (SN) (Delhi)(Trib.)

S. 68 : Cash credits – Gift from father and brother – Agricultural income – Source of deposit explained – Addition is held to be not justified. 1121

Tribunal held that, the Assesse's father and brother have confirmed the gift transaction by furnishing their confirmation statements. Credit worthiness is established, transaction were through banking channels, merely possessing the ration card of low economic strata does not show that donor does not have any source to earn reasonable income. Appeal of the assessee is allowed.(ITA No. 236/Hyd/ 2017 dt. 24-7-2020). (AY. 2012-13)

Lakadri Naidu v. ITO (2020) The Chamber's Journal-September-P. 112 (Hyd.)(Trib.)

S. 68 : Cash credits – Gift received by son – Source of cash deposits were explained – Addition cannot be made on the suspicion that source of source is doubtful. 1122

Allowing the appeal of the assessee the Tribunal held that once the assessee has discharged his burden by placing evidence with respect of gift to his son, the AO is not free to make an addition as cash credit merely because he is not satisfied with the source of the source. (ITA No. 76 /Viz/ 2019 dt 4-3-2020) (AY. 2015-16)

Bhimanna Shrinivasa Rao v. ITO (2020) The Chamber's Journal-May-P. 90 (Vishakha) (Trib.)

1123 **S. 68 : Cash credits – Unsecured loans – Identity,creditworthiness and genuineness of transaction established – Need not prove source of source – Addition is held to be not justified.**

Tribunal held that The Assessing Officer did not make any enquiry into the matter on the documentary evidence furnished by the assessee and merely rejected the claim of the assessee on irrelevant reasons that the creditors had income disproportionate to the loans advanced to the assessee. The Assessing Officer failed to examine the creditworthiness of the creditors from the source explained in their bank accounts. Since no further investigation had been carried out by the Assessing Officer on the documentary evidence filed by the assessee, the Assessing Officer could not fasten the assessee with such liability under section 68. The Assessing Officer failed to carry his suspicion to logical conclusion by further investigation. Therefore, the Assessing Officer could not draw any adverse inference against the assessee. In the law the assessee need not prove source of the source. (AY.2016-17)

Meenu Kapoor v. ACIT (2020) 78 ITR 53 (SN) (Delhi)(Trib.)

1124 **S. 68 : Cash credits – Loans from directors or relatives – Permanent Account Number Details, Bank Statements, Confirmations And Copies Of Income – Tax Returns Of Lenders were furnished – No cash was deposited before issue of cheque – Addition is held to be not valid.**

Tribunal held that all the lenders were either directors or relatives of the directors. The assessee had furnished permanent account numbers details, bank statements, confirmations and copies of Income-tax returns of the lenders. None of the lenders was alleged to be an entry provider. They have given loans to the assessee out of their available balances and it was not the case of the Department that prior to issuing cheques, there was a deposit of cash in the lender's bank account. Therefore, the assessee had not purchased cheques by paying cash. (AY.2011-12)

R. G. Consultants P. Ltd. v. Dy. CIT (2020) 78 ITR 37 (SN) (Delhi) (Trib.)

1125 **S. 68 : Cash credits – Unsecured loan – Failure to prove genuineness – Addition is held to be justified.**

Tribunal held that the assessee could only provide confirmation without permanent account number, address, Income-tax return and bank statement of the lender and the status and held that where certain sums of money were claimed by the assessee to have been borrowed from certain persons, it was for the assessee to prove by cogent and proper evidence that there were genuine borrowings as the facts were exclusively within the assessee's knowledge. He held that merely establishing the identity of the creditor was not enough. (AY.2012-13)

Rajesh Passi v. ITO (2020) 78 ITR 221 (Delhi)(Trib.)

S. 68 : Cash credits – Bogus purchases from bogus firm – Forensic Expert's report showing that account of firm operated in handwriting of assessee and all deposits and withdrawals made in handwriting of assessee – Not availing of opportunity to cross – examine forensic expert – Addition is held to be justified – Addition on account of bogus sales out of bogus purchases will result in double addition – Addition on debit entry to be deleted. [S. 145] 1126

Tribunal held that merely because the transactions had been done by account payee cheques that would not suffice when the forensic expert's report clearly proved that the account was operated in the handwriting of the assessee and all deposits and withdrawals were made in the handwriting of the assessee. Tribunal also held that the assessee chose not to respond and take the opportunity to cross-examine. Tribunal also held that the addition was confirmed on account of bogus purchases to the extent of Rs. 173 crores. Any addition out of the sales made out of the purchases would result in double addition. Therefore, there was no merit in the addition of debit entry and it was to be deleted. (AY.2008-09)

Puneet Jain v. ITO (2020) 78 ITR 41 / 208 TTJ 1011 (Delhi)(Trib.)

S. 68 : Cash credits – Share application money – Source of investment, identity and creditworthiness of investors and genuineness of transaction established – Addition is held to be not valid. [S. 14A, 131, 153A] 1127

The Tribunal held that the directors of the investor companies who appeared before him in response to the notice and whose statements were recorded on oath, the Assessing Officer could not make an allegation that they had invested in such non-descript company. The investor companies had withdrawn money from companies where funds were invested earlier and they invested money in the assessee in the shape of preference shares. This prudent financial planning could not be viewed adversely and, rather, it supported the case of the assessee that there was source of funds invested by the investor company in the shares of the assessee. The assessee had discharged the onus cast on it producing the directors of the investor companies whose statements were recorded and who had admitted to had invested in the assessee. The directors had explained the source of such investment producing relevant details such as bank statements, copy of the Income-tax returns, audited accounts of the investor companies to substantiate the identity and creditworthiness of the loan creditor and genuineness of the loan transaction. When the assessee had substantiated the three ingredients of section 68 of the Act no addition could be made under section 68 of the Act. (AY. 2013-14, 2014-15)

Nimbus (India) Ltd. v. Dy. CIT (2020)78 ITR 648 (Delhi)(Trib.)

S. 68 : Cash credits – Accommodation entries – Pravin Kumar Jain group – Loan confirmation, PAN no, copy of bank account of lender was produced – Submission was filed in pursuance of notice u/s.133(6) of the Act – Deletion of addition is held to be justified. [S.133(6)] 1128

The assessee had taken Loan from Palak Trading Co (P) Ltd the AO made addition under section 68 of the Act on the ground that the lender company is belonging to Pravin Kumar Jain group who is an accommodation entries provider. On appeal the

CIT(A) deleted the addition on the ground that the appellant has furnished the loan confirmation, PAN No, bank account of lender, copy of return of lender, details of interest paid. The CIT(A) also held that in response to notice under section 133(6) the lender has filed the required details. On appeal by revenue the Tribunal affirmed the order of the order of CIT(A). Followed R*ushabh Enterprises v. ACIT (WP No.167 of 2015 dt 15-4 2015* Judgements in *Konark Structural Engineering (P) Ltd. v. Dy. CIT [2018] 90 taxmann.com 56(Bom.) (HC) and CIT v. Nova Promoters & Finlease (P) Ltd. [2012] 18 taxmann.com 217 (Delhi) (HC)* distinguished. (ITA No. 4544/M/2017 dt 20-2-2019 (AY. 2013-14)
ACIT v. Gopalji K. Dwivedi (Mum.) (Trib.) (UR)

1129 **S. 68 : Cash credits – Share application money – Accommodation entries – Entry provider in his statement not stating investor company one of concerns controlled by him – Assumption Of accommodation entries vitiated by fact – Addition unsustainable.**
Tribunal held that the entry provider in the entire statement had not stated that the investor company was one of the concerns controlled or managed by him in providing such accommodation entries. Therefore, the case of the Department was solely based on surmises that the investor company was one of the concerns managed and controlled by the entry provider and his involvement in providing the accommodation entries was only an assumption of incorrect facts. Even otherwise, the assessee in order to discharge its onus under section 68 had produced the permanent account number, Income-tax return and the assessment order of investor company. The Assessing Officer had not brought any material on record as a result of any enquiry. The commission issued had not yielded any result. Thus except for reliance on the statement of the entry provider, the Assessing Officer did not have any document in his possession or other facts detected as an outcome of enquiry. The entry provider had not made any allegation regarding transaction of investment made by the investor company. Therefore, the documentary evidence produced by the assessee could not be ignored or rejected. (AY.2012-13)
ITO v. Skyways Industrial Estate Co. P. Ltd. (2020)78 ITR 320 (Jaipur)(Trib.)

1130 **S. 68 : Cash credits – Share application money – Nature and source satisfactorily explained – Addition is held to be not valid – Derivative loss – Matter remanded to the Assessing Officer.**
Tribunal held that under the deeming provision what is required to be seen was whether or not the assessee had been able to discharge the onus regarding the nature and source of credit appearing in the books of account during the financial year. The nature of credit was share application money and the source had been found to be satisfactorily explained by the assessee as held by the Commissioner (Appeals). Thus, the onus cast upon the assessee had been fully discharged. Secondly, if a share at a face value of Rs. 10 and premium of Rs. 90 had been bought back at Rs. 5 the Assessing Officer had all the powers under the Act to examine the issue in the year in which the transaction had taken place and there he could draw any inference after proper scrutiny and inquiry. So far as this year was concerned, the genuineness of the transaction of the share application money received during the year had to be seen. As regards derivative loss, matter remanded to the Assessing Officer. (AY.2011-12)
Rosewood Buildwell P. Ltd. v. ITO (2020) 78 ITR 592 (Delhi) (Trib.)

S. 68 : Cash credits – Advance receipt from parties – Excess amount offered to tax in subsequent year – Advance receipt not taxable as cash credit. 1131

Tribunal held that there were regular transactions of supply of goods and payments were received from the parties. There was a debit balance against which the amount received was in excess of the amount due from these customers. The excess amount in the subsequent years was stated to be outstanding. There was no transaction of sales nor were these amounts refunded to the parties. The sum of Rs. 4,31,376 had already been offered by the assessee in the assessment year 2011-12 and the amount had already been assessed to tax. Since the assessee had already suffered tax in the subsequent year, the addition did not survive. (AY.2007-08 to 2011-12)

Ultimate Flexipack Ltd. v. Dy.CIT (2020) 78 ITR 410 (Delhi) (Trib.)

S. 68 : Cash credits – Security deposits – Lack of full details of parties – Addition is held to be justified. 1132

Tribunal held that the assessee has not proved the source of the security deposits claimed to have been received. Payment to an agent and deduction of tax from such payment would not prove the creditworthiness of that agent or the genuineness of the purported security deposit from that agent. Addition is held to be justified. (AY.2008-09)

Carol Securities Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 469 (Delhi) (Trib.)

S. 68 : Cash credits – Difference between form no 26AS and tax credit statement – Assessing Officer is directed to examine reconciliation statement. 1133

Tribunal held that the difference in the revenue recognised by the assessee and form 26AS statement was bad in law inasmuch as section 68 was not at all applicable on such difference. The Assessing Officer was directed to examine the reconciliation statement mentioned and when found correct, no addition was called for. (AY.2012-13, 2015-16)

Avaya India Pvt. Ltd. v. Add. CIT (2020) 78 ITR 305 (Delhi)(Trib.)

S. 68 : Cash credits – Firm – Capital introduction by partners – Addition is held to be not valid – The period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in rule 34(5) of the Income – tax (Appellate Tribunal) Rules, 1963. [S. 254(1), ITAT R. 34(5)] 1134

Tribunal held that all the partners had owned the introduction of capital in the assessee-firm. The Assessing Officer had not challenged the correctness of the evidence filed by the assessee. This was a case where the partners had introduced the capital. The assessee had discharged its onus satisfactorily by furnishing all the relevant evidence. Therefore, when the firm had disclosed the capital introduction by the partner providing the names and permanent account numbers of the contributing partners, no addition could be made in the hands of the firm. Hence the addition of Rs. 60 lakhs was deleted. The period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963. (AY.2014-15)

R. N. Sahoo v. Dy.CIT (2020) 79 ITR 20 (SN) (Cuttack)(Trib.)

1135 **S. 68 : Cash credits – Tax savings investment – Matter remanded to thee Assessing officer. [S. 80C]**

Tribunal held that considering the financial strain of the assessee and the nature of the additions made, the matter was remitted to the Assessing Officer for de novo consideration. (AY. 2014-15)

Sanjeeva Reddy Paga v. ITO (2020) 79 ITR 439 (Hyd.)(Trib.)

1136 **S. 68 : Cash credits – Share premium – Identity and creditworthiness of share holders and genuineness transaction is not doubted – Merely for not furnishing the valuation report – Addition is held to be not justified.**

Tribunal held that the share premium of Rs. 90 per share had been contributed by the shareholders owing to various facts. Further, the Assessing Officer had not disputed the identity, genuineness and creditworthiness of the shareholders. Hence, the invocation of the provisions of section 68 of the Income-tax Act, 1961 for the simple reason of non-filing the valuation report by the assessee and not referring the cost of the land to the DVO, and without bringing any material on record to fulfil the criteria of section 68, was not justified. (AY.2012-13)

Dy.CIT v. International Land and Developers P. Ltd. (2020) 79 ITR 441 (Delhi)(Trib.)

1137 **S. 68 : Cash credits – Long-term capital gains – Sale of shares – Penny stock – Purchases in physical form – Dematerialised subsequently – Addition is held to be justified. [S. 10(38), 45]**

Tribunal held that the additions made by the Assessing Officer were on account of detailed enquiries carried out by the Kolkata Investigation Directorate with regard to 84 penny stock companies and the Securities and Exchange Board of India. The modus operandi involving operators, intermediaries and the beneficiaries had already been detailed in the investigation report prepared and disseminated by the Kolkata Investigation Directorate. Similar investigations were also conducted by the Directorate of Investigation at Mumbai and Ahmedabad. After a thorough investigation, the Assessing Officer concluded that : (a) the scrip was a penny stock, purchased at a low price, which was over a period of time ramped up by the operators acting in benami names or name lenders, the purchases were off market purchases and not reported on the exchange; (b) the purchases were back dated, i. e., per a back dated contract note, paid for in cash, so that there was no trail ; (c) the purchases were in the physical form, and dematerialised only subsequently; generally long after the purchase date, being back dated and, further, close to the date of sale; and (d) the investee was a penny stock company, with no credentials, and the sale rates were artificially hiked, with no real buyers, so that the inference of the sales being bogus, was unmistakable. No new facts or circumstances had been placed on record. Therefore, there was no reason to interfere with the findings of the authorities and of the Commissioner (Appeals). Followed *Pavankumar M. Sanghavi v. ITO (2017) 81 taxmann.com 308/ 59 ITR 389/ 165 ITD 260/187 TTJ 32 (Ahd.) (Trib.).* (AY.2014-15)

Bhagwatiben Vinodkumar Surani v. ITO (2020) 80 ITR 341 (Ahd.)(Trib.)

S. 68 : Cash credits – Family settlement – Source of receipt accepted – Addition is held to be not justified. 1138

Tribunal held that since the Department had not brought out that there were other properties which had been settled in favour of the assessee, the contention of the assessee that he had received Rs.15 lakhs towards settlement of family property could not be ruled out totally. The source of deposit of Rs. 10 lakhs as the receipt of the amount from his brother was accepted. Therefore, the addition to the extent of Rs. 10 lakhs was deleted. (AY.2009-10)

G. Ashok Reddy v. ITO (2020) 80 ITR 550 (Hyd.)(Trib.)

S. 68 : Cash credits – Balances from earlier years – Matter remanded to the Assessing Officer. 1139

Tribunal held that, confirmations and Ledger account of creditors prima facie showing that balances came from earlier years. Balance-sheet for preceding year and earlier years not on record hence the matter remanded stating that if credits in books of account pertain to earlier year addition could not be made in instant year. Assessing Officer is directed to decide material brought on record. (AY.2014-15)

Virendra Verma v. ITO (2020) 81 ITR 16 (SN) (Delhi)(Trib.)

S. 68 : Cash credits – Investment in company – Not producing criminal complaint to prove the source – Addition is held to be justified. 1140

Tribunal held that the assessee had not produced the criminal complaint to prove that a sum of Rs. 5.75 lakhs was given by way of loan by the son-in-law of the assessee nor had the assessee proved the amount of sum of Rs. 5.75 lakh was given to P in the year 2001. Since the Tribunal clearly stated that the sum of Rs. 5.75 lakhs was to be sustained if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs. 5.75 lakhs by way of loan from the son-in-law of the assessee, the addition was sustained because the assessee had failed to furnish the documents relating to the criminal proceedings neither before the Income-tax authorities nor before the Tribunal. (AY. 2006-07)

N. S. John v. ITO (2020) 81 ITR 76 (SMC)(SN) (Cochin)(Trib.)

S. 68 : Cash credits – Journal entry – Share application money – Cheques neither presented nor encashed in accounting year – Addition cannot be made. 1141

Tribunal held that the cheques were neither presented nor encashed in the accounting year relevant to the assessment year. The date of issuance of cheque was immaterial. Thus, the assessee had not received any money on account of share application during the accounting year relevant to the assessment year 2013-14, and it was a notional receipt only. The assessee had just passed the journal entry and ultimately the share application money was received in the subsequent year, i. e., assessment year 2014-15. Therefore, no inquiry could be made in this year. As no amount in the real sense had been found to be credited in the accounts of the assessee for the assessment year 2013-14 and if that be so, there was no need to examine this evidence, i.e., confirmation, capacity and genuineness of the 28 applicants. The addition was not sustainable in the assessment year 2013-14 and was deleted. (AY. 2013-14)

Deem Roll Tech Ltd. v. Dy. CIT (2020) 81 ITR 82 (SN) (Ahd.)(Trib.)

1142 **S. 68 : Cash Credits – Unsecured Loans – Banking channels – Subsequently adjusted against booking of flat – Addition is held to be not valid.**
Tribunal held that the amounts received by banking channels and subsequently adjusted against booking of flat. Parties have confirmed the transaction, accordingly the addition is held to be not valid. (AY.2012-13)
Dy. CIT v. H. B. Associates (2020) 81 ITR 38 (SN) (Trib.)(Pune)

1143 **S. 68 : Cash credits – Circuitous cash deposits – Three bank accounts – Salaried employee – Addition was confirmed to the extent of Rs.7,38,000]**
Tribunal held that some of the payments made by the assessee by cheques as reflected in his bank accounts were towards the personal and household expenses and if these were taken into consideration along with the other facts of the case including the quantum of salary income of the assessee, the cash withdrawals made by the assessee from his bank accounts could be considered as utilised for personal and households expenses to the extent of Rs. 3,00,000, i. e., Rs.25,000 per month. Thus the cash withdrawals made by the assessee during the year 2011-12 from his bank accounts to the extent of Rs. 7,75,000 could reasonably be treated as available with the assessee to explain the cash deposits made by him in the bank accounts during the year 2011-12. The addition of Rs. 15,13,000 made by the Assessing Officer and confirmed by the Commissioner (Appeals) on account of unexplained cash deposits found to be made by the assessee in his bank accounts to the extent of Rs. 7,38,000 was sustained. (AY.2011-12)
Baidya Nath Dey v. ITO (2020) 81 ITR 28 (SN) (Kol.)(Trib.)

1144 **S. 68 : Cash credits – Income from undisclosed sources – Ex parte Assessment – Loan – Creditor showing very low income not a determinative factor for determining creditworthiness of creditor – Addition held to be not justified. [S. 144]|**
Allowing the appeal of the assessee the Tribunal held that The CIT(A) had not doubted the genuineness of the transaction. The only reason for which the CIT(A) upheld the addition made by the Assessing Officer was that the assessee had not proved the source of numerous deposits in the bank account of the firm. Tribunal also held that Creditor showing very low income not a determinative factor for determining creditworthiness of creditor. (AY.2013-14)
Rohit Kumar Jindal (HUF) v. ITO (2020) 81 ITR 469 / 208 TTJ 764 (Chd.)(Trib.)

1145 **S. 68 : Cash credits – Share capital – Creditworthiness of subscribers and genuineness of transactions were proved – Addition is held to be not justified.**
Assessee, a Non-Banking Finance Company (NBFC), was engaged in business of trading and investments. During year, assessee received share application money of certain amount in cash from several individuals. AO added back entire amount of share capital to income of assessee. The AO had acknowledged that in compliance of notice issued under S. 133(6) all share applicants filed evidences in form of balance sheets, ITR acknowledgement and bank statements. Before CIT(A) assessee had also filed additional documents by way of account statements of share applicants, share application forms, copy of bank account of share applicants, copy of ledger account of share applicants. Tribunal held that the assesssee has proved the identity of share applicants was

proved by furnishing name, address, PAN of share applicants together with copies of their respective balance sheets and income tax returns it was further found that these individuals were having capital in lakhs of rupees and investment made in assessee-company was a small part of their capital. Accordingly, the assessee had discharged its onus to prove identity and creditworthiness of share subscribers and genuineness of transactions, therefore, addition made as cash credits was unjustified. (AY. 2013-14)
Tradelink Carrying (P.) Ltd. v. ITO (2020) 181 ITD 408 (Kol.)(Trib.)

S. 68 : Cash credits – Share capital – Companies never existed in given addresses – Fictitious and bogus companies – Addition is held to be justified. [S. 153A, 153C] 1146
AO on basis of documents seized during search conducted at premises of another company issued notice to provide details of share capital and share premium obtained by assessee in financial years 2009-10 to 2011-12 and also requested to produce controlling persons of share applicant companies along with supportive documentary evidence for examination. Assessee filed certain parties' details, failed to produce controlling persons. AO conducted field enquiries in respect of share applicant companies revealed that such companies never existed in given addresses. The AO held that these companies were nothing but paper companies created to conduit companies to facilitate these types of transactions accordingly made addition u/s 68 of the Act. CIT(A) confirmed the addition. On appeal the Appellate Tribunal held that on facts the AO rightly inferred that assessee had rooted its own money through bogus companies; thus, addition was affirmed. (AY. 2010-11, 2012-13)
Par Excellence Leasing and Financial Services (P.) Ltd. v. ACIT (2020) 181 ITD 437 / 195 DTR 129 / 207 TTJ 1133 (Delhi)(Trib.)

S. 68 : Cash credits – Bank deposits – Produced all relevant documents – Merely because assessee had not filed an application to file such additional evidence before CIT(A) such additional documents could not be rejected. [S. 251] 1147
Assessee has deposited cash in its bank account. The AO made addition as cash credits in respect of cash deposits. On appeal the CIT(A) had not accepted documents in support of cash deposits as same were not supported with an application to file additional evidence. On appeal the Appellate Tribunal held that since assessee had produced relevant documents to explain source of cash deposit in his bank account before CIT(A) merely because assessee had not filed an application for filling additional evidence, such documents could not be rejected. Accordingly addition confirmed by the CIT(A) was deleted. (AY. 2011-12)
Pabitra Mohan Samal v. ITO (2020) 181 ITD 391 (Cuttack)(Trib.)

S. 68 : Cash credits – Share capital – Furnished details of bank account, PAN, ITRs and financials etc. of share applicants – In response to notice issued under S. 133(6), share applicants had confirmed investment made by them along with source of their investment – Mere non-production of directors, without bringing any contrary material on record – Addition is held to be not valid. [S.133(6)] 1148
The assessee-company was a Non-Banking Finance Company (NBFC) and during the year under consideration was engaged in the business of share broking and sub-broking,

finance, etc. The AO made addition on account of share capital and premium and also on account of unsecured loan. CIT(A) deleted the addition. Dismissing the appeal of the revenue the Appellate Tribunal held that the assessee had submitted complete details of bank account particulars, PAN, ITRs and financials etc. of share applicants. In response to notice issued under S. 133(6), share applicants had confirmed investment made by them in assessee-company along with source of their investment. Accordingly the Appellate Tribunal held that mere non-production of directors, without bringing any contrary material on record, could not be adversely viewed against assessee (AY. 2012-13)

ITO v. Commitment Financial Services (P.) Ltd. (2020) 181 ITD 682 / 113 taxmann.com 565 (Delhi) (Trib.)

1149 **S. 68 : Cash credits – Long term capital gain – Sale of shares – investor in many years – Addition is held to be not justified. [S. 10(38)]**

Assessee sold certain shares of company LDPL and generated exempted long term capital gains. AO treated the long term capital gain as not genuine and made addition as cash credits. Tribunal held that since AO failed to produce any material evidence to dislodge or controvert genuineness of conclusive documentary evidences produced by assessee in support of his claim that he was a genuine investor from past many years, addition was deleted. (AY.2015-16)

Anoop Jain v. ACIT (2020) 181 ITD 218 / 186 DTR 57 / 203 TTJ 552 (Delhi)(Trib.)

1150 **S. 68 : Cash credits – Loan form penny stock company – Matter remanded to the AO for verification whether SEBI has taken any action against alleged Company which has given loan to the assessee. [S.115BBE]**

AO held that the assessee had taken accommodation entry from alleged a penny stock Company UNNO Industries Ltd. hence added the loan as cash credits which was affirmed by the CIT(A). On appeal the Appellate Tribunal held that in case of a listed company, a specific finding as to whether a particular company is a bogus or sham company from whom accommodation entry is allegedly taken, has to be recorded by appropriate regulatory authority ie. SEBI. Tribunal also directed the AO to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The Revenue shall ascertain and bring on record any order/warning or penalty visited upon M/s. Golden Legend Finance & Leasing Ltd. by SEBI/Regulatory Authority and decide the issue with reference to the status of the said company as held by the Appropriate Regulatory Authority qua its activities at the relevant point of time. In instant case, there was no reference whatsoever the impugned addition was set aside and matter remanded. (AY. 2014-15, 2015-16)

Rajbir Kaur (Smt.) v. ITO (2020) 181 ITD 67 (Chd.)(Trib.)

1151 **S. 68 : Cash credits – Accommodation entries – Tax avoidance – Bogus short term capital loss – Addition is held to be justified. [S.4, 45, 72]**

The assessee claimed short-term capital loss of certain amount on sale of shares. On the basis of information from the investigation wing the price movement of shares was also found to be unrealistic. On appeal the asssessee could not rebut these adverse findings

by AO Tribunal held that on facts, short-term capital loss claimed by assessee was not genuine and addition is held to be justified. (AY. 2015-16)
Sanjay Kaul v. ITO (2020) 181 ITD 146 / 206 TTJ 176 / 82 ITR 441 / 191 DTR 60 (Delhi) (Trib.)
Editorial : Affirmed in Sanjay Kaul v. PCIT (2020) 427 ITR 63 / 274 Taxman 301/ 119 taxmann.com 470 / 274 Taxman 301/ 193 DTR 57/ 316 CTR 337 (Delhi) (HC)

S. 68 : Cash credits – Unsecured loans – Lenders either directors or relatives of directors of Assessee – Assessee furnishing PAN, bank statements, confirmations and copies of income-tax returns of lenders – None of lenders were entry providers – No cash deposited in lenders' account prior to issuing cheques – Assessee not purchasing cheque by paying cash – Addition unsustainable. 1152
On appeal, the Tribunal held that,all the lenders were either directors or relatives of the directors. The assessee had furnished PANs, bank statements, confirmations and copies of income-tax returns of the lenders. None of the lenders was alleged to be an entry provider. They have given loans to the assessee out of their available balances and it was not the case of the Department that prior to issuing cheques, there was a deposit of cash in the lender's bank account. Therefore, the assessee had not purchased cheques by paying cash and hence no addition can be made under S. 68 of the Act. (AY.2011-12)
R. G. Consultants P. Ltd. v. DCIT (2020) 78 ITR 37 (SN) (Delhi)(Trib.)

S. 68 : Cash credits – Capital gains – Penny stocks – Transactions were genuine and duly supported by various documentary evidences – Opportunity of cross examination was not provided – The AO has not discharged the onus of controverting the documentary evidences furnished by the assessee and by bringing on record any cogent material to sustain the addition – Addition as cash credit and addition of 2% as commission was deleted – Assessed as long term capital gains and exemption is allowed. [S. 10(38), 45, 69] 1153
The assessee had made investment in 62500 Equity Shares of an entity namely Santoshima Trade Link Ltd (STL) during the month of September 2011. The face value of the share was Rs 10 peer share with premium of Rs 10 per share, accordingly the assessee has paid Rs 12.50 lacs to acquire the said shares. The shares were allotted and were received in physical form. The shares were dematerialised during march 2012. Meanwhile STL got merged with another entity namely Sunrise Asian Ltd (SAL) pursuant of scheme of Amalgamation u/s 391 to 394 of the Companies Act, 1956 which was duly approved by the Honourable Bombay High Court. In the month of June 2013 SAL was a public limited Company and its shares were traded at Bombay Stock Exchange. The Assessee sold the shares in the month of March 2014. Since the Shares were held more than one year the shares were sold through broker by paying Securities Transactions Tax (STT). The assessee earned the long- term capital gains of Rs. 293-38 lacs. The Assessee has shown long term capital gains on sale of shares and claimed exemption under section 10 (38) of the Act. Th AO has doubted the transactions and held that SAL was merely a paper company engaged in providing accommodation entries to various beneficiaries. The search was conducted on the assessee on 5-11 2014. Applying the ratio of judgement in *Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)*, the

AO assessed the long term as cash credits and also made addition of 2% commission thereon as explained u/s 69C of the Act. Order of AO is affirmed by the CIT(A). On appeal allowing the appeal the Tribunal held that the AO has not discharged the onus of controverting the documentary evidences furnished by the assessee and by bringing on record any cogent material to sustain the addition. The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and other entities. The whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee's position that that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.(Referred *Andaman Industries Ltd v. CCE (2015) 127 DTR 241/281 CTR 241 (SC), Kishanchand Chellaram v CIT. v CIT (1980) 125 ITR 713 (SC) ITA. No.7648/Mum/2019 dt 11-8-2020 and ors* (AY 2014-15)
Dipesh Ramesh Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Ramesh Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Vishal Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org
Rajesh Babulal Vardhan v. DCIT (Mum.)(Trib.) www.itatonline.org

1154 **S. 68 : Cash credits – Penny stock – Bogus capital gains – Not sufficiently discharged the onus on proving the source of deposits – Addition is restricted to 30% with the a rider that same shall not be treated as a precedent to other assessment years. [S. 10(38), 45]**
The assessee has produced documentary evidence in respect of sale of shares to demonstrate that the capital gains on sale of shares is exempt from tax. Tribunal held that as the detailed explanation of the assessee does not sufficiently discharge the onus on proving the source of impugned deposits, the impugned addition should be restricted to 30% only with a rider that same shall not be treated as a precedent in any other assessment year. (ITA No.1790-1791/Kol/2019 Dt. 14/2/2020) (AY 2014-15 & 2015-16)
Neha Chowdhary v. ITO (SMC) (Kol.)(Trib.) www.itatonline.org

1155 **S. 68 : Cash credits – Survey – Demonetization – Purchase of gold from sale proceeds – Sales cannot be assessed as undisclosed income – Only profit thereon could be taxed as income – Entire sales cannot be assessed as undisclosed income – Provision of section 115BBE is cannot be made retrospectively – For the assessment year 2017-18 only net profit was directed to be taxed. [S. 115BBE, 132, 133A]**
The assessee is an individual carrying on business of trading. In the course of search and survey the amount was surrendered and the taxes were paid. The Assessee suffered the loss in the undisclosed business and set off the same against the undisclosed income. The AO disallowed the loss. On appeal the CIT(A) confirmed the order of the AO and asseessed the income u/s115E of the Act. On appeal the Tribunal held that the present appeal is against the order of Ld. CIT(A) filed by department as well as by the assessee. Amended provisions are applicable from 01-04-2017 only and cannot be applied retrospectively. As regards the addition the deletion of addition made bey the CIT(A) was affirmed. Tribunal also held that It is evident from entries found in cash book and from statement recorded from assessee in course of survey that assessee

purchased gold in period of demonetization which was obviously for sale to persons on receiving cash from them as the same is normal practice of gold trade. The gold purchased in period of demonetization was towards agreed sale to persons on receiving amount therefor from those persons. Thus the source of payment for purchase of gold is out of amount received from its sales and so it is to be treated as properly explained. It is only profit on sale of said purchased gold which is income of assessee which was undisclosed income of assessee and the same could only be subjected to tax. It is settled law that in case of unaccounted sales only profit therefrom could only be taxed as income of assessee As regards undisclosed income only profit can be taxed the Tribunal relied on following case laws *Dr. T.A. Quereshi v. CIT 2006) 287 ITR 547(SC), CIT v. Piara Singh (1980) 124 ITR 40 (SC), CIT v. S.C. Kothari (1971) 82 ITR 794 (SC). (AY. 2015 to 2017-18), (ITA No. 1256, 1257, & 1258/JP/2019 dt.15-9-2020)*
Shri Nawal Kishore Soni v. ACIT (Jaipur)(Trib.) www.itatonline.org

S. 68 : Cash credits – Bogus sales – Purchase and sales accepted as recorded in the books of account – Books of accounts not rejected – Statement of third party was neither provided nor opportunity of cross examination – Addition by applying the GP rate of 8.8 % on sales is directed to be deleted. [S. 44AB, 145] 1156

Allowing the appeal of the assessee and dismissing the appeal of the revenue the Tribunal held that the assessee maintained proper books of accounts which were subject to audit under S. 44AB of the Act and the AO had not pointed out any specific defect on the said books of accounts. The CIT(A) had also categorically stated in the impugned order that the AO had never disputed purchases, stock statements, yields, VAT returns and though nothing adverse was pointed out about the evidence supplied by the assessee during the course of assessment proceedings. In the present case the sales made by the assessee to M/s Kalka Udyog was against C Form and Form No. 49 etc which were duly declared in VAT returns which had been accepted by the concerned Department and nothing contrary to that has been brought on record. In the instant case the assessee included the impugned sales in its turnover and duly recorded the same in its books of accounts which had not been rejected by the AO and even the sale declared by the assessee in its books of accounts was not disturbed. The AO had accepted the purchases declared by the assessee which were not found to be inflated. The sales of the assessee were also not found to be suppressed and even the GP rate declared was found to be genuine therefore the Assessing Officer was not justified in treating the entire sales on the basis of statement of third party as bogus and adding the same in hands of the assessee. CIT(A) although accepted the sales of the assessee to be genuine but made the addition by applying the GP rate of 8.8% which was already declared by the assessee and accepted by the Department. The AO had not provided the opportunity asked by the assessee to cross examination Shri Trilok Goel on the basis of which the impugned sales was treated as bogus and even the assessee furnished all the documents relating to purchase/sales, transportation etc, various copies of accounts, VAT returns, copy of C Form obtained from M/s Kalka Udyog. Therefore the AO arbitrarily added the entire sales in the hands of the assessee and the CIT(A) although considered the sales declared by the assessee as genuine but wrongly made the addition by applying the GP rate of 8.8% declared by the assessee on the same sales which was also part of the turnover

of the assessee on which the profit was also already declared. Accordingly, the same is deleted. (AY. 2012-13)
GRG Oil Mill v. Dy CIT (2020) 186 DTR 225. 203 TTJ 609 (Jodh.) (Trib.)

1157 **S. 68 : Cash credits – Capital gains – Share transactions – Assessee has discharged the onus cast upon him – AO is directed to accept the long term capital gain declared by the assessee. [S. 45]**
During the F.Y. 2014-15, the assessee has earned short term capital gain of Rs. 2.50 crores and long- term capital gain of Rs. 8.12 crores. However, the AO chose only one scrip out of several, and came to the conclusion that the long -term capital gain of Rs. 5.70 crores are bogus. However, the AO accepted the transactions in respect of short term capital gain and balance long term capital gain. CIT(A) also confirmed the addition made by the AO. On appeal the Tribunal held that The assessee is a habitual investor having portfolio of investment in shares in crores and is still holding investment in shares in several crores and is constantly engaged in investing in shares of various companies. Assessee has successfully discharged the onus cast upon him by provisions of. 68 thus, AO is directed to accept the long- term capital gain declared by the assesse. (AY. 2015-16)
Anoop Jain v. ACIT (2020) 186 DTR 57 / 203 TTJ 552 (Delhi) (Trib.)

1158 **S. 68 : Cash credits – Share application money – Cash was deposited before issue of cheque – Genuineness of transaction is not established – Addition is held to be justified.**
Tribunal held that, mere bank transactions coupled with existence of well -structured documents was not adequate when there were cash deposits in the bank account a few days before the date of issue of the cheque to the assessee. Therefore, there was a failure on the part of the assessee to demonstrate the genuineness of the transaction and creditworthiness of the subscribers to the share capital. Accordingly the addition is held to be justified.(AY.2006-07)
Badrinath Steels P. Ltd. v. ITO (2020) 77 ITR 465 (Hyd.)(Trib.)

1159 **S. 68 : Cash credits – Information from bank statements of creditors – Finding recorded on the basis of another creditor – Information not furnished to the assesee – Violation of principle of natural justice – Remanded to CIT(A) to decide the issue after obtaining the remand report from the AO. [R. 46A]**
The Tribunal held that the order had been passed in gross violation of the principles of natural justice. A party should be apprised of the case to be met and adequate opportunity be given to make its representation. The party should be put on notice to the case before an adverse order is passed against it. Therefore, the matter was remitted to the CIT(A)) for adjudication. The CIT(A) was directed to obtain a report from the AO on the evidence as per the provisions of rule 46A of the Rules and to decide the issue in accordance with law. (AY.2013-14)
Balwinder Kumar Sharma v. ACIT (2020) 77 ITR 380 (Chd.)(Trib.)

S. 68 : Cash credits – Additional evidence – AO is given sufficient opportunity to examine the additional evidence – Deletion of addition s held to be justified. [S. 151, R. 46A] 1160

Tribunal held,that the CIT(A) had categorically observed that the confirmation was filed with the AO. He sought a remand report from the AO in respect of the additional evidence filed by the assessee. Therefore, the confirmations filed for the first time before the CIT(A) was justified. The AO was given sufficient opportunity to rebut the evidence. Deletion of addition is held to be valid. (AY.2012-13)

Dy.CIT v. NIC Construction P. Ltd. (2020) 77 ITR 78 (SN) (Indore)(Trib.)

S. 68 : Cash credits – Identity and creditworthiness is established – Addition is held to be not justified. 1161

The Tribunal held that the assessee has discharged the burden by establishing identity and creditworthiness of the lender, hence addition as cash credits is held to be not valid. (AY.2008-09)

Debjyoti Dutta v. ITO (2020) 77 ITR 17 (SN) (Cuttack)(Trib.)

S. 68 : Cash credits – Failure to prove creditworthiness of the creditor – Addition is held to be justified. 1162

The Tribunal held that the assessee failed to prove the credit worthiness of the creditor. No interest was paid on loan to lender in the relevant year or subsequent year. Addition is held to be justified.(AY.2011-12)

Dibyajyoti Chemicals P. Ltd. v. Dy. CIT (2020) 77 ITR 40 (SN) (Cuttack)(Trib.)

S. 68 : Cash credits. – Purchase of site – Transaction has not materialized – Addition is held to be not justified. 1163

Tribunal held that the assessee could not be expected to prove the negative. Since the period of receipt and the repayment was only four months and there was nothing brought on record to show that the assessee had invested the entire money in the construction of the house, the assessee's contention had to be accepted. The AO had not brought out that the assessee had any other source of income other than the salary received by him. Addition is held to be not justified.(AY.2010-11)

P. Ramachandra Reddy v. ITO (2020)77 ITR 49 (SN) (Hyd.) (Trib.)

S. 68 : Cash credits – Books of account – No addition can be made owing to difference in income based on Form No. 26AS and income as reflected in books of account maintained by assessee. [S. 145] 1164

AO made the addition owing to difference in income based on Form No. 26AS and income as reflected in books of account maintained by assessee as regards the rental income. Assessee explained that difference was on account of fact that some customers, in 26AS had disclosed gross payment, including Service Tax whereas, in books, assessee had shown net amount, and further amount shown in 26AS included income rendered for 'Other Services', besides 'Facility Income' while Rental Facility Income did not include income in respect of 'Others Services', which had been disclosed under miscellaneous Income. On appeal the Tribunal held that since receipts of rents as

recorded in books of account was in consonance with agreement between assessee and lessee and no defect whatsoever had been pointed out by revenue authorities in books of account of assessee addition could not be sustained. (AY. 2014-15)
D M Estates (P.) Ltd. v. DCIT (2020) 180 ITD 813 (Bang.)(Trib.)

1165 **S. 68 : Cash credits – Sundry creditors – From earlier years – No addition can be made.**
Tribunal held that sundry creditors coming from earlier years cannot be added as cash credits. Tribunal also held that purchases made from sundry creditors had been duly accounted for and were part of trading account and neither debit side nor credit side of trading results had been disturbed nor books of account had been rejected, then no addition on account of sundry creditors could be made. (AY. 2010-11)
ITO v. Swati Housing & Construction (P.) Ltd. (2020) 180 ITD 854 (Delhi)(Trib.)

1166 **S. 68 : Cash credits – Gifts from father – Source explained – Addition is deleted.**
Tribunal held that the assessee explained that amount deposited in bank account was received as gift from his father who had sold agricultural land, since revenue authorities had not doubted veracity of sale deed brought on record by assessee's father, source of cash deposited in bank was duly explained. Accordingly the addition is deleted. (AY. 2011 12)
Kuldeep Singh v. ITO (2020) 180 ITD 749 / 185 DTR 10 / 203 TTJ 242 (Chd.)(Trib.)

1167 **S. 68 : Cash credits – Penny stock – Accommodation entries – Sale of shares – Capital gains – Exemption – Addition cannot be made on presumption – Entitle to exemption – When no incriminating material was not found in the course of search, no addition can be made – Estimation of commission was also deleted. [S. 10(38), 45, 69C, 132, 133(6), 153A]**
Assessee had applied for 1,50,000 equity shares of 10 each of Pine Animation Ltd (PAL) in the preferential issue of shares. Payment was made by Cheque on 9-3-2013. The shares were disclosed in the balance sheet. Shares were split in to Rs 1 per share by PAL on 21-5-2013 which was demated. Assessee sold the shares through broker Geojit on which STT charges were paid. The assesse claimed long term capital gain as exempt u/s 10 (38) of the Act. The AO made addition u/s 68 of the Act and denied the exemption. The AO held that the appellant has gained return of 9362. 45 %. ie. 10 Rs share was sold at an average price of 946. 24 perr share which is un realistic. CIT(A) affirmed the order of the AO. On appeal allowing the appeal the Tribunal held that, addition cannot be made on presumptions. Relied on the observation of Supreme Court in *Lalchand Bhagt Ambica Ram v. CIT (1959) 37 ITR 288 (SC),* Tribunal also relied on the ratio of supreme Court on the proposition that just the modus operendi, generalisation, preponderance of human probabilities cannot be the only basis for rejecting the claim of the aseessee. Unless specific evidence is brought on record to controvert the validity and correctness of the documents evidences produced, the same cannot be rejected by the assessee. Tribunal relied on the ratio of following case laws, *Omar Salay Mohamed Sait v CIT (1959) 37 ITR 151(SC)* wherein the court held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case

of *CIT v. Dault Ram Rawatmull (1973) 87 ITR 349 (SC)* the honourable supreme Court held that, the onus to prove that the apparent is not real on the party who claims to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidence, which would directly prove the fact of bogusness or establish circumstances unerringly raising interference to that effect. The Hourable Supreme Court in the case of *Umacharn Shaw & Bros v. CIT (1959) 37 ITR 271 (SC)* held that suspicion howsoever strong, cannot take place of evidence. Accordingly the addition was deleted. In one of the assessee as no incriminating material was found during the search. The addition was deleted following the Bombay High Court decision in *CIT v. Continental ware housing Corporation (Nava Sheva) Ltd (2015) 374 ITR 645 (Bom.)(HC)* and All Cargo Logistics vide appeal Civil 8546 of 2015 SLP 5254 of 2016. (AY. 2012-13, 2013-14, 2014-15)

Mahendra B. Mittal (HUF) v. Dy.CIT (2020) 203 TTJ 288 (Mum.) (Trib.)
Mahendra Balakrishna Mittal v. Dy. CIT (2020) 203 TTJ 288 (Mum.) (Trib.)
Pooja Mahendra Mittal (Smt.) v. Dy. CIT (2020) 203 TTJ 288 (Mum.)(Trib.)
Vijayrattan Balakridhna Mittal v. Dy. CIT (2020) 203 TTJ 288 (Mum.)(Trib.)

S. 69 : Unexplained investments – Under invoicing – Report of Enquiry commission – Purchased 'royalty paid' iron ore from open market and exported same at arm's length price, no addition could be made on ground of under – invoicing of export on basis of some report of Enquiry Commission. 1168

Assessee-company was engaged in business of trading iron ore. On basis of report of enquiry Commission, Assessing Officer held that assessee was one of such companies which exported iron ore by under-invoicing-Assessing Officer reopened assessment of assessee and made addition on ground of under-invoicing of export-Tribunal held that when assessee had purchased 'royalty paid' iron ore from open market and exported same at ALP, no addition could be made to assessee's income on basis of aforesaid report. High Court up held the order of the Tribunal. (AY. 2010-11)

PCIT v. Rawmin Mining and Ind. (P) Ltd. (2020) 274 Taxman 427 (Guj.) (HC)

Editorial : SLP of revenue is dismissed in,PCIT v. Rawmin Mining And Industries (P.) Ltd. (2021) 277 Taxman 593 (SC)

S. 69 : Unexplained investments – Income from undisclosed sources – Addition is held to be not justified merely on the basis of statement made by partner before Custom authorities. [Customs Act, 1962, S. 108] 1169

The AO made addition on account of unaccounted investment and unaccounted purchases on the basis of statement made before Custom Authorities. On appeal the CIT(A) held that the AO did not make further inquiries and that the only evidence with the AO was in the form of confessional statement of the partner of the assessee recorded on oath under section 108 of the Customs Act, 1962 and that in the absence of any corroborative evidence or finding, no addition could be made merely on the basis of the admission statement. The Tribunal found that the addition was made based on the show-cause notice issued by the Revenue Intelligence, that the statement was retracted by the partner and that the Customs Excise and Service Tax Appellate Tribunal had dropped the proceeding initiated against the assessee. The Tribunal held that in the absence of any documentary evidence no addition could be made on the action of

a third party, i. e., the Directorate of Revenue Intelligence. On appeal by the revenue dismissing the appeal the Court held that the Tribunal was correct in holding that no addition could be made on the basis of the action of the third party, i. e., the Directorate of Revenue Intelligence. The Department could not start with the confessional statement of the assessee. The confessional statement had to be corroborated with other material on record. The appellate authorities had concurrently recorded a finding that except the statement of the partner recorded under section 108 of the 1962 Act there was no other evidence. Relied on *Bannalal Jat Constructions (P.) Ltd. v. Asst. CIT [2019] 106 taxmann. com 128 (SC)* (AY. 2007-08)
PCIT v. Nageshwar Enterprises (2020) 421 ITR 388 / 107 CCH 0418 / 277 Taxman 86 (Guj.)(HC)

1170 **S. 69 : Unexplained investments – Undisclosed income – Immoveable property – Purchase consideration is alleged to be undervalued – Deletion of addition is held to be justified. [S. 158BC]**
Assessee's company purchased land for consideration of Rs. 1.57 crores. The AO held that actual purchase price was Rs. 4.95 crores while assessee declared lesser purchase value at Rs. 1.57 crores, and later on through sale consideration received unaccounted money. Tribunal deleted the addition. On appeal by the revenue the Court held that since this was not a case where assessee accounted for lesser sale consideration but this was a case of under accounted purchase consideration accordingly no addition could be made on account of undisclosed income. Order of Tribunal is affirmed. (BP 1998-99 to 2003-04)
PCIT v. Virender Kumar Bhatia. (2020) 268 Taxman 412 (Delhi)(HC)

1171 **S. 69 : Unexplained investments – Capital gains – Sale of property – Stamp valuation – Legal fiction cannot be invoked to make addition – Merely on the basis of stamp valuation addition cannot be made. [S. 45, 50C, 69B, 263]**
The assessee purchased a piece of land. Assessment was completed. Subsequently the order was set aside in revision and an addition was made to his income under S. 69 on the ground that there was a difference between the value of the land shown in the sale deed and the stamp value. The order of revision was upheld by the Tribunal. On appeal, High Court held that there was nothing on record to indicate what was the price of the land at the relevant time. Even otherwise, it was a pure question of fact. Apart from the fact that the price of the land was different from that recited in the sale deed unless it was established on record by the Department that as a matter of fact, the consideration as alleged by the Department did pass to the seller from the purchaser, it could not be said that the Department had any right to make any additions. The addition was not justified. (R/TA. No 399 of 2019 dt 20-08 2019) (AY. 2011-12)
Gayatri Enterprise v. ITO (2020) 420 ITR 15 / 192 DTR 192 / 271 Taxman 276 (Guj.)(HC)

1172 **S.69 : Unexplained investments – Survey - Income surrendered in the form of additional stock – Section 115BBE is not applicable – Rectification is not valid [S. 115BBE, 133A, 154]**
Where additional income in the form of excess stock was disclosed during the course of survey proceedings, the said income shall attract the provisions of section 69. Section

154 shall not be applicable and the said income shall not be treated under section 115BBE of the Act. Reliance was placed on order passed by ITAT in case of *Shri Lovish Singhal, Sriganganagar v. ITO (ITA No. 142 to 146 /Jodh /2018 dt 25-5-2018*, where it was held that the provisions of section 115BBE of the Act were not applicable if the surrender was made on account of excess stock found during the course of survey. (AY. 2014-15)
Pawan Kumar (HUF) v. ITO (2020) 190 DTR 366 /205 TTJ 810 (SMC) (Jodhpur)(Trib.)

S. 69 : Unexplained investments – Survey – Wrongly included in payment – Deletion of addition is held to be justified. [S.133A] 1173
Claim of the assessee that the amounts were though to be paid, however, the same had not been paid till date which is supported by documentary evidence. Deletion of addition of by the CIT(A) is upheld. (AY. 2013-14)
ACIT v. Windsor Realty Pvt. Ltd. (2020) 204 TTJ 493 (Mum.) (Trib.)

S. 69 : Unexplained investments – Penny stock – Accommodation entries – Capital gains held to be non genuine – Addition as income from undisclosed source is affirmed. [S. 10(38), 45] 1174
Assessee disclosed sale of shares pertaining to PS IT I&SL as long term capital gains. Assessing Officer held that scrip of PS IT I&SL was used for providing accommodation entries to several parties, which was also banned by SEBI for its illegal activities. AO applied test of human probabilities and declared long term capital gain shown by assessee as non-genuine. CIT(A) confirmed action of Assessing Officer. Tribunal also affirmed the order of the lower Authorities relying on the ratio in *CIT v. Durga Prasad More (1971) 82 ITR 540 (SC).* (AY. 2015-16)
Ravi Bhaskar Wattamwar v. ITO (2020) 187 DTR 149 / 204 TTJ 261 (SMC) (Pune)(Trib.)

S. 69 : Unexplained investments – Capital gains – Guidance value – Burden is on revenue – Addition cannot be made merely on the basis of stamp valuation adopted for registration purposes. [S. 45, 50C, 142A] 1175
The assessee sold the property for Rs 50 lakhs. The stamp authorities valued the property at Rs 60,72,000. The Assessing Officer assessed the difference as undisclosed income. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that There is no rule of law to effect that value determined for purposes of stamp duty is actual consideration passed between parties to sale. Apart from stamp duty valuation, there is nothing on record to suggest that assessee received extra sale consideration. Followed *Dinesh Kumar Mittal v. ITO (1992) 193 ITR 770 (All.) (HC)* The Tribunal also held that the AO had no cogent material available to satisfy himself about requirement of Section 69 and in absence of it, reference could not be made under Section 142A of the Act, accordingly the addition was deleted. Followed *Anand Banwarilal Adhukia v. Dy.CIT (2017) 148 DTR 262 (Guj.) (HC)* (AY 2010-11)
Saleh Mohd. Salim v. ITO (2020) 187 DTR 153 / 204 TTJ 255 (SMC) (Bang.)(Trib.)

1176 **S. 69 : Income from undisclosed sources – Bogus purchases – Books of account not rejected – Deletion of addition is affirmed. [S. 133A, 144]**
Dismissing the appeal of the revenue the Tribunal held that the Asseessing Officer has not rejected the books of account, even if treated as bogus, had already been taxed and therefore, addition thereof again would amount to double taxation. There was nothing on record to suggest that the assessee had booked any other part of expenditure in the profit and loss account. (AY.2011-12, 2012-13)
Dy. CIT v. Garg Acrylics Ltd. (2020) 84 ITR 537 (Delhi)(Trib.)

1177 **S. 69 : Unexplained investments – HSBC Bank – Black Money – Burden is on revenue to prove that money belongs to the assessee – Mere holding a joint bank account does not mean that the money belongs to the assessee – Addition is deleted. [S. 69A]**
The allowing the appeal of the assessee the Tribunal held that, the AO has to prove that the money belongs to the assessee. If the assessee files necessary evidences to prove that the unexplained money does not belongs to him, the onus shift to the revenue to prove that the unexplained money in fact belongs to the assessee. Unless the AO proves that unexplained money is belongs to the person, he cannot make any addition in the hands of the assessee. The fact that the assessee is a joint holder of the bank account does not mean that the money belongs to him if the evidence suggests that the money belongs to the other holder. (AY. 2003-04 to 2007-08)
Kamal Galani v. ACIT (2020) 194 DTR 273 / 207 TTJ 1049 (Mum.)(Trib.)
Editorial : Considered decision in Renu T. Thadani v. DCIT (20200 184 ITD 565 (Mum.) (Trib.)

1178 **S. 69 : Unexplained investments – Agricultural activity – Purchase of property – Addition is held to not justified. [S. 147, 148]**
Tribunal held that the assessee and the co-owner had paid Rs. 30 lakhs only in the assessment year under appeal. The share of the assessee with the stamp charges came to Rs. 15,67,500 which was below the amount of Rs. 18 lakhs accepted as source of income from agricultural activity by the Assessing Officer. Thus, there was no justification for the Assessing Officer to make any addition against the assessee. (AY. 2010-11)
Raj Devi (Smt.) v. ITO (2020) 83 ITR 84 (SN) (Delhi)(Trib.)

1179 **S. 69 : Unexplained investments – Undisclosed cash – Money changer – Information from police – No defect in books of account – Addition on basis of suspicion and surmises – Held to be not justified. [S. 133A]**
Tribunal held that the assessee was an authorised money changer. This line of business required availability of cash in huge amounts as persons give dollars to be exchanged in Indian currency. Considering the exchange rate, the assessee had to carry heavy cash. The fact that the cash bundles carried the tag of PNB should not be given weightage inasmuch as it was a common practice amongst all banks to issue currency bundles as received by them. Moreover, once a bundle of currency carried the tag of another bank, the issuing bank need not count it again. Though the cash books were written on day-to-day basis in practice there was always a time gap between the book entries.

Books were lying with the chartered accountant which had also been verified by the Assessing Officer and when during the course of assessment proceedings the books were produced, not a single defect had been pointed out by the Assessing Officer in the books of account of the assessee. The entire addition had been made on the basis of suspicions and surmises and such addition could not be sustained. (AY.2011-12)
R. G. Consultants P. Ltd. v. Dy. CIT (2020) 78 ITR 37 (SN) (Delhi)(Trib.)

S. 69 : Unexplained investments – Search and seizure – Construction activities – Retraction of statement – Addition is held to be not valid. [S.69A, 132(4)] 1180
During The Assessment Proceedings, The Assessee Produced Detailed Reconciliation Of The Return Filed Under Section 139 And Under Section 153A With Relevant Documentary Evidence Before The Assessing Officer. From The Reconciliation, The Assessing Officer accepted the additional interest income offered without any seized documents during the course of search in the return filed under Section 153A but did not allow the legitimate deduction towards interest expenses wrongly short claimed while filing the return under section 139. The Assessing Officer rejected the claim of interest on unsecured loan. The Tribunal held that The Assessing Officer was to restrict the addition to the extent of difference between the interest income offered and the interest expenses claimed. (AY. 2012-13, 2017-18)
Satya Narayan Choudhary v. ACIT (2020) 80 ITR 95 (Jodh)(Trib.)

S. 69 : Unexplained investments – Silver and jewellery belongs to family members – Declared in the wealth tax return to be considered – Addition is held to be not valid. [S. 69A, 132] 1181
Tribunal held that once it was accepted that these items belonged to all family members and the assessee had thereafter given specific details regarding such items identified to each of the individual members, the remaining items should also be accepted as belonging to respective family members and not just that of the assessee only. Secondly, the assessee and her mother had already declared silver jewellery items in their respective wealth-tax returns which needed to be considered. In the case of the assessee, he had declared 0.5 kilogram of silver in his wealth-tax return for the assessment year 1992-93 and to that extent, the same stood explained. Therefore, as against 1.480 kilograms of silver items belonging to the assessee, he had already declared 0.5 kilogram of silver in his wealth-tax return for the assessment year 1992-93. The possession of the remaining 0.98 kilogram of silver items over the period of 24 years given the societal customs of accepting and buying such items on the occasion of birth and other social functions was reasonable and the addition sustained by the Commissioner (Appeals) was deleted. (AY.2016-17)
Pankaj Ladha v. Dy. CIT (2020) 81 ITR 42 (SN) (Jaipur)(Trib.)

S. 69 : Unexplained investments – Immoveable property – Failure to produce evidence in respect of booking of flat – Addition is held to be justified. [S. 251] 1182
A flat was booked by one Shri Anup Hans, who under mutual consent surrendered same in favour of assessee and took back his booking amount. Assessee paid to him certain amount out for his withdrawal. Assessee claimed that Shri Anup Hans had paid Rs. 1

lakh on behalf of assessee as a booking amount for purchase of flat. Appellate Tribunal held that since no credible evidence was brought on record by assessee to prove that sum of Rs. 1 lakhs was paid by Shri Anup Hans on behalf of assessee as booking amount for purchase of flat, AO was justified in making addition of such amount on account of unexplained investment in purchase of flat. (AY. 2011-12)
Pabitra Mohan Samal v. ITO (2020) 181 ITD 391 (Cuttack) (Trib.)

1183 **S. 69 : Unexplained investments – Private discretionary trust – Beneficiary – Settlor – Beneficiary can be taxed only income component – Settlor has to explain the source of investments – Matter set aside – Penalty appeal also set aside. [S. 271(1)(c)]**
A search and seizure operation was carried out in case of assessee in course of which it was found that assessee had set up a private discretionary trust for benefit of his family members in British Virgin Islands. None of investments made in trust were accounted for at any stage or disclosed to revenue authorities. Subsequently, trust was terminated and amount received by beneficiaries was offered to tax. In course of assessment proceedings, AO brought to tax partial withdrawals as income of beneficiary who withdrew money. CIT(A) confirmed action of AO. On appeal the Tribunal held that as far as beneficiary is concerned, once source of funds received by him is explained, taxation could possibly be confined only to income component. In case of settlor, he has to explain investments, which were not accounted for in his books of account or disclosed to revenue authorities at any stage prior to detection in search proceedings. On facts since in instant case, investment in trust remained unexplained and uncorroborated, matter was to be remitted to AO for examination de novo on all aspects. (AY.2007-08, 2008-09)
Dr. Atul T Patel v. DCIT (2019) 108 taxmann.com 227 / (2020) 181 ITD 812 / 193 DTR 221 / 207 TTJ 252 (Ahd.)(Trib.)

1184 **S. 69 : Unexplained investments – Cash credits – Sole beneficiary of trust – Foreign Bank deposits – The sum of Rs 196 crore held by HSBC Pvt Bank, Switzerland, in the name of Tharani Family Trust, of which the assessee was a beneficiary, is assessable as the undisclosed income of the assessee. [S. 68, 147, 148]**
The assessee is an individual. The assessee had filed her income tax return, on 29th July 2006, disclosing an income of Rs 1,70,800 for the relevant previous year, but subsequently the investigation wing of the income tax department, received information that the assessee is having a bank account with HSBC Private Bank (Suisse) SA Geneva. Based on this information, was reopened for fresh assessment was made. The assessee denied having any bank account. The AO made the addition of Rs. 196 crore held by HSBC Pvt Bank, Switzerland, in the name of Tharani Family Trust, of which the assessee was a beneficiary, is assessable as the undisclosed income of the assessee. Order of the AO is affirmed by the CIT(A). On appeal affirming the view of the lower authorities the Tribunal observed that the assessee is not a public personality like Mother Terresa that some unknown person, with complete anonymity, will settle a trust to give her US $ 4 million, and in any case, Cayman Islands is not known for philanthropists operating from there; if Cayman Islands is known for anything relevant, it is known for an atmosphere conducive to hiding unaccounted wealth and money

laundering. HSBC Pvt Bank has also been indicted by several Governments worldwide and how it has even confessed to be being involved in money laundering. (AY. 2006-07)
Renu T Tharani (Ms.) v. Dy.CIT (IT) (2020) 184 ITD 565 / 192 DTR 9 / 206 TTJ 521 (Mum.)(Trib.)

S. 69 : Unexplained investments – Search and Seizure – Unexplained cash and jewellery – Benefit is given as per circular No 1016 dt 5-11-1994 – Explanation is not satisfactory – Addition is held to be justified. [S. 132] 1185
The Tribunal held that the explanation as regards the cash found at the time of search is not being satisfactory addition is held to be justified. As regards the jewellery the benefit is given as per circular No 1016 dt 5-11-1994. (AY. 2013-14)
Bishan Bansal v. Dy. CIT (2020) 77 ITR 95 (SN) (Delhi)(Trib.)

S. 69 : Unexplained investments – Purchase of property – Source of investment – Remanded to CTT(A). [S. 250] 1186
Tribunal held that the assessee had demonstrated with evidence that the brother of the assessee had been remitting money from Kuwait and the cash was being withdrawn by the father of the assessee. The assessee had also furnished certain documentary evidence demonstrating that the joint owner of the property being brother of the assessee had also contributed for the acquisition of property as he made remittances from Kuwait. It was a fact that the assessee had been changing his stand but it was also a fact that the assessee had filed certain evidence in support of his contention that the brother of the assessee remitted certain amounts from Kuwait who happened to be the co-owner of the properties. Moreover, there was no finding by the authorities as to what happened to the money which the assessee claimed to have received as gift or loan. Under these facts, the issue was remitted to the CIT(A) to decide the issue afresh after examining the aspect of remittance by the co-owner of the property and also the loan or gift claimed by the assessee. (AY.2014-15)
Mustafa Chhawaniwala v. ITO (2020) 77 ITR 5 (SN) (Indore)(Trib.)

S. 69 : Unexplained investments – Books of account not audited – Net profit to be estimated at 8% – Cash gift from relatives – Mother in law – Relative – Agricultural income – No reason to doubt genuineness and creditworthiness of source – Addition is not justified. [S. 56, Explanation (e), 68] 1187
Tribunal held that the assessee had not shown the business receipts and income under the head business income but this could not preclude the assessee from claiming incidental expenses incurred for carrying out business. Though assessee had declared 6.28 per cent net profit rate on the transport business on the gross receipts of Rs. 19,88,592, an estimate of net profit at 8 per cent. of the gross receipts of Rs. 19,88,592, i. e., Rs. 1,59,087 would be justified. As regards the gifts of Rs. 10 lakhs and Rs. 2.50 lakhs were received in cash. During the course of appellate proceeding the assessee placed sufficient documentary evidence to prove the identity, genuineness and creditworthiness of the donors. The gift of Rs. 10 lakhs received from the assessee's mother-in-law who was said to be the owner of around 50 acres agricultural land receiving regular income from agricultural proceeds for many years. The gift deed was

duly notarised and she had declared her accumulated capital, stridhan and income from gift received from her husband who was earning regular agricultural income, was the source of the gift given to her son-in-law. The fact that the mother-in-law had regular source of agricultural income and the authenticity of gift deed had not been disputed. She was also "relative" of the assessee as provided in clause (e) of Explanation to S. 56. There was no reason to doubt the genuineness and creditworthiness of the gift at Rs. 10 lakhs. (AY.2010-11)

Vinod Kumar Jain v. ITO (2020) 77 ITR 83 (SN) / 205 TTJ 527 (Indore)(Trib.)

1188 **S. 69 : Undisclosed investments – Bogus capital gains – Penny stocks – Explanation is not sufficient to discharge the liability – Addition is restricted to 30% with a rider that same shall not be treated as a precedent in any other assessment year. [S. 10(38), 45, 68, 143(3)]**

The assessee is a salaried person who was sold her stock holding in shares in the relevant two previous years. AO treated as unexplained income since assessee could not prove source thereof during the course of scrutiny as well as in the lower appellate proceedings. Tribunal held that the fact remains that her detailed explanation tendered in the course of assessment does not sufficiently discharge her onus on proving the source of impugned deposits. Accordingly considering peculiar facts and circumstances that the addition(s) of Rs. 17,88,666/- and Rs. 16,53,772/- are restricted to that @ 30% only with a rider that same shall not be treated as a precedent in any other assessment year. The assessee gets part relief accordingly. (ITA No.1790-1791/Kol/2019, dt. 14.02.2020) (AY. 2014-15, 2015-16)

Neha Chowdhary v. ITO (SMC) (Kol.)(Trib.), www.itatonline.org

1189 **S. 69A : Unexplained money – Gift from brother – Received through banking channel – Deletion is held to be justified.**

Dismissing the appeal of the revenue the Court held that the amount received gift from brother through banking channels being genuine creditworthiness is established hence deletion of addition is held to be justified. (AY. 2007-08)

PCIT v. Mubarak Kasam Momin (2020) 117 taxmann.com 133 (Bom.)(HC)

Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. Mubarak Kasam Momin (2020) 272 Taxman 103 (SC)

1190 **S. 69A : Unexplained money – Huge cash withdrawal – Failure to explain satisfactorily the source of cash deposit – Addition is held to be justified.**

Dismissing the appeal of the assessee the Court held that burden to explain the source of cash deposit was on the assessee, who as per the finding has not been able to discharge this burden. The evidence on record is undisputed, and the inference and factual findings recorded we would observe are supported by cogent and weighty reasoning. Explanation of the assessee has been duly considered and not ignored. Implausible and lame justification for making cash withdrawals has exposed and dented the concocted explanation regarding source of the cash deposit. Factual findings are based on cumulative effect of all facts covering all essential points. Accordingly the Court would not interfere with factual findings unless they are irrational and absurd, which no person acting

judicially and properly instructed in the field of law of taxation would have passed. Appeal was dismissed on merits and delay was also not condoned. (AY. 2011-12)
Shashi Garg v. PCIT (2020) 113 taxmann.com 92 (Delhi) (HC)
Editorial : SLP of assessee is dismissed, Shashi Garg v.PCIT (2020) 269 Taxman 26 (SC)

S. 69A : Unexplained money – Cold storage – Entries tallied with stock register – No violation of U.P. Regulation of Cold Storage Act, 1976 – Deletion of addition is held to be justified – No question of law. [S. 260A, U.P. Regulation of Cold Storage Act, 1976] 1191
Dismissing the appeal of the revenue the Court held that once it is established that the assessee had not violated the terms of licence, so granted by the licencing authority, merely on the basis of presumption and assumption from any documents or papers seized during search and survey cannot be the basis for the addition of such an amount. (A.Y. 2008-09)
CIT v. Kesarwani Sheetalaya (2020) 190 DTR 377 (All.)(HC)

S. 69A : Unexplained money – Client code modification – Commodity broker – Statement was retracted – Deletion of addition is held to be justified. [S. 132 (4), 153A, 260A] 1192
Assessing Officer alleged that assessee-commodity broker had done client code modifications for unusually high number of times helping clients to divert their profits to other persons and, thus, assessee had earned unaccounted income from clients and made addition of Rs 2 crore based on the statement of Nayan Thakkar. However, said Nayan Thakkar subsequently retracted from his statement. In case of Kunvarji Finance itself, Tribunal had already found that there was no material or evidence to support additions made by Assessing Officer. Tribunal deleted the addition. On appeal by revenue the court held that since addition was not based on any material other than disclosure made by NT which was retracted, no substantial question of law arose on its deletion. Followed *PCIT v. Kunvarji Finance Ltd dt 6-10-2015 (Guj.) (HC).*
PCIT v. Kunvarji Commodities Brokers (P.) Ltd. (2020) 274 Taxman 162 / 193 DTR 18 / (2021) 432 ITR 180 / 318 CTR 597 (Guj.)(HC)

S. 69A : Unexplained money – Hundi business – Addition cannot be made solely on statement of party against whom search conducted – No cogent material produced by the revenue – Deletion of addition is held to be proper. [S. 132, 143(3), 147, 153C] 1193
Dismissing the appeal of the revenue the Court held that on the facts and the concurrent findings given by the Commissioner (Appeals) and the Tribunal, it was evident that the Department had not been able to produce any cogent material which could fasten the liability on the assessee. The Commissioner (Appeals) had also examined the assessment record and had observed that the Assessing Officer did not make any further inquiry or investigation on the information passed on by the Dy Commissioner with respect to the party in respect of whom the search was conducted. No attempt or effort was made to gather or corroborate evidence in respect of the addition made under section 69A by the Assessing Officer. Order of the Appellate Tribunal is affirmed. (AY. 2002-03)
CIT v. Sant Lal (2020) 423 ITR 1 / 195 DTR 203 / 317 CTR 483 / 273 Taxman 551 (Delhi) (HC)

1194 **S. 69A : Unexplained money – Failure to explain the source of cash deposit in the bank account – Addition is held to be justified.**
The assessee had withdrawn huge amount of cash from his bank account on different dates in order to purchase an immovable property. Assessee failed to explain source of those cash deposits. AO added same to assessee's taxable income. Tribunal confirmed the addition. High Court affirmed the order of the Tribunal. (AY. 2011-12)
Shashi Garg v. PCIT (2020) 423 ITR 150 / 113 taxmann.com 92 / 269 Taxman 27 (Delhi) (HC)
Editorial : SLP of assessee is dismissed ; Shashi Garg. v. P CIT (2020) 269 Taxman 26 (SC)

1195 **S. 69A : Unexplained money – Search and seizure – Noting in diary of third party – Seized in the course of search – Without any corroborative evidence and had no authenticity, no additions could be made. [S. 132(4A), 292C]**
Assessee sold a property and derived long-term capital gain. During search, diary of a third party was seized from residence of assessee. This diary had notings which showed an amount of Rs. 1.15 crores as sale consideration. Assessing Officer held that in registered sale deed, total consideration was shown at Rs. 29.50 lakhs. By making presumption as per section 292C, he considered sale consideration shown in diary as actual consideration and made additions accordingly. Order of Assessing officer was affirmed by CIT(A). On appeal the Tribunal held that there was nothing on record to suggest that assessee had underestimated value of property and violated circle rate as prescribed by government. Even diary admittedly did not belong to assessee and noting of same were also not in handwriting of assessee. Furthermore, entry recorded in diary qua amount of sale was not confirmed from buyers of property. Since Assessing Officer had drawn presumptions only on basis of noting of diary without making independent exercise; and entry found in diary was without any corroborative evidence and had no authenticity, no additions could be made. (AY. 2009-10)
Harmohinder Kaur (Smt.) v. DCIT (2020) 204 TTJ 1 (UO) / (2021) 187 ITD 289 (Amritsar) (Trib.)

1196 **S. 69A : Unexplained money – Survey – Unexplained cash – Availability of the cash in the books of account – Addition cannot be made.[S.133A]**
The assessee explained that cash from one Branch was transferred to another Branch because of the closure of the showroom on account of holiday. The entirety of facts that seized records itself shows availability of cash with assessee in books of account. Deletion of addition is held to be justified. (AY. 2010-2011)
Dy. CIT v. Diamond Hut India (P) Ltd. (2020) 206 TTJ 73 (Mum.)(Trb.)

1197 **S. 69A : Unexplained money – Gold inherited from mother – Sale proceeds of gold – Not shown in the balance sheet – Addition is held to be not justified when there is no statutory provision to show in the balance sheet.**
Assessee filed its return of income declaring long term capital loss arising from sale of gold ornaments. The AO held that no such ornaments were reflected in balance sheets filed by assessee for earlier years hence treated sale proceeds of gold ornaments as

income of assessee from other sources and added it to total income of assessee. CIT(A) affirmed the order of the AO. Tribunal held that claim of assessee of having received gold ornaments from her late mother was duly supported by documentary evidence in form of Will and Probate of her mother as well as valuation report of jewellery obtained way back in year 1989 prior to death of her mother and further, there was no statutory provision which requires assessee to bring jewellery inherited by her from her mother into balance sheet. Accordingly the addition confirmed by the CIT(A) was deleted. (AY. 2006-07)
Hetal Nishith Merchant (Mrs.) v. ITO (2020) 185 ITD 738 (Mum.)(Trib.)

S. 69A : Unexplained money – Search – Jewellery to extent stated in CBDT Instruction No. 1916, dated 11-5-1996 stands explained. [S. 132] 1198
Tribunal held that Gold jewellery of 2417.290 grams was found and seized during search. 1650 grams belonging to different family members stood explained by Instruction No.1916, accordingly no addition could be made. However, with regard to remaining 85.29 grams, no corroborative evidence had been filed by assessee Addition is held to be justified. (AY. 2014-15, 2016-17)
N. Roja v. ACIT (2020) 184 ITD 329 / 196 DTR 134 / 208 TTJ 603 (Cuttack)(Trib.)

S. 69A : Unexplained investment – Jewellery – Weight of jewellery allowed as per instruction No 1916, dt 11-5-1994 need not be explained – Addition cannot be made – Over and above the quantity of the jewellery has been explained, no addition can be made. 1199
Allowing the appeal the Tribunal held that CBDT Instruction No. 1916 dt 11-5-1994 allows specific quantity of jewellery received by various family members on occasion of marriages and other social and customary occasions which assessee is not required to explain. On the facts jewellery over and above weight allowed as per CBDT instruction was explained addition cannot be made as unexplained investment. (AY. 2016-17)
Ram Prakash Mahawar v. DCIT (2020) 182 ITD 55 (Jaipur)(Trib.)

S. 69A : Unexplained money – Cash balances – Seized material – Matter remanded. [S. 132(4A), 153A] 1200
The Tribunal held that the facts or explanation given by assessee was not examined by department in right perspective to determine accountability of amounts in regular books or not. The Tribunal directed the AO to verify cash balances with regular books of account filed by assessee as well as with balance-sheets and income and expenditure accounts available with department with returns and books of account available in seized material. (AY.2009-10 to 2015-16)
Shri Ram Murti Smarak Trust v. ACIT (2020) 81 ITR 194 (Luck.)(Trib.)
Dev Murti v. ACIT (2020) 81 ITR 194 (Luck.)(Trib.)

S. 69A : Unexplained money – Cash gift from brother – Stamp paper used for the alleged gift was purchased after two years after declaration of gift – Addition is held to be valid – regarding professional receipts – Addition is deleted. 1201
Tribunal held that the stamp paper used for the gift deed of Rs. 100 was actually purchased two years after the declaration of gift. Such an illegal practice could not

be countenanced. The assessee was regularly maintaining a bank account and it was not clear why huge cash of Rs. 11,01,500 was not deposited in her bank account for a period close to six months. Thus the assessee had not proved that she genuinely received gift of Rs. 11,01,500 from her brother. As regards the remaining amount of Rs. 3,03,500, the assessee stated that this was out of her professional receipts redeposited out of withdrawals from the same bank account. Considering the totality of facts and circumstances and also the amount of income declared in the return, the addition of Rs. 3,03,500 was deleted.(AY.2014-15)
Soniya Ashokkumar Sachdev v. ITO (2020)77 ITR 54 (SN) (Pune)(Trib.)

1202 **S. 69A : Unexplained money – Bank deposits – Evidence was not considered – Matter remanded. [S. 45]**
The assessee deposited in the bank the amount received in cash which represented difference between amount shown in registered sale deed of property. The AO made addition as unexplained money. On appeal the Tribunal held that since no effort had been made by revenue authorities to look into position qua buyer, impugned order was to be set aside and, matter was to be remanded back for disposal afresh. (AY. 2007-08)
Raghubir Singh v. ITO (2020) 180 ITD 719 (Chd.)(Trib.)

1203 **S. 69A : Unexplained money – Un explained jewellery – Deletion of addition by the CIT(A) is held to be justified. [S.132(4)]**
The AO made the addition on the basis of the statement in the course of search though the proper explanation was furnished with supporting evidences. On appeal CIT(A) deleted the addition by appreciating the evidences and the explanation. On appeal by the revenue the Tribunal affirmed the order of the CIT(A). (ITA NO.194 /M/ 2018 dt 7-1-2020) (AY. 2014-15)
DCIT v. Manekchand Kothari (Mum.) (Trib.) (UR)

1204 **S. 69B : Amounts of investments not fully disclosed in books of account – Set off of gross unaccounted payments on certain transactions against unaccounted receipts for computing undisclosed investment – Non recovery of cash paid cannot be allowed as deduction. [S. 37(1), 69C]**
Search and seizure was conducted at premises of a land broker wherein certain documents were seized which showed that assessee-dealer cum broker had received certain sum in cash for two land deals with two companies. Assessee submitted that he received a certain sum from those deals but made cash payment to farmers for acquiring land and he claimed for set-off of unaccounted cash payments against unaccounted cash receipts for computing investment in accordance with section 69B of the Act. Assessing Officer held that assessee had not submitted confirmation from farmers in support of said cash payments and accordingly, he denied claim for set-off and made addition. Tribunal, allowed claim of assessee holding that subsequent payment should be presumed to be made out of cash available from earlier receipts. On appeal by the revenue the Court held that the assessee did not furnish any detail or particular about availability of funds from unaccounted land deals during course of assessment proceedings and said receipt had been protectively taxed in hands of assessee and

substantive addition had already been made in hands of companies and, thus, such funds were prima facie not available for any further investment made by assessee in his individual land business. Since there was no co-relation between unexplained cash receipts and unexplained cash payments, Assessing Officer had rightly not granted claim of assessee. High court also held that since there was no evidence on record with regard to payment made by assessee to Shri Govind C. Patel and Shri Govind C. Patel had denied fact of receipt of cash from assessee, there was no need to remand issue back to Assessing Officer, because for unaccounted transactions there cannot be any evidence for either payment or receipts of cash except what is found during course of search and seizure by Department and, consequently, assessee would not be entitled to claim said sum as business expenditure or business loss. (AY. 1985-86 to 1994-95 and part of BP 1-4 1995 to 21-9 1995)

CIT v. Manojbhai Bhupatrai Vadodaria (2020) 273 Taxman 220 / 317 CTR 278 / 194 DTR 201 (Guj.)(HC)

S. 69B : Amounts of investments not fully disclosed in books of account – Set off of gross unaccounted payments on certain transactions against unaccounted receipts for computing undisclosed investment – Non recovery of cash paid cannot be allowed as deduction. [S. 37 (1), 69C] 1205

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CIT v. Manojbhai Bhupatrai Vadodaria (2020) 273 Taxman 220 / 317 CTR 278 / 194 DTR 201 (Guj.)(HC)

1206 **S. 69B : Amounts of investments not fully disclosed in books of account – Burden is on the revenue to prove – Merely on the basis of stamp valuation addition cannot be made. [S. 45, 48, 50C(2), 69]**

Assessee has purchased land admeasuring 1.05 acres for Rs.1,20,00,000. Summons u/s 131 of the IT Act were issued to the seller (i.e.; President of the Society Grah Nirman Sahkari Samiti). On the basis of stamp value the Assessing office made the addition on this account to the extent of Rs. 19,41,000 only (Rs. 1,39,41,000-Rs. 1,20,00,000/-) being the difference between Actual market value (being guideline value as taken by CIT(A)) and the purchase price was confirmed by CIT. On appeal the Tribunal held that no evidence has been brought on record which can prove that assessee had paid amount over and above the stated purchase consideration of Rs.1,20,00,000/ and merely on the basis of statement of third-party addition is held to be not justified. (AY. 2009-10,2010-11)

B.S. Associates v. Dy.CIT (2020) 187 DTR 202 / 203 TTJ 728 (Ahd.)(Trib.)

1207 **S. 69B : Amounts of investments not fully disclosed in books of account – Investment in stock – Finding based on search conducted by DGCI – Order set aside by CESTAT – Addition was to be deleted.**

Assessee was engaged in manufacturing and trading of TMT bars. During course of search, Directorate General of Central Excise Intelligence (DGCEI) found that assessee was indulged in evasion of Central Excise duty by resorting to clandestine manufacture and clearance of finished goods. Assessing Officer, on basis of aforesaid finding of DGCEI, made an addition on account of undisclosed investment in stock and another addition on account of profit on sales of undisclosed stock. CIT(A) upheld addition. Tribunal held that CESTAT had set aside whole demand raised against assessee. Accordingly, the addition was deleted. (AY. 2010-11, 2011-12)

Raghuveer Metal Industries Ltd. v. DCIT (2020) 185 ITD 482 (Jaipur)(Trib.)

1208 **S. 69B : Amounts of investments not fully disclosed in books of account – Survey – Hotel business – Telescoping – Entitle to Depreciation on eligible on hotel building – Matter remanded. [S.133A]**

Allowing the appeal the Tribunal held that the AO was also directed to give telescoping from the surrendered income if the assessee had paid taxes on the entire surrendered amount. If it was found otherwise, the Assessing Officer was directed to consider the amount on which the assessee had paid taxes. The Assessing Officer was also directed to grant depreciation on the hotel building if the assessee was eligible under the Act and if the depreciation was not claimed while calculating the taxable income of the assessee. (AY.2009-10)

Tarlok Kumar v. ACIT (2020) 81 ITR 462 (Amritsar)(Trib.)

1209 **S. 69B : Amounts of investments not fully disclosed in books of account – Valuation of buildings – Difference between value estimated by valuation Officer and that stated by assessee Being Less than 15 Per Cent – No addition could be made. [S. 132]**

During the course of assessment proceedings, the valuation of buildings of various institutions of the assessee was referred to the valuation cell. The assessee was

confronted with the report of the Valuation Officer. Since the Valuation Officer had worked out the difference of Rs. 4,03,72,178 up to the assessment year 2013-14 in his report, the Assessing Officer added the difference in the assessment year 2013-14 under S. 69B. The CIT(A) deleted the addition as the difference between the actual investment, shown by the assessee and estimated by the Valuation Officer was only 9.86 per cent which was less than 15 per cent. On appeal the Tribunal held that the Department could not controvert the factual findings. Hence, the addition made on account of the difference of the investment and as estimated by the Valuation Officer being less than 15 per cent the addition was deleted. (AY.2009-10 to 2015-16)
Shri Ram Murti Smarak Trust v. ACIT (2020) 81 ITR 194 (Luck.) (Trib.)
Dev Murti v. ACIT (2020) 81 ITR 194 (Luck.)(Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account – Family settlement – Contribution to family settlement by taking loan from bank – Addition is held to be not valid. 1210
Allowing the appeal of the assessee the Appellate Tribunal held that contribution of funds as part of Family Settlement to balance settlement between brothers and explained that source of such funds was loan taken from Bank, it could not be treated as undisclosed income. (AY.2015-16)
Govind Kumar Khemka v. ACIT (2020) 181 ITD 586 / 193 DTR 341 / 207 TTJ 393 (Delhi) (Trib.)

S. 69C : Unexplained expenditure – Failure to explain source of capitation fee paid to a medical college for admission of son – Addition is held to be justified. 1211
Dismissing the appeal of the assessee the High Court held that the AO has taken pains to summon Shri Bhati, the father-in-law of the Assessee and record his statement. Unfortunately, the statement made by the Assessee's father-in-law was not helpful in explaining the source of payment of Rs. 23 lacs as capitation fees. Shri Bhati only explained the payment of Rs.7.18 lacs as regular fees. With there being no credible explanation offered by the Assessee for the payment made as capitation fee, the AO is justified in adding it to the Assessee's income. Order of Tribunal is affirmed. (AY. 2013-14)
Sushil Bansal v. PCIT (2020) 115 taxmann.com 225 (Delhi) (HC)
Editorial : SLP of revenue is dismissed, Sushil Bansal v. PCIT (2020) 274 Taxman 1 (SC)

S. 69C : Unexplained expenditure – Bogus purchases – Information from Sales – Tax Authority – Neither independent enquiry conducted by Assessing Officer nor due opportunity given to assessee Deletion of addition is held to be justified. 1212
The Assessing Officer held that the purchases made by the assessee from two sellers were bogus according to information received from the Sales Tax Department, Government of Maharashtra that those two sellers had not actually sold any material to the assessee. Accordingly, he issued show-cause notice to the assessee in response to which the assessee furnished copies of the bills and entries made in its books of account in respect of such purchases. However, the Assessing Officer in his order

made disallowances under section 69C. The Commissioner (Appeals) deleted the disallowances. According to the Tribunal the Assessing Officer had merely relied upon the information received from the Sales Tax Department, Government of Maharashtra but had not carried out any independent enquiry. The Tribunal recorded a finding that the Assessing Officer failed to show that the purchased materials were bogus whereas the assessee produced materials to show the genuineness of the purchases and held that there was no justification to doubt the genuineness of the purchases made by the assessee. Dismissing the appeal of the revenue the Court held that the Tribunal was justified in deleting the addition made under S. 69C on the ground of bogus purchases. Merely on suspicion based on the information received from another authority, the Assessing Officer ought not to have made the additions without carrying out independent enquiry and without affording due opportunity to the assessee to controvert the statements made by the sellers before the other authority.(AY.2010-11)

PCIT v. Shapoorji Pallonji and Co. Ltd. (2020) 423 ITR 220 / 273 Taxman 167 (Bom.)(HC)

1213 **S. 69C : Unexplained expenditure – Bogus purchases – Failure to produce lorry receipts and movement of goods – Mere reliance by the AO on information obtained from the Sales Tax department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus – Burden is on revenue to prove that the transaction is not genuine – Deletion of addition is held to be justified. [S. 133(6)]**

The assessee is in the business of sale of furniture and allied items on whole sale basis. AO on the basis of information received from the office of DIG (Inv), Mumbai and from the Sales Tax Department that in the list of bogus sales parties the names of the aforesaid two parties were included which rendered the purchase transaction doubtful. Show cause notice was issued by the AO to the assessee to show cause as to why the aforesaid amount should not be treated as unexplained expenditure and added back to the income of the assessee. The assessee submitted the detailed reply. AO has doubted the purchases from impex Trading Co and Victor Intertrade Pvt Ltd on the grounds that the assessee has not produced the lorry receipts and other related documents relating to movement of goods, accordingly disallowed the entire purchase amount paid to parties as unexplained expenditure u/s 69C of the Act. On appeal CIT(A) deleted the addition. Order of CIT(A) was affirmed by the Tribunal. On appeal by the revenue, dismissing the appeal the High Court held that m ere reliance by the AO on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition u/s. 69C. Followed *CIT v. Nikunj Eximp Enterprises (P) Ltd (2015) 372 ITR 619 (Bom.) (HC) Krishna Textiles v. CIT (2009), 310 ITR 227 (Guj.) (HC)(Arising from ITA No 794/Mum.2015 dt 16-12-2016.* (AY. 2010-11)

PCIT v. Vaman International Pvt. Ltd. (2020) 422 ITR 520 / 118 taxmann.com 406 / (2021) 202 DTR 209 / 321 CTR 671 (Bom.)(HC)

S. 69C : Unexplained expenditure – Bogus purchases – Accommodation entries – Restricting the disallowances at 5% of alleged bogus purchases is held to be justified – Entire purchases cannot be disallowed. [S. 37(1), 144] 1214

The assessee is engaged in the business of manufacturing and dealership of all kinds of industrial power controlling instrument cables and related items. On the basis of the information received from the sales tax department the AO disallowed the entire purchases from the alleged hawala bill givers and passed the order u/s 144 of the Act. On appeal considering the additional evidences added only 2% of the profit element on alleged purchases. On appeal by the revenue the Tribunal directed the AO to make further disallowance of 3% alleged purchases. Against the order of the Tribunal the revenue filed an appeal to the High court. Followed, *CIT v. Bholanath Polyfab Ltd (2013), 355 ITR 290 (Guj.) (HC)* and distinguished the ratio in *Kaveri Rice Mills v. CIT (2006) 157 Taxman 376 (All) (HC)., CIT v. La Medica (,2001) 250 ITR 575 (Delhi) (HC)* (Arising from ITA No.7773/Mum/2014 dt.3-11-2016. (AY. 2010-11).

PCIT v. Rishabhdev Tachnocable Ltd. (2020) 424 ITR 338 / 187 DTR 473 (Bom.)(HC).

S. 69C : Unexplained expenditure – Bogus purchases – Business of Civil Contractor – Even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed – As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated. [S. 37(1), 68] 1215

The Respondent - Assessee carried on business as a Civil Contractor. The assessment was reopened under Section 147 of the Income -tax Act. Information was received from the Sales Tax Department that Respondent-Assessee had taken bogus purchase entries of Rs.1,69,48,368/-from the different parties. The reassessment order was accordingly passed on 17 February, 2014 determining the total income of Rs.2,18,13,430/. On appeal CIT(A) who partly allowed the Appeal and sustained addition of based on the net profit @ 5.76 % on the contracted amount. On appeal by the revenue the Tribunal affirmed the order of the CIT(A). dismissing the appeal of the revenue the Court held that, even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed-As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated. Court also held that assuming that the Respondent-Assesssee the purchasers from whom the purchases were made were bogus, in view of the finding of fact that the material was consumed, the question would be of extending the percentage of net profit on total turnover. This would be a matter of calculations by the concerned authority. In this context, if the CIT(A) and the Tribunal chose to follow the percentage arrived by the Settlement Commission in the Respondent-Assessee's own case for the other years, this exercise cannot be considered as irregular or illegal. Followed *PCIT v. Mohommad Haji Adam & Co (Bom.) (HC) www. itatonline.org, PCIT v. Paramshakti Distributors Pvt Ltd (Bom.) (HC) www.itatonline.org.(ITA No 1453 of 2017 dt 8-1-2020) (AY. 2019-10)*

PCIT v. Pinaki D. Panani (Bom.) (HC) www.itatonline.org

1216 **S. 69C : Unexplained expenditure – Presumption as to documents seized from third party of drafts on Foreign Bank in name of company – Documents not seized from possession of assessee – Amount of draft cannot be treated as unexplained expenditure. [S. 132, 292C]**

During the search operation in third party premises drafts on Foreign Bank in name of Company payable in India were found and seized. The AO added the Indian rupee equivalent of these sums in the hands of the assessee. The Tribunal found that there was no material on record to suggest that such a company did not exist nor evidence of any link between the company PAD and the assessee and held that therefore, the presumption as referred to under S. 292C would not arise. The Tribunal confirmed the addition in respect of the bank in the name of the assessee, and deleted the addition in connection with the bank draft in favour of the company PAD. On appeal the Department contended that, during the search operation, it found a document in the nature of a letter from the bank, which stated that, the last date for presentation of the draft in question had expired and that the assessee had to get the draft revalidated and that no such letter would have been written by the bank, unless the assessee was the beneficiary of the payments. Dismissing the appeal the Court held that a mere letter from the bank would not establish a relationship between the payable amount and the assessee, particularly when the draft was in favour of a limited company. As recorded, the documents were not seized from the possession of the assessee but during the raid from a third party. The search was not conducted at the premises of the assessee but at the residence of the third party from where the bank drafts were recovered. The draft in question did not contain the name of the assessee as payee but of a company PAD. On the facts the Tribunal had refused to accept the Department's contention that the assessee was a beneficiary of such payment and based on the materials on record had reduced the additions made by the Assessing Officer on account of unexplained expenditure. (AY. 2000-01)

PCIT v. Hassan Ali Khan (2020) 426 ITR 556 (Bom.)(HC)

1217 **S. 69C : Unexplained expenditure – Capitation fee paid to medical college for admission of assessee's son – Source not explained satisfactorily – Addition is held to be justified.**

Dismissing the appeal the Court held that the statement made by the assessee's father-in-law was not helpful in explaining the source of payment of Rs. 23 lakhs as capitation fees and he had only explained the payment of Rs. 7.18 lakhs as regular fees. There being no credible explanation offered by the assessee for the payment made as capitation fees, the AO was justified in adding it to the assessee's income. Order of Appellate Tribunal is held to be justified. (AY.2013-14)

Sushil Bansal v. PCIT (2020) 426 ITR 535 (Delhi)(HC)

1218 **S. 69C : Unexplained expenditure – Bogus purchases – Ad-hoc addition – Only difference between gross profit rate on genuine purchases and gross profit rate on alleged hawala can be added – Once reassessment is held to be valid – Free to assess any other income. [S. 147, 148]**

Tribunal held that for alleged bogus purchases, ad hoc addition cannot be made rather same has to be made to extent of difference between gross profit rate on

genuine purchases and gross profit rate on hawala purchases. Tribunal held that,once reassessment proceedings are held to be validly initiated, Assessing Officer is free to assess any other income which comes to his notice in course of proceedings under section 147. (AY. 2011-12)
Devi Construction Company v. DCIT (2020) 185 ITD 858 / 193 DTR 225 / 207 TTJ 130 (Pune)(Trib.)

S. 69C : Unexplained expenditure – Purchase of raw material – purported excess money had been received back – Deletion of addition is held to be valid. 1219
Assessing Officer made addition in respect of excess amount paid for purchase of raw materials. CIT(A) deleted the addition. Appeal by the revenue the Tribunal held that in absence of any evidence as to non-supply of raw material and in absence of any evidence that purported that excess amount paid had been received back by assessee, impugned addition could not be sustained. (AY. 2011-12)
DCIT v. Gulshan Chemicals Ltd. (2020) 184 ITD 71 / 208 TTJ 1053 (2021) 197 DTR 274 (Delhi)(Trib.)

S. 69C : Unexplained expenditure – Business counseling charges – Payment to bogus companies – Reassessment is held to be justified – Disallowance is held to be justified. [S. 143(1), 147, 148] 1220
The return was accepted u/s 143(1) of the Act. On the basis of information that the expenses claimed as counselling charges was Payment to bogus companies. Accordingly the reassessment proceedings was initiated. On appeal the Tribunal affirmed the reassessment proceeding and as regards genuineness of payments made was concerned, in view of fact that two companies to whom payments were made were not found traceable and their existence, presence, infrastructure and nature of services rendered by them were not proved at all, Assessing Officer was justified in disallowing expenditure incurred under head business counseling charges. (AY. 2011-12)
Jaee Vishwas Joshi. v. ACIT (2020) 184 ITD 112 / 2021) 211 TTJ 311 (Mum.)(Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – Source of purchase not outside books of account and corresponding sales not disputed – Books of account not rejected – Only profit element can be added – Reassessment is held to be valid. [S. 37, 143(3) 147, 148] 1221
The Tribunal held that the Assessing Officer disputed that the source of purchase as outside the books of account. In fact the purchase of the same amount and invoice had been recorded in the books of account and duly disclosed and the amount had been paid through banking channels. The corresponding sales had also not been disputed including the direct expenses and the gross profit. At the most, this could be a case where the assessee had made purchases in cash and taken an accommodation bill for the sum for which cheque amount had been issued. In such a case also, the source of purchase were from the books. Therefore, the entire purchases could not be treated as income of the assessee especially when the books of account had not been rejected and the sales and the gross profit stood accepted in the trading account. It could be at best, a case of suppression of the gross profit on the purchase of Rs. 1,93,066. Under these

facts and circumstances, the profit element of such amount should be added as income. Accordingly, the Assessing Officer was directed to apply the gross profit declared by the assessee on purchase of Rs. 1,93,066 and deleted the balance. As regards reassessment the Assessing Officer after receiving the information had independently applied his mind and recorded his reasons to believe why such a purchase was not genuine. Reassessment is held to be valid. (AY.2011-12)
Belmarks Metal Works v. ITO (2020) 80 ITR 699 (Delhi)(Trib.)

1222 **S. 69C : Unexplained expenditure – Bogus purchases – Sales not doubted – Addition is restricted to 12.5 percent of non – genuine purchases and less gross profit already declared. [S. 37(1)]**
Tribunal held that though the assessee had failed to furnish documentary evidence to the satisfaction of the Assessing Officer to prove the genuineness of purchases, the sales effected by the assessee had not been doubted. For this reason alone, the Assessing Officer had not disallowed the entire purchases, but had made an addition on peak basis which had been reduced to 12.5 per cent of the non-genuine purchases by the Commissioner (Appeals). At the same time, the assessee's contention that no addition could be made was not acceptable considering the fact that he had failed to prove the source of purchases through cogent evidence. Therefore, disallowance had to be made at 12.5 per cent of the non-genuine purchases, but the assessee should get the benefit of the gross profit already declared. In other words, the addition on account of non-genuine purchases should be restricted to 12.5 per cent less the gross profit already declared by the assessee. (AY.2009-10)
ITO v. Jasmin Mulraj Mehta (2020) 79 ITR 9 (SN) (Mum.)(Trib.)

1223 **S. 69C : Unexplained expenditure – Bogus purchases – Sales not doubted – Quantitative tally of purchases of meat and exports furnished – Addition is held to be not justified.**
Tribunal held that when the sales are not doubted quantity tally was furnished and the CIT(A) had given a finding that only 20 per cent of the purchases were disallowed on account of cash payment which was duly reflected in the books of account of the assessee. Accordingly the addition was not justified. *Sanchita Marine Products v. DCIT (2007) 15 SOT 290 (Mum.)(Trib.) Balaji Textile Industries Pvt. Ltd. v. ITO (1994) 49 ITD 177 (Mum.)(Trib.)* (AY.2011-12).
Dy. CIT v. Hind Industries Ltd. (2020) 79 ITR 1 / (2021) 186 ITD 272 (Delhi)(Trib.)

1224 **S. 69C : Unexplained expenditure – Bogus purchases – Source of purchase not outside books of account and corresponding sales not disputed – Books of account not rejected – Only profit element can be added – Reassessment is held to be valid. [S. 37, 143(3), 147, 148]**
The Tribunal held that the Assessing Officer disputed that the source of purchase as outside the books of account. In fact the purchase of the same amount and invoice had been recorded in the books of account and duly disclosed and the amount had been paid through banking channels. The corresponding sales had also not been disputed including the direct expenses and the gross profit. At the most, this could be a case

where the assessee had made purchases in cash and taken an accommodation bills for the sum for which cheque amount had been issued. In such a case also, the source of purchase were from the books. Therefore, the entire purchases could not be treated as income of the assessee especially when the books of account had not been rejected and the sales and the gross profit stood accepted in the trading account. It could be at best, a case of suppression of the gross profit on the purchase of Rs. 1,93,066. Under these facts and circumstances, the profit element of such amount should be added as income. Accordingly, the Assessing Officer was directed to apply the gross profit declared by the assessee on purchase of Rs. 1,93,066 and deleted the balance. As regards reassessment the Assessing Officer after receiving the information had independently applied his mind and recorded his reasons to believe why such a purchase was not genuine. Reassessment is held to be valid. (AY. 2011-12)

Belmarks Metal Works v. ITO (2020) 80 ITR 699 (Delhi) (Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – Accommodation entries – Trading in gold jewellery – Enhancement by CIT(A) directing to add entire purchases was deleted – Estimate of 10% of bogus purchases Assessing Officer is affirmed. [S. 132] 1225

The assessee could only furnish the bank statements to substantiate his claim that the payments were made by cheque. The assessee also did not take any serious steps to prove the genuineness of the suppliers. Therefore, the Assessing Officer held that the purchases made by the assessee from those individuals were bogus transactions. Thereafter, the Assessing Officer estimated 10 per cent. of the bogus purchase as the undisclosed income of the assessee which worked out to Rs. 9,30,487 (10 per cent. of Rs.93,04,866). The CIT(A) took the view that the entire bogus purchase of Rs. 93,04,866 had to be added to the income of the assessee and enhanced the addition. On appeal the Tribunal held that the order of the Commissioner (Appeals) to enhance the addition treating the entire bogus purchases as the income of the assessee was not appropriate because the assessee had made purchases apparently from his accounted money as the payments had made through banking channels. Further the gold and jewellery purchased were either sold by the assessee or remained with the assessee as his closing stock, since there were no other contrary findings by the Department. Therefore, the order of the CIT(A) was set aside and the order of the Assessing Officer was confirmed. (AY. 2009-10)

Bhagatram v. ACIT (2020) 81 ITR 59 (SN) (SMC) (Hyd.)(Trib.)

S. 69C : Unexplained expenditure – Labour expenses – ad hoc disallowance – Held to be not justified. [S. 145] 1226

Tribunal held that there being no discrepancy in muster roll, no disallowance could be made on ad hoc basis at 10% regarding labour payment for violation of ESI and EPF Act. (AY. 2010-11)

ITO v. Swati Housing & Construction (P.) Ltd. (2020) 180 ITD 854 (Delhi)(Trib.)

1227 **S. 70 : Set off of loss – One source against income from another source – Same head of income – Tax avoidance – Long term capital gains set off against short term capital loss – Forfeiture of call monies – Set off loss is held to be allowable. [S. 4, 45]**

Dismissing the appeal of the revenue the Court held that forfeiture was not claimed to be bogus nor it had been shown to be a fraudulent manner or colourable devise. There is no allegation that the amount invested in forfeited shares had come back to the assessee in any form whatsoever. Loss is held to be allowable. (AY.2007-08)

CIT v. K.P.D. Sigamani (2020) 120 taxmann.com 254 (Mad.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. K.P.D. Sigamani (2020) 120 taxmann. com 255/ 275 Taxman 4 (SC)

1228 **S. 70 : Set off of loss – One source against income from another source – Tax avoidance – Same head of income – Penny stock – Capital gains – Short-term capital loss – Beneficiary of bogus accommodation entries – Disallowance proper. [S. 4, 45, 68, 69C, 115BBEE]**

Dismissing the appeal the Court held that the involvement of the assessee in the entire chain of generating bogus entries of long-term capital gains and short-term capital loss was taken into consideration by the Assessing Officer. The evidence in the form of testimonies of persons in charge of the management and control of the penny stock companies was also taken into account. Such evidence formed the basis for the Assessing Officer to conclude that the short-term capital gains claimed by the assessee were not genuine or market driven but a prearranged transaction noted in the accounts of the assessee in lieu of unaccounted cash. Though the Tribunal had held that the provision of section 68 was not attracted, the Tribunal had still sustained the additions holding that the short-term capital loss should be disallowed as it resulted from bogus transactions. The finding was based on consideration of the entire evidence on record. In view of the concurrent findings arrived at by the authorities below and with no tenable evidence with the assessee to the contrary, no substantial question of law arose. (AY. 2015-16)

Sanjay Kaul v. PCIT (2020) 427 ITR 63 / 274 Taxman 301 / 119 taxmann.com 470 / 193 DTR 57 / 316 CTR 337 (Delhi)(HC)

Editorial : Order in is approved, Sanjay Kaul. v. ITO (2020) 181 ITD 146 / 206 TTJ 176 (Delhi)(Trib.).

1229 **S. 71 : Set off of loss – One head against income from another – Set-off loss against under the head salaries – Not permissible – Depreciation loss is allowed to subsequent year. [S. 32, 71(2A), 72]**

Assessee was an individual deriving income from salaries, income from house property, income from business, income from capital gains and income from other sources. Assessee filed his return of income setting off losses by way of unabsorbed depreciation from head business and profession against income from head salaries. Tribunal held as per provision of section 71(2A) and explanatory memorandum to Finance Act, 2004 amending provision of section 71(2A) w.e.f. 01.04.2005, losses under head income from business or profession, including unabsorbed depreciation, if any cannot be set-off against income assessable under head salaries that losses of business and profession,

including unabsorbed depreciation. However, there was no restriction, as per provisions of section 72 to carry forward unabsorbed depreciation to subsequent years, therefore, Assessing Officer was directed to allow carry forwarded of unabsorbed depreciation to subsequent years.
Harbans Singh Bawa v. ACIT (2020) 183 ITD 682 / 194 DTR 127 / 207 TTJ 804 (Mum.) (Trib.)

S. 72 : Carry forward and set off of business losses – Unabsorbed depreciation – Can be set off against sum chargeable to tax as income u/s 68 of the Act – Provision of S.115BBE which barred set off of losses against income determined u/s 68 was effective from 1-4-2017 and not applicable for the Assessment year 2006-07 [S. 32, 68 71, 115BBE] 1230

The assessee claimed the setoff of business loss and depreciation against the addition made u/s 68 of the Act. The set off was not allowed by the Assessing Officer, which was affirmed by the Appellate Tribunal. On appeal allowing the appeal the Court held that amendment brought in sub-section (2) of section 115BBE by Finance Act, 2016, whereby set off of losses against income referred to in section 68 was denied, would be effective from 1-4-2017. Accordingly the assessee is entitle to set off the brought forward loss and depreciation against the addition u/s 68 of the Act. Matter remanded to the Appellate Tribunal for further adjudication. Referred CBDT Circular No.11/2018 dated 19-6-2019(AY. 2006-07)
Shree Karthik Papers Ltd. v. Dy. CIT (2020) 273 Taxman 546 / 196 DTR 248 (Mad.)(HC)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Matter remanded to verify whether conditions laid down in section 72A(2) which are mandatory. [S. 72A(2)] 1231

A company was merged by a scheme of amalgamation. Amalgamated company claimed set off of losses of amalgamating company against its profits. Assessing Officer disallowed same. Tribunal allowed the claim. Allowing the appeal of the revenue the Court held Tribunal had not adverted to fact that whether assessee had complied with conditions laid down in section 72A(2) which were mandatory so as to enable assessee to claim benefit of set off under section 72A. Accordingly the order of Tribunal was to be set aside and matter was to be remanded back to Tribunal for fresh examination. (AY. 2008-09)
CIT v. Indus Fila Ltd. (2020) 275 Taxman 403 (Karn.)(HC)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Filing of Form 62 not a condition precedent for set off. [IT Rules 9C] 1232

Dismissing the appeal, that the relevant provisions of section 72A read with rule 9C of the Income-tax Rules, 1962, were very clear. These provisions stipulate that after the merger, within four years, the amalgamated company should achieve at least 50 per cent. of the installed capacity of production. Though the Tribunal, in its order, had not discussed the facts and figures as discussed by the Commissioner (Appeals) it had observed that the failure to file prescribed form 62 for the third AY, after amalgamation, namely the AY. 2006-07, was not relevant, because the mark of 50 per cent. of installed

capacity of production can be achieved at any point of time within four years after the date of merger, which was April 1, 2003. Even though the exact date of crossing over the mark of 50 per cent. was not ascertainable, the fact was undisputed that in the fourth year, the amalgamated company achieved more than 100 per cent. of its installed capacity of production. The requirement of filing of the requisite information in form 62 for the third AY. could not be said to be a condition precedent or a mandatory condition to allow the assessee to carry forward such losses under section 72A. The condition of filing form 62, at best, is only directory and failure to comply therewith would not disentitle the assessee to claim such carried forward losses to be set off against the profits of the assessee. No substantial question of law arose for consideration. (AY.2006-07)

PCIT v. Lotte India Corporation Ltd. (2020) 427 ITR 80 / 194 DTR 7 / 317 CTR 330 / 274 Taxman 63 (Mad.)(HC)

1233 **S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – revised return after order form High Court – Entitled to set off and carry forward of accumulated losses and unabsorbed depreciation. [S. 2(19AA), 32(2), 72A(4), 139(3)]**

AO rejected the revised return and held that the assessee is not entitle to Carry forward and set off of accumulated loss and unabsorbed depreciation. CIT(A) allowed the claim of the assessee. On appeal the Tribunal held that all the conditions stated in S. 72A(4) read with S. 2(19AA) had been fulfilled. Since the assessee met all the requirements contained in the Act all the carried forward losses and unabsorbed depreciation in respect of the vortal undertaking were transferred, pursuant to S. 72A(4) from the demerged company) to the resulting company with effect from the appointed date, i. e., March 1, 2010. The claim of the assessee was in accordance with law and the Assessing Officer erred in refusing to consider the revised return and the Commissioner (Appeals) had rightly allowed the claim of the assessee. Followed *Dalmia power Ltd v. ACIT (2020) 420 ITR 339 (SC)* (AY.2010-11)

ACIT v. Padma Logistics and Khanij Pvt. Ltd. (2020) 81 ITR 61 / 183 ITD 891 / 208 TTJ 67 (Kol.)(Trib.)

S. 73 : Losses in speculation business – Dividend income – Stock in trade – Can be set off against loss suffered in share trading business. [S. 56, 70, 71] 1234

Allowing the appeal of the assessee the Court held that dividend income earned from stock in trade can be set off against loss suffered in share trading business. Followed *CIT v. Sphere Stock Holding (P.) Ltd. in [TA No. 2583 of 2009, dated 23-8-2011 (Guj.) (HC).* (AY. 1997-98)

Torrent Finance (P.) Ltd. v. ACIT (2020) 115 taxmann.com 256 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, ACIT v. Torrent Finance (P.) Ltd (2020) 272 Taxman 190 (SC)

S. 73 : Losses in speculation business – Futures and options derivative transactions – Deriving 69 Per Cent of its gross total income from various heads – Explanation is not applicable – Business loss and can be set off against other business income – Derivatives carried out in recognised Stock Exchange through registered stock broker – Transaction not deemed to be speculative transaction – Eligible to be set off – Apportionment of expenditure is directed to be followed. [S. 28(i), 43(5)(d)] 1235

Tribunal held that the assessee-company had derived income from house property, capital gains and other sources, which collectively represented 69 per cent of the gross total income of the assessee-company. This proved that the assessee's gross total income mainly consisted of income from various heads. The case of the assessee squarely fell outside the ambit of the provisions of the Explanation to section 73. Therefore, the loss on derivative transactions was to be construed as regular business loss incurred by the assessee and eligible for set off against other business income. Relied on *CIT v. Darshan Securities (P.) Ltd. (2012) 341 ITR 556 (Bom.) (HC) and CIT v. HSBC Securities and Capital Markets India (P) Ltd. [2012 23 taxmann.com 377 (Bom.) (HC).* Tribunal held that since the loss incurred on derivative transactions was not speculative loss and treated as regular business loss, the Assessing Officer was to delete the disallowance. (AY.2011-12).

Megha Property Developers Ltd. v. ITO (2020) 84 ITR 406 (Mum.)(Trib.).

S. 73 : Losses in speculation business – Business in trading in shares – Business loss – Delivery based transactions – Derivates transactions in futures and options segment – Explanation to section 73 does not differentiate between 'delivery based transactions' and 'derivative transactions in F&O segment' and same applies to entire business of purchase and sale of shares, whether such trading is delivery based or non – delivery based and, whether there is profit or loss from such business. [S. 28(i)] 1236

The assessee-company which is engaged in the business of trading in shares on its own account, derivative transactions and share broking activity. It incurred loss in respect of the business of purchase and sale of shares on its own account and the same was claimed to be a normal business loss. The AO held that the loss incurred from the said activity was liable to be treated as a deemed speculation loss in terms of Explanation below S. 73 and rejected the claim. CIT(A) up held the order of the AO. On appeal the Accountant Member accepted the claim of the assessee that the loss incurred from the business of purchase and sale of shares on its own account constituted a normal business loss. The Judicial Member did not agree with the view taken by the Accountant Member and proceeded a pass a separate order taking a different view. He held that

the assessee-company during the year under consideration was engaged in a systematic business activity of purchase and sale of shares of other companies on its own account and the loss suffered in the said activity was liable to be treated as speculation loss in terms of Explanation to section 73. In view of difference of opinion between the members of the Tribunal, the matter was referred to the Third Member, Third member held that the business carried on by the assessee during the year under consideration remained the same and it was continued to be of trading in shares on its own account, derivative transactions and share broking activity as admitted by the AO himself in the assessment order. As categorically observed by the AO, there was no material difference or any deviation in the nature of business carried on by the assessee during the year under consideration, vis-a-vis the preceding year. This position gets further fortified from the gross income earned by the assessee from the different activities. The legal position that emanates from various judicial pronouncements is that the Explanation to section 73 does not differentiate between 'delivery based transactions' and 'derivative transactions in F&O segment' and same applies to the entire business of purchase and sale of shares, whether such trading is delivery based or non-delivery based, whether there is profit or loss from such business. In the present case, the assessee-company has treated the entire activity of purchase and sale of shares, which comprised of both the delivery based and non-delivery based trading as one composite business and, accordingly, claimed set off of the loss incurred in delivery based trading against profit derived from derivative trading. If the ratio of earlier judicial pronouncements is applied to the facts of the assessee's case, it follows that the aggregation of the share trading loss and profit from derivative transaction should be done before application of Explanation to section 73 and where there was surplus profit on such aggregation, Explanation to section 73 would not be applicable. Therefore, the view taken by the Accountant Member is correct. (AY. 2009-10)
Lohia Securities Ltd. v. DCIT (2020) 180 ITD 1 / 203 TTJ 929 / 187 DTR 73 (TM) (Kol.) (Trib.)

1237 **S. 74 : Losses – Capital gains – Carry forward of capital losses – Brought forward from sale of securities – Capital gains were not taxable in India by virtue of India-Mauritius treaty – Loss has been rightly carried forward – DTAA-India-Mauritius [Art. 13]**
Where the assessee had brought forward capital loss from transfer of securities from previous AY. The aforesaid loss was determined in the hands of the assessee vide an intimation under S.143(1) for AY. 2002-03. It has been observed that the capital gains were not taxable in India as per Article 13 of the Indian-Mauritius Tax Treaty. It was held that the brought forward short term capital loss of the previous years was rightly carried forward by the assessee to the subsequent years. (AY. 2013-14)
Goldman Sachs Investment (Mauritius) Ltd v. Dy. CIT (2020) 194 DTR 329 / 207 TTJ 913 / (2021) 187 ITD 184 (Mum.) (Trib.)

1238 **S. 74 : Losses – Capital gains – Long-term capital loss – Reduction of share capital – Amounts to transfer – Loss arising due to cancellation of shares allowable as long – term capital loss eligible to be carried forward to subsequent years. [S. 2(47)]**
Allowing the appeal, the definition of transfer includes extinguishment of any rights in a capital asset. Reduction of capital amounts to transfer. Even though the shareholder

remained a shareholder after the capital reduction, the first right as a holder of those shares stood reduced with the reduction in the share capital. In the assessee's case, the capital reduction was effected by cancellation or extinguishment of a certain number of shares and consideration was received pursuant to such capital reduction and the share of the assessee in the subsidiary company remained the same even after the capital reduction. Hence, the loss arising to the assessee upon cancellation of its shares pursuant to reduction of capital in the sum of Rs. 3.64 crores was to be allowed as long-term capital loss eligible to be carried forward to subsequent years.(AY.2011-12)
Carestream Health Inc. v. Dy.CIT (2020) 78 ITR 599 / 193 DTR 41 / 206 TTJ 835 (Mum.) (Trib.)

S. 74 : Losses – Capital gains – Carried forward losses – Capital losses brought forward from earlier years pertaining to source of income that was exempt from tax was allowed to be carried forward to subsequent years – DTAA-India-Mauritius [S.9(1)(i), 74(1)(a), 90(2), 144C(5), Art. 13] 1239
Assesses, a FII based in Mauritius, had claimed short-term and long-term capital gains from transfer of securities in Indian market as exempt under Article 13 of Indo-Mauritius DTAA. Assessee also claimed to carry forward capital losses which were brought forward from earlier years to subsequent years .Assessing Officer held that when capital gain arising to assessee was not taxable in India, capital loss would also be exempted and assessee could not claim carry forward of said capital losses. DRP directed the Assessing Officer to allow carry forward of the short term capital gains brought forward from the preceding years Tribunal held that Assessing Officer was not justified in holding that capital losses brought forward from earlier years, pertaining to a source of income that was exempt from tax was not to be carried forward to subsequent years and thus, assessee was duly entitled for carry forward of its brought forward capital losses to subsequent years brought forward short term and Long term capital gains of earlier years were not to be adjusted against exempt short term capital gain and Long-term capital gain earned by assessee from transfer of securities during year in question. (AY. 2013-14)
Goldman Sachs Investments (Mauritius) Ltd. v. DCIT (2020) 194 DTR 329 / 207 TTJ 913 / (2021) 187 ITD 184/ (Mum.) (Trib.)

S. 80 : Return for losses – Claim for carry forward of loss – Return filed in old form – Filed revised form after due date – Entitle to carry forward the loss. [S. 139(1), 139(3)] 1240
Assessee had filed its return on 31-10-2007, in old Form, its claim for carry forward of loss could not be allowed. New form was filed on 23-12-2008 ie beyond due date of filing of return. AO disallowed the claim for carry forward of loss. Tribunal allowed the claim of the assessee. On appeal by the revenue, High Court affirmed the view of the Tribunal. Court held that the assessee had not sought to gain any unfair advantage by filing return in old Form and moreover, it did later on comply with conditions of filing new Form. (AY. 2007-08)
CIT v. Zila Sahkari Bank (P.) Ltd. (2019) 112 taxmann.com 403 / 269 Taxman 56 (All.) (HC).
Editorial : SLP of revenue is dismissed; CIT v. Zila Sahkari Bank (P.) Ltd. (2020) 269 Taxman 55 (SC)

1241 **S. 80AC : Return to be furnished – Housing projects – Fling of return of income u/s 139(1) is mandatory for claiming the deduction u/s. 80IB (10) – Not eligible to claim the deduction. [S. 80IB(10), 139(1)]**

Dismissing the appeal of the assessee the Tribunal held that condition imposed u/s 80AC of the Act is mandatory failure to file the return u/s 139(1) of the Act, the assessee is not eligible to claim the deduction u/s 80IB(10) of the Act. Followed Saffire Garments (2013) 140 ITD 6 (SB) (Ahd.) (Trib.)(ITA No. 2164 /Mum/2016 dt 11-10 2019) (AY. 2012-13)

Uma Developers v. ITO (2020) BCAJ-January-P.34. (Mum.)(Trib.)

1242 **S. 80G : Donation – Registration – Religious nature – Granting registration is held to be valid. [S. 80G(5)]**

Dismissing the appeal of the revenue the High Court held that the assessee had been getting registration under section 80G(5) right from year 1993 to year 31-3-2006 on same kind of activities. Since there was no change in objects and activities of trust, granting of registration by the Tribunal under section 80G(5) of the Act is held to be valid. Rule of consistency is followed *Radhasoami Satsang v. CIT (1992)193 ITR 321 (SC)*

CIT v. Rajkot Jilla Gayatri Parivar Trust (2020) 117 taxmann.com 121 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Rajkot Jilla Gayatri Parivar Trust (2020) 272 Taxman 99 (SC)

1243 **S. 80G : Donation – Renewal of exemption is held to be justified. [S. 11, 12A, 80G(5)(iii)]**

Dismissing the appeal of the revenue the Court held taht the Society was registered in the year 1961 and the medical college commenced in the year 1963. Admittedly, thereafter, the exemption under Section 80G(5)(iii) of the Act was granted to the Society. Clause 3 of the Memorandum of Association which uses the expression "primarily for the benefit of Catholics". Others may be admitted without distinction of caste and creed" has been thoroughly examined by the Department several time and only on the satisfaction, the Tribunal granted exemption under Section 80G(5)(iii) of the Act to the Assessee. Court also observed that the number of staffs employed in its various institutions such as Research Institute, Medical College, Hospital etc., were from other communities also. In paragraph No.7.4 of the order of the Tribunal, it has been held that the assessee-Trust has been serving the people on humanity basis in its noble profession by rendering timely treatment to the needy without discriminating the caste, creed, community etc.

DIT(E) v. C.B.C.I. Society for Medical Education (2020) 194 DTR 385 / (2021) 318 CTR 192 (Karn.)(HC)

1244 **S. 80G : Donation – Charitable Trust – Charitable Trust should be registered under Section 12A for availing the benefit. [S. 2(15), 11, 12A, 12AA]**

The assessee filed an application under S. 80G(5) of the Act. The Commissioner rejected the application. The Appellate Tribunal allowed the appeal preferred by the assessee holding that the assessee was entitled for approval. On appeal by the revenue the Court held that even for the purpose of registration of charitable or religious trusts, the application had to be accompanied by a self-certified copy of the order granting

registration under section 12A or section 12AA of the Act. The Appellate Tribunal, instead of addressing itself to this issue, looked into section 2(15) of the Act. Section 2(15) of the Act merely defines the term "charitable purpose". The issue was with regard to the grant of approval under section 80G in the absence of any valid registration certificate under section 12A. Once a charitable trust is registered under section 12A, the question whether the assessee-trust is for charitable purpose need not be gone into. Indisputably, the charitable trust was not registered under section 12A. The order passed by the Appellate Tribunal was not sustainable in law. (AY. 2014-15)
CIT(E) v. Shree Tapeshwar Hanumaji Bajrang Charity Trust (2020) 421 ITR 358 / 189 DTR 237 / 314 CTR 622 (Guj.)(HC)

S. 80G : Donation – In absence of any evidence on record showing that funds of assessee trust were being utilised for private purposes – AO is, not justified in refusing to grant approval under S. 80G(5)(vi) of the Act. [S. 12AA] 1245
Assessee-trust was granted registration under S 12AA of the Act. Assessee filed application for grant of approval under S. 80G(5)(vi) of the ACY. CIT(E) denied the approval on ground that activities of assessee-trust were not for charitable purposes and 50 per cent of donations was from trustees themselves. Tribunal held that no action under S.12AA (3) of the Act for cancellation of registration. Tribunal also held that CIT(E) before denying approval was required to record a definite finding of fact that funds were utilised for private purposes and not for charitable purposes failure to bring any such evidence on record, denial of exemption is held to be not sustainable. High Court upheld the order of the Tribunal. (AY. 2016-17)
CIT(E) v. Seth Vinod Kumar Somani Charitable Trust (2020) 113 taxmann.com 142 / 269 Taxman 60 (P & H) (HC)
Editorial : SLP of the revenue is dismissed ; CIT(E) v. Seth Vinod Kumar Somani Charitable Trust. (2020) 269 Taxman 59 (SC)

S. 80G : Donation – Approval – Registration Immediate non-start of activity cannot be reason for denial of approval u/s 80G(5) of the Act – Matter remanded. [S.2(15), 12AA, 80G(5) 1246
The assessee a charitable trust applied for grant of registration under S. 12AA as well as for grant of approval under S. 80G(5) of the Act. CIT(E) granted registration under S. 12AA(1)(b), however denied the approval u/s 80G(5)(vi) on the ground that no significant activity had been started by the assessee trust as per the objects. On appeal the Tribunal held that once objects of assessee-trust is found to be charitable and S. 12AA registration is granted, immediate non-start of activity by assessee trust cannot be a reason for denial of approval under S. 80G(5) of the Act. Matter remanded to the file of CIT(E) for verification the activities of the Trust and allow the registration. (AY. 2014-15)
Badri Narain Kanta Devi Katta Charitable Trust v. CIT (2020) 181 ITD 178 (Jaipur)(Trib.)

S. 80G : Donation – Corporate Social Responsibility requirements – Denial of approval is not justified. [S. 12A, 80G(5)(vi)] 1247
Tribunal held that the registration under S. 12A was subsisting and had not been cancelled. The only contention raised was that the company had been formed to carry

out the corporate social responsibility of another company. However, there was no averment or allegation that the assessee did not fulfil the condition as required under S. 80G(5). Merely because the assessee had been formed by another company for complying with the corporate social responsibility requirements, it could not be denied approval.
Sabtera Foundation v. CIT(E) (2020) 77 ITR 296 (Chd.)(Trib.)

1248 **S. 80G : Donation – Approval – Approval granted to assessee is still continuing – Order rejecting approval is redundant in law. [S. 80G(5)(vi)]**
CIT(E) had rejected the approval under S. 80G of the Act on the ground that the relevant documentary evidence was not filed stating the genuineness of charitable activities conducted by the assessee. Tribunal held that he assessee had already got approval under S. 80G(5)(vi) from the CIT(E) which was still continuing order rejecting the approval is redundant in law.
Ashwini Sahakari Rugnalaya Ani Sanshidhan Kendra v. CIT(E) (2020) 77 ITR 61 (SN) (Pune)(Trib.)

1249 **S. 80GGB : Contribution – Companies – Political parties – Returned income was loss – If the assessed income is positive the claim has to be allowed after verification.**
The assessee made payment of Rs. 15 crores as contribution to a political party but added back the amount while filing the return of income. In the return the assessee could not claim deduction under section 80GGB of the Act as the total returned income was loss. The claim was made before the Assessing Officer but was denied. On appeal the Tribunal held that if the assessee was eligible to claim the deduction under section 80GGB of the Act it had to be allowed. The Assessing Officer was to allow the deduction in accordance with the provisions of the law after necessary verification. (AY. 2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi) (Trib.)

1250 **S. 80HHC : Export business – Deduction to be computed on ninety per cent. of net income of other income and not gross income.**
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that other income had to be reduced by 90 per cent of such net income when computing profits of business for the purpose of allowing deduction under section 80HHC. Followed *ACG Associated Capsules (P.) Ltd. v. CIT [2012] 343 ITR 89 (SC).* (AY.1998-99)
CIT(LTU) v. ABB Ltd. (2020) 429 ITR 355 (Karn.)(HC)

1251 **S. 80HHC : Export business – Explanation (baa) applicable only to receipts similar to brokerage, commission, interest, rent or charges.**
Court held that the Commissioner (Appeals) as well as the Tribunal had reduced 90 per cent of Rs. 3,05,11,720 being income from services rendered and Rs. 21,77,493 being sundry income from profits of business while computing deduction under section 80HHC. The service charges could not be deducted as profits of business means profits of business reduced by 90 per cent of any sum referred to in clauses (iiia), (iiib), (iiic),

(iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits. (AY.2000-01, 2001-02, 2002-03)
Ingersoll-Rand (India) Ltd. v. CIT (2020) 427 ITR 158 / 192 DTR 369 (Karn.)(HC)

S. 80HHC : Export business – Reduction of 90 Per Cent of net (and not gross) Income from interest, commission and technical services – Income from technical services cannot be reduced by 90 Per Cent. 1252
Court held that the Tribunal was justified in holding that the net interest income should be reduced by 90 per cent when computing profits of business for the purpose of allowing deduction under section 80HHC and not the gross interest income. Followed *ACG Associated Capsules (p.) Ltd. v. CIT [2012] 343 ITR 89 (SC) and CIT v. Eli lilly and Co. (India) (P) Ltd. [2009] 312 ITR 225 (SC)* Court also held that the Tribunal was justified in holding that the income from technical services could not be reduced by 90 per cent when computing profits of the business according to Explanation (baa) to section 80HHC *CIT v. Motor Industries Co Ltd. [2011] 331 ITR 79 (Karn.) (HC), CIT v. Robert Bosch (India) Ltd. [2014] 2 ITR-OL 97 (Karn.)(HC), CIT v. K. Ravindranathan Nair [2007] 295 ITR 228 (SC), CIT v. Pfizer Ltd.(2011) 330 ITR 62 (Bom.) (HC) and Ingersoll-Rand (India) Ltd. v. CIT (2020) 427 ITR 158 (Karn.) (HC)* (AY.1995-96)
CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 192 DTR 376 / 272 Taxman 224 (Karn.)(HC)

S. 80HHC : Export business – Computation of profits – Common Expenditure for eligible and non-eligible units – Expenditure to be apportioned. 1253
Court held that the depreciation was not covered by Explanation (baa) to S. 80HHC of the Act and the expenditure incurred by the head office was a common expenditure for eligible and non-eligible units run by the assessee-company, and needed to be apportioned to determine the actual profits of the two types of units.(AY.2001-02)
Vardhman Holdings Ltd. v. CIT (2020) 425 ITR 253 (P&H)(HC)

S. 80HHC : Export business – Export turnover Fluctuation in foreign exchange rates – Part of export turnover and total turnover [S. 80HHC(2), Art. 226] 1254
On writ allowing the petition the Court held that that the inflow of foreign exchange in question into India had resulted from the export that the assessee had made. This excess realization was inextricably linked to the export made by the assessee. Had the export not been made, the foreign exchange would not have come into India and no question of realization or excess realization in terms of Indian rupees would have arisen. Hence, in principle, such excess realization should be treated as part of the export turnover of the assessee. According to the definition of "export turnover" in the Act, before an amount received by an exporter could be treated as part of the export turnover, it must also be shown that the convertible foreign exchange was received in or brought into India within a period of six months from the end of the previous year or within such extended period as the Chief Commissioner or Commissioner (now Reserve Bank of India) might allow. The foreign exchange was received in India beyond the period of six months stipulated in sub-section (2)(a) of section 80HHC. The extra realization made

in rupees for export sale proceeds in foreign exchange due to adverse exchange rate of rupees would be part of the export turnover in the year of receipt subject to the foreign exchange coming into the country within the statutorily prescribed time period. The export sale proceeds received in accordance with and in terms of the export contract and with the approval of Reserve Bank of India could not be ignored for the purpose of relief under s. 80HHC. The grounds on which the Commissioner (Appeals) and the Tribunal rejected the assessee's claim were untenable. Followed *Raghunath Exports (P) Ltd. v. CIT (2011) 330 ITR 57 (Cal) (HC).* As regards the receipt brought to India after the end of the previous year relevant to the assessment year 1994-95, matter remanded to the Tribunal for fresh consideration. (AY.1996-97)
ISPAT Projects Ltd. v. CIT (2020) 425 ITR 459 / 190 DTR 355 / 315 CTR 641 / 272 Taxman 193 (Cal.)(HC)

1255 **S. 80HHC : Export business – Supporting manufacturer – Certificate by main exporter and report of Chartered Accountant is mandatory – Failure to comply the same deduction is not available. [S. 80HHC(IA)]**
Dismissing the appeal of the assessee the Court held that, the purpose of providing the twin conditions of report of an accountant and a disclaimer certificate from the export house is obviously to avoid the double claims to deduction in respect of the same exports and earning of foreign exchange for the country, one in the hands of export house and the other in the hands of supporting manufacturer. The disclaimer on the part of export house to the extent to which the export is allowed to be made on behalf of the export house by the supporting manufacturer is, therefore, necessary to establish the claim of deduction under section 80HHC. The two requirements, namely, the disclaimer declaration and report of the accountant are, therefore, at the root of the claim by the supporting manufacturer. On facts the assessee has had complied with these conditions, it was not entitled to deduction under S. 80HHC(1A) of the Act. (AY. 1992-93 to 1995-96, 1997-98)
Parwaz Food Packer (PFP) v. Dy.CIT (2019) 107 CCH 0419 / (2020) 421 ITR 377 (Mad.) (HC)
Editorial : SLP of the assessee is dismissed, Parwaz Food Packer (PFP) v. Dy. CIT [2020] 421 ITR (St.) 14 (SC)

1256 **S. 80HHC : Export business – Business profits – Receipts by way of re assortment charges and labour commission – Cannot be excluded from business profits for purpose of computation of business profits – Prior to amendment with effect from April 1, 1992.**
The assessee exported cut and polished diamonds. It also undertook the work of other exporters on contract basis and gave the work of cutting and polishing of diamonds on sub-contract. The assessee claimed deduction under section 80HHC of the Act. On the receipts on account of reassortment charges and labour commission charges. The AO excluded such amounts for the purpose of deduction under S.80HHC. The CIT(A) allowed the appeal filed by the assessee. The Tribunal recorded that the reassortment charges were nothing but commission received by the assessee from the diamond traders when the assessee facilitated the sale of their goods to foreign buyers and that the

labour commission was received by the assessee from other diamond dealers for cutting and polishing the diamonds. The Tribunal held that such receipts were not includible in the business profits for the purpose of computation of special deduction under S.80HHC and allowed the appeal filed by the Department. On appeal High Court held that the Tribunal was not justified in excluding from the total business income of the assessee the receipts of reassortment charges and the labour commission for the purpose of calculation of deduction under S.80HHC of the Act.(AY. 1991-92)
Seven Stars v. DCIT (2020) 421 ITR 16 (Bom.)(HC)

S. 80HHC : Export business – Entitle to deduction on gross total income without reducing it by the deduction allowed u/s 80IB of the Act. [S. 80IA (9), 80IB] 1257
Allowing the appeal of the assessee the Court held that the assessee is entitle to deduction on gross total income without reducing it by the deduction allowed u/s 80IB of the Act. Followed *Associated Capsules (P) Ltd v. Dy.CIT (2011) 332 ITR 42 (Bom.) (HC) IPCA Laboratories Ltd. v. ACIT (2019) 112 taxmann.com 331 / (2020) 268 Taxman 328 (Bom.) (HC)*
Editorial : SLP of revenue is dismissed ACIT v. IPCA Laboratories Ltd (2020) 268 Taxman 327 (SC)

S. 80HHC : Export business – Sale of scrap – Income from such scrap would tantamount to recoupment of cost of raw material/production and, therefore, was includible in profits of business. 1258
Tribunal held that the sale of scrap, any income from such scrap would tantamount to recoupment of cost of raw material/production and, therefore, was includible in profits of business for purpose of S. 80HHC of the Act. (AY. 2004-05)
Mahindra & Mahindra Ltd. v. DCIT (2020) 180 ITD 776 (Mum.)(Trib.)

S. 80I : Industrial undertakings – deduction should be given on profit without reducing the deduction u/s.80HH. [S. 80HH] 1259
Assessee is entitled to the simultaneous benefit of Section 80I and Section 80HH of the Act. (ITXA No. 805 of 2015 dt.05/02/2018)
CIT v. Hindustan Lever Ltd. (Bom.)(HC)(UR)
Editorial: SLP is granted to the revenue (CA No. 2015 of 2019)(2019) 413 ITR 320(St.) (SC)

S. 80IA : Industrial undertakings – Conversion of a partnership firm into a company – Part IX of Companies Act – As per S. 575 of the Companies Act, the conversion of a partnership firm into a company under Part IX causes a statutory vesting of all assets of the firm into the company without the need for a conveyance – The business of the firm is carried on by the company and the latter is eligible for the benefits of S. 80IA(4) of the Act. [S. 80IA(4), Companies Act, S. 575] 1260
Dismissing the appeal of the revenue the Court held that As per S. 575 of the Companies Act, the conversion of a partnership firm into a company under Part IX causes a statutory vesting of all assets of the firm into the company without the need for a conveyance. The business of the firm is carried on by the company and the latter

is eligible for the benefits of S. 80IA (4) of the Act. Order in *Chetak Enterprises v. ACIT (2005) 95 ITD 1 (Jodh) (Trib.)* is approved. (AY. 2002-03)
CIT v. Chetak Enterprises Pvt. Ltd. (2020) 423 ITR 267 / 313 CTR 489 / 187 DTR 351 / 115 taxmann.com 108 / 272 Taxman 509 (SC)

1261 **S. 80IA : Industrial undertakings – Manufacture – Process of converting raw urad into urad dhal is a manufacturing activity – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that process of converting raw urad into urad dhal is a manufacturing activity undertaken by assessee and therefore, assessee would be entitled to deduction. (AY. 2003-04)
CIT v. S. Mahalakshmi (Smt.) (2020) 274 Taxman 179 / 189 DTR 256 / 315 CTR 919 (Mad.)(HC)

1262 **S. 80IA : Industrial undertakings – Lease rent income of industrial park is assessable as business income and eligible for deduction [S. 22, 28(i)]**
Dismissing the appeal of the revenue the Court held that lease rent income received by assessee from letting out of built-up space of industrial park was assessable under head 'income from business' and such income was eligible for deduction under section 80IA. (AY. 2008-09)
CIT v. Tidel Park Ltd. (2020) 430 ITR 214 / 317 CTR 440 / 195 DTR 191 (Mad.)(HC)

1263 **S. 80IA : Industrial undertakings – Enhancement of profit – Incidental income arising to electricity distribution company on account of commission on arrears, replacement of burnt metres, inspection fee, reconnection fee, miscellaneous recovery from suppliers etc., which are incidental incomes would be eligible to deduction. [S. 32, 40(a)(ia), 40A(3), 43B]**
Dismissing the appeal of the revenue the Court held that disallowances made under section 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, related to business activity against which Chapter VI-A deduction has been claimed, result in enhancement of profits of eligible business, and that deduction under Chapter VI-A is admissible on profits so enhanced by disallowance. Court also held that incidental income arising to electricity distribution company on account of commission on arrears, replacement of burnt metres, inspection fee, reconnection fee, miscellaneous recovery from suppliers etc., which are incidental incomes would be eligible to deduction under section 80 IA. (AY. 2009-10)
Dy. CIT v. Tata Power Delhi Distribution Ltd. (2020) 273 Taxman 56 (Delhi)(HC)

1264 **S. 80IA : Industrial undertakings – Infrastructure development – Appellate Tribunal – Container freight station – Part of inland port – Tribunal cannot ignore decision of co-ordinate Bench – Matter remanded to the Assessing Officer to apply the decision of Tribunal. [S. 253, 254(1)]**
Court held that the Tribunal ought to have applied its decision in the assessee's own case for the earlier assessment years. If the identical issue had arisen in the assessee's own case for the earlier assessment years and the assessee had succeeded before the Tribunal then the decision of the Tribunal was binding on the authorities, which were

anterior to that of the Tribunal and would bind the Assessing Officer. Furthermore, the Tribunal could not ignore the decision of a Co-ordinate Bench unless it distinguished the decision on the merits or disagreed with the view taken by the Tribunal in which case the only option would be to refer it for consideration to a larger Bench. The matters were remanded to the Assessing Officer with a direction to the Assessing Officer to apply the decision of the Tribunal in I. T. A. Nos. 825 and 826/Mds/2010 dated June 14, 2011. (Followed *A. L. Logistics Pvt. Ltd.(2015) 374 ITR 609 (Mad.) (HC)* (AY.2006-07 to 2008-09, 2010-11, 2011-12)

A. S. Shipping Agencies Pvt. Ltd. v. Dy.CIT (2020) 428 ITR 38 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Telecommunications Services – Change in shareholding – Losses which have lapsed cannot be taken into account for purposes of computation of deduction. [S. 72(b), 79, 80IA(4), 80IA(5)(2)] 1265

The assessee-company, established in the year 1997-98, was in the business of providing cellular telecommunications services in the State of Gujarat. During the previous year relevant to the assessment year 200102, there was a change in the shareholding of the assessee, as a result of which the provisions of section 79 was made applicable and the accumulated losses from the assessment years 199798 to 200102 lapsed. The assessee therefore, made a claim for deduction under S. 80IA for the first time for the assessment year 2005-06. In the return of income, the assessee had shown total income of Rs.191,59,84,008 and claimed the entire amount as deduction under S. 80IA(4)(ii). According to the Assessing Officer, the quantum of deduction available to the assessee under S. 80IA(4)(ii) of the Act, 1961 was to be computed in accordance with the provisions of S. 80IA(5) of the Act, without the application of the provisions of section 79. This was upheld by the Commissioner (Appeals) and the Tribunal. On appeals Court held that, the assessment year 2005-06 was opted as the first year in the block of 10 consecutive assessment years for claiming deduction under S. 80IA(1). This fact of the option exercised by the assessee was not disputed by the Assessing Officer. Therefore, the assessment year 2005-06 was the initial assessment year and Circular No. 1 of 2016 ([2016] 381 ITR (St.) 1) would be applicable to the facts of the case. The Assessing Officer, the Commissioner (Appeals) and the Tribunal were not justified in applying S. 80IA(5) so as to ignore the losses which had already lapsed by operation of section 79. (AY.2005-06, 2006-07)

Vodafone Essar Gujarat Ltd. v. ACIT (2020) 424 ITR 498 / 191 DTR 288 / 315 CTR 778 / 275 Taxman 432 (Guj.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Sewage system – Contract with local bodies for development of infrastructure facility – Entitle to deduction. [S. 80IA(4)] 1266

Dismissing the appeal of the revenue the Court held that contracts with local bodies or municipal bodies undertaking contract works for developing the infrastructure-sewage system, is entitle to benefit u/s 80IA(4) of the Act.

PCIT v. V. A. Tech Wabag Pvt. Ltd. (2020) 424 ITR 105 (Mad.) (HC)

1267 **S. 80IA : Industrial undertakings – Backward area – Undertaking set up in area designated subsequently as backward – Not entitled to deduction.**
Court held that admittedly, the industrial undertaking of the assessee was not located in an industrially backward district, which had been mentioned in the notification issued by the Central Government. The assessee had set up the industry before the coming into force of the notification. Therefore, the assessee was not entitled to claim deduction under S. 80-IA(2)(iv)(c) of the Act.
CIT v. Endeka Ceramics (India) Pvt. Ltd. (2020) 423 ITR 117 / 186 DTR 369 / 313 CTR 238 / 269 Taxman 591 (Karn.)(HC)

1268 **S. 80IA : Industrial undertakings – Production of power – Energy – Power would Include steam – Steam produced can be termed as power and would qualify for the benefits. [S. 80IA(4)]**
The assessee had claimed deduction under S. 80 IA(4) on account of the operation of the captive power plant. The AO held that "vapour" would not fall within the meaning of "power". The CIT(A) and the Tribunal upheld the assessee's claim. On appeal dismissing the appeal of the revenue the Court held that S. 80IA(4) of the Act, provides for special deduction to industrial undertakings engaged in the production of power. The word "power" should be understood in common parlance as "energy". "Energy" can be in any form, mechanical, electricity, wind or thermal. In such circumstances, "steam" produced by an assessee can be termed as power and would qualify for the benefits available under S. 80IA(4) of the Act.(AY. 2011-12)
PCIT v. Jay Chemical Industries Ltd. (2020) 422 ITR 449 / 107 CCH 0459 / 275 Taxman 78 (Guj.)(HC)

1269 **S. 80IA : Industrial undertakings – Generation of Power – Captive Consumption – Valuation of profits to be taken at rate distribution companies allowed to supply electricity to consumers.**
Dismissing the appeal of the revenue the Court held that,the appropriate rate for valuation of the electricity supplied captively would be the rate at which the electricity distribution companies were allowed to supply electricity to consumers. Followed *CIT v. Godawari Power and Ispat Ltd. [2014] 42 taxmann.com 551 (Chhattisgarh) (HC), PCIT v. Gujarat Alkalies and Chemicals Ltd. [2017] 395 ITR 247 (Guj.) (HC)*
CIT(LTU) v. Reliance Industries Ltd. (2019) 104 CCH 0730 / (2020) 421 ITR 686 (Bom.) (HC)
Editorial : SLP is granted to the revenue CIT v. Reliance Industries Ltd. (2019) 418 ITR 13 (st.)(SC)

1270 **S. 80IA : Industrial undertakings – Business income – Income from other sources – Interest on deposit of margin money and interest on belated payments by customers is assessable as business profits – Entitle to deduction. [S. 28(i), 56]**
The assessee is engaged in the business of marketing cinematographic sensitised material or picture positives in its industrial undertakings situated at Pondicherry. The Assessing Officer held that in computing the deduction interest received by the assessee from the banks on the margin money deposits or interest received from customers on belated

payment of invoices was not includible and this was upheld by the Tribunal. On appeal the court held that the interest earned by the assessee on margin money deposits with the bank and interest on short-term loans and advances in the form of belated payments made by customers was very much profits and gains of the business of the assessee and therefore, the assessee is entitled to deduction under section 80IA of the Act. (AY. 1994-95, 1995-96)
Avm Cine Products v. Dy.CIT (2020) 421 ITR 431 (Mad.)(HC)

S. 80IA : Industrial undertakings – Separate and independent unit – Common excise registration – Common electricity – Common water connection – Not an extension of existing units – Different products manufactured – Written down value of machinery transferred was less than 20% of the value. [S. 80IB] 1271
The assessee is a private limited company and is engaged in manufacturing pharmaceutical products. The respondent had a manufacturing unit at Aurangabad. Later on, the assessee established another unit at Daman. Yet another unit referred to as Unit-2 at Daman was set up at the same site. The assessee claimed exemption of an income arising out of its manufacturing activities carried out at the Daman units in terms of S. 80IA of the Act, The Revenue rejected the claim on two grounds. Firstly, on the ground that the assessee had utilised old machinery, valuation of which was in excess of 20% of the total installed machinery. Secondly, that the Unit-2 was a mere extension of the existing Unit-1 and was not an independent manufacturing unit. The Tribunal had taken into account the valuation of the existing machinery used at Daman and the valuation of the written down value of the machinery transferred from Aurangabad to come to the conclusion that the same did not exceed 20% of the total value of the machinery. On appeal the Tribunal held that in Unit-1, the assessee was manufacturing oral liquids only, whereas at the Unit-2, the assessee had started manufacturing tablets, capsules as well as certain orally administered liquids. The assessee had also commenced for the first- time manufacturing activity of certain antibiotics. The Tribunal, therefore, came to the conclusion that the formation of Unit-2 at Daman cannot be seen as a mere extension of the assessee's existing unit-1. The Tribunal has discarded the Revenue's contention that both the Units shared common amenities and common central excise registration and, therefore, cannot be seen as a separate industry, was rejected by the Tribunal. The assessee had presented full details of purchase of new plot, efforts made for obtaining separate excise registration for the new industry as well as for obtaining of a separate electric connection. No question of law. (AY. 1999-2000)
PCIT v. Medley Pharmaceuticals Ltd. (2020) 185 DTR 213 / 317 CTR 599 (Bom.)(HC)

S. 80IA : Industrial undertakings – Writ of mandamus or otherwise to respondent to notify the Industrial Park of the petitioner under Rule 18C of the Income Tax Rules, 1962. [S. 80IB(10), Art. 226] 1272
The assesseee is carrying on its business under the name and style "M/s. Softzone Tech Park Limited" and is engaged in development of Industrial Park for providing facilities to IT/ITES sector and operation and maintenance of said Industrial Park. The respondent instructed vide Official Memorandum dated 1.3.2012 to withdraw the approval. On writ the Court held that the language employed in the Official Memorandum impugned

would not indicate that the instructions therein were only recommendatory. Accordingly the Court directed the CBDT to notify the petitioner's Industrial Park under Rule 18 – C of the Income Tax Rules, 1962 in terms of the Industrial Park Scheme, 2002 in an expedite manner, in any event, not later than three months from the date of receipt of certified copy of the order. (AY. 2010-11). (Scheme : Notified by the Central Government of India in the Gazette of India dated April 1, 2002 vide Notification No. 354(E) of 2002 ([2002] 255 ITR (St.) 125).
Softzone Tech Park Ltd. v. CBDT (2020) 421 ITR 398 / 185 DTR 92 / 312 CTR 289 (Karn.) (HC)

1273 **S. 80IA : Industrial undertakings – Back ward area – Not located in the industrial backward district which has been mentioned in the notification issued by the Central Govt – Not entitle to deduction. [S. 80HH(2), 80IA(2)(iv)(c)]**
Allowing the appeal of the revenue the Court held that, the industrial undertaking of the appellant-assessee is not located in the Industrial Backward District, which has been mentioned in the Notification issued by the Central Government. It is pertinent to note here that the first Notification was issued by the State Government on 03rd September 1997, whereas the second Notification was issued on 07th October 1997. In both the aforesaid Notifications, the District in which the industry of the assessee is located has not been mentioned as Industrially Backward District. It is also not in dispute that the assessee had set up the industry before coming into force of the Industry Notification. Therefore, the condition mentioned in S. 80-IA(2)(iv)(c) of the Act that an industrial undertaking should be located within such Industrial Backward District as the Central Government vide Notification prescribed has not admittedly been fulfilled by the assessee. In order to claim the deduction, the assessee has to satisfy the requirements mentioned under the provision, which admittedly the assessee does not fulfill. Therefore, the assessee is not entitled to claim deduction under S. 80-IA(2)(iv)(c) is concerned the same is sans substance.(AY. 2004-05, 2005-06)
CIT v. Endeka Ceramics (India) Pvt. Ltd. (Formerly Johnson Mathey Ceramics India Ltd.) (2020) (2020) 423 ITR 117 / 186 DTR 369 / 313 CTR 238 (Karn.)(HC)

1274 **S 80IA : Industrial undertakings – Infrastructure development – Profit earned from operating and maintaining of the water treatment system is eligible for deduction – Profit earned from contract work is not eligible for deduction. [S.80IA(4)]**
It was held that the assessee shall be entitled for deduction u/s. 80IA(4) of the Act with respect to profit earned from operating and maintaining of the water treatment system/ water supply project. However, it had also been established that the assessee is not a developer. Thus the assessee is not entitled for deduction u/s . 80IA(4) with respect to profit earned from the contract work entrusted to the assessee for procurement and supply of water treatment system/water supply project, as it will not fall under the ambit of S. 80IA (4) of the Act. (AY. 2012-13)
Dy. CIT v. Waterlife India Pvt. Ltd (2020) 192 DTR 196 / 206 TTJ 361 (Hyd)(Trib)

S. 80IA : Industrial undertakings – Infrastructure development – Developer-cum-contractor – Eligible for exemption. [S. 80IA(4)(i)] 1275

Assessee-company was engaged in business of contractors and project developers which had shown gross income from projects of Road Construction being an infrastructure facility carried out as developer and against such income, had claimed deduction, under section 80IA(4) of the Act. Assessing Officer held that the assessee was acting as a mere work contractor therefore it was not eligible for deduction. Tribunal held that the assessee being developer-cum-contractor eligible for exemption. (AY. 2005-06, 2009-10, 2010-11)

Katira Construction Ltd. v. ACIT (2020) 185 ITD 173 (Rajkot)(Trib.)

S. 80IA : Industrial undertakings – Infrastructure development – Positive income on account of disallowances – Entitle to deduction. [S. 80IA(4)] 1276

Tribunal held that the assessee is entitled to deduction under section 80IA(4) when there is positive income in hands of assessee on account of disallowance made by Assessing Officer in course of assessment proceedings. (AY. 2010-11)

Gujarat State Energy Generation Ltd. v. ACIT (2020) 183 ITD 590 (Ahd.)(Trib.)

S. 80IA : Industrial undertakings – Infrastructure development – Wind Mill – loss prior to initial assessment year which had already been set off, could not be brought forward and adjusted against profits of eligible business. [S. 80IA(5)] 1277

Assessee had wind mill units located at various places in Gujarat and Maharashtra. It claimed deduction under section 80IA of the Act. Assessing Officer disallowed deduction applying provision of section 80IA(5) and computed quantum of deduction after giving set off of notional brought forward losses and depreciation of eligible business. Tribunal held that loss prior to initial assessment year which had already been set off could not be brought forward and adjusted against profits of eligible business and, thus, assessee was entitled to deduction. (AY. 2012-13, 2013-14)

Zaveri & Co. (P.) Ltd. v. DCIT (2020) 184 ITD 777 (Ahd.)(Trib.)

S. 80IA : Industrial undertakings – Infrastructure development – Initial assessment year – Not required to reduce losses arising from eligible business which was already set off against other business income. [S. 70, 71, 72, 80IA(5)] 1278

Dismissing the appeal of the revenue the Tribunal held that while determining eligible profit, is not required to notionally reduce losses arising from eligible business in earlier years already set off against other business of assessee in terms of sections 70, 71 and 72 prior to exercise of option of 'initial assessment year'; losses arising in 'eligible business', if any, subsequent to earmarking of 'initial assessment year' would, however, continue to be governed by embargo placed in Section 80IA(5) of the Act. (AY. 2012-13)

DCIT v. Chhotabhai Jethabhai Patel & Co. (2020) 183 ITD 603 (Ahd.)(Trib.)

S. 80IA : Industrial undertakings – Initial Assessment year – Option given by CBDT to assessee to choose initial Assessment year – Prior period depreciation on investment in premises. [S. 80IA(4)(iv)(a), 119] 1279

Tribunal held that in the assessee's case for the immediately preceding assessment year, i. e., 2011-12, had allowed the deduction to the assessee observing that the initial

assessment year was the year in which the assessee had claimed first time the deduction under section 80-IA of the Act. Also find the CBDT Circular itself gave preference to the assessee to choose a particular year as the initial assessment year and in this case the assessee has chosen assessment year 2010-11. Therefore, the relief provided to the assessee by the Commissioner (Appeals) should be sustained. Tribunal also held that the entire depreciation and amortization expenses had been claimed in the balance-sheet and profit and loss account for the relevant assessment year and it included prior period deprecation on investment in premises. There was no need for any interference with the order of the Commissioner (Appeals). (AY. 2012-13)
ACIT v. Suma Shilp Ltd. (2020) 83 ITR 39 (SN) (Pune)(Trib.)

1280 **S. 80IA : Industrial undertakings – Infrastructure development – Development, Maintenance and operation of Industrial Park. [S. 80IA(4)(iii)]**
Dismissing the appeal, that when the facts and circumstances were identical, and there were no counter findings placed on record by the Department, there was no reason to deviate from the view taken in the assessee's own case for the preceding assessment year. The relief provided by the Commissioner (Appeals) to the assessee allowing the claim of deduction under section 80-IA(4)(iii) of the Act was to be sustained. (AY. 2012-13)
Dy.CIT v. Marigold Premises Pvt. Ltd. (2020) 83 ITR 32 (SN) (Pune)(Trib.)

1281 **S. 80IA : Industrial undertakings – Infrastructure development – Container freight station – Eligible for deduction. [S. 80IA(4)]**
Tribunal held that the container freight station activities carried out by the assessee were nothing but infrastructure facility as defined under section 80-IA(4) of the Act hence eligible for deduction. Followed CIT v. Container Corporation of India Ltd (2018) 404 ITR 397 (SC) (AY.2015-16)
Ameya Logistics Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 46 (SN) (Mum.)(Trib.)

1282 **S. 80IA : Industrial undertakings – Infrastructure development – Generation Of Electricity – Initial assessment year – Not required to notionally reduce losses arising from eligible business in earlier years already set off against other business – Losses arising in eligible business subsequent to earmarking of initial Assessment year to be governed by embargo placed in section 80IA(5) of the Act. [S. 70, 71, 72, 80IA(4), 80IA(5)]**
The Tribunal held that the assessee is not required to notionally reduce losses arising from eligible business in earlier years already set off against other business of assessee in terms of sections 70, 71 and 72 prior to exercise of option of initial assessment year. Losses arising in eligible business subsequent to earmarking of initial Assessment year to be governed by embargo placed in section 80IA(5) of the Act. (Circular No. 1 of 2016 dt. 15-2-2016 (2016) 381 ITR(St) 1).(AY.2012-13)
Dy.CIT v. Chhotabhai Jethabhai Patel and Co. (2020) 81 ITR 5 (SN) (Ahd.)(Trib.)

S. 80IB : Industrial undertakings – Fraudulent transactions – Denial of tax holiday – Principles of natural justice is not applicable in cases of fraud. [S. 80IB, 80IB, 11C, 115JC, 153A) 1283

Dismissing the petition, that the assessment order revealed that during the demonetisation period, the assessee had deposited a total sum of Rs. 7,54,77,619 in cash, and when the assessee was asked to explain the source, he stated that he was running a hospital at Thanjavur, for which the tax holiday was now being sought. The hospital had been the source of a huge cash holding of Rs. 7,54,77,619. Any tax holiday can be granted to a person who declares a truthful return. It cannot and should not be granted to a person who claims that he purchased medical equipment in the guise of treating poor persons for a sum of Rs. 2,32,79,760 and it is subsequently found that the entire transaction was bogus. There was every justification in the order of the Assessing Officer invoking section 115JC which provision was squarely applicable.(AY.2013-14 to 2017-18)

S. Gurushankar v. CIT(A) (2020) 427 ITR 175 / (2021) 277 Taxman 180 / (2021) 199 DTR 44 / 319 CTR 410 (Mad.)(HC)

S. 80IB : Industrial undertakings – Manufacture – Making of poultry feed amounts to manufacture – Commercially different and distinct as a commodity – Entitle to deduction. [S. 2(29BA] 1284

Dismissing the appeal of the revenue the Court held that the poultry feed was not merely rice bran or maize or vitamins or minerals but a mixture of all in calculated proportions through a process involving mills and manufacturing by the use of machinery which ran on electricity and where the end product being the pellet was wholly different from each of the ingredients and resulted in a product which was commercially different and distinct as a commodity so that it could not be considered as any of the original commodities which were used as ingredients. The assessee which was producing poultry feed was entitled to the special deduction. (AY.2009-10, 2010-11, 2012-13, 2013-14)

PCIT v. Sona Vets Pvt. Ltd. (2020) 424 ITR 387 / 193 DTR 294 / 316 CTR 569 / 275 Taxman 578 (Cal.)(HC)

S. 80IB : Industrial undertakings – Initial assessment year – Commenced manufacture in accounting year relevant to Assessment Year 2002-03 – Assessee cannot claim subsequent assessment year as year for initial deduction. [S. 80IB(4), 80IB(14)] 1285

Dismissing the appeal of the assessee the Court held that that the material on record showed that prior to the amendment by the Finance Act, 2002 in section 80IB(4), the assessee had declared that its industrial undertakings had begun manufacture on March 26, 2002. However, after the amendment of the extended date for commencement of manufacture up to March 31, 2004, the assessee sought to contend that the manufacture began for the first time at its industrial undertakings only on February 1, 2003. The Appellate Tribunal had also noted that absolutely no evidence was produced on record that the processes undertaken were in the nature of testing or trial production. No contemporaneous report of such trial production or testing was produced by the assessee. No reports of the production staff for testing were ever produced. All this material was more than sufficient to sustain the findings of fact recorded by the

Assessing Officer and the Appellate Tribunal. The Appellate Tribunal was justified in law by holding that the assessment year 2002-03 was the initial assessment year, as contemplated under clause (c) of sub-section (14) of S. 80IB of the Act. (AY. 2002-03)
Teracom Ltd. v. ACIT (2020) 420 ITR 1 / 113 taxmann.com 233 / 187 DTR 440 / 315 CTR 402 (Bom.)(HC)

1286 **S.80IB : Industrial undertakings – Fair market value of goods transferred to eligible units in higher terms – Claim was accepted in subsequent year – Disallowance was deleted [S.80IA(8), 80IB(13)]**
Where the AO had made disallowance of deduction u/s 80IB/IC by applying provisions of section 80 IA (8) read with section 80IB (13) and 80IC (7) of The Act on ground that rate of technical knowhow fee on value of goods transferred from perfumery dividend to eligible unit should be 2.75% as against 2.5% declared by assessee, was not allowed. It was noted that when claim of assessee has been accepted in subsequent year on identical facts and circumstances, which is not disputed, therefore there is no reason to sustain any such addition during the relevant assessment year. (AY. 2010-11, 2011-12)
Dharampal Satyapal Ltd. v. Dy. CCIT (2020) 191 DTR 87 (Delhi)(Trib.)

1287 **S. 80IB : Industrial undertakings – Addition made towards suppressed production – Entitle to deduction. [Form 10CCB]**
Additions were made by Assessing Officer towards suppressed sales, assessee claimed that its entitlement towards claim of deduction under section 80-IB would also be consequentially raised. Commissioner (Appeals) denied said claim on ground that claim for deduction under section 80-IB is based on satisfaction of a set of conditions and legal requirements as specified in Act, one of which is verification and authentication of claim by Auditor in statutory Form 10CCB but said mandatory requirement would not be satisfied by assessee insofar addition was made in its hands towards suppressed production. Accordingly, the order of CIT(A) is affirmed. (AY. 2012-13)
Medley Pharmaceuticals Ltd. v. DCIT (2020) 184 ITD 8/207 TTJ 143 (Mum.)(Trib.)

1288 **S. 80IB : Industrial undertakings – Sub-Licensing income – Royalty – Not related to manufacturing activity – Income excludible on net basis after adjusting loyalty paid against sub-licensing income. [S. 80IC]**
Tribunal held, that the additional grounds taken by the assessee were identical to those taken for the assessment year 2005-06 wherein the Tribunal had admitted the ground and observed that the proposition of the assessee that the sub-licensing fee, if any, ought to have been excluded on net basis after adjusting the royalty paid against income from sub-licensing because the sub-licensing income and royalty payment had a direct nexus with the know-how agreement but excluding the direct nexus of sub-licensing to the manufacturing activity of the assessee. For the assessment year 2007-08 the facts remained the same. Thus, the Assessing Officer was to compute the sub-licensing fee on net basis after adjusting the royalty paid against income from sub-licensing.(AY.2007-08 to 2011-12)
Ultimate Flexipack Ltd. v. Dy.CIT (2020) 78 ITR 410 (Delhi) (Trib.)

S. 80IB : Industrial undertakings – Disallowance of expenses Deduction to be computed taking into account income enhanced. [S. 37, 80IB(8A)] 1289

Tribunal held that the disallowance had resulted in enhancing the deduction under section 80IB(8A). The disallowance had been made because of the statutory provisions under section 37 and as a consequence of such disallowance there was an increase in the income in the hands of assessee. Therefore in computing the deduction under section 80IB(8A) in the hands of the assessee the disallowance so made ought to be considered. Tribunal directed the AO to compute the deduction under section 80IB(8A) in accordance with law. (AY.2013-14)

Lotus Labs P. Ltd. v. Dy.CIT (2020) 79 ITR 295 (Bang.)(Trib.)

S. 80IB : Industrial undertakings – Apportionment of expenses between eligible and non-eligible units – Held to be proper. 1290

Tribunal held that the allocation on basis of number of employees linked to factory operation divided by total number of employees in corporate office into sales of eligible units divided by total sales held to be proper. (AY.2010-11, 2011-12)

Reckitt Benckiser (I.) Pvt. Ltd. v. Dy.CIT (2020) 81 ITR 577 (Kol.)(Trib.)

S. 80IB(8A) : Industrial undertakings – Scientific research and development – Prescribed authority under Act alone has power to examine nature of scientific research and determine whether assessee is entitled to deduction and not the Assessing Officer. 1291

Dismissing the appeal of the revenue the Court held that, once the prescribed authority grants approval and such approval holds the field, it would not be open to the Assessing Officer or any other Revenue authority to sit in appeal over such approval certificate and re-examine the issue of fulfilment of conditions mentioned in sub-rule (1) of rule 18DA of the Rules. The prescribed authority is a specialized body having expertise in the field of scientific research and development and the requirements being extremely complex, scientific requirements have therefore, being rightly placed in the hands of the expert body. There is no plausible reason why the Assessing Officer should be allowed to sit in appeal over the decision of a body, which is prescribed under the Rules. An issue with regard to violation of conditions mentioned in rule 18DA can be looked into only by the prescribed authority and not by the Assessing Officer.(AY.2008-09)

CIT v. Quintiles Research (India) P. Ltd. (2020) 429 ITR 4 / 196 DTR 47 / (2021) 318 CTR 64 / 276 Taxman 10 (Karn.)(HC)

S. 80IB(8A) : Industrial undertakings – Scientific research and development – Hybrid cotton seeds – Matter remanded. [S. 80IA] 1292

Assessee-company, engaged in business of research in hybrid seeds, entered into a sub-licence agreement with MMB, a USA company, to acquire Monsanto Technology to test, produce and sell insect tolerant cotton planting seeds. Assessing Officer disallowed claim of deduction of on ground that since assessee-company was having an agreement with MMB to whom payment under head trait value was made for use of their technology and as such, assessee-company was not carrying out any research activities rather it was only passing on technology of MMB to parties from whom royalty was being received. Tribunal held that since no patent or copyright had ever been developed by assessee-company during last 5-6 years, role of assessee-company for carrying out scientific research and development was

not clearly established however since Assessing Officer as well as Commissioner (Appeals) had not carried out any fact finding exercise to bring on record if laboratory testing and marketing of Hybrid B.t. Cotton Seeds by assessee-company on basis of Monsanto Technology availed of by virtue of sub-licencee agreement amounted to research activity, matter was to be remitted back to Assessing Officer to examine afresh if assessee-company had carried out any scientific research and development activities during year under assessment independent of technology purchased from MMB. (AY. 2010-11, 2011-12)
DCM Shriram Consolidated Ltd. v. ITO (2020) 185 ITD 596 / (2021) 201 DTR 113 / 211 TTJ 292 (Delhi)(Trib.)

1293 **S. 80IB(10) : Housing projects – Completion certificate – Issuance of completion certificate after cut off date by Local Authority but mentioning date of completion of certificate before cut off date did not fulfil condition specified in clause (a) of section 80-IB(10) read with Explanation (ii) – Not entitle to deduction. (Order of High Court is stayed)**
Allowing the appeal of the revenue the Court held that issuance of completion certificate after cut -off date by Local Authority but mentioning date of completion of certificate before cut -off date did not fulfil condition specified in clause (a) of section 80-IB(10) read with Explanation (ii) is not entitle to deduction. Order of Assessing Officer is affirmed. (AY. 2002-03 to 2006-07)
CIT v. Global Estate (2020) 114 taxmann.com 95 (MP)(HC)
Editorial : Operation of the High Court order is stayed Global Estate v. CIT (2020) 270 Taxman 178 (SC)

1294 **S. 80IB(10) : Housing projects – Date of completion of construction – Separate project – Separate approval was granted – Entitle to exemption.**
Dismissing the appeal of the revenue the Court held that, the assessee had established on record that buildings in question were part of separate project for which a separate approval was granted by Municipal Corporation. Accordingly, Tribunal accepted two different dates of completion taking into account respective dates of approval of housing project. Order of Tribunal allowing the exemption was affirmed. (AY. 2008-09)
PCIT v. Kewal Real Estate (P.) Ltd (2020) 113 taxmann.com 623 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Kewal Real Estate (P.) Ltd (2020) 270 Taxman 175 (SC)
Note : Also digested at page No. 412, Case No. 1310

1295 **S. 80IB(10) : Housing projects – Undertaken development and construction of housing project on a piece of land which was different from land on which erstwhile promoters had completed construction of houses – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that the assessee has undertaken development and construction of housing project on a piece of land which was different from land on which erstwhile promoters had completed construction of houses hence entitle to deduction. (AY. 2010-11)
PCIT v. Yash Associates (2020) 115 taxmann.com 425 / 423 ITR 215 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Yash Associates (2019) 417 ITR 60 (St) / (2020) 274 Taxman 103 (SC)
Note : Also digested at page No. 412, Case No. 1309

S. 80IB(10) : Housing projects – Sale of flats to single or related persons – Amendment is prospective – Unaccounted income found in the course of search – Business income – Deduction cannot be denied. [S. 80IB(10)(e), (f)] 1296

Assessing Officer disallowed the claim on ground that some residential units were sold to single or related persons or a single person, thus, contravening clauses (e) and (f) of section 80IB(10). Tribunal allowed the claim on appeal by revenue the Court held that amendment brought on 1-4-2010 vide clauses (e) and (f) to section 80IB(10) are prospective in nature, since sale of flats by assessee took place in 2007-08, such amendment to section 80-IB(10) could not be applied. Deduction is rightly allowed by the Appellate Tribunal. Court also affirmed the order of the Tribunal wherein the Appellate Tribunal held that unaccounted money found during search proceedings at premises of assessee-company, engaged in business of building and developing housing project, was treated to be business income of assessee by Assessing Officer, assessee could not be denied deduction under section 80IB(10) in respect of such receipt. (AY. 2010-11)

CIT v. Mandavi Builders, Mangalore (2020) 275 Taxman 519 / 317 CTR 709 / 195 DTR 273 (Karn.)(HC)

S. 80IB(10) : Housing projects – Developer – Owner – If developer was allowed to claim deduction under section 80IB (10) equivalent to its share in profit, assessee land owner should also be allowed to claim deduction of its share, direction of Tribunal was proper. [S. 260A] 1297

Tribunal directed that if developer was allowed to claim deduction equivalent to its share in profit, assessee land owner should also be allowed to claim deduction of its share. Tribunal further directed that in case assessee had incurred any expenditure towards land development and developer had claimed deduction under section 80IB(10) of only its share, then assessee should be allowed to claim deduction under Section 80-IB(10) of its share. Dismissing the appeal of the revenue the Court held that direction of Tribunal was proper. (AY. 2008-09, 2010-11)

CIT v. Astoria Leathers (2020) 273 Taxman 159 (Mad.)(HC)

S. 80IB(10) : Housing projects – Completion / occupation certificate issued by Municipality – Tribunal order allowing the claim is affirmed. [S. 260A] 1298

Assessee a partnership firm was engaged in business of developers and builders. It fled e-return of income declaring total income at Nil following claims of deduction under section 80-IB. During assessment proceedings, assessee stated before Assessing Officer that completion certificate for building in question was under process, though building project was completed. Assessing Officer did not allow claim of assessee for deduction under section 80IB (10) which was thereafter added to income of assessee and treated as its income. Commissioner(Appeals) upheld order of Assessing Officer on ground that assessee did not produce completion/ occupation certificate within stipulated time limit. On appeal Tribunal held that the assessee had furnished commencement certificate and, occupation certificate issued by Municipal Corporation, besides other documents evidencing full occupation/permission for all blocks of building project within stipulated time limit and accordingly allowed claim of assessee under section 80IB(10) and held that building was completed within stipulated time. High Court affirmed the Order of the Tribunal. (AY. 2011-12)

PCIT v. Rattanchand Rikhadbas Jain Chemical Works (2020) 273 Taxman 261 (Bom.)(HC)

1299 **S. 80IB(10) : Housing projects – Pro rata deduction is eligible. [S. 80IB(10)(c)]**
Allowing the appeal of the assessee the Court held that the Tribunal was not justified in denying pro rata deduction to the assessee under section 80-IB(10). The order of the Commissioner (Appeals) to the extent he granted pro rata deduction was restored. (AY.2010-11 to 2012-13)
Models Construction Pvt. Ltd. v. Dy.CIT (2020) 429 ITR 605 / (2021) 279 Taxman 247 (Bom.)(HC)

1300 **S. 80IB(10) : Housing projects – Condition coming into effect from 19-8-2019 – Allotments made prior to that date – Entitled to pro-rata deduction. [S. 80IB(10)(f)]**
Dismissing the appeal of the revenue the Court held that, clause (f) to section 80-IB(10) came into force on August 19, 2009, in terms of which, there was a prohibition for allotment in favour of a spouse. The allotment of the two flats to SK on March 13, 2009 and June 29, 2009 and the allotment of the flat to SP on June 26, 2009 would not constitute a breach of the condition in section 80-IB(10)(f). Even if the area proportionate to the four residential units was excluded from consideration, the available area exceeded 4000 sq. meters or one acre. Since only one of the residential units could be excluded, the area exceeded one acre and there was no breach whatsoever on this count. (AY. 2012-13)
Kamat Constructions Pvt. Ltd. v. CIT (2020) 429 ITR 609 / 277 Taxmann 640 (Bom.)(HC)

1301 **S. 80IB(10) : Housing projects – Eligible deduction on proportionate basis.**
Dismissing the appeal of the revenue the Court held that the assessee is eligible deduction on proportionate basis. (AY.2007-08 to 2011-12)
Devashri Nirman Ltd. v. ACIT (2020) 429 ITR 597 / (2021) 277 Taxman 408 (Bom.)(HC)
PCIT v. Devashri Nirman Ltd. (2020) 429 ITR 597 / (2021) 277 Taxman 408 (Bom.)(HC)
Note : Also digested at page No. 411, Case No. 1305

1302 **S. 80IB(10) : Housing projects – Single approval from local authority for development and construction of residential units more and less than 1500 Sq. Ft. in area – Entitled to deduction. [S. 80IB(10)(c)]**
Dismissing the appeal of the revenue the Court held that the condition laid down under section 80IB(10)(c) was fulfilled when the assessee claimed the deduction with respect to the residential units, which had built-up area less than 1500 sq. ft. Under section 80IB(10) there was no provision requiring the assessee to obtain a commencement certificate from the local authority for development and construction of the residential unit having more than 1500 sq. ft area. Therefore, whether such development permission included the area for the residential units, which were more than 1500 sq. ft. would not be relevant for deciding the eligibility for deduction under section 80IB(10). (AY.2010-11)
PCIT v. Pratham Developers (2020) 429 ITR 114 (Guj.)(HC)

1303 **S. 80IB(10) : Housing projects – Proportionate deduction in respect of individual units permissible.**
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the assessee was eligible for deduction under section 10B having satisfied the requirements as laid down in clauses (a) to (d) of section 80IB(10). (AY.2009-10)
CIT v. Brigade Enterprises Ltd. (No. 2) (2020) 429 ITR 615 / (2021) 197 DTR 319 / 318 CTR 325/ 278 Taxman 81 (Karn.)(HC)

S. 80IB(10) : Housing projects – Proportionate deduction allowable – Each residential block to be considered as a separate unit – Res judicata – not applicable – Principle of consistency must be followed. 1304

Dismissing the appeal, the Court held that the housing project of the assessee was approved in respect of an area of 48,939 square feet, which was more than one acre. Therefore, the assessee had complied with the requirement contained in clause (b) of section 80-IB(10). In respect of each block, the assessee had taken separate approval. The Tribunal, inter alia, held that a individual residential block had to be considered as separate project and the commercial space which was a separate part of the project should not be considered. It further held that similar view was taken by the Tribunal in the case of the assessee for the assessment year 2004-05, which had been upheld by the High Court. The principles of consistency had to be followed. (AY.2007-08)

CIT v. Brigade Enterprises Ltd. (No. 1) (2020) 429 ITR 511 / 195 DTR 177 / 275 Taxman 283 / (2021) 318 CTR 178 (Karn.)(HC)

S. 80IB(10) : Housing projects – Proportionate deduction – Entitle to proportionate deduction in respect of units fulfilling conditions. 1305

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in holding that the assessee was entitled to deduction under section 80-IB(10) on proportionate basis.(AY.2007-08 to 2011-12)

Devashri Nirman Ltd. v. ACIT (2020) 429 ITR 597 (Bom.)(HC)

PCIT v. Devashri Nirman Ltd. (2020) 429 ITR 597 (Bom.)(HC)

S. 80IB(10) : Housing projects – Completion of project within specified time – Certificate of registered certified Architect sufficient. [S.147, Karnataka Municipal Corporations Act, 1976. [S. 310] 1306

The assessee was carrying on the business of development and construction. The return of income filed by the assessee was taken up for scrutiny and it came to be accepted. Subsequently, in exercise of power vested under S. 147, reassessment proceedings were commenced for withdrawing the deduction allowed under S. 80IB. The claim of the assessee for deduction under S. 80IB(10) which was in respect of a residential project was disallowed by the AO on the ground that the assessee had failed to produce the completion certification. The CIT(A) and the Appellate Tribunal held that the assessee was entitled to deduction. On appeal dismissing the appeal the Court held that a finding of fact was recorded by the Appellate Tribunal that the assessee had furnished the certificate of the registered certified architect dated February 27, 2008 before the AO r to demonstrate or establish that the project in question had been completed within the period stipulated under S. 80IB(10) of the Act. Accordingly the assessee was entitled to deduction. (AY.2008-09)

PCIT v. Majestic Developers (2020) 426 ITR 175 / 122 taxmann.com 123 (Karn.)(HC)

Editorial : SLP of revenue dismissed, PCIT v. Majestic Developers (2021) 278 Taxman 187 (SC)

1307 **S. 80IB(10) : Housing Project – Entire project as composite one – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that the assessee had obtained approvals of the plan for the proposed projects and planned the entire project regarding the number of floors, the number of apartments in each floor, the cost of each apartment based on the square foot area of the apartment and it was done as a composite project. Though a ground was raised before the Tribunal as to the location of the plots in question in two different streets, no arguments had been advanced. Decision of the Appellate Tribunal is affirmed. (AY. 2007-08, 2008-09, 2009-10)
CIT v. A. Jagadeeswari (Smt.) (2020) 423 ITR 8 / 274 Taxman 168 (Mad.)(HC)

1308 **S. 80IB(10) : Housing projects – Joint venture agreement – Developer need not be the owner of the land – Entitle to deduction.**
The AO disallowed the claim on the ground that the assessee is not the owner of the land. CIT(A) allowed the claim. Tribunal affirmed the order of the AO. On appeal the Court held that the joint venture agreement clearly showed that the assessee was the developer and ETA was the builder and mutual rights and obligations were inextricably linked with each other and undoubtedly, the project was a housing project. Therefore, the assessee would be entitled to claim deduction. (AY. 2010-11)
Bashyam Constructions P. Ltd. v. Dy.CIT (2019) 104 CCH 740 / (2020) 422 ITR 346 (Mad.) (HC)

1309 **S. 80IB(10) : Housing projects – Deduction could not be denied on the ground that project was not completed within prescribed time limit.**
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that although the first approval had been given by the Municipal Corporation on March 17, 2004, the project on which deduction was claimed was different from the project which the previous developer had conceived and that the deduction could not be denied under S. 80IB(10) on the ground that the project had not been completed within the prescribed time. (AY.2010-11)
PCIT v. Yash Associates (2020) 423 ITR 215 (Bom.)(HC)
Editorial : SLP of revenue is dismissed (SLP No.18066 of 2019 dt.29/07/2019)(2019) 417 ITR 60 (St.)(SC)

1310 **S. 80IB(10) : Housing projects – Complied all the conditions – Failure to complete the project attributable to the assesee – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that ; appellate proceedings Tribunal's concluded that assessee had satisfied all conditions stipulated in provisions of S. 80-IB(10) of the Act. Order of Tribunal is affirmed. Followed *PCIT v. Kewal Real Estate Developers (P.) Ltd. 793 of 2016 dt 10-12-2018*
PCIT v. Kewal Real Estate Developers (P.) Ltd. (2020) 113 taxmann.com 49 / 268 Taxman 388 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Kewal Real Estate Developers (P.) Ltd. (2020) 268 Taxman 387 (SC)

S. 80IB(10) : Housing projects – Completion of project – Partial construction of project – Eligible for exemption. 1311

Question raised before the High Court by the revenue was "Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in holding that the project was complete on or before 31.03.2009 when occupation certificate was accorded only in respect of 9206.30 Sq.Mtr. Against sanction of 11960.15 sq.Mtr. ?"

Following the order of High Court in assessee's own case bearing ITA No. 655 of 2017 dt 6-6-2019 for the AY. 2009-10 the question raised is decided against the revenue and in favour of the assessee. (ITA No. 2099/Mum/ 2015 dt 15-12-2016) (ITA No 1755 of 2017 dt 22-01-2020. (AY.2010-11)

PCIT v. Sadhana Builders Pvt. Ltd. (Bom.)(HC) (UR)

S. 80IB(10) : Housing projects – Building competition certificate – Mere delay in issuing competition certificate – Exemption cannot be denied – Inner measurements of a residential unit as well as projection or balcony would form part of built – up area – Within a composite housing project, where there are eligible and ineligible units, assessee can claim proportionate deduction in respect of eligible units – Higher GP rate cannot be a sole decisive factor for declining an assessee's claim of deduction – Period during which lockdown was in force in view of COVID – 19 pandemic, would stand excluded for purpose of working out time limit for pronouncement of orders, as envisaged in rule 34(5). [S. 255, ITAT R. 34(5)] 1312

Tribunal held that when the builder having completed housing project within stipulated time period had applied for completion certificate, but issuance of same involved delay on part of local authority, in such type of cases there would be no justification in denying assessee's claim for deduction u/s 80IB(10) of the Act. Tribunal also held that if the assessee builder had de facto provided to purchaser of flat exclusive possession/ enjoyment of dry balcony attached with flat, same would be included while computing built-up area of such flat.-Held, yes however, if such dry balcony is either in nature of a service projection to be used for servicing building or carrying out repairs of building, or a common area shared with other residential units, then same would not be included in built-up area of flat. Tribunal also held that within a composite housing project, where there are eligible and ineligible units, assessee can claim deduction in respect of eligible units in project and claim proportionate relief in units satisfying extent of built-up area. Excess profit was attributable to steep rise in price of land in year in which flats were sold, had also not been taken cognizance of by Assessing Officer in course of assessment proceedings. Accordingly, the claim of deduction could not be declined. Tribunal also held that period during which lockdown was in force in view of COVID-19 pandemic, same would stand excluded for purpose of working out time limit for pronouncement of orders. (AY. 2011-12, 2013-14)

Harshvardhan Constructions v. ITO (2020) 81 ITR 299 / 183 ITD 497 / 207 TTJ 663 (Mum.)(Trib.)

1313 **S. 80IB(10) : Housing projects – Interest on bank deposits – Transfer fee and interest received for delay in payment against flat – Eligible deduction – Net interest can be disallowed.**

Tribunal held that, transfer fee and interest received for delay in payment against flat is eligible deduction. As regards interest on bank deposits the same should be restricted to net interest. Followed *ACG Associated Capsules P. Ltd v. CIT (2012) 343 ITR 89 (SC)* (AY.2011-12)

Satern Griha Nirman P. Ltd. v. ITO (2020) 79 ITR 359 (Kol.) (Trib.)

1314 **S. 80IB(10) : Housing projects – Completion certificate is not obtained for certain flats – Not entitled to deduction in respect of those flats – Development plan road acquired by Municipal Corporation not be reduced from total land area of project.**

Tribunal held that for the 12 flats for which the completion certificate was not obtained by the assessee, the assessee was not entitled to deduction under section 80IB (10) of the Act. The Tribunal also held that the project size has to be looked into in totality with all amenities which were there before such development plan road was acquired by the municipal authority. Therefore, the development plan road could not be alienated or separated from the main portion of the land and the area of the plot should be inclusive of the land acquired by the municipal corporation as development plan road. (AY. 2008-09)

Dy. CIT v. Shewale and Sons (2020) 79 ITR 310 / 184 ITD 899 / 196 DTR 17 / 208 TTJ 901 (Pune)(Trib.)

1315 **S.80IB(11A) : Industrial undertaking – Business of processing, preservation and packing of fruits or vegetable eligible – Handling – Storage of grains – Basmati Rice – Entitle to deduction. [S.80IB(2)]**

The activities conducted by the assessee deriving income from the integrated business of handling storage and transportation of food gains. The assessee cannot be denied deduction under Section 80IB(11A) either in respect of activities conducted by assessee to meet demand of section or for non-compliance with conditions depleted under Section 80IB (2). Therefore held that no illegality/ regularity either in reasoning or conclusions reached by CIT(A) and appeal is dismissed. (AY. 2007-08)

DCIT v. L.T. Foods Ltd (2020) 208 TTJ 137 (Delhi)(Trib)

1316 **S. 80IC : Special category States – Substantial expansion – Entitle to deduction.**

Allowing the appeal of the assessee the Court held that the assessee undertaking which carried out 'substantial expansion' within specified window period i.e. between 7-1-2003 and 1-4-2012, would be entitled to deduction on profits at rate of 100 per cent, under section 80IC post said expansion. Followed *Stovekraft India v. CIT (2018) 400 ITR 225 (Himachal Pradesh)(HC).*

SBS Biotech Unit-I v. PCIT (2020) 114 taxmann.com 99 (Himachal Pradesh) (HC)

Editorial : SLP of revenue is dismissed PCIT v. SBS Biotech Unit-I (2020) 270 Taxman 173 (SC)

S. 80IC : Special category States – Profit of undertaking is eligible for deduction – Disallowance of purchase is held to be not valid. [S. 80A(5)] 1317

Dismissing the appeal of the revenue the Court held that the assessee-unit was eligible for deduction u/s 80IC; it was not in dispute that the assessee was entitled to the benefit of S. 80IC on the entire eligible income; it was also not in dispute that the AO had granted relief to the assessee, under S. 80IC, qua the sum of '73,91,587/-claimed in the return of income; when the profits, for the purposes of S. 80IC, were to be calculated as per S. 28 to 44BB of the Act, the purchases were also covered thereunder; while calculating the profits of any business, purchases were also deductible expenditure; disallowance of purchases resulted in reduction in the purchases amount and, consequently, increase in the profit which would be again be eligible for exemption u/s 80IC of the Act; it would not increase the income tax liability of the assessee, which would remain the same even if the purchases were disallowed; the contention of the Revenue, that the assessee had not made any claim in the return of income for the amount claimed as deduction and, therefore, the deduction should not be allowed in view of S. 80A(5) of the Income Tax Act, was not sustainable, the entire profit of the assessee was exempt u/s 80IC. Accordingly, the order of the Tribunal is affirmed.

PCIT v. Laxmi Electronic (2020) 186 DTR 373 / 312 CTR 310 (Uttarakhand)(HC)

S. 80IC : Special category States – Manufacture of Perfumes and Fragrances – Eligible deduction. 1318

Assessee had began to manufacture items of Perfumes and Fragrances in notified area. Even if sales were made to three parties only deduction cannot be denied.(AY. 2010-11)

ACIT v. Vasundhara Flavours (2020) 204 TTJ 663 (Delhi) (Trib.)

S. 80IC : Special category States – Deduction could not be restricted proportionately to split/broken period when undertaking undertook substantial expansion and it was eligible on basis of annual profit. 1319

Tribunal held that deduction could not be restricted, proportionately to split/broken period when undertaking undertook substantial expansion and it was eligible on basis of annual profit. (AY. 2005-06)

Mahindra & Mahindra Ltd. v. ACIT (2020) 184 ITD 621 (Mum.)(Trib.)

S. 80IC : Special category States – Electricity consumption – Not producing toll tax receipt does not make the purchases as bogus – Entitle to deduction. 1320

Tribunal held that merely on the ground of consumption of electricity without any comparative analysis or without any further evidence, the Assessing Officer could not have said that goods had not been manufactured by the assessee especially when in the last year it had been accepted. Merely because the assessee could not produce the toll tax receipt, the Assessing Officer could not have said that the goods had not been transferred from Bharal check post to Delhi. Not mentioning something in the bills did not make purchases of goods through those bills bogus. Thus the Assessing Officer was directed to grant deduction under section 80 IC to the assessee for unit situated at Ponta Sahib.(AY.2014-15)

Bharat Sons (HUF) v. ACIT (2020) 79 ITR 29 (SN) (Delhi)(Trib.)

1321 **S. 80IC : Special category States – Scrap – Sale of scrap is part of business income – Eligible for deduction.**
Tribunal held that scrap consisted of empty drums, off-cuts, trims, coils, leftovers, packing material, gatta, scrap rolls etc, which were generated in the course of the business. Accordingly, the income derived from the business and eligible for deduction. Followed *CIT v. Sadu Forgings Ltd. 336 ITR 444 (Delhi) (HC)* (ITA No. 3936/Del/2017 dt.4-9-2020 (AY. 2012-13)
Isolloyd Engineering Technologies Ltd. v. DCIT (2020) BCAJ-October-P. 37 (Delhi)(Trib.)

1322 **S. 80IC : Special category States – Sale of scrap – Scrap produced during manufacture – Eligible to deduction – Disallowance of interest – Quantification – Matter remanded. [S. 80IB]**
The Tribunal held that the scrap materials came into being during the manufacturing process of the industrial undertaking in the manufacture of certain products. The scrap materials had a saleable value. Profits and gains from the sale of scrap materials were eligible to deduction in an amount equal to twenty per cent under section 80-IC of the Act, inasmuch as such gains or profits were derived from the industrial undertaking and includible in the gross total income of the assessee. (AY.2010-11, 2011-12)
Reckitt Benckiser (I.) Pvt. Ltd. v. Dy. CIT (2020) 81 ITR 577 (Kol.)(Trib.)

1323 **S. 80ID : Hotels and convention centers in specified area – Transfer of a building previously used as a Hotel – Not eligible deduction. [S. 80ID(3)]**
Assessee claimed deduction under section 80ID in respect of profit derived from hotel. The AO disallowed the claim. Tribunal held that since assessee had commenced already established business by way of transfer of a building previously used as a hotel to a new business, assessee was not eligible for deduction. (AY. 2012-13)
Ramesh Bhatia (HUF) v. ITO (2020) 185 ITD 130 (Delhi)(Trib.)

1324 **S. 80JJA : Bio-degradable waste – Collecting and processing – Deduction allowed for four consecutive years – Deduction cannot be denied for fifth year.**
The AO held that the deduction was allowable up to the assessment year 2004-05 being the fifth and last year for the claim. The year under consideration was the eight years from the year in which the business eligible for deduction under section 80JJA was commenced. In such circumstances, the deduction claimed under section 80JJA came to be disallowed and was added to the total income of the assessee. The Appellate Tribunal took into consideration that fact that the first year in which section 80JJA deduction was claimed was the assessment year 2004-05 and during the course of the scrutiny assessment proceedings, the AO had specifically called upon the assessee to show that the deduction under S. 80JJA was allowable during the year under consideration and no such deduction was claimed in the earlier years. The Appellate Tribunal also held that the AO had duly accepted it as the first year of claim. Considering the fact, the Appellate Tribunal took the view that the current year was the fifth and the final year. Hence the claim was admissible. On appeal by the revenue dismissing the appeal the Court held that when the Department thought it fit to grant the deduction for four consecutive years, there was no reason to raise any objection with regard to admissibility of such deduction under S. 80JJA for the fifth and the final assessment year 2008-09. (AY. 2008-09)
CIT v. Maps Enzymes Ltd. (2020) 422 ITR 554 / 193 DTR 318 / 317 CTR 230 (Guj.)(HC)

S. 80JJAA : Employment of new workmen – Persons working in software industry could be said to be workmen who render technical services and not services in the nature of supervisory or management character – Electronic design automation (FDA) software license – First year of employment – Employees had worked for more than 300 days during relevant assessment years. 1325

Persons working in software industry could be said to be workmen who render technical services and not services in the nature of supervisory or management character. Assessee hired 287 new employees who joined during financial year 2006-07 on or after 12-6-2006, the assessee claimed deduction under section 80JJA of the Act. The AO held that since additional wages paid to these 287 employees were not eligible for deduction in assessment year 2007-08 as they did not work for more than 300 days in financial year 2006-07 in relevant assessment year 2008-09 also, benefit of deduction would not be allowed. On appeal the Tribunal held that since employees had worked for more than 300 days during relevant assessment years, assessee could not be denied deduction under section 80JJA on ground that if in first year of employment additional wages paid to these new employees was refused then for succeeding years also deduction could not be allowed. (AY. 2008-09)

Texas Instruments (India) (P.) Ltd. v. ACIT (2020) 183 ITD 7 / 195 DTR 347 / 207 TTJ 586 (Bang.)(Trib.)

S. 80JJAA : Employment of new workmen – Provisions as existing before 1-4-2016 applicable to earlier years. 1326

Tribunal held that sub-section (3) of section 80JJAA as amended by the Finance Act, 2016 makes it clear that the provisions that existed before 1st day of April, 2016 shall apply to the earlier years, meaning thereby the provisions, which are applicable to a particular year, should be applied for determining the eligibility of the assessee to claim this deduction. Accordingly, the Assessing Officer was directed to apply with the provisions of section 80JJAA as applicable to the years. (AY.2012-13, 2013-14)

Century Link Technologies India Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 71(SN) (Bang.)(Trib.)

S. 80JJAA : Employment of new workmen – Provisions as existing before 1-4-2016 applicable to earlier years – AO to apply provisions as applicable to each of the earlier years. 1327

On appeal, the Tribunal held that, S. 80JJAA(3) of the Act as amended by the Finance Act, 2016 makes it clear that the provisions that existed before April 1, 2016 shall apply to the earlier years, meaning thereby the provisions, which are applicable to a particular year, should be applied for determining the eligibility of the assessee to claim this deduction. The Assessing Officer was directed to apply the provisions of Section 80JJAA of the Act as applicable to the respective year(s). (AY. 2012-13, 2013-14)

Century Link Technologies India Pvt. Ltd. v. DCIT (2020) 78 ITR 71 (SN). (Bang.)(Trib.)

S. 80JJAA : Employment of new workmen – Rendering software development services – Regarded as an industrial undertaking engaged in manufacture of article or thing – Eligible for deduction. 1328

Tribunal held that rendering software development services is regarded as an industrial undertaking engaged in manufacture of article or thing. Accordingly the software

professional who were employees of assessee-company could be considered as workman, hence eligible for deduction. Followed *ESI Corpn. v. Reliable Software Systems (P.) Ltd. [2012] 5 AIR Bom. R 795 (para 12] ACIT v. Texas Instruments (India) (P.) Ltd. [2009] 27 SOT 72 (URO)(Bang.) (Trib.)*. The Tribunal held that Software Industry has also been notified as Industry for the purpose of Industrial Disputes Act, 1947 by the State of Karnataka and that the employees employed in software development industry render technical services and not services in the nature of supervisory or management character. (AY. 2012-13)
Manhattan Associates (India) Development Centre (P.) Ltd. v. DCIT (2020) 180 ITD 257 / 203 TTJ 1015 / 187 DTR 105 (Bang.)(Trib.)

1329 **S. 80-O : Royalties – Foreign enterprises – services rendered in India and not the 'services rendered from India – Merely having a contract with a foreign enterprise and mere earning foreign exchange does not ipso facto lead to the application of S. 80-O of the Act – Without any claim for expertise capable of being used abroad rather than in India, would not be entitled to deduction – The burden is on the assessee to prove eligibility to an incentive or exemption provision and it is subject to strict interpretation – Interpretation of taxing statutes – When there is ambiguity in exemption which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.**

The assessee who had been engaged in providing services to certain foreign buyers of frozen seafood and/or marine products and had received service charges from such foreign buyers/enterprises in foreign exchange, claimed deduction under S. 80-O of the Act as applicable for the relevant assessment year/s. The AO denied the deduction essentially with the finding that the services rendered by respective assessees were the 'services rendered in India' and not the 'services rendered from India' and, therefore, the service charges received by the assessees from the foreign enterprises did not qualify for deduction in view of clause (iii) of the Explanation to S. 80-O of the Act. Tribunal allowed the claim of the assessee. On appeal High Court affirmed the order of the AO. On appeal the Supreme Court affirmed the order of the High Court. The Supreme Court observed that the sweeping proposition in some Supreme Court decisions that when two views are possible, the one favourable to assessee has to be preferred & that a tax incentive provision must receive liberal interpretation, is disapproved by the Constitution Bench in *Commissioner of Customs v. Dilip Kumar (2018) 9 SCC 1 (FB)*. when applied to incentive provisions like those for deduction, would also be that the burden lies on the assessee to prove its applicability to his case; and if there be any ambiguity in the deduction clause, the same is subject to strict interpretation with the result that the benefit of such ambiguity cannot be claimed by the assessee, rather it would be interpreted in favour of the revenue. In view of the Constitution Bench decision in Dilip Kumar & Co. (supra), the generalised observations in *CIT v. Baby Marine Exports (2007) 290 ITR 323 (SC)* with reference to a few other decisions, that a tax incentive provision must receive liberal interpretation, cannot be considered to be a sound statement of law; rather the applicable principles would be those enunciated in *UOI v. Wood Papers Ltd. (1990) 4 SCC 256*, which have been precisely approved by the

Constitution Bench The burden is on the assessee to prove eligibility to an incentive or exemption provision and it is subject to strict interpretation. If there is ambiguity, the benefit of the ambiguity has to go to the Revenue. However, if the assessee proves eligibility, a wide and liberal construction of the provision has to be done. Merely having a contract with a foreign enterprise and mere earning foreign exchange does not ipso facto lead to the application of s. 80-O of the Act. (AY. 1993-94 to 1997-98)
Ramnath and Co. v. CIT (2020) 425 ITR 337 / 315 CTR 217 / 272 Taxman 275 / 190 DTR 1 (SC)
Editorial : CIT v. Ramnath & CO (2016) 388 ITR 307/289 CTR 355/(2017) 79 taxmann. com 416 (Ker.) (HC) is affirmed.

S. 80P : Co-operative societies – Society Registered Under Karnataka Act of 1997 falls within definition of Co-operative society – Entitled. [S. 2(19), Art. 14, 19(1)(c), Karnataka Souharda Sahakari Act, 1997, Karnataka Co-operative Societies Act, 1959) 1330
The assessee, a society registered under the Karnataka Souharda Sahakari Act, 1997 was in banking business and provided credit facilities to its members. On a writ petition to declare that the assessee registered under the 1997 Act was on par with a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and was entitled to claim the benefit under section 80P of the Income-tax Act, 1961 and to defreeze the assessee's bank accounts. Allowing the petition, the Court held that the assessee registered under the 1997 Act was a co-operative society within the definition of co-operative society under S. 2(19) of the Act and should be extended the benefit under S. 80P of the Act. Consequently, the order of assessment and order to freeze the assessee's bank account were to be quashed. *Swabhimani Souharda Credit Co-Operative Ltd. v. government of India(2020) 421 ITR 670 (Karn.) (HC)*, applied.
Shri Vitthalray Souharda Pattin Sahakari Niyamit v. UOI (2020) 426 ITR 457 / 121 taxmann.com 300 / 277 Taxman 276 (Karn.)(HC)

S. 80P : Co-operative societies – Interest on statutory reserves – Deduction denied without speaking order – Assessment orders held to be not valid – Mutuality – Whether principle of mutuality is applicable or not is pending before Supreme Court hence the assessees had to file a statutory appeal before the CIT(A). Directed to file appeals. [S. 143(3), Art. 226] 1331
The assessees were primary agricultural co-operative societies. Some of them claimed deduction on interest from statutory reserves which was denied. Some of them claimed exemption on the ground of mutuality. This was denied by the Assessing Officer. On writ petitions the Court held that the Assessing Officer rejected the submissions cursorily stating in a single line that, "statutory reserve can also be considered as surplus funds of the assessee". The judgment of the Supreme Court in the case of *CIT v. Nawanshahar Central Co-Operative Bank Ltd (2007 289 ITR 6 (SC)* had not been considered or discussed and neither had the plea of the assessees for netting of interest paid and earned. Mere reliance on a judgment without reference to the facts involved in the cases, those in the case relied upon and those in the case of the assessee in question, would not justify the conclusion arrived at. The orders rejecting the claim for special deduction of interest on statutory reserve were not valid. As regards to the

claim of the assessees for exemption by application of the principle of mutuality and its rejection there were cases of other identically placed agricultural co-operative marketing societies that the Department had carried or intended to carry to the Supreme Court. The questions of law would be decided in those cases. Since the questions of law in this regard were still at large, the assessees had to file a statutory appeal before the CIT(A).
K. 2058, Saravanampatti Primary Agricultural Co-Operative Credit Society Ltd. v. ITO (2020) 426 ITR 251 / 187 DTR 185 / 313 CTR 459 / 275 Taxman 87 (Mad.)(HC)

1332 **S. 80P : Co-operative societies – Member – Share holding member and associate member – Assessing Officer cannot draw distinction between shareholding members and associate members – Entitle to deduction. [S. 80P(4)(b), Tamil Nadu Co-Operative Societies Act, 1983, S. 2(16)]**
Dismissing the appeals of the revenue the Court held that the definition of the word "member" in S. 2(16) of the Tamil Nadu Co-operative Societies Act, 1983 included an associate member. Therefore, the Assessing Officer fell into an error in drawing a distinction between A class members and B class members. If the co-operative society satisfied the description of a society carrying on the business of providing credit facilities to its members, the assessee became entitled to the benefit of S. 80P subject to the provisions contained in S. 80P(2) of the Act. Court also held that the assessee being a primary agricultural co-operative credit society was entitled to the benefit under S 80P. The Assessing Officer himself had found that the associate members of the assessee-society were also admitted as members of the society. He had not pointed out that loans had been disbursed to all and sundry under the provisions of the 1983 Act. Under S. 80P(4)(b) of the Act, the society had an area of operation within the taluk and provided long-term credit for agricultural and rural development activities as well. Order of Appellate Tribunal is affirmed. (AY. 2013-14, 2014-15)
PCIT v. S-1308 Ammapet Primary Agricultural Co-Operative Bank Ltd. (2020) 426 ITR 244 (Mad.)(HC)

1333 **S. 80P : Co-operative societies – Amount transferred to reserve fund which were invested in approved securities – Interest earned is entitled to – Matter remanded. [S. 80P(2)(d), West Bengal Co-operative Societies Act, 2006, S. 79, 82]**
Court held that as per S.79 and 82 of the West Bengal Co-operative Societies Act, 2006, it is mandate to transfer, in every co-operative year, not less than 10 per cent of its net profit to a reserve fund. The corresponding enabling procedure was in accordance with rule 119 of the West Bengal Co-operative Societies Rules, 2011. Accordingly it was entitled to deduction of the interest earned as a result of the investment of the reserve fund in approved securities. The AO was directed to work out the interest earned on the reserve fund, if invested and allow deduction therefor in addition to the deduction already allowed in applying S. 80P(2)(d) of the Act. (AY. 2012-13)
PCIT v. Electro Urban Co-Operative Credit Society Ltd. (2020) 426 ITR 215 / 273 Taxman 437 (Cal.)(HC)

S. 80P : Co-Operative Societies – Interest from credit to employees – Not entitled to deduction. 1334

Dismissing the appeal of the assessee the Court held that, the interest income was received from credit facilities extended to the employee and the employee of a member, for personal purposes would not fall within sub-clause (i) of clause (a) of section 80P(2). Not entitle to deduction.

Kerala State Co-Operative Agricultural and Rural Development Bank Ltd. v. Dy.CIT (2020) 423 ITR 350 (Ker.)(HC)

S. 80P : Co-operative societies – Entitle to deduction – Reassessment notice is held to be not valid. [S. 2(19), 147, 148, Constitution of India, Art. 226, Karnataka Co-Operative Societies Act, 1959, S. 2(D-2)] 1335

The assessee is a credit co-operative society, registered as a State federal co-operative under section 33 of the 1997 Act. The assessee contended that it was entitled to deduction in respect of its income under S. 80P of the Act on the premise that it was a co-operative society, on par with those registered under the provisions of the 1959 Act. The Department contended that the definition under section 2(19) mentioned of only a co-operative society and not a Souharda co-operative and that in the guise of judicial interpretation, the scope of the definition could not be widened than what was prescribed by Parliament and a stand in variance with that would have far reaching implications on the exchequer. On a writ petition to declare that the 1997 Act fell within the meaning of the words "any other law for the time being in force in any State for the registration of co-operative societies" as enumerated in section 2(19) of the 1961 Act. Allowing the petition the Court held that a declaration was made to the effect that the entities registered under the 1997 Act fell into the definition of "co-operative society" as enumerated in section 2(19) of the 1961 Act and therefore subject to all just exceptions, the assessees were entitled to their claim for the benefit of section 80P. The notice issued under section 148 was to be quashed. Referred *Ujagar Prints v. UOI (1989) 179 ITR 317 (SC).*

Swabhimani Souharda Credit Co-Operative Ltd. v. GOI (2020) 421 ITR 670 / 107 CCH 0442 (Karn.)(HC)

Karnataka State Souharda Federal Co-Operative Ltd. v. GOI (2020) 421 ITR 670 (Karn.) (HC)

S. 80P : Co-operative societies – Interest received from another Co-operative bank – Deduction allowed on gross interest in earlier years – Department has not challenged the decision of the Tribunal in another assesee – Department is not entitled to challenge its correctness in case of another assessee without good reason. [S. 80P(2)(d)] 1336

The AO allowed deduction under S. 80P(2)(d) of the Act, the net interest against the deduction claimed by the assessee on the gross interest. Tribunal allowed the claim of the assessee on gross interest. Order of the AO is confirmed by the Tribunal. On appeal the Court held that when the assessee had been once granted the benefit of deduction under section 80P(2)(d) for the earlier years, it should have been granted for the assessment years 1991-92 to 1994-95. The Department's reference application against the Tribunal's order, in another case wherein it had held that the assessee was entitled

to deduction under section 80P(2)(d) in respect of the whole amount of interest received from investments by it, had been rejected. The Department had accepted such order and had not challenged it further. It was not open to the Department to accept the judgment in the case of one assessee and challenge its correctness without just cause in the cases of other assessees. The order of the Tribunal was set aside. (AY. 1991-92 to 1994-95)
Surat Vankar Sahakari Sangh Ltd. v. ACIT (2020) 421 ITR 134 (Guj.)(HC)

1337 **S. 80P : Co-operative societies – CBDT – Binding precedent – Clarificatory circulars for guidance of Government Officers is not binding on Tribunal – Circulars issued by a Government Department cannot have any primacy over the decision of the jurisdictional High Court – Not entitle to deduction. [S. 80P(2), 119]**
The assessees were co-operative societies registered under the Kerala Co-operative Societies Act, 1969. The AO treated them as co-operative banks and not as primary agricultural credit societies and denied their claim for deduction under S 80P(2) of the Act, The CIT(A) followed the judgment in *Chirakkal Service Co-Operative Bank Ltd. v. CIT (2016) 384 ITR 490 (Ker.) (HC)* and directed the Assessing Officer to grant deduction under S. 80P(2) on the ground that the assessees were classified as primary agricultural credit societies by the Registrar of Co-operative Societies. Decision relied on by the CIT(A) is overruled by the Full Bench in *Poonjar Service Co-Operative Bank Ltd Mavilayai Service Co-Operative Bank Ltd (2019) 414 ITR 67 (FB) (Ker.)*(HC). The Tribunal also relied upon the decision and dismissed the appeal filed by the Department. The assessees' cross-objections supporting the orders passed by the Commissioner (Appeals) by making reference to a circular issued by the Department were also dismissed by the Tribunal on the ground that they only supported the view taken by the CIT(A) On further appeals, dismissing the appeals, that a circular issued by the Board was not binding on the Tribunal and it was not necessary for the Tribunal to consider the effect of the circular issued by the Board. The appeals were misconceived. No question of law arose.
Kuthannur Service Co-Operative Bank Ltd. v. ITO (2020) 420 ITR 358 / 180 DTR 313 / 312 CTR 465 / 271 Taxman 118 (Ker.)(HC)
Peringottukurussi Service Co-Operative Bank Ltd. v. ITO (2020) 420 ITR 358 / 180 DTR 313 / 312 CTR 465 / 271 Taxman 118 (Ker.)(HC)
Vadakkenchery Service Co-operative Bank Ltd. v. ITO (2020) 420 ITR 358 / 180 DTR 313 / 312 CTR 465 / 271 Taxman 118 (Ker.)(HC)

1338 **S. 80P : Co-operative societies – The activities of the assessee are interlinked with the activities of the primary co-operative societies – Entitle to deduction. [S. 80P(2)]**
The assessee has 646 members which are primary co-operative societies. These primary co-operative societies have the members such as farmers, their family members and other rural family unit. These primary cooperative societies are procuring milk from the members and in turn supplying to the assessee being a single society in the district. Thereafter the assessee is supplying the milk to the mother dairy. The assessee claimed that all the activities involved in the supply of milk to the mother dairy are controlled as per the direction of Gujarat Milk Marketing Federation (For short GMMF). Accordingly the assessee claimed to be eligible for claiming the deduction under section 80P(2)(b)

of the Act and hence claimed the deduction of Rs. 1142336.00 only. The AO was not satisfied with the claim of the assessee on the ground that such deduction is available to the primary co-operative societies. As such the assessee is the district level society and therefore the same cannot be held eligible for deduction under section 80P(2)(b) of the Act. Accordingly the AO disallowed the deduction of 1,11,42,336.00 claimed and added to the total income of the assessee. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that it appears that the assessee is not the primary co-operative society but its activities are depending upon the primary co-operative societies. As such the primary co-operative societies can also not operate without the assessee being a district level society. As such the activities of the assessee are interlinked with the activities of the primary co-operative societies. Moreover, the primary co-operative societies will be eligible only when they supply milk to a federal co-operative society accordingly the provisions of section 80P(2)(b) of the Act should be read liberally followed *Broach Distt Co-operative Cotton Sales, Ginning & pressing Society Ltd. v. CIT (1989) 177 ITR 418 (SC)*(AY. 2012-13, 2013-14)

Surrendranagar District Co-Operative Milk Producers Union Ltd. v. Dy.CIT (2020) 187 DTR 5 / 204 TTJ 72 (Rajkot)(Trib.)

S. 80P : Co-operative societies – Return filed in response to notice under section 148 – Deduction cannot be denied – Interest earned from funds belonging to members – Deduction allowable. [S. 80A(5), 80P(2)(a)(i), 147, 148] 1339

Assessee filing return for first time in response to notice under Section 148 deduction of claim cannot be denied. Interest earned from funds belonging to members, deduction allowable. Relied *Chirakkal Service Co-Operative Bank Ltd. v. CIT (2016) 384 ITR 490 (Ker.) (HC).* (AY. 2013-14)

ACIT v. Daee Co-Operative T and C Society (2020) 84 ITR 42 (SN) (Chennai)(Trib.)

S. 80P : Co-operative societies – Credit co-operative banks – Loan disbursement – Narration in loan extracts in audit reports by itself may not be conclusive – Matter remanded. [S. 80P(2)(a)(i)] 1340

Assessing Officer denied assessee's claim for deduction under section 80P(2)(a)(i) on ground that as per narration of loan extracts in statutory audit reports, only a minuscule portion was advanced for agricultural purposes out of total loan disbursement and, thus, assessee could not be treated as a co-operative society. Tribunal held that there should be fresh examination by Assessing Officer as regards nature of each loan disbursement and purpose for which it was disbursed, i.e., whether it was for agricultural purpose or not. Matter remanded. (AY. 2010-11, 2012-13 to 2015-16)

Pattambi Service Co-operative Bank Ltd. v. ITO (2020) 185 ITD 469 (Cochin)(Trib.)

S. 80P : Co-operative societies – Credit Co-operative Bank – Agricultural loan – Matter remanded. [S. 80P(2)(a)(i)] 1341

Assessing Officer had denied a portion of claim of deduction under section 80P for reason that though assessee was essentially doing business of banking but disbursement of agricultural loans by assessee was only minuscule and therefore, to extent of disbursement of agricultural loan alone, assessee was entitled to deduction. Tribunal

held that the Assessing Officer had not examined details of each loan disbursement and purpose for which loans were disbursed, i.e., whether it was for agricultural purpose or non-agricultural purpose and to what extent loans, if any, had been disbursed to non-members. Matter remanded to the AO for verification. (AY. 2010-11, 2014-15)
Poomangalam Service Co-operative Bank Ltd. v. ITO (2020) 185 ITD 474 (Cochin)(Trib.)

1342 **S. 80P : Co-operative societies – Source of investment by co-operative society – Revenue is not required to look to nature of investment whether it is from surplus funds or otherwise. [S. 80P(2)]**
During relevant year assessee earned interest income on FDRs and deposits kept with non-member co-operative banks and commercial banks and claimed deduction. Assessing Officer held that interest earned from fixed deposits out of surplus funds was not eligible for deduction under section 80P(2)(a)(i) of the Act. Tribunal held that provision does not make any distinction in regard to source of investment, revenue is not required to look to nature of investment whether it is from surplus funds or otherwise hence the assessee is eligible for deduction under section 80P(2)(d) of the Act. (AY. 2012-13 to 2014-15)
Mantola Co-operative Thrift & Credit Society Ltd. v. ITO (2020) 184 ITD 136 (Delhi)(Trib.)

1343 **S. 80P : Co-operative societies – Deposit from members – Assessing Officer passing the order, without verifying the licence to carryon banking business – Matter remanded to the Assessing Officer. [S. 80P(2)(a)(i)]**
The Tribunal held that the Authorities below had not verified as to whether the Assessee was a Banking Co-Operative Society having the licence/Authority to collect the deposit etc, accordingly the matter remanded to the AO for verification and decide accordance with law. (AY. 2014-15, 2015-16)
Co-Operative House Building Society Ltd. v. DCIT (2020) 182 ITD 415 (Chd.)(Trib.)

1344 **S. 80P : Co-operative societies – Business of Banking and disbursement of agricultural loans – Assessing Officer director to examine each loan disbursement to determine its purpose – Matter remanded. [S. 80P(2)]**
Tribunal held that the narration in loan extracts and audit reports by itself might not be conclusive to prove whether a loan was an agricultural loan or a non-agricultural loan. The gold loans might or might not be disbursed for the purpose of agricultural purposes. Necessarily, the Assessing Officer had to examine the details of each loan disbursement and determine the purpose for which the loans were disbursed, i. e., whether it was for agricultural purpose or non-agricultural purpose. In this case, such a detailed examination had not been conducted by the Assessing Officer. The Assessing Officer shall list out the instances where loans had been disbursed for non-agricultural purposes and accordingly conclude whether the assessee's activities were not in compliance with the activities of a primary agricultural credit society functioning under the Kerala Co-operative Societies Act, 1969, before denying the deduction under section 80P(2). Matter remanded.(AY.2017-18)
Mugu Service Co-Operative Bank Ltd. v. ITO (2020) 83 ITR 85 (SN) (Cochin)(Trib.)

S. 80P : Co-operative societies – Member of Federation – Bonus – Dividend – Bonus to be considered as dividend – Assessing Officer is directed to verify the nature of the bonus received.[S.80P(2) (d) 1345

Tribunal held that the computation mechanism for payment of bonus and dividend were different but both were towards distribution of net profit of the Federation. Dividend is only a distribution of the net profits. The nature of bonus received by the assessee from the Federation was nothing but dividend although the mechanism of its computation was different because both bonus and dividend were paid to the assessee as distribution of net profits only. The Assessing Officer was directed to consider the amount of bonus received by the assessee from the Federation as dividend received from the Federation and allow deduction Under Section 80P(2)(d) in respect of receipt of bonus also. (AY.2014-15)

Mysore District Co-Operative Milk Producers Society Union Ltd. v. ACIT (2020) 82 ITR 11 (SN) (Bang.)(Trib.)

S. 80P : Co-operative societies – Registered under Karnataka Souharda Sahakari Act, 1997 – Entitled to deduction. [S. 2(19) 80P(2), Karnataka State Sahakari Souharda Act, 1997] 1346

Tribunal held that the assessee-society registered under the Karnataka State Sahakari Souharda Act, 1997 could be regarded as a co-operative society within the meaning of section 2(19) of the Act entitled to the benefit of deduction under section 80P(2) of the Act. (AY.2014-15)

Lalitamba Pattina Souharda Sahakari Niyamitha v. PCIT (2020) 78 ITR 58 (SN) (Bang.) (Trib.)

S. 80P : Co-operative societies – Contract works – Income earned from labour construction works – Entitled to deduction. [S. 80P(2)(A)(vi), Form 26AS] 1347

Tribunal held that the income earned from construction works qualified for deduction under section 80P(2)(a)(vi) and if there was a transaction which was incidental to such contracts, that transaction was also eligible for deduction under section 80P(2) (a)(vi). Even though the assessee was not involved in trading, but in contract works, which included material being supplied by the Government, the assessee was eligible for deduction under section 80P(2)(a)(vi). The difference between the gross receipts as reflected in form 26AS and the turnover declared by the assessee in its return was also eligible for deduction under section 80P(2)(a)(vi).(AY.2014-15)

Jyothi Waddera Labour Contract Co-Operative Society Ltd. v. ITO (2020) 78 ITR 23 (SN) (Hyd.)(Trib.)

S. 80P : Co-operative societies – Interest earned from Scheduled Bank – Not deductible – Net interest from deposits with Scheduled Bank to be excluded – Interest from Co-Operative Bank Or Society – Deductible – Receipt from its members towards form fee – Deductible – Standard deduction – Allowable. [S. 80P(2)(a)(i), 80P(2)(c), 80P(2)(d)] 1348

Court held that the assessee was not entitled to deduction of interest from scheduled bank under section 80P(2)(a)(i). The Assessing Officer was to work out the net interest earned from the deposits with the scheduled bank. That interest earned from co-

operative bank or society would qualify for grant of deduction. Amount received from its members towards form fee, was attributable to and arose from the assessee's day-to-day activities. Allowable as seduction. That the standard deduction of Rs. 50,000 claimed by the assessee under section 80P(2)(c) being a statutory deduction, the assessee would be entitled to the deduction. (AY.2014-15)

Balasinor Vikas Co-Operative Credit Society Ltd. v. Dy.CIT (2020) 78 ITR 15 (SN) (Ahd.) (Trib.)

Shri Jalaram Mahila Co-Operative Credit Society Ltd. v. Dy.CIT (2020) 78 ITR 15 (SN) (Ahd.)(Trib.)

Anand Catholic Co-Operative Credit Society Ltd. v. Dy.CIT (2020) 78 ITR 15 (SN) (Ahd.) (Trib.)

1349 **S. 80P : Co-operative societies – Primary agricultural credit Society – Narration in Loan extracts in audit reports is not conclusive – Assessing Officer to examine details of each loan disbursement and determine purpose for which loans disbursed.**

Tribunal held that the narration in the loan extracts in the audit reports by itself may not be conclusive to prove whether a loan is an agricultural loan or a non-agricultural loan. The gold loans may or may not be disbursed for the purpose of agricultural purposes. Necessarily, the Assessing Officer had to examine the details of each loan disbursement and determine the purpose for which the loans were disbursed, i. e., whether for agricultural purpose or non-agricultural purpose. The Assessing Officer shall list out the instances where loans had disbursed for non-agricultural purposes, etc., and accordingly conclude that the assessee's activities were not in compliance with the activities of a primary agricultural credit society functioning under the Kerala Co-operative Societies Act, 1969, before denying the deduction under section 80P(2). For the purpose, the issue was restored to the Assessing Officer. The Assessing Officer shall examine the activities of the assessee by following the dictum laid down by the Full Bench of the High Court and shall take a decision in accordance with law. (AY. 2014-15)

Sholayoor Service Co-Operative Bank Ltd. v. ITO (2020) 79 ITR 32 (SN) (Cochin)(Trib.)

1350 **S. 80P : Co-operative societies – Agricultural purpose or allied activities – Matter remanded to the AO to examine activities of assessee afresh and determine whether activities in compliance with activities of Co-Operative Society functioning under Kerala Co-Operative Societies Act, 1969 and to grant deduction. [S. 80P(2), Kerala Co-operative Societies Act, 1969]**

Tribunal held that the Assessing Officer had concluded that out of the total loan disbursed by the assessee only 12.54 per cent was for agricultural purpose or allied activities. His finding was not conclusive unless each loan application and loan ledger was verified and after necessary verification he had to conclude that the assessee was not engaged primarily in providing credit facilities for agricultural purpose or allied activities. Therefore, the Assessing Officer shall examine the activities of the assessee afresh and determine whether the activities were in compliance with the activities of a co-operative society functioning under the 1969 Act and accordingly grant deduction under section 80P(2). (AY.2014-15)

Ayalur Service Co-Operative Bank Ltd. v. ITO (2020) 79 ITR 17 (SN) (Cochin)(Trib.)

S. 80P : Co-operative Societies – Interest earned from scheduled bank – Not deductible – Net interest from deposits with scheduled bank to be excluded from deduction – Interest earned from Co-operative bank or society – Deduction allowable on net interest – Receipt by society from its members towards form fee – Attributable to and arising from Assessee's day-to-day activities – Deductible – Standard deduction allowable. [S. 80P(2)(a), 80P(2)(c), 80P(2)(d)] 1351

On appeal, the Tribunal held that, the assessee was not entitled to deduction of interest from scheduled bank under Section 80P(2)(a)(i) of the Act and the Assessing Officer has to work out the net interest earned from the deposits with the scheduled bank to exclude that amount from the computation of deduction claimed under Section 80P(2)(a)(i) of the Act. The interest earned from co-operative bank or society would qualify for grant of deduction under Section 80P(2)(d) of the Act and the net amount of such interest income should be considered for grant of deduction under Section 80P(2)(d) of the Act. *State Bank of India v. CIT (2016) 389 ITR 578 (Guj.) (HC)* relied on. The assessee received amount from its members towards form fee, was attributable to and arose from the assessee's day-to-day activities. Therefore, the claim of the assessee was allowable under Section 80P of the Act. The standard deduction of Rs. 50,000 claimed by the assessee under Section 80P(2)(c) of the Act being a statutory deduction, the assessee would be entitled to such deduction. The Assessing Officer was directed to allow such claim in accordance with the law. (AY.2014-15)

Balasinor Vikas Co-Operative Credit Society Ltd. v. DCIT (2020) 78 ITR 15 (SN) (Ahd.) (Trib.)

Shri Jalaram Mahila Co-Operative Credit Society Ltd. v. DCIT (2020) 78 ITR 15 (SN) (Ahd.)(Trib.)

Anand Catholic Co-Operative Credit Society Ltd. v. DCIT (2020) 78 ITR 15 (SN) (Ahd.) (Trib.)

S. 80P : Co-operative societies – Certificate issued by Registrar of Co-Operative Societies is not binding on AO – Interest on investments with Co-Operative Banks – AO is to follow law laid down by full bench of Kerala High Court in *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2019) 414 ITR 67 (FB) (Ker.)(HC).* [S. 80P(2)(4)] 1352

Tribunal held that the CIT(A) ought not to have rejected the claim of deduction under s. 80P(2) without examining the activities of the assessee. The Full Bench of the High Court had held that the AO had to conduct an inquiry into the factual situation as to the activities of the assessee to determine the eligibility of deduction under S. 80P. Accordingly as as regards the grant of deduction under S. 80P on interest on investments with co-operative banks and other banks, the AO shall follow the law laid down by the Full Bench of the High Court in *Mavilayi Service Co-Operative Bank L td. v. CIT (2019) 414 ITR 67 / 309 CTR 121 /179 DTR 65 (FB) (Ker.) (HC)* and examine the activities of the assessee before granting deduction under S. 80P on such interest. (AY.2015-16), (AY.2008-09, 2011-12, 2012-13, 2014-15, 2015-16)

Chirakara Service Co-Operative Bank Ltd. v. ITO (2020) 77 ITR 457 (Cochin)(Trib.)

Pangode Service Co-Operative Bank Ltd. v. ITO (2020) 77 ITR 33 (SN) (Cochin)(Trib.)

Andoorkonam Service Co-Operative Bank Ltd. v. ITO (2020) 77 ITR 33 (SN) (Cochin)(Trib.)

Varkala Service Co-Operative Bank Ltd. v. ITO (2020) 77 ITR 33 (SN) (Cochin)(Trib.)

1353 **S. 80P : Co-operative societies – Interest from Nationalised Banks – Not entitled to deduction – Net interest from deposits with Scheduled Bank to be excluded from computation of deduction – Interest from Co-Operative Societies or Co-Operative Banks – Entitled to deduction – Net nterest to be allowed as deduction. [S. 80P(2)(a)(i), 80P(2)(d)]**

Tribunal held that the assessees earned two types of interest : (a) interest from Nationalised Banks, and (b) interest from co-operative societies or co-operative Banks. Interest from scheduled banks under S. 80P(2)(a)(i) of the Act, was not entitled to deduction. The AO was to work out the net interest from the deposits with scheduled bank and thereafter exclude that amount from the computation of deduction claimed under S. 80P(2)(a)(i). Interest from co – operative banks or societies would qualify for grant of deduction under S. 80P(2)(d). The AO was to work out the net amount of such interest and thereafter grant deduction under S. 80P(2)(d). (AY.2013-14, 2014-15)

Lunawada Taluka Primary School Teachers Co-Op. Credit Society Ltd. v. ITO (2020) 77 ITR 46 (SN) (Ahd.)(Trib.)

Vir Transport Operator Co-Op. Credit and Services Society v. ITO (2020) 77 ITR 46 (SN) (Ahd.)(Trib.)

1354 **S. 80P : Co-operative societies – Provision for bad debt – Commission expenses – Deductible. [S. 80P(2)]**

Tribunal held that the provision for bad debt and commission expenses which is in the nature of profits and gains of the assessee, are held to be allowable as deduction. (AY.2012-13)

Rishabh Sahkari Sakh Sanstha Mydt v. ITO (2020) 77 ITR 26 (SN.) (Indore)(Trib.)

1355 **S. 80P : Co-operative societies – Co-Operative credit society – Not registered as bank by RBI cannot be categorised as a co-operative bank – Financial assistance to members – Not be hit by provisions of S.80P(4) – Entitle to deduction – Matter remanded to CIT(A). [S. 80P(2)(a) (i), Banking Regulation Act, 1949]**

Assessee claimed deduction under S. 80P(2)(a)(i) of the Act. AO disallowed on grounds that assessee was a co-operative bank and, thus, hit by provisions of S.80P(4) and was not eligible for deduction under S.80P(2)(a)(i) of the Act. On appeal the Tribunal held that the assessee is providing financial assistance/credit to its members only and not to general public and the assessee is not recognized as a bank by Reserve Bank of India. Accordingly the is a co-operative credit society and not a co-operative bank, therefore, it would not be hit by provisions of S. 80P(4) hence eligible for deduction under S. 80P(2)(a)(i) of the Act. Tribunal also held that the CIT(A) bifurcated the claim in to section 80P(2) (a)(i) and 80P(2)(d) without any opportunity to the assessee, the matter reamanded to the CIT(A) for consideration afresh. (AY. 2012-13, 2013-14)

Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Maryadit v. ITO (2020) 180 ITD 267 / 188 DTR 23 / 204 TTJ 92 (Mum.)(Trib.)

S. 90 : Double taxation relief – Foreign tax credit – FTC paid subsequent to filing of return was to be allowed – DTAA-India-USA. [S. 9(1)(i), ITR 128, Art. 25] 1356

Assessee submitted that at time of filing of income tax return in India, assessee had not claimed credit of foreign tax payable as no tax for year under consideration was determined and paid in USA at that time and also tax return was not filed in USA; that subsequently assessee had to pay taxes in USA and so it raised claim of foreign tax credit before Assessing Officer by way of application in accordance with Rule 128 of Income-tax Rules, 1962. The Assessing Officer rejected to give such credit. On appeal the Tribunal held that since Revenue had agreed that foreign tax credit might be allowed to assessee as per India-USA Treaty, Assessing Officer should allow claim of assessee in accordance to law. Matter remanded. (AY. 2014-15)

Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2020) 183 ITD 354 (Kol.)(Trib.)

S. 90 : Double taxation relief – Book Profit – The fact that profits of foreign branches of a resident are taxed outside India under tax treaties does not imply that the said income is not taxable in India. The entire global income has to be taxed in India – The assesseee is entitled to credit for taxes paid abroad, as admissible under the treaty or the domestic law – Even profits of foreign branches which are taxed under the tax treaties are also liable for MAT. [S. 115JB] 1357

The Tribunal held that the fact that profits of foreign branches of a resident are taxed outside India under tax treaties does not imply that the said income is not taxable in India. The entire global income has to be taxed in India. The assesseee is entitled to credit for taxes paid abroad, as admissible under the treaty or the domestic law. (ii) S. 115JB applies to banking companies after the 2012 amendment. Even profits of foreign branches which are taxed under the tax treaties are also liable for MAT. (iii) The argument that S. 90 overrides S. 115JB and so the incomes taxed abroad should be excluded from taxation of book profits u/s 115 JB is not correct. Treaty protection come normally into play for taxation of a non-resident in India, i.e. source country taxation, and not for taxation of a resident in whose hands global income is to be taxed anyway. All that one gets in the residence jurisdiction, by the virtue of tax treaties, is tax credits for the taxes paid abroad.(ITA Nos: 1767 and 2048/Mum/2019, dt. 11.12.2020) (AY. 2015-16)

Bank of India v. ACIT (Mum.)(Trib.), www.itatonline.org

S. 90 : Double taxation relief – Foreign Tax Credit – One has to take a judicious call as to whether the view adopted by the source jurisdiction of taxing the income is a reasonable and bonafide view, which may or may not be the same as the legal position in the residence jurisdiction – The view of the treaty partner should be adopted unless it is wholly unreasonable or manifestly erroneous – Entitle for Foreign Tax Credit – DTAA-India-Japan. [Art. 12, 22] 1358

The assessee had claimed a foreign tax credit of Rs. 80,55,856 in respect of taxes withheld by its clients in Japan. The taxes so withheld were at the rate of 10% on gross billing amounts, by treating the professional fees earned by the assessee in Japan as taxable in Japan, i.e. the source country, under article 12 of Indo-Japanese tax treaty. The Assessing Officer, however, was of the view that credit for such taxes withheld

in Japan was not admissible to the assessee, for the reason that the income so earned by the assessee could only have been taxable under article 14 for the 'independent personnel services' but then since assessee admittedly did not have any fixed in Japan, the condition precedent for taxability even under article 14 was not at all satisfied. The Assessing Officer was thus of the view that the taxes have been wrongly withheld in Japan, and, therefore, the assessee was not entitled to a foreign tax credit in respect of the same. Aggrieved, the assessee carried the matter in appeal before the learned Commissioner (Appeals), but without any success. Learned Commissioner (Appeals) referred to certain emails exchanged between the assessee and his Japanese clients, which show that the assessee had consistently taken a stand that the assessee could only be taxed under article 14 in Japan, and since the assessee admittedly did not have a fixed base in Japan for more than 183 days, which is sine qua non for taxation under that article, no taxes could legitimately be withheld from the payments in question. On appeal the Tribunal held that The AO's refusal to grant foreign tax credit under article 23(2) of India Japan DTAA on the ground that the assessee's income (legal fees) was not taxable in Japan under Article 14 (Independent Personal Services) & that the taxes were wrongly withheld in Japan is not justified. The income could have been taxed under Article 12 (Fees for Technical Services). Even otherwise, one has to take a judicious call as to whether the view adopted by the source jurisdiction of taxing the income is a reasonable and bonafide view, which may or may not be the same as the legal position in the residence jurisdiction. The view of the treaty partner should be adopted unless it is wholly unreasonable or manifestly erroneous. (ITA No. 2613 /Mm/19 dt 18-12 2020 (AY. 2014-15)

Amarchand & Mangaldas & Suresh A Shroff & Co. v. ACIT (Mum.)(Trib.), www.itatonline.org

1359 **S. 90 : Double taxation relief – Non-resident – Salary and allowances earned in respect of employment rendered in Austria – Entitle to exemption – Non-production of tax residency certificate cannot be a Reason not to grant benefit of DTAA – DTAA-India-Australia. [S. 5(2), 90(4), Art. 15(1)]**

Tribunal held that during the previous year relevant to the assessment year 2014-15, the assessee qualified as a non-resident in India and as a tax resident in Austria. The salary and allowances were earned by the assessee in respect of employment rendered in Austria due to his foreign assignment. Hence, the first two conditions enumerated under article 15(1) of the Agreement stood satisfied. Therefore, the assessee's claim to exemption in regard to his salary income in terms of the provisions of article 15(1) in his return was appropriate. The other objections raised by the Assessing Officer that evidence was not produced for receiving the foreign allowance outside India and the bank account of the assessee maintained abroad was not produced were not relevant because the facts of the case established that the salary and the foreign allowance were received in India for the services rendered abroad and by virtue of the Agreement and the Act there was no bar in law to receiving the money in India. (AY. 2014-15)

Sreenivasa Reddy Cheemalamarri v. ITO (2020) 79 ITR 465 (SMC) (Hyd.)(Trib.)

S. 90 : Double taxation relief – Once an income of an Indian assessee is taxable in the treaty partner source jurisdiction under a treaty provision, the same cannot be included in its total income taxable in India as well i.e. the residence jurisdiction, is no longer good law in view of s. 90(3) inserted w.e.f. 01.04.2004 – The mere amendment or substitution of a section does not affect the validity of notifications, circulars and instructions – Addition made by the AO is confirmed. [S. 90(3), 144C] 1360

The issue before the Tribunal was whether the AO ought to have excluded a sum of Rs 11,91,18,391 from total income chargeable to tax in the hands of assessee in India, as this amount represents aggregate of profits earned by assesses's branches in UAE and Qatar. The Tribunal held that the law laid down in *CIT v. PVAL Kulandagan Chettiar (2004) 267 ITR 654 (SC)* that once an income of an Indian assessee is taxable in the treaty partner source jurisdiction under a treaty provision, the same cannot be included in its total income taxable in India as well i.e. the residence jurisdiction, is no longer good law in view of s. 90(3) inserted w.e.f. 01.04.2004 read with Notification no. 91 of 2008 dated 28.08.2008. The substitution of s. 90 w.e.f. 01.10.2009 does not affect the validity of the said Notification. The mere amendment or substitution of a section does not affect the validity of notifications, circulars and instructions issued therein. Accordingly the appeal of the assessee is dismissed. (ITA No. 155/Mum/2019, dt. 14.02.2020)(AY. 2014-15)

Tecnimont Pvt. Ltd. v. ACIT (Mum.)(Trib.), www.itatonline.org

S. 92A : Transfer pricing – Associated enterprises – Advance of loan – None of said two entities had individually advanced loan of more than 51 per cent of book value of total assets of assessee – Entities could not be deemed as AEs of assessee. [S. 92A(2)(c), 92C] 1361

Assessee was engaged in providing ship management and consultancy services. Transfer pricing Officer (TPO) held that overall management and control of assessee company lied with management of companies SSML, PSML and UML. DRP held that assessee had received certain amount from SSML and PSML but these two entities had not provided any service to assessee and, thus, these amounts could not be considered as credits availed during course of business and same could only be considered as loans advanced by them to assessee-Accordingly, he held that SSML and PSML would become AEs of assessee by deeming fiction in terms of section 92A(2)(c) of the Act. On appeal the Tribunal held that as per mandate of section 92A(2)(c) each of enterprise should have advanced loan to assessee constituting more than 51 per cent of book value of total assets of assessee so as to be considered as AEs of assessee by deeming fiction, since none of two entities had individually advanced loan of more than 51 per cent of book value of total assets of assessee and these entities had jointly given loans of more than 51 per cent of book value of total assets of assessee, these two companies could not be deemed as AEs of assessee as per section 92A(2)(c) of the Act. (AY. 2011-12)

Soveresign Safeship Management (P.) Ltd. v. ITO (2020) 184 ITD 806 / 195 DTR 337 / 208 TTJ 754 (Mum.)(Trib.)

1362 **S. 92A : Transfer pricing – Arm's length price – Associated enterprises – Two enterprises can be treated as associated enterprises – Judgments of non jurisdictional High Courts are binding on the Tribunal – Addition is deleted. [S. 92A(2), 92C]**
The law in *Diageo India Pvt Ltd v. Dy CIT (2011) 47 SOT 252 (Mum.) (Trib.)* that the definition of "Associated Enterprises" in section 92A(1)(a) & (b) is the basic rule which is unaffected by the specific instances referred to in s. 92A(2) is not good law in view of the amendment by the FA 2002 and CBDT Circular No. 8 dated 27.08.2008. The correct law as held in Veer Gems 95 taxmann.16 (Guj.) is that S. 92A(2) restricts the scope of S. 92A(1) and it is only when the criterion specified in sub section (2) is satisfied, two enterprises can be treated as associated enterprises. Judgements of non-jurisdictional High Courts are binding on the Tribunal. Tribunal held that the relationship between assessee and KES was not AEs and accordingly no arm's length price adjustments could be made on the transactions between these two entities. Addition is deleted.(ITA No 2165/Mum/15, dt. 28.02.2020)(AY. 2007-08)
Kayee Pvt. Ltd. v. ITO (2020) 188 DTR 1 / 204 TTJ 921 (Mum.)(Trib.)

1363 **S. 92B : Transfer pricing – No evidence to show any kind of agreement existed between the assessee and its AE towards reimbursement of AMP – Cannot be treated as an international transaction.[S.92C]**
There is no evidence to show any kind of agreement existed between the assessee and its AE towards reimbursement of AMP the same cannot be treated as an international transaction. (AY.2010-11)
Casio India Co. (P) Ltd. v. Dy. CIT (2020) 203 TTJ 180 (Delhi)(Trib.)

1364 **S. 92B : Transfer pricing – Corporate guarantee – No material to prove cost in providing corporate guarantee – Addition is held to be not valid – Finance Act, 2012, amendment is prospective. [S. 92C]**
During relevant year assessee had undertaken international transaction with its AEs. Assessing Officer made addition mark up of 2.58 per cent on corporate guarantee given by assessee. CIT(A) restricted arm's length price of compensation for providing corporate guarantee at rate of 1 per cent as against 2.58 per cent computed by Assessing Officer. Tribunal held that Explanation to section 92B introduced by Finance Act, 2012 is prospective in nature and hence, not applicable to relevant year and since there was no material on file to prove that assessee company had incurred any cost in providing corporate guarantee and transaction qua corporate guarantee entered into by assessee company with its AE was an international transaction, ALP of compensation for providing corporate guarantee could not have been determined. (AY. 2011-12)
ACIT v. Spentex Industries Ltd. (2020) 184 ITD 695 (Delhi) (Trib.)

1365 **S. 92B : Transfer pricing – Safe Harbour Rules (5 per cent variation) – No TP adjustment could be made where arm's length value of transactions as computed by TPO was within permitted range of variation of +/ – 5 per cent of actual value of transaction. [S. 92C]**
Tribunal held that where arm's length value of transactions as computed by TPO was within permitted range of variation of +/-5 per cent of actual value of transaction, downward adjustment made by TPO was not justified. (AY. 2008-09)
Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – No addition can be made even if assessee has Permanent Establishment in India. [S. 9(1)(i)] 1366

Dismissing the appeal of the revenue the Court held that once arm's length principle has been satisfied, there can be no further profit attributable to assessee, even if assessee has a Permanent Establishment (AY. 2007-08)

CIT(IT) v. Honda Motors Co. Ltd. (2020) 274 Taxman 342 (Delhi)(HC)

Editorial : SLP dismissed on the ground of delay, CIT(IT) v. Honda Motors Co. Ltd (2021) 278 Taxman 272 (SC)

S. 92C : Transfer pricing – Arm's length price – Providing internet based medical health related services, a company rendering high end online software solutions, could not be accepted as comparable. 1367

Dismissing the appeal of the revenue the High Court held that concern provided high end online software solutions unlike the assessee, which provided internet based medical health related services. The real services, therefore, were entirely dissimilar hence could not be accepted as comparable. (AY. 2011-12)

PCIT v. Inductis (India) (P.) Ltd. (2020) 114 taxmann.com 319 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Inductis India (P) Ltd (2020) 270 Taxman 1 (SC)

S. 92C : Transfer pricing – Arm's length price – Safe Harbour rules – RBI rate to be a bench mark – Second proviso to section 92C(2) which allows +/ – 5 per cent range to could be applied even in a case where transactions involved were an account of trading in foreign exchange. 1368

Dismissing the appeal of the revenue High Court held that Tribunal is right in applying first and second proviso of Section 92C of the Act and allowing +/-5% range in the case where there is only one reference rate of RBI as a benchmarking rate for determining Arms' Length Price. (AY. 2010-11)

PCIT v. UAE Exchange & Financial Service Ltd. (2020) 117 taxmann.com 105 (Karn.)(HC)

Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect PCIT v. UAE Exchange Technology (P) Ltd (2020) 272 Taxman 19 (SC)

S. 92C : Transfer pricing – Arm's length price – Comparable – company having high brand value cannot be selected as comparable. 1369

Dismissing the appeal of the revenue the High Court held that the Tribunal is justified in holding that company having high brand value cannot be selected as comparable. (AY. 2011-12)

PCIT v. Cadence Design Systems (I) (P.) Ltd. (2020) 119 taxmann.com 415 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Cadence Design Systems (I) (P) Ltd (2020) 274 Taxman 279 (SC)

S. 92C : Transfer pricing – Arm's length price – Adjustment – MAP – ITAT is justified in directing to adopt 16.63% Arm's Length margin for transaction relating to non US entities based on MAP concluded with US Tax Authorities. 1370

Dismissing the appeal of the Revenue High Court held that order ITAT is justified in in directing to adopt 16.63% Arm's Length margin for transaction relating to non- US

entities based on MAP concluded with US Tax Authorities. Followed *PCIT v. J.P. Morgan Services India (P.) Ltd (2019) 263 Taxman 141 (Bom.)(HC)*
PCIT v. J.P. Morgan Services India (P.) Ltd. (2020) 119 taxmann.com 413 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. JPMorgan Services India (P) Ltd (2020) 274 Taxman 281 (SC)

1371 **S. 92C : Transfer pricing – Arm's length price – Comparable – Functional similarity – Company engaged into software products and medical transcription, could not be accepted as comparable – Company engaged in different verticals and working through outsourcing models, could not be accepted as valid comparable – company having gone through extraordinary events during relevant year, could not be accepted as valid comparable.**
Assessee company was engaged in providing data collection, web services, information research and related support services to its associated enterprise. Tribunal excluded a comparable company selected by Transfer Pricing Officer on ground that said company was engaged into software products and medical transcription and, thus, this company being functionally different and also having extraordinary event during relevant year, could not be considered as comparable, a comparable company selected by Transfer Pricing Officer by observing that said company was engaged in different verticals and was working through outsourcing models, thus, being functionally different, could not be considered as comparable to assessee company, set of comparables by noticing that said company having gone through extraordinary events during relevant year, could not be considered as valid comparable. High Court affirmed the order of the Tribunal. (AY. 2008-09)
PCIT v. Corporate Executive Board India (P) Ltd. (2020) 274 Taxman 529 (P&HC)(HC)

1372 **S. 92C : Transfer pricing – Arm's length price – Comparable – Software product development – Company have brand value and more than 24 times that of turnover – Significant intangible assets – Business restructuring – Extraordinary event of amalgamation – Company which developed its own web based software – Huge brand value – BPO services – Additional evidence – Matter remanded. [S. 254(1), 260A]**
Affirming the order of the Tribunal the Court held that in case of assessee company providing software development services to its AE, a company engaged in software product development and product design services whose segmental details of revenue generated from its services were also not available, could not be accepted as valid comparable. Company having considerable brand value and turnover which was 24 times that of turnover of assessee, was not acceptable as comparable. Company which had significant intangible assets owned by it as compared to assessee, could not be held to be a valid comparable. Company which had undergone business restructuring process during relevant year, could not be accepted as comparable. Extraordinary event of amalgamation took place which resulted in a higher OP by TC margin, could not be accepted as valid comparable. Company which developed its own web based software by which it provided niche services to its customers, could not be accepted as comparable on account of functional difference. Company which had huge brand value resulting in higher operating profits was not acceptable as a valid comparable. Business of BPO

service and providing high-end technology services such as software testing, verification and validation of software could not be accepted as comparable with assessee company engaged in providing information technology and IT enabled services. Since assessee had filed additional evidence wherein voluminous details was filed indicating that assessee was engaged in software development, as well, matter was to be remanded (AY. 2010-11)
PCIT v. Equant Solutions India P. Ltd. (2020) 269 Taxman 315 (P&H)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – Functionally similarity – Activities of merchant banker cannot be acceptable as comparable. 1373
Dismissing the appeal of the revenue where assessee was engaged in rendering investment advisory services to AE, a company providing purely advisory services in various industries was acceptable as comparable and also a research company primarily dealing in research and survey services similar to that of assessee, could be accepted as comparable. (AY. 2011-12)
PCIT v. AGM India Advisors P. Ltd. (2020) 275 Taxman 71 / (2021) 200 DTR 145 / 320 CTR 98 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Providing market services to Associated enterprises – Deletion of addition is held to be justified – No question of law. [S.260A] 1374
Dismissing the appeal of the revenue the Court held that Tribunal examined the relevant clauses of the contract and noted that eligibility condition for participating in tender was submission of registration certificate under Delhi Value Added Tax Act, 2004, besides submission of certificate of being original equipment manufacturer of gas turbines. Admittedly, assessee was not a manufacturer of gas turbines but its AE was. However, the AE did not have VAT registration certificate. Therefore, it was not qualified to participate in the tender. On the other hand, assessee had registration certificate under the Delhi VAT Act, 2004. Therefore, for participating in the tender and for obtaining the contract the bid was submitted in assessee's name though it was clearly understood by the contracting parties that the original equipment manufacturer of gas turbines was the AE. Tribunal found that there was nothing on record to suggest that the assessee had provided any services to its AE for sale of its gas based turbines either to PWD or to other customers in India. It was found as a matter of fact that in case of sales made by the Assessing Officer to other parties in India, the assessee was in no way involved in the sales affected. The six parties had stated that they had negotiated directly with the AE for purchase of gas turbines and the assessee was in no way involved in such transactions. Tribunal also noted that for earlier assessment years too there were no transfer pricing adjustments. Thus, there was no basis for concluding that assessee had provided any market support services to the AE or received any commission from the AE for providing such marketing support services. In the absence of concrete evidence, transfer pricing adjustment could not have been made merely on presumptions and surmises. Therefore, the transfer pricing adjustment was deleted. Accordingly, the order of Tribunal is affirmed. (AY. 2011-12)
PCIT v. Solar Turbines India Ltd. (2020) 272 Taxman 268 / 192 DTR 145 / 316 CTR 172 (Bom.)(HC)

1375 **S. 92C : Transfer pricing – Arm's length price – Comparables – Different financial years – Rejection of comparable – Question of fact – Exempted income – Disallowance of expenses – Question of fact. [S. 260A]**
Dismissing the appeal of the revenue the Court held that the Appellate Tribunal rightly rejected the comparable hence no question of law. Similarly, deletion of expenses u/s 14A is also question of fact. Accordingly, the order of Tribunal is affirmed.
CIT v. Visual Graphics Computing Services India Pvt Ltd (2020) 274 Taxman 481 / 195 DTR 397 / (2021) 318 CTR 586 (Mad.)(HC)

1376 **S. 92C : Transfer pricing – Arm's length price – Comparable – Test of functional similarity applied by Tribunal is in consonance with legal position discussed hereinabove – Order of Tribunal is affirmed. [S. 92B(2), 260A]**
Dismissing the appeal of the revenue the Court held that none of comparables have been excluded on the ground of high turnover alone. The test of functional similarity applied by the Tribunal is in consonance with the legal position discussed hereinabove. Therefore, there is no merit in the contentions urged by the Revenue on this ground. Court cannot hold that merely because a comparable clears the filters, its inclusion in the list of comparables is immune to challenge by the assessee.(AY. 2010-11)
PCIT v. Open Solutions Software Services P. Ltd. (2020) 191 DTR 76 / 315 CTR 497 (Delhi) (HC)

1377 **S. 92C : Transfer pricing – Arm's length price – Not a question of law to be considered by High Court – Remanding the matter in second round of appeals will be as if it was a shuttle game between the assessee and the Revenue Authorities – Tribunal is directed to decide the issue with in six months from today. [S. 37(1), 254(1), 260A]**
The Court held that determination of Arm's length price is a question of fact which has to be decided by the Appellate Tribunal. Similarly, the question of allowing commission paid to the Central Agency as business expenditure, the Tribunal had to look into the past history of the assessee about the allowability of the expenditure and such expenditure for the previous years had been consistently allowed by the Revenue authority below, and there was no contrary finding by the Tribunal for the previous years. The Tribunal had to decide the issue again fairly and objectively in the light of the materials available before it for the present assessment year 2009-10. Remanding the matter in second round of appeals will be as if it was a shuttle game between the assessee and the Revenue Authorities. Tribunal is directed to decide the issue with in six months from to day. (AY.2009-10)
Madura Coats Pvt. Ltd. v. Dy.CIT (2020) 428 ITR 273/ (2021) 199 DTR 228 / 320 CTR 543 (Mad.)(HC)

1378 **S. 92C : Transfer pricing – Arm's length price – Direction by Dispute Resolution Panel – Writ Petition is not maintainable against such direction. [Art. 226]**
Dismissing the petition the Court held that merely because the order of the Dispute Resolution Panel may be binding on the Assessing Officer, against whose order, the appeal can be filed only before the Tribunal, a shortcut cannot be provided to the assessee to invoke the writ jurisdiction, which itself has three tiers of remedies ;

before the High Court, two tiers, viz., the single judge dealing with the writ petition and the intra-court writ appeal before the Division Bench and then if the matter is taken up to the Supreme Court by way of a special leave petition under article 136 of the Constitution of India. If the matter is dragged through these three tiers, it would be impossible for the orders of the Dispute Resolution Panel to be executed by the Assessing Officer and the Tribunal to apply its mind to the factual aspects of the matter for a long period. Prematurely pronouncing on these issues, definitely curtails the discretion of the assessing authorities in this regard and it is a self defeating exercise, which the High Court in its writ jurisdiction would be reluctant to undertake. (AY.2012-13)

Hyundai Motor India Ltd. v. Secretary, Income-Tax Department (2020) 428 ITR 545 / 195 DTR 260 / (2021) 276 Taxman 453 (Mad.)(HC)

S. 92C : Transfer pricing – Arm's length price – Net margin method – Finding of fact – No question of law. [S. 94B, 260A] 1379

Held, dismissing the appeal the Court held that the Tribunal after considering in detail the facts of the case had given the finding of fact that the transactional net margin method applied by the assessee was the correct method and the application of comparable uncontrolled price method was not justified, in view of the fact that intra associated enterprise transactions were fundamentally different in character in economic circumstances and contractual terms and these could not be compared with the independent transactions entered into by the assessee. The findings of fact recorded by the Tribunal in the order could not be termed perverse or contrary to the evidence on record. The Tribunal had taken into consideration the voluminous documentary evidence on record for the purpose of coming to the conclusion of adoption of the transactional net margin method by the assessee as the most appropriate method of arriving at the arm's length price. No question of law. (AY.2007-08, 2008-09)

PCIT v. Gulbrandsen Chemicals Pvt. Ltd. (2020) 428 ITR 407 / (2021) 202 DTR 249 / 321 CTR 791 / 119 taxmann.com 52 (Guj.)(HC)

S. 92C : Transfer pricing – Arm's length price – Instruction of CBDT is binding on revenue – Instruction No.3 of 2003 (2003) 261 ITR 51 (St.). [S. 92CA] 1380

Court held that as per instruction No. 3 of 2003 ([2003] 261 ITR (St.) 51) issued by the Central Board of Direct Taxes states that wherever the aggregate value of international transaction exceeds Rs. 5 crores (amended to Rs. 15 crores), the case must be picked up for scrutiny under section 92CA of the Income-tax Act, 1961 and sent to the Transfer Pricing Officer for determination of the arm's length price. In view of the unambiguous language employed in S. G. Asia Holdings' case by the Supreme Court Instruction No. 3 of 2003 issued by the Central Board of Direct Taxes is mandatory. (AY. 2008-09)

PCIT v. Obulapuram Mining Company Pvt. Ltd. (2020) 428 ITR 322 / (2021) 199 DTR 223 / 319 CTR 700 / 278 Taxman 89 (Karn.)(HC)

1381 **S. 92C : Transfer pricing – Safe harbour – Exercise of option – Assessing Officer not passing order and declaring that exercising of option was invalid – Option exercised by assessee to be treated as Valid. [S. 92CA, 92CB Art. 226]**

The assessee was a co-operative milk producers' union. It entered into certain specified domestic transactions. For the assessment year 2014-15 it opted for safe harbour and applied in the prescribed format duly certified by the chartered accountant and filed the application along with the return of income. The AO issued notice The assessee referred to the Central Board of Direct Taxes Instruction No. 3, dated March 10, 2016 ([2016] 382 ITR (St.) 36) and submitted that it did not fall in any other criteria for making reference to the Transfer Pricing Officer and that if the Assessing Officer made a reference its objections might be called for before he made any reference to the Transfer Pricing Officer. The assessee wrote to the Principal Commissioner and contended that it had made an application to the Assessing Officer in connection with the domestic transfer pricing and that it had opted for safe harbour and requested to do the needful. The Transfer Pricing Officer issued a notice to the assessee to produce evidence in support of the computation of the arm's length price in respect of its specified domestic transactions. The assessee submitted that it had opted for safe harbour and attached a copy of the application and requested the Transfer Pricing Officer to take it into account. Eventually, the Transfer Pricing Officer passed an order but did not make any adjustments for the arm's length price of the assessee's specified domestic transactions. On a writ allowing the petition the Court held that that the Assessing Officer had no authority to make any reference under section 92CA to the Transfer Pricing Officer to ascertain the arm's length price of the assessee's specified domestic transactions. Therefore, the reference itself was invalid. The Board's Instruction No.3, dated March 10, 2016, could not have and did not lay down anything to the contrary. The circular merely prescribed the circumstances under which the Assessing Officer would make reference to the Transfer Pricing Officer. Nowhere did the circular provide that as soon as such circumstances existed, the Assessing Officer would make a reference to the Transfer Pricing Officer, irrespective of the fact that the assessee had opted for safe harbour and such option was treated or deemed to be treated as validly exercised. Legally speaking, the Board could not have given any such directive. Eventually no such directive could be discerned from the circular. Court also held that the assessee was an eligible assessee as specified in rule 10THA and the specified domestic transaction with respect to which the assessee had opted for safe harbour was eligible specified domestic transaction under rule 10THB. The Department had not pointed out anything to the contrary and it was not even the case of the Assessing Officer that the assessee had not satisfied the circumstances referred to in sub-rule (2). Admittedly, after the assessee had exercised such an option, the Assessing Officer had passed no order under sub-rule (4) of rule 10THD declaring that the exercise of option was invalid and therefore, under sub-rules (7) and (8) of the rule, the option exercised by the assessee would be treated as valid. As a natural and necessary corollary, the transfer pricing regime would not apply. (AY. 2014-15)

Mehsana District Co-Operative Milk Producers' Union Ltd. v. Dy. CIT (2020) 426 ITR 96 (Guj.)(HC)

S. 92C : Transfer pricing – Arm's length price – Appellate Tribunal – Advertising, marketing and publicity expenses – Remand by the Tribunal for determination of arm's length price is held to be not warranted. [S. 254(1)] 1382

Court held that the Tribunal was not justified in remanding the matter to the Assessing Officer/Transfer Pricing Officer for determining the arm's length price of the advertising, marketing and publicity expenses when the Department had failed to prove that there had existed an international transaction between the assessee and its associated enterprise. (AY. 2011-12)

PCIT v. Valvoline Cummins Pvt. Ltd. (2020) 424 ITR 162 (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – Question of fact – No substantial question of law. [S. 92CA, 260A] 1383

Dismissing the appeal of the revenue the Court held that the Tribunal had considered the case of each comparable company and discussed the parameters of the comparables for the purposes of including or excluding them as comparables on the basis of the functionality of the companies in the public domain. Such a detailed exercise having been undertaken by the Tribunal qua each and every comparable company, the reasons given by the Tribunal could not be faulted in respect of the comparable companies. The findings arrived at by the Tribunal were entirely findings of fact and the Revenue had failed to show any perversity in the order. The order of the Tribunal was valid and no question of law arose from it. (AY.2010-11)

PCIT v. Eight Roads Investment Advisors Pvt. Ltd. (2020) 424 ITR 563 / 189 DTR 123 / 315 CTR 365 / 274 Taxman 71 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable uncontrolled price method – The arm's length price determined was not in excess of the invoice price by more than 5 per cent. The price fixed by the Transfer Pricing Officer was justified. [S. 92A, 92B] 1384

The assessee had an international transaction as defined under section 92B with an associated enterprise as defined under section 92 A in the accounting year relevant to AY 2005-06. The price invoiced by the assessee was Rs. 37,39,96,538. The Assessing Officer referred it under section 92CA of the Act and the Transfer Pricing Officer determined the arm's length price at Rs. 38,05,97,081. The difference was Rs. 66,00,543, which was below five per cent., i. e., the arm's length price determined exceeded the invoice price only by less than five per cent. This was upheld by the Tribunal. On appeal by the assessee dismissing the appeal, that there was only one arm's length price determined by the Transfer Pricing Officer in accordance with one of the appropriate methods, being the "comparable uncontrolled price method". It was very clear that the arm's length price determined was not in excess of the invoice price by more than 5 per cent. The price fixed by the Transfer Pricing Officer was justified.(AY. 2005-06)

Torry Harris Sea Foods P. Ltd. v. Dy. CIT (2019) 104 CCH 0729 / (2020) 421 ITR 555 / 193 DTR 377 / 316 CTR 656 (Ker.)(HC)

1385 **S. 92C : Transfer pricing – Arm's length price – Selection of comparables – Exclusion of dissimilarities of function is held to be justified – Appellate Tribunal – Additional evidence – Tribunal directed to examine issue of asessee's involvement in activity of software development considering additional evidence produced. [S. 254(1)]**

The AO made the transfer pricing adjustments and passed a draft assessment order. The assessee contended before the Dispute Resolution Panel that the comparables chosen by the Transfer Pricing Officer were functionally dissimilar and hence should be excluded. The Panel excluded only one comparable from the list and rejected the objections regarding the exclusion of other comparables. On appeal the Tribunal accepted the submissions of the assessee that the comparables chosen by the TPO were functionally dissimilar and were to be rejected. On appeals by the revenue the Court held that the Tribunal had given cogent reasons showing the dissimilarities of the comparables selected by the TPO for determination of arm's length price of the assessee. The Tribunal was justified in excluding the comparables selected by the TPO. For the AY 2013-14, the TPO characterized the assessee as information technology enabled services provider only and rejected its claim as information technology services provider which was in the nature of software development. The assessee filed an appeal before the Appellate Tribunal along with an application for additional evidence wherein evidence was also filed indicating that it was engaged in software development which was rejected. On appeal the Court held that considering the facts that according to the assessment orders in the preceding AYs, the Transfer Pricing Officer and the Assessing Officer had accepted that the assessee was engaged in information technology services (including software development and information technology enabled services) and that due to paucity of time the assessee could not produce certain evidence before the Tribunal, the order of the Tribunal was set aside. The Tribunal was directed to examine whether the assessee was engaged in the activity of software development on consideration of the additional evidence adduced by the assessee. (AY.2010-11, 2011-12, 2013-14)

PCIT v. Equant Solutions India Pvt. Ltd. (2019) 106 CCH 0722 / (2020) 421 ITR 655 (P&H) (HC)

PCIT v. Orange Business Services India Solutions Pvt. Ltd (2020) 421 ITR 655 (P&H)(HC)
Orange Business Services India Solutions Pvt. Ltd. v. Dy.CIT (2020) 421 ITR 655 (P&H) (HC)

1386 **S. 92C : Transfer pricing – Arm's length price – Loan syndication fee received from associated enterprise – Tribunal remitting matter to AO – Not erroneous. [S. 254(1), 260A]**

The Tribunal remanded the matter to the AO to decide the issue afresh of allocation of non-syndication fees between the assessee and its associated enterprise. On appeal High Court held that, on the facts there was no error or infirmity in the view taken by the Tribunal in remanding the matter to the AO for a fresh decision. (AY. 2008-09)

CIT v. RBS Financial Services (India) Pvt. Ltd. (2020) 421 ITR 1 / (2021) 277 Taxman 489 (Bom.)(HC)

Note : Also digested at page No. 441, Case No. 1389

S. 92C : Transfer pricing – International Transactions – Arm's length price – comparable – Investment advisor or sub-advisor cannot be compared with a merchant banker or investment banker. 1387

Investment advisor or sub advisor cannot be compared with a merchant banker or investment banker whether it is a inclusion or exclusion of certain comparable. (ITA No.8 of 2017, dt.11/03/2019)

PCIT v. Blackstone Advisors India Pvt. Ltd, (Bom.)(HC)(UR)

Editorial : SLP of revenue is dismissed (SLP No.24300 of 2019 dt.04/10/2019) (2019) 418 ITR 13 (St.)(SC)

S. 92C : Transfer pricing – Arm's length price – Granting adjustment of 10% on account of quality difference and deleting the addition made by TPO/AO by applying CUP to arrive at ALP in respect of Bisoprolol – Held to be valid. [S.10B(1)(a)(ii), 260A] 1388

Dismissing the appeal of the revenue the Court held that, the application of CUP method was what was canvassed by the Revenue and accepted by the Tribunal. Thus, there could be no grievance with regard to the application of CUP method. Similarly, the adjustment on account of quality as claimed by the assessee was allowed. Moreover, the TPO himself has accepted this price adjustment on account of perception of quality by allowing the adjustment at 10%. No question of law arises. (AY. 2010-11)

PCIT v. Merck Ltd. (2020) 185 DTR 401 / 312 CTR 242 / 275 Taxman 181 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Loan syndication fee received from associated enterprise – Tribunal remitting matter to AO – Not erroneous. [S. 254(1), 260A] 1389

The Tribunal remanded the matter to the AO to decide the issue afresh of allocation of non-syndication fees between the assessee and its associated enterprise. On appeal High Court held that,on the facts there was no error or infirmity in the view taken by the Tribunal in remanding the matter to the AO. for a fresh decision. (AY. 2008-09)

CIT v. RBS Financial Services (India) Pvt. Ltd. (2020) 421 ITR 1 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparables – Functional similarity – Merely because the assessee included an entity in list of comparbles would not bar the assessee from contending otherwise before TPO – Order of Tribunal is affirmed. [S. 92B] 1390

Dismissing the appeal of the revenue the Court held that Merely because the assessee included an entity in list of comparbles would not bar the assessee from contending otherwise before TPO. Court also held that the view taken by the Tribunal that Alphageo was in business of oil extraction and production of oil and it carried research activity in seismic data, whereas the assessee did research and chemical analysis for Agro-chemicals on face of it, functions of two were different. Accordingly, the order of Tribunal is affirmed. (AY. 2008-09)

PCIT v. Sygenta Bioscience (P) Ltd. (2020) 268 Taxman 422 (Bom.)(HC)

1391 **S. 92C : Transfer pricing – Arm's length price – Comparable – Employee cost filter – Company which out sourced its work cannot be accepted as comparable – ITES services – Cannot be excluded merely because it did not make profit relevant assessment year.**

Dismissing the appeal of the revenue the Court held that, Company which out sourced its work cannot be accepted as comparable and also assesee rendering ITES services cannot be excluded merely because it did not make profit relevant assessment year. (AY. 2009-10)

PCIT v. Nomura Structured Finance Service (P) Ltd. (2020) 268 Taxman 173 (Bom.)(HC)

1392 **S. 92C : Transfer pricing – Arm's length price – International Transactions – Providing data collection, web services – Three of the companies held to be not comparable – Question of fact – Order of Tribunal is affirmed. [S. 260A]**

Dismissing the appeal of the revenue the Court held that the Tribunal after elaborately analysing the record and appreciating the factual matrix excluded the companies from the set of comparables on the ground that they were engaged in different verticals and worked through outsourcing models, thus, being functionally different, could not be considered as comparable to the assessee-company i.e. excluding these three comparables, namely, Accentia Technologies Ltd, Coral Hub, Eclerx Services Ltd for determining the arm's length price. (AY. 2008-09)

PCIT v. Corporate Executive Board India P. Ltd. (2020) 420 ITR 52 (P&H)(HC)

1393 **S. 92C : Transfer pricing – Arm's length price – Service was rendered – Addition was deleted.**

The Assessing Officer held the assessee company could not show that there was in fact receipt of services, the payment commensurate with the benefit and such payments benefited the assessee directly and tangibly therefore determined the arm's-length price of the international transaction at nil and added the sum of Rs.7,05,54,285/-to the income of the assessee. CITT (A) deleted the addition. On appeal by revenue the Tribunal held that the findings of the Assessing Officer that the payments were made without any business purpose and without any commensurate benefit to the assessee are not based on any cogent material and without bringing any adverse material on record. The very fact of the Assessing Officer disallowing the income and the reimbursement which does not pass through the P&L account while disallowing the expenses shows that the disallowance was made by the learned Assessing Officer without any proper verification of the material facts available on record. Order of the CIT(A) is affirmed. (AY. 2011-12)

Dy.CIT v. Arkadin Confer India (P) Ltd. (2020) 188 DTR 238 / 204 TTJ 912 (Delhi)(Trib.)

1394 **S. 92C : Transfer pricing – Arm's length price – TNMM – Adjustment in the Manufacturing segment of the assessee – Matter remanded to the Assessing Officer – Claim under section 10A/10B is directed to be allowed on stand alone basis. [S. 10A, 10B]**

Tribunal remitted the matter to the file of AO/TPO for a fresh determination of the ALP of the international transactions under the Manufacturing and ITES/Back-office

services segments in terms of the discussion made supra in this order. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh determination. As regards claim under section 10A.10B following the ratio in CIT v. Yokogawa India Ltd. (2017) 391 ITR 274 (SC) the Tribunal held that the deduction should be allowed qua the eligible undertaking standing on its own without reference to other eligible or non-eligible units or undertakings. Accordingly the profits of the eligible units should be considered on standalone basis. Similar view has been reiterated by the Hon'ble Supreme Court in *CIT v. J.P. Morgan Services India Pvt. Ltd. (2017) 393 ITR 24 (SC).* (AY. 2010-11)
Vishay Components India (P.) Ltd. v. ACIT (2020) 188 DTR 337 / 204 TTJ 649 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – CUP method – Matter remanded for fresh adjudication. 1395
Tribunal set aside the issue of determination of ALP and consequential adjustment if any to the record of the A.O./TPO for fresh adjudication after giving an opportunity of hearing to the assessee. (AY. 2014-15)
Mytex Polymers India (P) Ltd. v. Dy. CIT (2020) 187 DTR 137 / 204 TTJ 371 (Jaipur) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Interest receivable from associate enterprise for delay in payment – Addition is not justified when requisite adjustment made to working capital. 1396
Allowing the appeal, the Revenue had not controverted the assessee's contentions that its margin was 23.3 per cent in the software development segment as compared to 11.42 per cent of the comparable companies and that the assessee had already made requisite working capital adjustment to factor in the impact of delayed receivables. Moreover, an identical issue stood settled in favour of the assessee in its own case for the assessment year 2010-11 and no distinguishing features had been pointed out by the Revenue. Further, the Revenue had also not brought on record any material to show that this decision had been set aside or stayed or overruled by the higher judicial forum. The Revenue was not justified in making the addition. (AY. 2011-12)
Barco Electronic Systems (P.) Ltd. v. Dy.CIT (2020) 84 ITR 35 (SN) / (2021) 187 ITD 249 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Loss making companies to be excluded – High margin cannot be excluded unless backed by certain extraordinary events – Risk adjustment to be considered – Adjustment to be worked out applying average profit level indicator of comparables to cost of international transactions and not on its sale turnover. 1397
Tribunal held that Loss making companies to be excluded. High margin cannot be excluded unless backed by certain extraordinary events. Risk adjustment to be considered. Adjustment to be worked out applying average profit level indicator of comparables to cost of international transactions and not on its sale turnover. (AY. 2010-11)
Gco Technologies Centre P. Ltd. v. ITO (2020) 84 ITR 21 (SN) / (2021) 187 ITD 136 (Mum.) (Trib.)

1398 **S. 92C : Transfer pricing – Arm's length price – Comparable – Having vastly higher turnover cannot be used – Amalgamation not reason For exclusion – Income – tax Authorities – Transfer Pricing Officer – Include additional Commissioner – Order passed by Additional Commissioner is valid. [S. 2(28C), 92CA, 117(1)]**

Tribunal held that under section 92CA of the Act, the Joint Commissioner has been authorised to pass the order as Transfer Pricing Officer. A Joint Commissioner has been defined under section 2(28C) of the Act to mean a person appointed to be a Joint Commissioner or an Additional Commissioner in terms of section 117(1) of the Act. Therefore, Joint Commissioner includes the Additional Commissioner also and the assessee's objection to his jurisdiction was not tenable. As regards comparbles, where the standalone balance-sheet of the comparable company showed that it was functionally similar to the assessee, it may not be rejected for comparison analysis. Where the extraordinary events such as amalgamation of the comparable company would have impacted the profitability of the comparable company was not a valid argument since the effective date of amalgamation was April 1, 2008 and the financial year under consideration was 2009-10 and, therefore, there was no impact of amalgamation during the relevant year. Moreover, merger with another entity carrying on a functionally similar business does not have any impact on the profitability of the comparable. Where the comparable company had undergone an amalgamation in the relevant year but the operations of the amalgamated company were functionally similar to the comparable company and all shares of that company were owned by the comparable company, as there was no functional dissimilarity between the two companies, the event of amalgamation did not have any impact on the profitability margin. Where very large turnover more than 20 times that of the assessee-company, was a ground on which the company could not be treated as a comparable and was to be excluded. The Transfer Pricing Officer was directed to determine the arm's length price afresh in terms of the above directions. (AY. 2010-11)

Transcend Mt Services Pvt. Ltd. v. Dy.CIT (2020) 84 ITR 62 (SN) (Delhi)(Trib.)

1399 **S. 92C : Transfer pricing – Arm's length price – Advertisement, marketing and sales promotion expenses – Business Of Distributing – Not a case of adding value to goods – Sale and distribution expenses to be excluded. [S. 92CA(3)]**

The Tribunal held that the element of adding value to the goods incurring advertisement, marketing and sales promotion expenditure creating market intangibles and enhancing brand value of the product was missing in the present assessee's case. Applying the resale price method after excluding selling and distribution expense of Rs. 10.18 crores, the adjustment worked out to Rs. 2.85 crores. Thus, at best the adjustment made by the Transfer Pricing Officer/Dispute Resolution Panel ought to be restricted to Rs. 2.85 crores as against Rs. 13.50 crores. The Transfer Pricing Officer was directed to restrict the adjustment to the extent of Rs. 2.85 crores. (AY. 2008-09)

Haier Appliances India Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 521 (Delhi)(Trib.)

1400 **S. 92C : Transfer pricing – Arm's length price – Comparable – Five companies to be excluded from final list of comparables [S.92CA]**

Tribunal partly allowing the appeal of the assessee, that the assessee restricted its argument in respect of 5 comparables raised out of 10 as they were covered by the

order of a co-ordinate Bench of the Tribunal. The five comparables of which the assessee sought exclusion had been considered by a co-ordinate Bench of the Tribunal in a case where the assessee had been characterised to be rendering contract software development services to its associated enterprise. The functional profile of the assessee in the present appeal was the same and therefore the 5 comparables were to be excluded from the final list. (AY. 2012-13).
IMS Health Analytics Services Pvt. Ltd. v. ACIT (2020) 84 ITR 277 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Outstanding Receivables – Interest for realisation of trade advances up to 150 days – Interest for delay above 150 days alone should be considered Prime lending rate should not be considered – Currency in which loan to be repaid. [S. 92B] 1401
Tribunal held that the transfer pricing adjustment on account of interest for the entire period of delay beyond 60 days could not be treated as a separate international transaction of trading debt arising during the course of business. When the interest for realisation of trade advances up to 150 days was part and parcel of the price charged from the associated enterprise, the delay up to this extent could not give rise to a separate international transaction of interest uncharged. The effect of delay on interest up to 150 days over and above the normal period of realisation in an uncontrolled situation, should be considered in the determination of the arm's length price of the international transaction of provision of information technology enabled data conversion services and the period of delay above 150 days should be considered as a separate international transaction in terms of clause (c) of Explanation to section 92B. It is the currency in which the loan is to be repaid which determines the rate of interest and hence the prime lending rate should not be considered for determining the interest rate. The assessee could not show the difference between the working capital of the assessee and that of the comparable companies. Thus, the adjustment of working capital was not at all there in the case of the assessee for this year. (AY. 2012-13)
Techbook International Pvt. Ltd. v. ACIT (2020) 84 ITR 377 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Mere filing sample bill is not sufficient – Burden is on assessee to prove service rendered – Matter remanded – Acting as facilitator and reimbursements were pass – through costs – No adjustment to be made – Dispute Resolution panel – Bound to follow the order of Appellate Tribunal, though the appeal was preferred to High Court. [S. 144C, 254(1)] 1402
Tribunal held that the assessee was incurring these expenses by acting as a facilitator and these reimbursements were pass-through costs. Such transactions could not be compared with information technology enabled services. No mark-up was warranted on pass-through costs as these were reimbursement of primary third -party expenses initially incurred by the assessee for which no value addition was done by the assessee and were subsequently reimbursed by the associated enterprises on cost-to-cost basis. Moreover, such transactions are undertaken for commercial expediency and are not intended to be undertaken with expectation of return. Considering the nature of the expenses in totality, in the light of the Organisation for Economic Co-operation and Development guidelines, this adjustment made by the Transfer Pricing Officer was to be deleted. (AY. 2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

1403 **S. 92C : Transfer pricing – Arm's length price – Transactional Net Margin Method (TNMM) – Held to be appropriate method – Remanded TPO to apply TNMM method. [S. 92]**

The assessee is engaged in trading of beauty products. The TPO rejected the Transactional Net Margin Method (TNMM) and adopted Resale Price Method and rejected all comparables and selected only single comparable namely Modicare Ltd. Adjustment made by the was up held by the DRP. On appeal the Tribunal directed the TPO to apply TNMM on the comparable selected by the assessee with suitable working capital adjustment. (AY. 2013-14)

Oriflame India Pvt. Ltd. v. Add.CIT (2020) 82 ITR 268 (Delhi)(Trib.)

1404 **S. 92C : Transfer pricing – Arm's length price – Comparable – Companies Engaged In Providing High – End Integrated Services, Having Huge Brand Name And Significant Intangibles Cannot Be Compared – Gains or loss arising from Fluctuation of Foreign Currency to be considered as operating in nature – working capital adjustment to be allowed on actual basis without any restriction. – Directions of Dispute Resolution Panel cannot be construed as setting aside of issue to Transfer Pricing Officer. [S. 92CA, 144C (8)]**

Tribunal held that company having huge Brand Name And Significant Intangibles Cannot Be Compared. Gains or loss arising from Fluctuation of Foreign Currency to be considered as operating in nature. Working capital adjustment to be allowed on actual basis without any restriction.-Tribunal also held that the directions of the Dispute Resolution Panel could not be construed as setting aside of the issue to the Transfer Pricing Officer/Assessing Officer, there was no merit in the ground raised by the Department (AY. 2009-10)

Akamai Technologies India P. Ltd. v. Dy. CIT (2020) 83 ITR 393 (Bang.)(Trib.)

1405 **S. 92C : Transfer pricing – Arm's length price – Comparable – Turnover filter – Turnover of more than Rs 200 crores was excluded – Market support services – Operating cost Matter remanded. [S. 92]**

Tribunal remanded the entire issue was to be restored to the Assessing Officer/Transfer Pricing Officer for undertaking the exercise afresh selecting a fresh set of comparable companies in respect of the software research and development segment. Accordingly, the order passed by the Assessing Officer/Transfer Pricing Officer was to be set aside. (AY. 2011-12, 2013-14)

Trident Microsystems India P. Ltd. v. Dy. CIT (2020) 83 ITR 449 (Bang.)(Trib.)

1406 **S. 92C : Transfer pricing – Arm's length price – Advertising and promotion expenses – Reimbursement of expenses – Adjustment is held to be not valid – Additional evidence – Packaging, design cost – Issue remanded – Depreciation – Good will – Actual cost – Matter remanded. [S. 32, 92CA(3), 234A, 234B, 254(1)]**

Tribunal held that the Transfer Pricing Officer had not brought any fact on record to show that there existed any agreement between the assessee and its associated enterprise to share or reimburse the advertising and marketing and promotion expenses. As the Department had failed to discharge the onus that was cast upon it as regards proving

that there was an understanding or an arrangement or action in concert under which the assessee had agreed for incurring of advertising and marketing and promotion expenses for brand building of its associated enterprise. Thus no adjustment on account of advertisement and marketing expenses could be made. As regards additional evidence regarding on account of payment for packaging design, cost, training to saloon customers and promotional goods by the assessee to its associated enterprise, which required consideration and verification by the Assessing Officer, the issue was remitted to the Assessing Officer for consideration and decision on the issue afresh. As regards intangible assets collectively called goodwill, which included various permits, employees, and contracts though the assessee had specifically contended about its claim of goodwill. Considering the facts that neither the Assessing Officer nor the Panel had considered the facts as placed before the Tribunal, the issues were remitted to the Assessing Officer to consider these issues afresh by considering the submission of the assessee and the evidence and pass the order in accordance with law. As regards to grant the credit of self-assessment tax and recompute the interest under sections 234A and 234B afresh in accordance with law. (AY. 2015-16)
L'oreal India Pvt. Ltd. v. Dy. CIT (2020) 82 ITR 595 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparables – High degree of brand value – Cannot be comparable. 1407
Tribunal held that in an earlier year, L&T had incurred expenditure on cost of brought out items for resale at Rs. 27.10 crores which was absent in the case of the assessee. It had a huge intangible assets and brand value in software at Rs. 143.61 crores and it had intangible asset in the form of business rights to the tune of Rs. 153.42 crores. Hence, it could not be compared with the assessee. Accordingly, the Transfer Pricing Officer was directed to exclude it from the list of comparables. Absence of segmental relevant data and operating margins in certain companies. Composite data cannot be considered as comparable with assessee. Relevant facts required to be verified and then to decide issue afresh. Matter remanded. (AY. 2012-13, 2013-14)
NXP India Pvt. Ltd. v. Dy.CIT (2020) 82 ITR 467 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Advertising, marketing and promotion expenses – Not international transaction – No adjustment can be made. [S. 92CA] 1408
Tribunal held that in the absence of an express arrangement or agreement between the assessee and its associated enterprise for incurring the advertising, marketing and promotion expenditure to promote the brand of the associated enterprise, advertising, marketing and promotion expenditure incurred by making payment to third parties for promoting and marketing the product manufactured by the assessee did not come within the purview of international transaction.(AY.2013-14)
JCIT v. General Mills India P. Ltd. (2020) 80 ITR 45 (SN) (Mum.) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Outstanding receivables – Working capital adjustment allowed to assessee – No adjustment called for. [S. 92B] 1409
Tribunal held that no adjustment is to be made on account of notional interest on receivables under Explanation (i), (a) and (c) to section 92B treating the continued

debit balance as an international transaction. Moreover when the assessee was a debt free company, and there was no question of charging any interest on receivables. The assessee during the year 2013-14 had not availed of any loan from the associated enterprises or unrelated third parties and was not incurring any interest cost. The agreement between the assessee and its associated enterprise vis-à-vis terms of payment within the stipulated period of 90 days could not form basis for holding the existence of international transaction between the assessee and its associated enterprise where the outstanding was not received within the stipulated period especially where working capital adjustment had been allowed to the assessee. In any case, the credit period of 90 days was less than the credit period of 90 to 120 days of comparables and no adjustment was warranted. (AY.2013-14)
Valuelabs LLP v. ACIT (2020) 80 ITR 19 (SN) (Hyd.)(Trib.)

1410 **S. 92C : Transfer pricing – Arm's length price – Comparable – Segmental result not reliable – Product designing – Product company – Not comparable – Interest rate – Delay in recovery of sales consideration – No adjustment can be made.**
Assessee was engaged in providing software development services to its AE. Comparable company was engaged in business of software product, computer programming, consultancy and related services. Segmental result showed that this company had reported unallocable expenses of Rs.193.89 crores and such segmental detail could not be relied upon as margins of said concern could not be finalized in final analysis. Further, under an extraordinary event, it transferred its Product Engineering Services (PES) Business Unit to another group company as part of business restructuring. Can not be comparable. Company which is in the business of product design services and graphics animation and gaming, it could not be a comparable. A product company, it could not be comparable. Assessee had not availed any loan from AEs or unrelated third party and was not incurring any interest cost and there was similar delay in receipt of receivables from third parties also and assessee was not charging any interest on third parties, no adjustment could be made on account of interest due on receivable from its AE. (AY. 2015-16)
Global Logic India Ltd. v. ACIT (2020) 185 ITD 795 (Delhi)(Trib.)

1411 **S. 92C : Transfer pricing – Arm's length price – Comparable – Segmental result not reliable – Product designing – Product company – Not comparable – Interest rate – Delay in recovery of sales consideration – No adjustment can be made.**
Assessee was engaged in providing software development services to its AE. Comparable company was engaged in business of software product, computer programming, consultancy and related services. Segmental result showed that this company had reported unallocable expenses of Rs.193.89 crores and such segmental detail could not be relied upon as margins of said concern could not be finalized in final analysis. Further, under an extraordinary event, it transferred its Product Engineering Services (PES) Business Unit to another group company as part of business restructuring. Can not be comparable. Company which is in the business of product design services and graphics animation and gaming, it could not be a comparable. A product company, it could not be comparable. Assessee had not availed any loan from AEs or unrelated third party and was not incurring any interest cost and there was similar delay in receipt of

receivables from third parties also and assessee was not charging any interest on third parties, no adjustment could be made on account of interest due on receivable from its AE. (AY. 2015-16)
Global Logic India Ltd. v. ACIT (2020) 185 ITD 795 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Rule 10B permits to aggregate comparable uncontrolled transactions for determining ALP, however, it does not permit to aggregate international transactions carried out by assessee to work out average price for purpose of comparison – Once comparable company becomes AE of assessee in year under consideration, then such company cannot be considered as comparable. [S. 92A(2), R. 10B] 1412
Tribunal held that rule 10B permits to aggregate comparable uncontrolled transactions for determining ALP, however, it does not permit to aggregate international transactions carried out by assessee to work out average price for purpose of comparison. Once comparable company becomes AE of assessee in year under consideration, then such company cannot be considered as comparable (AY. 2010-11)
Lonsen Kiri Chemical Industries Ltd. v. Dy. CIT (2020) 185 ITD 753 / (2021) 198 DTR 257 / 210 TTJ 99 (Ahd.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Captive routine software development service provider – A company operating in diversified markets, owning IPRs and brand value and focusing on R&D could not be comparable – Functionally different cannot be comparable – PLI should be worked by considering provision for doubtful debts as operating expenditure. 1413
Assessee was, thus, a captive routine software development service provider who did not own any significant intangibles. Selected company operated in diversified markets, owned IPRs and brand value and focussed on Research and Development cannot be comparable.
Selected company was an IT consulting firm engaged in consulting, designing, implementing and supporting enterprise applications. It had significant capabilities in transaction, analytics and cloud layers of enterprise application. It also rendered industry specific solutions spanning business applications consulting, design, implementation and support. Since services rendered by this company were in nature of knowledge process outsourcing services and were entirely different from routine SWD services rendered by assessee, it would not be comparable.
PLI should be worked by considering provision for doubtful debts as operating expenditure. (AY. 2014-15)
Brocade Communications Systems (P.) Ltd. v. DCIT (2020) 185 ITD 634 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparison – Data should be of same financial year – Delay of 47 days in filing appeal by the revenue was condoned. [S. 253] 1414
Tribunal held that data to be used for comparison should be data relating to same financial year in which international transaction were entered by tested party. Order of DRP is affirmed. Delay of 47 days in filing appeal by the revenue was condoned (AY. 2009-10)
Firemenich Aromatics (I.) (P.) Ltd. v. ACIT (2020) 184 ITD 43 (Mum.)(Trib.)

1415 **S. 92C : Transfer pricing – Arm's length price – Threshold limit for application of RPT filter cannot be fixed as zero per cent – 15% to 25%.**
Tribunal held that threshold limit for application of RPT filter should be 15 per cent and in cases where available samples are less, then threshold limit can be fixed at 25 per cent. Therefore, directions of DRP fixing threshold limit as 0% for application of RPT filter was not correct. (AY.2010-11)
ITO v. Sabre Travel Technologies (P.) Ltd. (2020) 185 ITD 617 (Bang.)(Trib.)

1416 **S. 92C : Transfer pricing – Arm's length price – Comparable – Functionally dissimilarity and various other factors such as extraordinary performance etc can not be held to be comparable – Segments details are not available matter remanded.**
Assessee-company was engaged in business of rendering software development services (SWD services) and Information Technology Enabled Services (ITES) to its Associated Enterprise (AE). Transfer Pricing Officer (TPO) selected a comparable company which is functional dissimilarity, employee cost filter and 75 per cent revenue from software development service of this comparable company were not discussed by TPO with facts and figures. Mater remanded. Company engaged in product engineering and software development, and it owned inventories etc. and that its segmental data was also not available, cannot be held to be comparable. Matter remanded. Comparable company was a giant in field of SWD services and had brand value and huge turnover should be excluded from the list of comparable. Company having Company was engaged in diverse activities and there was no segment details available and also this company held IPR indicating that it was not a pure SWD service company but was also in SWD products was to be excluded from list of comparables. Company engaged in diverse activities including R & D activities and which had also gone through extraordinary events during year cannot be held to be comparable. Assessee contended that this company was engaged in diverse activities Company having extraordinary events from annual report cannot beheld to be comparable. Where the segments details are not available, matter remanded. (AY. 2011-12)
Indecomm Global Services (India) (P.) Ltd. v. DCIT (2020) 185 ITD 673 (Bang.)(Trib.)

1417 **S. 92C : Transfer pricing – Brand value – Company having high brand value and turnover as compared to assessee – Company could not be selected as comparable.**
A company having high brand value and turnover as compared to assessee-company could not be selected as comparable. (AY. 2012-13)
Integreon (India) (P.) Ltd. v. DCIT (2020) 185 ITD 539 (Delhi) (Trib.)

1418 **S. 92C : Transfer pricing – Arm's length price – Reimbursement of expenses – Adjustment cannot be made – Comparable – Functional similarity – Providing a platform for sale of electronic products of multiple brands – Cannot be held to be comaparble – Manufacture and trading of consumer electronics, home appliances – Different financial year – Matter remanded. [S. 92B]**
Tribunal held that, where there was a Marketing Fund Agreement (MDF) between assessee and AE regarding AMP and shop display activities, scope and value of International Transaction could not have been expanded beyond reimbursement received under MDF agreement to cover entire gamut of AMP expenditure incurred by assessee

during year and as such, adjustments made by TPO on account of AMP expenses would not be sustainable in law. Assessee company was engaged in business of manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products and was also performing critical functions such as quality control and post sale/warranty support as a routine distributor A company being an aggregator, providing a platform for sale of electronic products of multiple brands and, thus, having a different business model vis-à-vis assessee having routine buy-sell model would not be comparable and hence was to be excluded. A company engaged in sale of surgical and medical equipment would not be comparable to assessee engaged in business of manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products. Matter remanded. A comparable cannot be rejected merely on ground that its financial year is different particularly when result can be extrapolated using quarterly result. No comparable can be rejected merely on ground that its financial year is different particularly when result can be extrapolated using quarterly results Matter remanded. (AY. 2014-15)

Samsung India Electronics (P.) Ltd. v. DCIT (2020) 185 ITD 387 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Software development service – Comparable – Functionally different – Company, engaged in both development of software products as well as services whose segmental data was also not available could not be accepted as valid comparable – Filter – Related party – Providing multiple services like custom software development in addition to cloud computing, application services and mobile technology – providing software development and IT enabled services like hardware designing – Employee cost – Huge revenue from engineering design charges – broadband services and wireless internet – based communication services – Providing cloud consulting, cloud regulations and cloud application development – Software validation and verification services to banking and financial services industry worldwide – Held to be not comparable – Positive net worth – software development and testing services – Valid comparable. 1419

Assessee company was engaged in business of providing software development services, company, engaged in both development of software products as well as services whose segmental data was also not available, could not be accepted as valid comparable. Company whose RPT was 56.49 per cent of operating revenue could not be accepted as valid comparable. Company, engaged in providing multiple services like custom software development in addition to cloud computing, application services and mobile technology, enterprise application services, QA and testing, BPO and strategic sourcing could not be accepted as valid comparable. Comparable company engaged in providing software development and IT enabled services like hardware designing, complete product lifecycle development, application development, enterprise IT consulting could not be accepted as valid comparable. A comparable company was having employee cost percentage of 11.51 per cent whereas filter applied by TPO in case of assessee was 25 per cent of employee cost, said company could not be accepted as valid comparable. Company engaged in providing software services and which also earned huge revenue from engineering design charges could not be accepted as valid comparable. Company engaged in providing broadband services and wireless internet-based communication

services as well as enterprise computing could not be accepted as valid comparable. Company engaged in providing cloud consulting, cloud regulations and cloud application development could not be accepted as valid comparable. Company having positive net worth and it was not a loss making enterprise and had reported profits in earlier assessment years, same was to be accepted as valid comparable. Comparable company, engaged in software development and testing services was to be accepted as valid comparable. Company, engaged in software service primarily delivering software validation and verification services to banking and financial services industry worldwide could not be accepted as valid comparable. (AY. 2011-12)
Atlas Healthcare Software India (P.) Ltd. (2020) 185 ITD 753 (Kol.)(Trib.)

1420 **S. 92C : Transfer pricing – Arm's length price – Comparable – Turnover of more than 200 crores upto 500 crores – Working capital adjustment – Negative working capital adjustment shall not be made in case of a captive service provider as there is no risk and it is compensated on a total cost plus basis.**
Companies having turnover of more than 200 crores upto 500 crores have to be regarded as one category and those companies cannot be regarded as comparables with companies having turnover of less than 200 crores. Negative working capital adjustment shall not be made in case of a captive service provider as there is no risk and it is compensated on a total cost plus basis. (AY. 2013-14)
Tavant Technologies India (P.) Ltd. v. DCIT (2020) 185 ITD 309 (Bang.)(Trib.)

1421 **S. 92C : Transfer pricing – Arm's length price – Comparable – Companies whose turnover was less than or more than 10 times turnover of assessee could not be considered as comparable companies – Loss making companies in three financial years were to be excluded from list of comparables – Export filter turnover – Substantial expenditure on R &D – Matter remanded – As per retrospective amendment to section 92B w.e.f. 1-4-2002 deferred payment on receivables or any other debt arising during course of business was an international transaction. [S. 92B]**
Tribunal held that where turnover of comparable companies was less than or more than 10 times turnover of assessee, these companies could not be considered as comparable companies. Companies in whose case there were losses in three previous financial years, these companies were to be excluded from list of comparables being persistent loss making companies. TPO rejected a company as comparable company applying export turnover filter of 75 per cent, and assessee contended that export income of said company as per financial statement was 79.6 per cent, matter was to be restored to TPO for fresh consideration. Substantial expenditure on R& D, matter remanded. As per retrospective amendment to section 92B w.e.f. 1-4-2002 deferred payment on receivables or any other debt arising during course of business is also included as an international transaction. (AY. 2014-15)
KBACE Technologies (P.) Ltd. (2020) 185 ITD 164 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Allowability of expenditure – TPO has no authority to disallow the expenditure – ALP adjustment cannot be equated with disallowance of expenses. [S. 37(1)] 1422

Assessee entered into international transactions with its Associated Enterprises (AEs) as regards payment of management fee, research and development (R&D) fees and tender fees. TPO proposed certain ALP adjustment in respect of aforesaid transactions. DRP held that assessee failed to explain benefit for said charges in earlier years, DRP, further, held that said fees pertained to previous years and same could not be disallowed in instant year. Tribunal held that neither ALP adjustments can be equated with disallowance of expenses, even though effect may be same, nor TPO has authority to disallow expenses and, thus, aforesaid ALP adjustments made by DRP were vitiated in law and was to be deleted. (AY. 2007-08, 2010-11,2011-12)

Hamon Cooling Systems (P.) Ltd. DCIT (2020) 185 ITD 23 / 196 DTR 97 / 208 TTJ 725 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Shown margin of 9.02 per cent as against average margin of final comparables adopted by TPO at 22.69 per cent – High Turnover having brand value to be excluded – Matter remanded to TPO for denovo consideration – Provisions for bad debts as non – operating expenditure only in case of three comparable companies – Foreign exchange loss being not an extra – ordinary item in relevant year to assessee alone and similar loss being incurred by comparable companies, it was not a distinguishing factor to be considered for arriving at ALP. 1423

Tribunal held that the assessee has shown margin of 9.02 per cent as against average margin of final comparables adopted by TPO at 22.69 per cent-Matter remanded to TPO for denovo consideration. Tribunal also held that out of 13 companies selected by TPO, DRP directed for exclusion of two companies on ground of high turnover as well as for having brand value to which revenue raised objection, matter was to be remanded to TPO to examine fact. Tribunal also held that TPO should bring out reasons for considering provisions for bad debts as non-operating expenditure only in case of three comparable companies. Foreign exchange loss being not an extra-ordinary item in relevant year to assessee alone and similar loss being incurred by comparable companies, it was not a distinguishing factor to be considered for arriving at ALP. (AY. 2010-11)

United Online Software Development (India) (P.) Ltd. v. DCIT (2020) 185 ITD 15 (Hyd.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Royalty – Bench mark analysis – Matter remanded. 1424

Assessee-company entered into intellectual property agreement with its foreign AE for right to use intellectual property and know-how as regards truck engine. It paid certain amount towards royalty to said AE and adopted Comparable Uncontrolled Price (CUP) method for benchmarking arm's length price (ALP) of said royalty. Assessee submitted that, as per search conducted in Royalty Stat Database, royalty paid by assessee was at ALP in view of royalty paid by comparables. The TPO rejected same doubting its authenticity and determined its ALP at Nil. Tribunal remanded to TPO for afresh adjudication. (AY. 2010-11)

Mahindra Heavy Engines Ltd. v. ACIT (2020) 185 ITD 291 (Mum.) (Trib.)

1425 **S. 92C : Transfer pricing – Arm's length price – Working capital – Captive service provider – No negative working capital adjustment could be made.**
Assessee provided software development services to its Associated Enterprise only and the Assessee was only a captive service provider which was entirely funded by AEs. Tribunal held that since assessee was running business without any working capital risk as compared to comparables, no negative working capital adjustment could be made. (AY. 2013-14)
Tivo Tech (P.) Ltd. v. DCIT (2020) 185 ITD 209 (Bang.)(Trib.)

1426 **S. 92C : Transfer pricing – Arm's length price – Guarantee commission was to be charged at rate of 0.50 per cent in respect of corporate guarantee – Interest – Commercial expediency of loan is wholly irrelevant in ascertaining ALP of interest on said loan advanced to AE.**
During relevant year assessee extended corporate guarantee to its AE Assessee, however, did not charge any guarantee commission from AE in respect of said transaction The TPO benchmarked transaction of guarantee commission at rate of 1.25 per cent and, thus, certain addition was made to assessee's ALP. Tribunal held restricted addition of guarantee commission to 0.50 per cent. During relevant year, assessee advanced certain loan to its AE-Assessee's case was that it did not charge any interest on said loan due to precarious condition of AE. TPO made certain addition to assessee's ALP in respect of interest on loan Tribunal held that commercial expediency of loan is wholly irrelevant in ascertaining ALP of interest on said loan advanced to AE. Order of TPO is affirmed. (AY. 2014-15)
Laqshya Media Ltd. v. DCIT (2020) 184 ITD 143 (Mum.)(Trib.)

1427 **S. 92C : Transfer pricing – Arm's length price – Turnover – Companies having higher turnover can be held to be comparable Risk management – TPO was to be directed to re – compute risk adjustment in accordance with law – A company rendering software development services and licensing and earning royalty of software products cannot be held to be comparable in absence of segmental details – A company engaged in diverse field of activities of software development could not be regarded as functionally comparable with assessee – A company had undergone acquisition which was an extraordinary event that would impact profits for year under consideration, this company could not be considered as comparable – Comparable companies available in public domain was insufficient assessee cannot be required to produce the evidence, the revenue can compel production of required details from comparable companies by issuing notice under section 133(6) of the Act. [S. 133(6)]**
Tribunal held that where assessee was a captive software development service provider having turnover less than Rs. 200 crores, companies having higher turnover of more than Rs. 200 crores could not be compared with assessee. DRP provided risk adjustment at 1 per cent on ad hoc basis, since assessee was a low risk bearing company for software development services and information technology enabled services segment, while computing risk adjustment, risk assumed by comparables for earning revenue under particular segment was to be analysed. Assessee was a low risk bearing company for software development services and information technology enabled services segment. DRP provided risk adjustment on ad hoc

basis at 1 per cent. Tribunal held that since assessee was low risk bearing company, while computing risk adjustment, risk assumed by comparables for earning revenue under particular segment was to be analysed and TPO was to be directed to re-compute risk adjustment in accordance with law. A company rendering software development services and licensing and earning royalty of software products, in absence of segmental details, could not be considered as comparable to assessee. A company engaged in diverse field of activities of software development could not be regarded as functionally comparable with assessee. A company had undergone acquisition which was an extraordinary event that would impact profits for year under consideration, this company could not be considered as comparable. Where TPO selected a company as comparable to assessee, however, assessee contended that said company was not functionally comparable as under this segment same was into high-end KPO services whereas assessee was carrying out back officer services, comparability analysis said company was to be set aside to TPO for fresh consideration. Company was not functionally comparable as under this segment said company was into high-end KPO services whereas assessee was carrying out back officer services. Matter remanded to TPO. If information as regards comparable companies available in public domain was insufficient, it was beyond power of assessee to produce correct information about said comparables, however, revenue had sufficient powers under section 133(6) to compel production of required details from comparable companies; therefore, it was no defense to say that assessee had not furnished required details to deny working capital adjustment. TPO was to be directed to recompute working capital adjustment in actual, and to consider same for purposes of computing arm's length margin. (AY. 2010-11)
Marlabs Innovations (P.) Ltd. v. ACIT (2020) 184 ITD 289 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Development of software products, was to be excluded from list of comparables – Bigger sized company having large turnover was to be excluded from the list of comaparbles. 1428
Assessee was engaged in providing software development services. Therefore r a company engaged in providing IT enabled services and also into development of software products, was to be excluded from list of comparables. Similarly bigger sized company having turnover of Rs. 22,742 crore being in position to undertake more risks in business as compared to smaller size companies, was to be excluded from list of comparables. (AY. 2012-13)
Capgemini Technology Services India Ltd. v. DCIT (2020) 184 ITD 393 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Volume difference in transaction values, funding issues, environmental issues, geographical location of clients and alleged differences in FAR without specifying same were held not grounds to reject CPM method and adopt TNMM method in oil and gas sector – Appellate Tribunal – Period of 90 days for pronouncement of orders after date of hearing is to be computed by excluding period during which nationwide COVID 19 pandemic lockdown was in force. [S. 255, ITAT R. 34] 1429
Tribunal held that Volume difference in transaction values, funding issues, environmental issues, geographical location of clients and alleged differences in FAR

without specifying same were held not grounds to reject CPM method and adopt TNMM method in oil and gas sector. Tribunal also held that period of 90 days for pronouncement of orders after date of hearing is to be computed by excluding period during which nationwide COVID 19 pandemic lockdown was in force. (AY.)
Mott MacDonald (P.) Ltd. v. CIT (2020) 184 ITD 656 / 190 DTR 21 / 206 TTJ 30 (Mum.) (Trib.)

1430 **S. 92C : Transfer pricing – Arm's length price – TNMM method – Constantly accepted to be Most Appropriate Method – TNMM would be appropriate methodology – Corporate guarantee – Spread rate would be applied to gross amount of guarantee, and not on actual loan availed by AE.**
Assessee sold natural ingredients to its US AE and benchmarked same using Transactional Net Margin Method (TNMM). Accordingly, no TP adjustment was proposed by assessee. Rejecting TNMM and adopting CUP as Most Appropriate Method (MAM), TPO proposed an adjustment. Tribunal held that in earlier years, TNMM method as adopted by assessee had constantly been accepted to be Most Appropriate Method as against observation of TPO. Accordingly no TP adjustment would be warranted on these transactions. Assessee provided corporate guarantee of USD 4 Million US dollars to a US bank for extending credit facilities to one of its 100 per cent subsidiary/AE. In its TP study report, assessee benchmarked said transaction and arrived at spread of 1.25 per cent on such transaction. Applying same to loan amount outstanding at month end, assessee worked out TP adjustment of Rs.18.74 Lacs.However, TPO held that said rate would apply to gross amount of guarantee and not on actual loan availed by AE. TPO worked out additional adjustment of Rs.1.20 Lacs. DRP confirmed order of TPO Tribunal confirmed the order of lower authorities. (AY. 2014-15)
Omni Active Health Technologies Ltd. v. ACIT (2020) 184 ITD 714 (Mum.)(Trib.)

1431 **S. 92C : Transfer pricing – Arm's length price – Comparable – A company engaged in distribution of software product could be accepted as valid comparable.**
Assessee company was engaged in distribution of satellite channels to local cable operators, multi system operators and Direct to Home (DTH) operators, therefore a company engaged in distribution of software product could be accepted as valid comparable. (AY. 2011-12)
Sony Pictures Networks India (P.) Ltd. v. DCIT (2020) 184 ITD 794 (Mum.)(Trib.)

1432 **S. 92C : Transfer pricing – Arm's length price – Comparable – Company engaged in the business of investment banking, merchant banking, merger and acquisition, private equity, syndication, etc. cannot be compared to non-binding investment advisory service provider.**
Tribunal held that one of the comparable company, Motilal Oswal Investment Advisories Pvt. Ltd., was engaged in the business of investment banking, merchant banking, merger and acquisition, private equity, syndication, etc. The assessee had only one segment of providing non-binding investment advisory services to the AE. Looking at the functional profile of that company, it was held that company cannot be a comparable to a non-binding investment advisory service provider. Accordingly the AO was directed to

determine the arm's length price of the international transaction with the AEs based on remaining comparables. (AY. 2010-11)
Khazanah India Advisors Pvt. Ltd. v. Dy.CIT (2020) 184 ITD 890 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Notional interest – Interest on loan at LIBOR + 200 bps is held to be appropriate. [S. 92B] 1433
During relevant year, assessee granted loan to AE without charging any interest. In transfer pricing proceedings, TPO applied rate of SBI PLR+300 bps and determined transfer pricing adjustment in respect of notional interest.-DRP confirmed said addition Tribunal held that loan to AE is an international transaction and it needs to be benchmarked for ALP determination, however in view of fact that loan was advanced to AE in Italy, ALP computed by TPO on basis of lending rate of banks in India was not sustainable it was appropriate to charge interest on loan at LIBOR + 200 bps. (AY. 2009-10 to 2014-15)
Bombay Rayon Holdings Ltd. v. ITO (2020) 183 ITD 91 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Purchase product from AE and reseing to unrelated party – Resale price method (RPM) method was to be applied for benchmarking international transaction undertaken by assessee – Subvention payments by AE to reimburse part of operating expenses, said subvention amount received by assessee was operating in nature and was to be included as operating income – Promotion of Drug – Reimbursement of expenses – No transaction or international transaction could be said to be involved between assessee and its AE. [S. 92B] 1434
Tribunal held that where assessee purchased a product from its AE and resold same to unrelated party without altering or using any intangible assets to add substantial value i.e. resale was made without any value addition, RPM method was to be applied for benchmarking international transaction undertaken by assessee. Where assessee incurred losses in its initial year of operations and in order to assist assessee for transfer pricing purposes, its AE made subvention payments to reimburse part of operating expenses, said subvention amount received by assessee was operating in nature and was to be included as operating income while computing PLI in hands of assessee. Tribunal also held that since expenditure incurred by assessee was neither incurred at instance or behest of its AE nor there was any understanding or arrangement between parties to allocate or contribute any part of expenditure towards reimbursement of any part of AMP expenditure, no transaction or international transaction could be said to be involved between assessee and its AE. (AY. 2011-12, 2012-13)
MSD Pharmaceuticals (P.) Ltd. v. DCIT (2020) 183 ITD 80 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – AMP expenses – AE has not carried out any function in India – No international transaction in form of any agreement or arrangement on AMP expenditure incurred by assessee – Addition is held to be not justified. [S. 92B] 1435
Assessee-company was engaged in trading and manufacturing of soft drink beverages, aerated and non-aerated drinks and snacks food items TPO made additions on account of Advertisement, Marketing and Promotional (AMP) expenses determining ALP of said transactions. On appeal the Tribunal held that said AEs had not carried out any function in India and also had not assumed any risk and, further, even for license for use of

trademark, no royalty was paid by assessee to its AEs; hence, no benefit accrued to said AEs. Accordingly the addition was directed to be deleted. (AY. 2015-16)
PepsiCo India Holdings (P.) Ltd. v. DCIT (2020) 183 ITD 196 (Delhi)(Trib.)

1436 **S. 92C : Transfer pricing – Arm's length price – Comparable – Software development – Software education – Computer related activities like maintenance of website for its clients and creation of multimedia presentation – Product companies – Functionally not comparable – High turnover filter – Directed to be excluded.**
Assessee was a company engaged in business of software development solely for its foreign Associates Enterprises (AEs). Tribunal held that companies which provided software education,Computer related activities like maintenance of website for its clients and creation of multimedia presentation, and Product companies are functionally not comparable. Similarly companies having high turnover filter are also directed to be excluded. (AY. 2010-11)
Xoriant Solutions (P.) Ltd. v. ITO (2020) 183 ITD 180 (Mum.)(Trib.)

1437 **S. 92C : Transfer pricing – Arm's length price – Advance for allotment of shares – Notional interest – No addition could be made.**
During relevant year assessee gave certain money to its AE as share capital for allotment of shares. The TPO held that share transaction was sham and amount paid to AE was to be regarded as loan and made addition of notional interest. Tribunal held that the TPO could not recharacterize said transaction unless it was found to be a sham or bogus transaction. Accordingly, addition of notional interest made by TPO was deleted. Followed the order of earlier year.
Voltas Ltd. v. ACIT (2020) 183 ITD 857 (Mum.)(Trib.)

1438 **S. 92C : Transfer pricing – Arm's length price – Re sale without any further value addition – Resale Price Method (RPM) is most appropriate method for determining ALP of said international transactions.**
During relevant year assessee purchased certain finished goods from AE and resold same to various customers in India. In order to benchmark said transactions assessee adopted Resale Price Method. TPO, however, taking a view that TNMM was most appropriate method. DRP upheld order passed by TPO. Tribunal held that when assessee purchases products from AE and resells same without any further value addition or further processing then RPM is most appropriate method for determining ALP of said international transactions. (AY. 2014-15)
Topcon Sokkia India (P.) Ltd. v. DCIT (2020) 183 ITD 876 (Delhi) (Trib.)

1439 **S. 92C : Transfer pricing – Arm's length price – Notional interest on interest free loan – Rate of LIBOR plus 2 per cent is held to be justified.**
During relevant year assessee gave interest free ECB loan to its wholly owned subsidiary in India. Assessing Officer made addition to assessee's ALP in respect of notional interest on said loan. Tribunal held that that ALP of notional interest on interest free loan advanced by assessee was to be taken as LIBOR rate plus 2 per cent. Followed the order of earlier year. (AY. 2013-14)
Sabre Asia Pacific Pte. Ltd. v. DCIT (2020) 183 ITD 832 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Loan and advance – Interest – CUP method – Reimbursement of expenses – No adjustment can be made – Corporate guarantee was extended by assessee as a shareholder activity – No adjustment can be made. [S. 92B] 1440

Tribunal held that since loan and advances were granted in foreign currency, Euro-LIBOR would be appropriate benchmark that conforms to arm's length standard under CUP Method, accordingly the upward adjustment made by DRP was to be deleted. Tribunal also held that no ALP adjustment could be made as said payment was reimbursement of cost. Tribunal also held that where corporate guarantee was extended by assessee-company as a shareholder activity, i.e., solely because of ownership interest with primary object to help its subsidiary company, protect its interest and not to earn interest income on same no adjustments could be made. Followed *ACIT v. Emani Ltd. [IT Appeal No. 1958/Kol/2017, dated 3-4-2019.* (AY. 2013-14)

AT & S Austria Technologie & Systemtechnik Aktiongesell Schaft v. DCIT (2020) 182 ITD 143 (Kol.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – ITES services did not form a single composite transaction – Transactions cannot be aggregated – Extended credit period – Addition of notional interest is held to be not justified. 1441

Dismissing the appeal of the revenue the Tribunal held that since transactions of assessee with its AEs did not form a single composite transaction and terms of each transaction was agreed separately by assessee with its AEs, approach of TPO aggregating international transactions was not appropriate. Tribunal also held that where assessee did not charge interest either from its AEs or from third parties towards extended credit period for payment of contract revenue for providing them ITES services, no notional interest was to be charged on receivables from AEs for such extended credit period. (AY. 2007-08)

ACIT v. WNS Global Services (P.) Ltd. (2020) 182 ITD 59 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Matter remanded to the TPO – Turnover cap – Goodwill – Loss making companies – Size and Economies of Sale/High Risk Companies 1442

Tribunal remanded the matter to the TPO to consider comparable and also held that what are the circumstances the turnover cap, goodwill, loss making companies, size and economies of sale, high risk companies can be said to be comparable. (AY. 2011-12, 2012-13)

Aithent Technologies (P.) Ltd. v. ITO (2020) 182 ITD 169 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Tested party – Cost Plus Method (CPM) – Audit of segmental accounts – Cannot be rejected on the ground that the Accounts of overseas entities were not audited. 1443

Tribunal held that when foreign AE, primarily acting as marketing arm of assessee and performing administrative services, was least complex entity, it should be treated as tested party for purpose of TP analysis.

Tribunal also held that CPM is appropriate to be used as MAM in situation wherein international transaction involves provision of services to a related party. Tribunal also

held that TPO was not justified in rejecting segmental accounts of overseas entities used by assessee for transfer pricing analysis as transfer pricing legislation nowhere mandates that segmental accounts of such entities used should be audited. (AY. 2010-11 to 2013-14)
ACIT v. ITC Infotech India Ltd. (2020) 182 ITD 101 / (2021) 209 TTJ 735 (Kol.)(Trib.)

1444 **S. 92C : Transfer pricing – Arm's length price – Addition of 10 percent – Allocation of expenses – Held to be not justified.**
Assessee a 'multi system operator' (MSO) in distribution of television channels, received placement charges from broadcasters for placing their channels at preferred positions. After retaining amount attributable to direct subscriber base of company, it distributed balance amount among RPs (Related Parties) according to their respective entitlements as worked out on basis of their subscribers. TPO on ad hoc basis, added 50 per cent of placement charges as assessee's income. DRP upheld ad hoc addition to extent of 10 per cent. On appeal the Tribunal held that adjustment of 10 per cent upheld by DRP was without following any of prescribed methods under section 92C(1) nor had any benchmarking been adopted in determination of ALP, there was no justification even for upholding 10 per cent of addition. (AY. 2014-15)
Hathway Cable and Datacom Ltd. v. DCIT (2020) 182 ITD 274 / 77 ITR 52 (SN) / 203 TTJ 691 / 186 DTR 50 (Mum.)(Trib.)

1445 **S. 92C : Transfer pricing – Arm's length price – AMP expenses – TPO cannot be debarred from examining said international transaction with respect to arm's length price. [S. 92B]**
Tribunal held that when there is an agreement that overseas associated enterprise will share AMP expense of assessee when benefitted, the AMP expense becomes an international transaction and, TPO cannot be debarred from examining said international transaction with respect to arm's length price. Matter remanded. (AY. 2010-11)
Diageo India (P.) Ltd. v. ACIT (2020) 182 ITD 362 / 205 TTJ 622 (Mum.)(Trib.)

1446 **S. 92C : Transfer pricing – Arm's length price – Comparable – Software development – Size and economies of scale/high risk companies – Functionally different – providing Information Technology Enabled Services (ITES) To be excluded from final list of comparables – Working capital adjustment was directed to be allowed on actual basis.**
Tribunal held that a giant risk-taking company was engaged in development and sale of software products and owned intangible assets was to be excluded from final list of comparables. Where assessee was engaged in providing Information Technology Enabled Services (ITES), a company earning revenue from outsourcing solutions to several clients and its service offerings span across multiple industries segment, was to be excluded from list of comparables. TPO was to be directed to allow working capital adjustment as per actuals. Some of the issues were remanded for re-examination. (AY. 2014-15)
Goldman Sachs Services (P.) Ltd. v. JCIT (2020) 182 ITD 189 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – Functionally different – Companies having turn over of 10 times greater cannot be considered as comparable companies. 1447

Tribunal held that where turnover of comparables companies was 10 times greater than that of assessee, these companies could not be considered as comparable companies, similarly a company engaged in provision of software solutions developed in-house, was to be excluded from list of comparables being functionally dissimilar. (AY. 2009-10)
Mformation Software Technologies (I) (P.) Ltd. v. ITO (2020) 182 ITD 78 (Bang.) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Software development – Directed to pass speaking order – Working capital – Computed by taking actual data without putting any upper limit – Ad-hoc estimate of risk differential was directed to recompute. [S. 144C] 1448

Tribunal held that the DRP excluded certain comparables as well as upheld inclusion of comparables without giving any proper reasoning for such exclusion and inclusion, matter remanded. As regards working capital since working capital adjustment was to be computed by taking actual data without putting any upper limit, thus, TPO was to be directed to recompute same. As regards risk differential TPO was to be directed to recompute such adjustment in accordance with law (AY. 2011-12)
NXP India (P.) Ltd. v. DCIT (2020) 182 ITD 163 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparble – Customised software development on contractual basis Job placement portal and BPO services – Dissimilarity in functions and for want of segmental accounts – Sponsorship fees and other expenses, said company was to be excluded from final set of comparables – Turnover more than 750 time cannot be considered as comparable – Profit margin – Sale of licence – Sale of software and products. 1449

Tribunal held that the business of customised software development on contractual basis can not be compared with the company which rendered job placement portal and BPO services. Tribunal also held that advertisements, sponsorship fees and other expenses, said company was to be excluded from final set of comparables for dissimilarity in functions and for want of segmental account. Where the company having turnover was around 758 times than that of assessee, could not be taken in final set of comparables to assessee. Company profit of which is very volatile cannot be selected as a comparable. Revenue from sale of licence was directed to be excluded. Company which is in the business of sale of software services and products to be excluded. (AY. 2009-10)
Nagarro Software (P.) Ltd. v. ITO (2020) 182 ITD 128 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Turnover filter – To be accepted as valid comparable. 1450

Assessee applied turnover filter with minimum turnover of Rs. 1 crores. TPO accepted same and, accordingly, rejected a comparable company selected by assessee on two grounds; firstly, company was having turnover less than Rs. 1 crore; and secondly, company was not functionally comparable. Tribunal held that a perusal of directors report of said comparable which was part of annual report prima-facie revealed that

turnover of said company was more than Rs. 2 crores hence said company was to be accepted as valid comparable. (AY. 2008-09)
Schindler India (P.) Ltd. v. ACIT (2020) 182 ITD 84 (Mum.)(Trib.)

1451 **S. 92C : Transfer pricing – Arm's length price – Reimbursement of expenses – Bright – Line Text (BLT) – Interest – TPO could not have determined 30 days as credit period for computing interest on outstanding receivables, without appreciating actual credit terms offered to AEs.**
Tribunal held that where there was a Marketing Fund Agreement (MDF) between assessee and AE regarding AMP and shop display activities, scope and value of International Transaction could not have been expanded beyond reimbursement received under MDF agreement to cover entire gamut of AMP expenditure incurred by assessee during year Tribunal also held that TPO could not have determined 30 days as credit period for computing interest on outstanding receivables, without appreciating actual credit terms offered to AEs. (AY. 2012-13)
Samsung India Electronics (P.) Ltd. v. ACIT (2020) 182 ITD 312 (Delhi)(Trib.)

1452 **S. 92C : Transfer pricing – Arm's length price – Comparable – Matter remanded – Adjustment for working capital difference nor working provided – Addition is held to be justified.**
Tribunal held that comparable companies to be decided on basis of far analysis and not on basis of judicial precedent. Functionally comparable company to be included in list of comparables. Margin of comparable shown in show-cause notice different from that in order. There is no justification for change. TPO to show how and on what basis margins went up to 33.2 Per Cent. from 7.28 Per Cent. Matter remanded. No arguments raised before TPO with respect to adjustment for working capital difference nor working provided. Claim is not entertained. (AY. 2014-15)
Open Solutions Software Services Pvt. Ltd. v. Add.CIT (2020) 83 ITR 21 (SN) (Delhi)(Trib.)

1453 **S. 92C : Transfer pricing – Arm's length price – Working capital adjustment granted – Outstanding receivables part of working capital – No separate benchmarking warranted.**
Tribunal held that the assessee had been allowed working capital adjustment while computing the arm's length price of the international transaction of the sale of services. Therefore, no separate benchmarking should be done of the outstanding receivables as these were part of the working capital of the assessee. Therefore the addition in relation to the delay in receipt of receivables from the associated enterprises was deleted. Relied on *PCIT v. Kusum Health Care P. Ltd. (2017) 398 ITR 66 (Delhi)(HC).* (AY.2011-12)
Dy. CIT(LTU) v. EXL Service.Com (India) Pvt. Ltd. (2020) 83 ITR 11 (SN) (Delhi)(Trib.)

1454 **S. 92C : Transfer pricing – Arm's length price – Reimbursement of expenses – Addition is held to be not valid.**
Tribunal held that the reimbursement was not duplicative in nature. Since the assessee had earned income from its customers at a cost +10 Per Cent. After including cost of

such service. No addition was made in subsequent year. Addition was directed to be deleted. (AY.2012-13)
WM India Technical and Consulting Services Pvt. Ltd. v. Dy.CIT (2020)82 ITR 37 (SN) (Delhi)(Trib.)

S. 92C : Transfer pricing – Reference to Transfer Pricing Officer – No Transfer pricing adjustment of more than Rs. 10 Crores for an earlier year – Reference invalid and consequential Transfer pricing adjustment invalid. [S. 92CA] 1455
Tribunal held that though the proposed transfer pricing adjustment was more than Rs. 10 crores in an earlier assessment year it was still pending with the Panel at the time of the Assessing Officer making a reference to the Transfer Pricing Officer for the year 2014-15. Till then the Assessing Officer had simply forwarded a draft of the proposed order of assessment to the assessee proposing to make variation in the income returned. None of the two conditions enshrined in Instruction of 2016 were satisfied inasmuch as neither was a transfer pricing adjustment of more than Rs. 10 crores made for an earlier year nor as a sequitur was there any question of such transfer pricing adjustment having been either upheld by a judicial authority or pending in appeal. The Assessing Officer did not invoke para 3.3(c) of the 2016 Instruction either at the time of seeking approval from the Principal Commissioner or making a reference to the Transfer Pricing Officer. Thus the Assessing Officer made a reference to the Transfer Pricing Officer in contravention of Instruction No.3 of 2016. Since the Instruction is binding on the Assessing Officer such reference was invalid and the consequential transfer pricing adjustment of Rs. 10.14 crores was deleted. Instruction No. 3 Of 2016 dt. 10-3-201 (AY.2014-15)
Sava Healthcare Ltd. v. Dy.CIT (2020) 184 ITD 312 / 189 DTR 1 / 204 TTJ 513 / 78 ITR 65 (SN) (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable Benchmarking of Transaction – Marketing support services same functions – Can be treated as comparable – Deriving its income from manufacturing or trading and indenting services – Not good Comparable for company rendering market support services. 1456
Tribunal held that the marketing support services same functions-can be treated as comparable, however companies deriving its income from manufacturing or trading and indenting services is not good Comparable for company rendering market support services. (AY.2011-12)
Avaya India Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 84 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Debt – free company – Adjustment in relation to notional interest on overdue receivables is held to be not justified – Comparable – Company having controlled transactions – High brand value and high turnover of company – Held not comparables. 1457
Tribunal held that the assessee had not borrowed any money. Where the assessee was a debt-free company, the question of receiving any interest on receivable did not arise. The Assessing Officer was directed to delete the addition. Tribunal held that, the operating margin of E could not be included to arrive at the arm's length price of controlled transactions, which were materially different in content and value. Thus it could not

be compared with a low-end service provider like the assessee. I was excluded on the basis of the high brand value and high turnover of the company. (AY.2012-13, 2015-16)
Avaya India Pvt. Ltd. v. Add.CIT (2020) 78 ITR 305 (Delhi)(Trib.)

1458 **S. 92C : Transfer pricing – Arm's length price – Capacity utilisation of comparable – Details not available in public domain – Remanded to the TPO to call for information and decide the issue. [S. 133(6)]**
Tribunal held that the assessee was entitled to deduction from its profit level indicator towards capacity under utilisation adjustment. However, the assessee had computed the adjustment presuming that the comparable companies operated at 100 per cent. capacity. The assessee accepted that the adjustment should have been computed considering the details of actual capacity utilisation by comparable companies. Since the details were not available in the public domain, the issue was restored to the Transfer Pricing Officer with the direction to collect the relevant details from comparable companies for the year 2013-14 and accordingly compute the adjustment. The Transfer Pricing Officer was directed to exercise powers under section 133(6) to call for information on capacity utilisation of the comparable companies such as installed capacity, actual production in units, break-up of fixed cost and variable cost, and segmental and product-wise information, if any. After obtaining the information, he was to provide the assessee an opportunity by sharing the details so obtained, and accordingly, grant the adjustment for capacity under utilised. (AY.2013-14)
Essentra (India) Pvt. Ltd. v. ITO (2020) 79 ITR 22 (SN)(Bang.)(Trib.)

1459 **S. 92C : Transfer pricing – Arm's length price – Outstanding sum of invoices akin to loan advanced – Credit of tax deduction at source – Matter remanded. [S. 92B(2)]**
Tribunal held that the outstanding sums under invoices are akin to loans advanced by the assessee to the foreign associated enterprise, and an international transaction according to the Explanation to section 92B. The Transfer Pricing Officer was directed to study the impact of the receivables appearing in the accounts of the assessee, looking into why they were shown as receivables and also as to whether the transactions could be characterised as international transactions. Tribunal also directed the the Assessing Officer to verify and consider the claim of the assessee for credit amounting to Rs. 2,61,461 of tax deducted at source based upon the documents filed in accordance with law.
Lotus Labs P. Ltd. v. Dy.CIT (2020) 79 ITR 295 (Bang.)(Trib.)

1460 **S. 92C : Transfer pricing – Arm's length price – Comparable – Software testing services company – Company rendering whole basket services – Company providing software services to its clients – Not Comparables.**
Tribunal held that, software testing services company and a company rendering whole basket services. Company providing software services to its clients is not Comparables. (AY. 2014-15)
Fis Solutions (India) P. Ltd. v. Dy.CIT (2020) 79 ITR 656 (Pune) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Foreign exchange gain or loss – Comparable – Comparability position on year to year basis independently to be examined – Provision for doubtful debts. [S. 92CA] 1461

Tribunal held that the amount of foreign exchange gain or loss arising out of revenue transactions was required to be considered as an item of operating revenue/cost, both for the assessee as well as the comparables.

Tribunal held that the nature of work and business model of a company can undergo change from one year to another. One had to examine the comparability position on year to year basis independently. For one year, a company may be comparable and for the next year, it may cease to be so for a variety of reasons. Therefore, I was excluded from the list of comparables.

The Tribunal also held that the provision for doubtful debts had a direct relation with the sales made by a company. In the same way in which the amount of sales is an item of operating revenue, the amount of provision for doubtful debts, having direct link with the sales, is also an item of operating expense. The provision for doubtful debts could not be treated as a non-operating expense. Therefore, the Assessing Officer was directed to include the amount of provision for doubtful debts in the expensed side of CG for calculating the profit margin. (AY.2013-14)

Extentia Information Technology Pvt. Ltd. v. Dy.CIT (2020) 79 ITR 364 / 184 ITD 549 / 195 DTR 369 / 208 TTJ 210 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Shipping business – Tonnage taxation scheme – Interest on purchase of two ships – No application of transfer pricing provisions to income covered under tonnage tax scheme – Guarantee commission – Assessing Officer is directed to make adjustment by applying 0.25 Per Cent. To Transaction Instead of 0.5 Per Cent – Advance to share application money – Shares not allotted – Full money refunded – loan – Rate of interest to be applied on amount at Libor – Service agreement – Interest to be confined up to end of year and not thereafter. 1462

Tribunal held that when the assessee is covered under Tonnage taxation scheme. As regards interest on purchase of two ships, no application of transfer pricing provisions to income covered under tonnage tax scheme. Tribunal held that as regards guarantee commission, the Assessing Officer is directed to make adjustment by applying 0.25 Per Cent. to transaction instead of 0.5 Per Cent. As regards advance to share application money as the shares were not allotted and full money refunded the said amount was treated as loan and rate of interest to be applied on amount at Libor. As regards service agreement, interest to be confined up to end of year and not thereafter. (AY. 2013-14)

Essar Shipping Ltd. v. ACIT (2020) 79 ITR 555 (Mum.)(Trib.)

S. 92C : Transfer Pricing – Comparables – A company is engaged in BPO services cannot be rejected as a comparable merely by stating that it is in the health care segment and is functionally dissimilar – Matter remanded. 1463

Assessee company is engaged in providing testing, inspection and audit services to clients for a full range of consumer products/softlines/textiles, toys and juvenile products, hardlines/hard goods and house hold products throughout supply chain. TPO

rejected Ace BPO Services Pvt Ltd as a valid comparable to ITES segment of assessee. Tribunal held that on perusal of Annual Report of Ace BPO Services Pvt Ltd shows that under Schedule "Types of Principal Products or Services", it has been mentioned that this company is engaged in BPO services, though in health care segment. Tribunal held that since this company is engaged in BPO services, TPO should not have rejected this company merely by stating that this company is in health care segment and is functionally dissimilar. Referred Hyundai Motor India Engineering Pvt. Ltd ITA No. 1807/HYD/2017. AO is directed to verify information filed by assessee and if it satisfies RPT filter, then same should be considered as a comparable. Matter remanded. (AY. 2013-14)
Bureau Veritas Consumer Products Services (India) P. Ltd. v. ACIT (2020) 81 ITR 73 (SN) (Delhi)(Trib)

1464 **S. 92C : Transfer pricing – Arm's length price – Exchange rate fluctuations – Taken part of operating margin. [S. 92CA]**
Tribunal held that the foreign exchange loss on account of exchange rate fluctuations arose in the normal course of business transaction. Therefore, while computing the margin for determining the arm's length price, the foreign exchange loss had to be taken as part of the operating margin.(AY.2010-11)
Vitech Systems Asia Pvt. Ltd. v. ITO (2020) 81 ITR 58 (SN) (Hyd.)(Trib.)

1465 **S. 92C : Transfer pricing – Arm's Length Price – Delay in realisation of trade debts – Uniform policy – Associated enterprises and non-enterprises – Addition of notional interest is held to be not justified. [S. 92B]**
Tribunal held that when the assessee was adopting the uniform policy of not charging interest for delay in realisation of export receivables from associated enterprises and non-associated enterprises and the transactions with regard to sale of cut and polished diamonds had been accepted by the Transfer Pricing Officer to be at the arm's length price, no addition for notional interest was warranted. Followed *ACIT v. Gitanjali exports corporation ltd. [2017 81 taxmann.com 452 (Mum.) (Trib.).* (AY.2009-10)
S. Vinodkumar Diamonds P. Ltd. v. Dy.CIT (2020) 81 ITR 46 (SN) (Mum.)(Trib.)

1466 **S. 92C : Transfer pricing – Arm's length price – Manning service fee – Addition is deleted.**
Tribunal held that while deciding the issue in the assessment year 2002-03 the Tribunal after considering all factual as well as legal aspects of the issue, had accepted the price charged by the assessee towards manning services to its associated enterprise to be at the arm's length.(AY.2003-04)
Wilhelmsen Ship Management India Pvt. Ltd. v. Dy.CIT (2020) 81 ITR 14 (SN) (Mum.) (Trib.)

1467 **S. 92C : Transfer pricing – Arm's length price – Huge related party transactions – Unreliable financials – Not Comparables.**
The Tribunal held that HCL had related party transactions of 71.09 per cent and HP had got 87.44 per cent related party transactions. Although the Transfer Pricing Officer had

mentioned that the objection of the assessee regarding related party transactions was not substantiated with any account details, from the details furnished by the assessee the assessee had categorically mentioned before the Transfer Pricing Officer regarding substantial related party transactions. A potential comparable having more than 25 per cent related party transactions was to be ignored. Under these circumstances, the Transfer Pricing Officer was directed to exclude the two comparables on account of huge related party transactions. S could not be considered as a comparable on account of unreliable financials. Under these circumstances, the Transfer Pricing Officer was directed to exclude S from the list of comparables. Tribunal also held that TPO in the instant case, without verification of the working submitted by the assessee at the time of hearing, had simply disallowed the claim, considering the totality of the facts of the case and in the interest of justice, this issue was remanded to the Transfer Pricing Officer with a direction to verify the working capital adjustment, the details of which had been given by the assessee and allow appropriate working capital adjustment to the assessee after due verification of the same. (AY.2003-04, 2004-05)
Dy. CIT v. Cadence Design Systems (India) P. Ltd. (2020) 81 ITR 35 (SN) (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – A debt – free company – No interest paid to creditor or supplier nor interest earned from unrelated party – Adjustment of interest is held to be not warranted. 1468
Tribunal held, that the question of receiving any interest on receivables did not arise. There was no merit in the transfer pricing adjustment of Rs. 22.16 lakhs and it was, accordingly, to be deleted. (AY.2015-16)
Boeing India Pvt. Ltd. v. ACIT (2020)81 ITR 94 (SN) (Delhi) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Information enabled technology services – Comparable – Extraordinary events taking place in relevant period – Excluded from comparable – Interest receivables – No separate adjustment is required – Denial of exemption is not justified. [S. 10A, 92CA] 1469
Tribunal in the assessee's case finding that because of the extraordinary events that took place in 2010-11, I, A, TCS E-S and TCS ES were not good comparables and were liable to be excluded from the list of comparables to benchmark the international transactions. On finding parity in the facts with the year 2011-12, the Assessing Officer was directed for to exclude I and TCS ES from the final list of comparables. The Assessing Officer was directed to consider the inclusion of CP in the light of the findings given in the case of other comparables. Tribunal held that the interest of credit period granted by the company under normal trade practices was unjustly charged. If working capital adjustment was granted, no separate adjustment for interest receivable was required. That the assessee had established a new unit. Once deduction under section 10A on the same unit had been allowed in the earlier years no different view could be taken for the same unit on similar facts for denying the exemption in the instant assessment year. Accordingly, the Assessing Officer was directed to allow deduction under S. 10A of the Act
American Express (I) P. Ltd. v. Dy. CIT v (2020) 81 ITR 89 (SN) (Delhi)(Trib.).

1470 **S. 92C : Transfer pricing – Arm's length price – Royalty – Paid for basket of services – Adjustment is held to be not justified – Advertising, marketing and promotion of sales expenses – No proof of existence of International Transaction – Adjustment made in respect of advertising marketing and promotion of sales expenses to be deleted – Expenses reimbursed matter remanded. [S. 92CA]**

Tribunal held that the royalty was paid for basket of services. Accordingly adjustment is held to be not justified. As regards advertising, marketing and promotion of sales expenses there being no proof of existence of International Transaction adjustment made in respect of advertising marketing and promotion of sales expenses to be deleted. As regards expenses reimbursed matter remanded to the AO for verification.(AY.2010-11, 2011-12)

Reckitt Benckiser (I.) Pvt. Ltd. v. Dy.CIT (2020) 81 ITR 577 (Kol.) (Trib.)

1471 **S. 92C : Transfer pricing – Arm's length price – Comparable – Information Technology enabled services – Companies which are providing knowledge process outsourcing services, medical transcription services, development of infrastructure, high brand value are held to be not comparable. [S. 92CA]**

Assessee engaged in providing Information Technology enabled services to associated enterprises while determining Arm's length price, companies which are providing knowledge process outsourcing services, medical transcription services, development of infrastructure, high brand value are held to be not comparable. (AY.2012-13)

Evalueserve.Com Pvt. Ltd. v. Dy.CIT (2020) 77 ITR 97 (Delhi)(Trib.)

1472 **S. 92C : Transfer pricing – Arm's length price – Loan to AE – Interest should be charged at LIBOR+200 bps.**

Tribunal held that loan to the AE is international transaction and it needs to be benchmarked for ALP determination. In the present case the entire amount has been written off as non-refundable. Accordingly the interest should be charged at LIBOR+200 bps. (AY. 2009-10, 2014-15)

Bombay Rayon Holdings Ltd. v. ITO (2020) 186 DTR 19 / 203 TTJ 568 (Mum.)(Trib.)

1473 **S. 92C : Transfer pricing – Arm's length price – Broad casting – Multi-system operator in distribution of television channels – Adjustment of 10 % – Ad hoc determination of Arm's length price is unsustainable. [S. 40A(2)(b)]**

The assessee is a multi-system operator in distribution of television channels through analog and digital cable distribution network and internet services through cable. It operated as a last mile cable operator for certain territories of the country. Over the years, it acquired stake in other entities by subscribing to majority shares therein. These entities fell within the meaning of related parties as defined in S. 40A(2)(b) of the Act. The assessee adopted a pooled model under which it negotiated and settled with the broadcasters for their channels or bouquets of channels. The placement fees as determined between the company and the broadcaster on the basis of the total number of subscribers was received by the assessee and the amount relatable to the related parties was then paid by the company to the respective related parties. The DRP directed the TPO to retain the adjustment to the extent or 10 per cent or the allocated

amount. On appeal the Tribunal held that there was no justification for upholding any ad hoc addition of 10 per cent. The adjustment of 10 per cent upheld by the Panel was without following any of the prescribed methods under S. 92C(1) nor had any benchmarking been adopted in determination of the arm's length price. The ad hoc determination of the arm's length price de hors S. 92C could not be sustained, rendering the entire transfer pricing adjustment unsustainable in law. (AY.2014-15)
Hathway Cable And Datacom Ltd. v. Dy.CIT (2020) 77 ITR 55 (SN) / 186 DTR 50 / 203 TTJ 691 (Mum.)(Trib.)

S. 92C : Transfer pricing – (i) If the "Arms length" principle is satisfied qua the relevant transaction between the assessee and its Indian subsidiary, no further profits can be attributed to the assessee in India even if it was to be held that the latter had a PE in India (ii) If the subsidiary has subsequently entered into an "APA" with the CBDT & the FAR analysis and overall functions remain unchanged, the "APA" would have a bearing on the ALP of the earlier years. 1474

The assessee which is a foreign company incorporated in Israel is engaged in the business of developing software and marketing active content for mobile phones across the globe. For the year under consideration, the assessee was providing "Live Screen Media technology software solutions" to the telecom operators. The software solutions provided by the assessee allowed telecom operators, advertisers and content providers to send interactive content to mobile phones, which were otherwise not able to access such content. The copyright in the software solutions was at all times owned, developed and maintained by the assessee. The A.O held a conviction that the amount received by the assessee from providing the software solutions to its third party customers in India constituted sale of copyright right, and not sale of a copyrighted article. Accordingly, the A.O concluded that the amount of Rs.16,31,65,734/-that was received by the assessee from the provision of software solutions to the telecom operators in India was towards "royalty" both as per the provisions of the I-T Act and the India-Israel tax treaty. Further, the A.O was of the view that M/s Celltick Mobile Media (India) Pvt. Ltd. was the dependant agent PE of the assessee in India. As such, the A.O being of the view that the assessee had generated the revenue from provision of software solutions to its third party customers in India with the joint efforts of its PE in India viz. M/s Celltick Mobile Media (India) Pvt. Ltd., thus, attributed 50% of the total receipts of the assessee to the said Indian PE. Further, in absence of any specific details, the A.O allowed a deduction of 20% towards expenses and assessed the balance receipts of Rs.6,52,66,294/- attributable to the Indian PE as the "business income" of the assessee that was liable to be taxed in India. On appeal the Tribunal held that, (i) If the "arms length" principle is satisfied qua the relevant transaction between the assessee and its Indian subsidiary, no further profits can be attributed to the assessee in India even if it was to be held that the latter had a PE in India (ii) If the subsidiary has subsequently entered into an "APA" with the CBDT & the FAR analysis and overall functions remain unchanged, the "APA" would have a bearing on the ALP of the earlier years. (ITA No.4167/Mum/2017, dt. 11.06.2019). (AY. 2014-15)
Celltick Technologies Ltd. v. DCIT (2019) 109 taxmann.com 334 (Mum.)(Trib.), www.itatonline.org

1475 **S. 92C : Transfer pricing – Arm's length price – Manufacturing segment not to be clubbed with distribution segment – Addition was confirmed.**
Where the assessee is trying to club the transaction of Production of finished goods with Trading of spare parts, it is held that the Manufacturing segment cannot be aggregated with the Distribution segment and both need to be benchmarked independent of each other. Addition was confirmed. (AY. 2012-13)
Man Diesel & Turbo India Private Limited v. ACIT (2020) 191 DTR 380 / 204 TTJ 999 (Pune)(Trib.)

1476 **S.92C : Transfer pricing – Arm's length price – Order passed by Tribunal for earlier assessment years cannot be contradicted under identical facts. [S.144C]**
It was noted that in the order passed by the Tribunal in the assessee's own case for the immediately preceding assessment year, It was shown that in the identical fact situation, the Tribunal has held the transaction of Payment of management services fee at ALP. Thus, for lack of any distinguishing feature in the facts of the relevant AY, the precedent was followed and it was held that the international transaction of Payment of management services fees was at ALP. (AY. 2012-13)
Walter Tools India Private Limited v. ACIT (2020) 192 DTR 305 / 207 TTJ 496 (Pune) (Trib.)

1477 **S. 92C : Transfer pricing – Arm's length price – Intra group services – Mandate by law – Adjudication at nil – Addition was deleted. [R.10B]**
The Transfer Pricing Officer while determining the arm's length price of the transaction at nil has apparently not followed any one of the prescribed method under section 92C r/w rule 10B.Transfer Pricing Officer is mandated by law to determine the arm's length price by following one of the methods prescribed under section 92C. Transfer Pricing Officer by determining the arm's length price of intra group services at nil is contrary to the statutory provisions, hence, cannot be sustained. (AY. 2011-12)
ACIT v. Anheuser Busch Inbev India Ltd (2020) 204 TTJ 402 (Mum.) (Trib.)

1478 **S. 92C : Transfer pricing – Arm's length price – No other method is applicable – TNMM has to be applied as most appropriate method – Deletion of addition is held to be justified.**
In subsequent assessment years, assessee benchmarked import of finished goods from AE by applying TNMM. The Transfer Pricing Officer has also accepted it as most appropriate method. The same comparables, as selected in impugned assessment year are accepted as good comparables in subsequent assessment years. The deletion of addition is held to be justified. (AY. 2007-08)
Dy.CIT v. India Medtronic Pvt. Ltd. (2020) 205 TTJ 950 (Mum.)(Trib.)

1479 **S. 92C : Transfer pricing – Arm's length price – Royalty fees for use of trade mark – Matter remanded.**
The assessee was already paying royalty/fees for the use of Trademarks, which is embedded under the TTA and hence further payment under the TLA was not warranted. The assesse was earlier paying for use of contractual Trademarks and there was no need to pay a further amount for use of the Trademarks. Such an approach is

considered erroneous and no addition in made. Matter remanded. (AY.2011-12, 2012-13, 2013-14)
Knorr Bremse Systems For Commercial Vehicles India Private Limited v. Dy. CIT (2020) 205 TTJ 736 (Pune) (Trib.)

S. 92CA : Reference to transfer pricing officer – Clause (i) of Section 92BA of the Act had been omitted by Finance Act, 2017 w.e.f. 01.04.2017 and as such it came to be held that proceedings would lapse. [S. 92BA] 1480
Assessee is engaged in export of readymade garments. The AO had made transfer pricing adjustment and other additions. AO has made a reference to transfer pricing order under S. 92CA of the Act to determine arms length price as the assessee had entered into specified domestic transaction and on the ground it was covered under S. 92BA of the Act. Despite objections being filed by the assessee before Dispute Resolution Panel directions came to be issued by DRP on 28.04.2017. Being aggrieve by the order, an appeal came to be filed before Income Tax Appellate Tribunal by orders dated 22.12.2017 and 12.09.2018 passed in respective appeals held that Clause (i) of S. 92BA of the Act had been omitted by Finance Act, 2017 w.e.f. 01.04.2017 and as such it came to be held that proceedings would lapse. Accordingly appeals filed by the assessee came to allowed. Appeals of revenue was dismissed. (AY. 2013-14, 2014-15)
PCIT v. Texport Overseas Pvt. Ltd. (2020) 186 DTR 50 / 313 CTR 485 / 271 Taxman 170 (Karn.) (HC)

S. 92CA : Reference to transfer pricing officer – International Transactions – Transactions with Associated Enterprises – Arm's Length Price – Management fees – Order of Tribunal is affirmed. [S. 92C, 260A] 1481
Dismissing the appeal of the revenue the Court held that the Tribunal took into consideration the voluminous documentary evidence on record in the form of e-mail correspondence indicating the rendition of services. The Tribunal was right in its view that the assessee would be the right person to know whether or not the services were required. Such issues should be left best to the commercial wisdom of the assessee. What was important was whether or not the services were rendered and whether the cost allocation was on a fair and reasonable basis. The rendition of services had not been disputed. However, a great deal of emphasis had been put on the issue of arm's length price in respect of the management fees. This aspect had also been well discussed by the Tribunal. The decision of the Tribunal was correct and required no interference. (AY. 2010-11)
CIT v. Tudor India P. Ltd. (2020) 420 ITR 399 / 189 DTR 329 / 314 CTR 787 (Guj.)(HC)

S. 92CA : Reference to transfer pricing officer – There was no transfer pricing adjustment of more than 10 crores in earlier year – Assessing Officers reference to TPO was in contravention to Instruction No. 3 of 2016 and such reference was to be declared as invalid. [S. 92C] 1482
Assessee reported certain international transactions in Form No. 3CEB, including Sale of Pharmaceutical products. Assessing Officer made a reference to Transfer Pricing Officer for determining ALP of international transactions on ground that there was transfer

pricing addition of more than Rs. 10 crore in earlier year It was contended before the Appellate Tribunal that Assessing Officer could not have made a reference to TPO on basis of said reason and hence, such a reference should be declared invalid. Tribunal held that since neither transfer pricing adjustment of more than Rs. 10 crore was made for an earlier year nor, as a sequitur there was any question of such transfer pricing adjustment having been either upheld by a judicial authority or pending in appeal, Assessing Officer made a reference to TPO in contravention of Instruction No. 3 of 2016, which is binding on Assessing Officer and, thus, such reference was to be declared as invalid and consequential transfer pricing adjustment was directed to be deleted. (AY. 2014-15)
Sava Healthcare Ltd. v. DCIT (2020) 184 ITD 312 / 189 DTR 1 / 78 ITR 65 (SN) / 204 TTJ 513 (Pune)(Trib.)

1483 **S. 92CA : Reference to transfer pricing officer – Arm's length price – Computing Arm's Length Price without referring matter to Transfer Pricing Officer – Transfer adjustment vitiated – Draft assessment order does not become final assessment order simply by issuing corrigendum – Draft assessment order not valid. [S. 92CA(3), 144C]**
The Tribunal held that the transfer pricing adjustment was done by the Assessing Officer without reference to the Transfer Pricing Officer. The Commissioner (Appeals) held that by mentioning the words "draft assessment order and section 144C " by mistake did not make the assessment order bad in law. The Assessing Officer could not assume the role of Transfer Pricing Officer without referring the transfer pricing analysis on international transaction to the Transfer Pricing Officer. Such an exercise of transfer pricing adjustment was vitiated. The Tribunal also held that the a corrigendum could not validate the draft assessment order passed by the Assessing Officer, where he had clearly mentioned that the order passed was a draft assessment order and even his forwarding letter further clarified the order and the intention of the Assessing Officer. The limitation for passing the assessment order, if it was not draft assessment order, was March 31, 2014. However the Assessing Officer had passed the draft assessment order and had forwarded the order to the assessee stating that if the assessee did not agree with the transfer pricing adjustment, it could file objections before the Dispute Resolution Panel within 30 days of the order. It was only when the assessee intimates to the Assessing Officer that it had accepted the variation order and had no objections within 30 days that the Assessing Officer had to complete the assessment order on the basis of the draft assessment order. Thus, the draft assessment order could not be treated as the final assessment order simply by way of issuing corrigendum and since no final assessment order had been passed and only a draft assessment order had been passed, the draft order had no consequence and was null and void. (AY. 2011-12)
North Shore Technologies Pvt. Ltd. v. ITO (2020) 78 ITR 204 / 192 DTR 105 / 266 TTJ 344 (Delhi)(Trib.)

1484 **S. 92CA : Reference to transfer pricing officer – Transfer pricing – Specified domestic transaction – Unreported transaction – No power to determine arm's length price without approval from principal commissioner or making reference to him. [S. 92C]**
Tribunal held that if during the course of proceedings, another international transaction, whether reported or unreported, comes to the notice of the Transfer Pricing Officer,

he is competent to directly proceed with the determination of its arm's length price without going through the process of the Assessing Officer first seeking approval from the Principal Commissioner or making a reference to him. The caveat is that the power of the Transfer Pricing Officer under sub-sections (2A) and (2B) of section 92CA of the Income-tax Act, 1961 extends to international transactions and not to specified domestic transactions. In other words, if a specified domestic transaction comes to the notice of the Transfer Pricing Officer during the course of proceedings before him, for which either no reference was made by the Assessing Officer or was not reported, then he is not entitled to determine the arm's length price of such a specified domestic transaction directly. Once a reference is made to the Transfer Pricing Officer for determining the arm's length price of a transaction (international or specific domestic transaction), he is bound to do so. Such a distinction between the two becomes significant only when the Transfer Pricing Officer assumes jurisdiction in terms of sub-sections (2A) and (2B) of section 92CA in the sense that he can proceed only with an international transaction and not with a specified domestic transaction under the latter two sub-sections. (AY. 2013-14)

Extentia Information Technology Pvt. Ltd. v. Dy.CIT (2020) 79 ITR 364 / 184 ITD 549 / 195 DTR 369 / 208 TTJ 210 (Pune)(Trib.)

S. 115AC : Capital gains – Bonds – Global Depository – Foreign currency – Cost of acquisition – Computation of capital gains – Conversion of Foreign currency convertible bonds into equity shares – Order of Tribunal is affirmed. 1485

Dismissing the appeal of the revenue the Court held that the bonds were issued under the 1993 Scheme and the conversion price was determined on the basis of price of shares at the Bombay Stock Exchange or the National Stock Exchange on the date of conversion of the foreign currency convertible bonds into shares. The computation of capital gains by the assessee was right. (AY. 2008-09)

DIT(IT) v. Intel Capital (Cayman) Corporation (2020) 429 ITR 45 / 195 DTR 382 / 317 CTR 702 / (2021) 276 Taxman 118 (Karn.)(HC)

S. 158BBC : Anonymous donations – 85% of such donation was applied for objects of the Trust – Has to prove the genuineness of donations – Matter remanded to prove genuineness of donations. [S. 11, 13] 1486

Assessee-society received donation and submitted list of donors. However, notices given to donors were received back unserved and, accordingly, Assessing Officer treated said donations as anonymous donations under section 115BBC. Tribunal held that since assessee raised a plea that it was not allowed adequate time to prove genuineness of donors, same should be provided to assessee and thus, matter be remanded back to Assessing officer. Tribunal observed that if a particular receipt turns out to be anonymous donation, same gets caught within mischief of section 115BBC and, hence, mars exemption of income to that extent notwithstanding that assessee applied 85 per cent of such anonymous donations for objects of trust. (AY. 2016-17)

Shriram Bahuuddeshiya Sevabhavi Sanstha v. ITO (2020) 185 ITD 614 / (2021) 199 DTR 13 / 210 TTJ 269 (Pune)(Trib.)

1487 **S. 115BBE : Tax on specified income – Finance Bill, 2016 – No set off any loss against deemed income – Provision cannot be applied retrospectively. [S. 72]**

Dismissing the appeal of the revenue the Court held that amendment made by Finance Bill, 2016 to provisions of section 115BBE providing that no set off of any loss shall be allowed to assessee against deemed income under sections 68, 69, 69A to 69D could not be applied retrospectively. (AY. 2014-15)

PCIT v. Aacharan Enterprises (P.) Ltd. (2020) 273 Taxman 85 (Raj.)(HC)

1488 **S. 115BBE : Tax on specified income – Unexplained money – Survey – Surrender of income as business income – Rate of tax – Source of excess cash, excess stock and unaccounted receivables not explained – Taxable at 60 per. Cent. [S. 68, 69, 69A, 69C, 133A]**

Tribunal held that the asssesse accepted that he was unable to explain the source of excess cash, excess stock and unaccounted receivables. There was no other evidence brought on record by the assessee to show that some unaccounted purchases for the year or unaccounted sales or unrecorded sales happened during the year or details of the debtors which could show the nexus of the surrendered income as business income for the year under consideration. Though the surrendered income of Rs. 92,81,150 was a business income the assessee being individual having no limitation of earning income from sources other than for the objects of the business and also the assessee having not offered any explanation in the statement given during the course of survey, the unexplained and undisclosed income of Rs. 92,81,150 was liable to be taxed as income falling under sections 68 to 69D as applicable to the type of income and had been rightly taxed by the Assessing Officer applying the higher rate of tax provided in section 115BBE. (AY.2015-16)

Rajesh Kumar Bajaj v. ACIT (2020) 78 ITR 79 (SN) (Indore)(Trib.)

1489 **S. 115BBE : Tax on specified income – Unexplained expenditure – Matter remanded to the Tribunal. [S. 69C]**

Allowing the appeal of the revenue the Court held that the question before the Tribunal was with regard to the applicability of section 115BBE which came into effect from April 1, 2017. Based on the contention of the Department that section 115BBE was introduced to clarify the ambiguity that prevailed in respect of unexplained expenditure under section 69C and that the provision being clarificatory would be retrospective and the submission of the assessee that the expenditure was recorded in the books of account, the Tribunal had held that when the expenditure was recorded in the books of account, it could not be said that the assessee could not explain the source of income for meeting such expenditure. The Central Board of Direct Taxes has issued Circular No. 11 of 2019 dated June 19, 2019 ([2019] 415 ITR (St.) 204) which also needed to be considered as regards the effect of the introduction of section 115BBE. Matter remanded. (AY. 2008-09)

CIT v. Hussain Mohideen Ibrahim Sha (2020) 429 ITR 160 (Mad.)(HC)

S. 115BBE : Tax on income – Unexplained money – Part of unrecorded sales Addition Cannot be made – Surrendered income – Business income – Eligible for deduction under section 80JJA. [S. 69A, 80JJA] 1490

Tribunal held that the addition under section 69A could have been made only if no explanation regarding the source of such income was offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. The assessee had given a complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and the Assessing Officer also did not object to the explanation. Therefore, the addition could not be made under section 69A and if the addition could not be made under section 69A, the provisions of section 115BBE were not be applicable. Thus the addition sustained by the Commissioner (Appeals) under section 115BBE was not in accordance with law and the surrendered income had rightly been included in the sales of the assessee and all the expenses had rightly been set off against the surrendered income. Therefore, this sum being business income, the assessee was also eligible for deduction under section 80JJA. (AY. 2016-17)
Kanpur Organics Pvt. Ltd. v. Dy.CIT (2020) 78 ITR 120 (Luck.)(Trib.)

S. 115JA : Book profit – Banking company – Provision is not applicable. 1491

Dismissing the appeal of the revenue held taht the provision of S. 115JA is not applicable to banking companies. Followed *CIT v. ING Vyas Bank Ltd (2020) 186 DTR 193 (Karn.)(HC).* (AY. 2000-01)
CIT v. Syndicate Bank (2020) 186 DTR 200 / 313 CTR 576 (Karn.)(HC)

S. 115JAA : Book profit – Deemed income – Tax credit includes surcharge and cess – Appellate Tribunal – Monetary limit – Includes surcharge and cess. [S. 2(43), 115WA, 253] 1492

Dismissing the appeal of the revenue the Court held that tax credit includes surcharge and cess. Circular No. 3 of 2018, dated July 11, 2018 ([2018] 405 ITR (St.) 29), issued by the Central Board of Direct Taxes fixed the monetary limit for filing appeals by the Department before the Tribunals, the High Courts and the Supreme Court and para 4 therein states that for the purposes of the circular, the tax effect shall be tax including applicable surcharge and cess. (AY. 2009-10)
PCIT v. Scope International Pvt. Ltd. (2020) 429 ITR 500 (Mad.)(HC)

S. 115JAA : Book profit – Deemed income – Tax credit-Includes surcharge and education cess. 1493

Dismissing the appeal of the revenue the Court held that the minimum alternate tax credit under section 115JAA of the Act includes surcharge and education cess. (AY. 2011-12)
CIT v. Saint Gobain Glass India Ltd. (2020) 429 ITR 505 (Mad.)(HC)

S. 115JB : Book profit – Receipt in subsequent year – Rate of tax is same – Directed the Assessing Officer to pass the consequential order. 1494

Assessee was a private limited company, engaged in generation of power, which was sold to Tamilnadu Generation and Distribution Corporation (TANGEDCO) under a power

purchase agreement entered into between parties. During assessment proceedings, Assessing Officer made additions under normal provisions as well as under section 115 JB. Assessee contended for deletion and submitted that since it had received and admitted impugned receipts for subsequent year, additions made under normal provisions of Act, as well as under section 115JB maybe deleted so that rate of tax remained same in all these years under section 115JB. Tribunal confirmed the addition. On appeal High Court held that in view of above facts, appropriate direction was to be issued to Assessing Officer to reopen assessments from years 2010-2011 to 2014-2015 on this issue alone and to examine whether assessee had paid taxes on these receipts, which addition had been sustained in impugned assessment year 2009-2010 and to redo assessment only on this aspect (AY. 2009-10)
PPN Power Generating Company (P.) Ltd. v. CIT(A) (2020) 275 Taxman 143 / 194 DTR 329 (Mad.)(HC)

1495 **S. 115JB : Book profit – Disallowance u/s 14A were deleted – No adjustment could be made while computing book profit. [S. 14A, R. 8D]**
Dismissing the appeal of the revenue the Court held that when disallowance made under section 14A were deleted by Tribunal, additions would not be made for disallowance made under section 14A to book profits. (AY. 2012-13)
PCIT v. CIMS Hospital (P.) Ltd. (2020) 193 DTR 275 / (2021) 318 CTR 349 (Guj.)(HC)

1496 **S. 115JB : Book profit – Amounts disallowed under section 14A cannot be added. [S. 14A]**
Dismissing the appeal of the revenue held that any disallowance computed under section 14A of the Income-tax Act, 1961 pertains to computation of income under the normal provisions of the Act and cannot be read into the provisions of section 115JB of the Act pertaining to computation of book profits for levy of minimum alternate tax and there is no express provision in clause (f) of Explanation 1 to section 115JB of the Act to that extent. (AY.2008-09)
CIT v. Gokaldas Images Pvt. Ltd. (2020) 429 ITR 526 / (2021) 276 Taxman 420 / 197 DTR 225 / 318 CTR 486 (Karn.)(HC)

1497 **S. 115JB : Book profit – Waiver of part of loan and entire interest – Waiver of interest by IREDA could not be considered as withdrawal of a provision and could not be reduced from the book profits – Order of Tribunal is affirmed. [S. 41(1)]**
The assessee entered into a one-time settlement with IREDA under which the entire interest as well as a part of the principal amount was also waived by the IREDA. While preparing the return of income, the assessee excluded the amount as no part of such interest had even been allowed in any prior assessment year under the provisions of section 41(1) of the Act. The AO included the same for computing book profits. Tribunal held that no provision can be made for an ascertained liability and therefore, no provision had been made by the assessee for interest payable and therefore, waiver of interest by IREDA could not be considered as withdrawal of a provision and could not be reduced from the book profits. However, it held that the contention of the assessee that a sum of Rs. 1.08 crores should be considered as waiver of interest and part of the book profits as interest payable for the pre-commencement period, needed examination and therefore, the matter was remitted for adjudication in accordance with law. On

appeal dismissing the appeal held that the findings by all the authorities under the Act were based on meticulous appreciation of evidence on record and did not suffer from any perversity warranting interference in appeal. (AY. 2007-08)
Kilara Power Pvt. Ltd. v. ITO (2020) 429 ITR 534 / (2021) 279 Taxman 437 (Karn.)(HC)

S. 115JB : Book profit – Capital gains – Indexed cost of acquisition to be taken into account in calculating capital gains. [S. 45, 48, 112] 1498
Allowing the appeal of the assessee the Court held that since the indexed cost of acquisition was subjected to tax under a specific provision, viz., section 112, the provisions of section 115JB which is a general provision could not be made applicable to the case of the assessee. Also, considering the profits on sale of land without giving the benefit of indexed cost of acquisition results in taxing the income other than actual or real income. In other words, a mere book keeping entry cannot be treated as income. The assessee had to be given the benefit of indexed cost of acquisition. (AY. 2005-06, 2006-07)
Best Trading and Agencies Ltd. v. Dy.CIT (2020) 428 ITR 52 / 275 Taxman 550 / (2021) 203 DTR 269 / 321 CTR 373 (Karn.)(HC)

S. 115JB : Book profit – Brought forward loss or unabsorbed Depreciation – Non-consideration of claim for deduction – Matter Remanded to Tribunal. [S. 10A] 1499
The AO held that no amount of brought forward loss had to be reduced in the computation of income and that in the computation of income under S. 115JB the unabsorbed depreciation claimed could not be allowed. The CIT(A) concurred with the AO The Tribunal held that under S. 115JB, book profit was defined as net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2) in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 and thereafter increased by the amount specified in clauses (a) to (f) and reduced by clauses (i) to (viii), that the net profits were to be determined according to the provisions of the 1956 Act and thereafter adjustments were to be made, that the assessee could not adjust the book profit except as provided under the 1956 Act, that the assessee computed the brought forward losses under the provisions of the 1961 Act and not under the 1956 Act, which was not permissible and dismissed the appeal filed by the assessee. On appeal the Court held that the Tribunal had misconstrued the relevant statutory provisions and had not dealt with the claim of the assessee for deduction under S 10A of the Act. The matter was remanded to the Tribunal for deciding afresh. (AY. 2005-06)
Yokogawa India Ltd. v. Dy.CIT (LTU) (2020) 425 ITR 648 / 273 Taxman 520 (Karn.)(HC)

S. 115JB : Book profit – Prior period expenditure not deductible – Assessing Officer has limited power to make changes – Deletion of addition was held to be not justified. [S. 115J] 1500
The Assessing Officer while computing the income under S. 115J of the Act, has power to examine whether the books of account are certified by the authorities under the Companies Act and the AO has limited power of making increase and deductions as provided in the Explanation to S. 115J. The provisions of S. 115J or S.115JB are pari materia accordingly, allowing the appeal, of the revenue the Court held that the CIT(A)

and the Tribunal were not justified in deleting the addition made on account of prior period expenditure while computing the book profits under S. 115JB of the Act. (AY. 2003-04)
CIT v. GMR Industries Ltd. (2020) 425 ITR 504 / 194 DTR 52 (Karn.)(HC)

1501 **S. 115JB : Book profit – Interest – Retrospective amendment – Interest is leviable. [S. 234B]**
Court held that clause (h) of Explanation 1 below section 115JB(2) of the Act has been incorporated with effect from April 1, 2001. The retrospective operation of the provision had not been challenged by the assessee hence the interest could be levied under S. 234B of the Act. (AY.2005-06)
CIT v. Jsw Steel Ltd. (2020) 424 ITR 227 / 275 Taxman 587 (Karn.)(HC)

1502 **S. 115JB : Book profit – Insurance business – Accounts prepared in accordance with Insurance Act, 1938 – Provision relating to books of account is not applicable. [Insurance Act, 1938]**
Dismissing the appeal of the revenue the Court held that provisions of S. 115JB of the Act which enables the companies to compute the book profit may not be applicable to insurance companies. (AY. 2006-07 to 2009-10)
CIT (LTU) v. Cholamandalam Ms General Insurance Co. Ltd. (2020) 424 ITR 272 (Mad.) (HC)

1503 **S. 115JB : Book profit – Foreign exchange fluctuations – Exempt income – Deletion of addition is held to be justified. [S. 14A]**
Tribunal affirmed the deletion of the additions made under section 14A. It deleted the adjustments made in the book profits under section 115JB following the disallowance made under section 14A on account of foreign exchange fluctuations. The Tribunal held that loss that arose on account of valuation of outstanding liabilities and receivables could not be considered as a notional loss. Dismissing the appeal of the revenue the Court held that Tribunal was justified in upholding the decision of the CIT(A) in deleting the disallowance made under section 14A and foreign exchange fluctuations to the book profits under S. 115JB. (AY.2010-11)
PCIT v. Shapoorji Pallonji and Co. Ltd. (2020) 423 ITR 220 / 273 Taxman 167 (Bom.)(HC)

1504 **S. 115JB : Book profit – Insurance company – Provision is not applicable – Solatium fund – Estimation done according to directions given by Government of India as per decision taken by general Insurance Company – Not liable to taxation. [S. 4, 37(1)]**
Dismissing the appeal of the revenue the Court held that the provisions of S. 115JB of the Act were not applicable to insurance companies. Insurance companies prepared the profit and loss account according to the guidelines issued by the Insurance Regulatory and Development Authority of India and not according to Parts II and III of the Companies Act, 1956 and the applicability of Schedule VI thereto was specifically excluded in respect of the insurance companies. That according to the finding of the Tribunal the contribution of 0.1 per cent. of the gross premium from motor vehicle insurance was done according to the directions given by the Government and the

amount had been paid by the assessee as decided by the General Insurance Council. Therefore, the Tribunal was right in rejecting the contention of the Department that the solatium fund had been estimated in a routine manner and was an unascertained liability liable to be disallowed while computing book profits under section 115JB and in holding that the provision made towards contribution to solatium fund was not liable to taxation. Followed *CIT v. Bajaj Allianz General Insurance co. Ltd. [2016] 76 taxmann. com 308 (Bom.) (HC)*
CIT v. Royal Sundaram Alliance Insurance Co. Ltd. (2020) 423 ITR 122 (Mad.)(HC)

S. 115JB : Book profit – Provisions as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company governed by provisions of Banking Regulation Act, 1949 – Companies which are not required to prepare its profit and loss account in accordance with part II & III of Schedule VI of the Companies Act, 1956 – Adjustment cannot be made. [S. 115JB(2), Companies Act, 1956, S. 211(2), Banking Regulation Act, 1949] 1505
Dismissing the appeal of the revenue the Court held that the Tribunal was correct in law holding that the provisions of S.115JB of the income-tax Act, 1961 are not applicable to assessee to whom proviso to sub-section (2) of section 211 of the Companies Act, 1956, applies, i.e. Companies which are not required to prepare its profit and loss account in accordance with part II & III of Schedule VI of the Companies Act, 1956. Followed *CIT v Union Bank of India (2019) 105 taxmann.com 253/ 263 Taxman 685 (Bom.)(HC)(ITA No.2966 / 3085 /Mum/ 2014 dt.13-07-2016)(ITA No.1996 of 2017 dt.23/01/2020)*
PCIT v. Bank of India (Bom.)(HC)(UR)

S. 115JB : Book profit – Provision is not applicable when Profit & Loss is prepared in accordance with Insurance Act 1938. [S. 44] 1506
Provision of MAT will only come into play, only when assessee prepares its P&L account in accordance with part (II) and part (III) of Schedule (VI) of the Companies Act. Since the assessee's P&L account is prepared in accordance with Insurance Act 1938, as specifically provided in S. 44 read with First schedule, therefore, the provision of S. 115JB will not apply. (ITA No. 428 of 2017 dt.04/06/2017)
PCIT v. The New India Assurance Co. Ltd. (2020) 114 taxmann.com 222 (Bom.)(HC)
Editorial : SLP granted to the revenue. (CA No. 8178 of 2019 dt.18/10/2019) (2019) 418 ITR 14(St.)(SC) / (2020) 269 Taxman 481 (SC)

S. 115JB : Book profit – Banking company – Provision is not applicable to banking company. [S. 115JB(2), Companies Act, 1956. S. 211(1)] 1507
Dismissing the appeal of the revenue the Court held that, assessee being a banking company is not required to prepare its accounts in accordance with provisions of part II and part III of Sch. VI of the Companies Act, 1956, provisions of S. 115JB(2) do not apply to assessee a banking company. (AY. 2002-03, 2005-06, 2006-07, 2009-10)
CIT v. Ing Vysya Bank Ltd. (2020) 422 ITR 116 / 186 DTR 193 / 313 CTR 69 (Karn.)(HC)
Atria Power Corp. Ltd. v. CIT (2020) 186 DTR 193 / 313 CTR 69 (Karn.)(HC)
Atria Hydel Power Ltd. v. CIT (2020) 186 DTR 193 / 313 CTR 69 (Karn.)(HC)

1508 **S. 115JB : Book profit – Provision for bad and doubtful debt – Ascertained liability – No addition can be made.**

Tribunal deleted addition made in respect of provision for bad and doubtful debts in computation of book profits. High Court upheld the order of the Tribunal. Followed *Apollo Tyres Ltd v. CIT (2002) 255 ITR 273 (SC).*

CIT (LTU) v. ACC Ltd. (2019) 112 taxmann.com 402 / (2020) 269 Taxman 15 (Bom.)(HC)

Editorial : SLP of revenue is dismissed ; CIT (LTU) v. ACC Ltd. (2020) 269 Taxman 14 (SC)

1509 **S. 115JB : Book profit – Agricultural income – Revenue derived from land – Profits from sale of agricultural land – Cannot be excluded from book profits. [S. 2(IA), 2(14)(iii), 10(1), 45]**

The assessee declared loss from sale of agricultural land. The assessee also claimed deduction on agricultural income. The AO held that the sale of agricultural land and its exclusion from the minimum alternate tax provision had resulted in its exclusion from the calculation of the book profits of the assessee under section 115JB(2)(ii) which was wrong. The CIT(A) held that the income of the assessee that arose from the transfer of agricultural land fell within the terms of items (a) and (b) of section 2(14)(iii) and section 10(1) and fell outside the ambit of the revenue derived from land and therefore, outside the ambit of "agricultural income", that therefore such income was liable to capital gains tax under S. 45 of the Act. The Tribunal held that the findings of the Assessing Officer were correct. It held that the consideration received on sale of agricultural land did not constitute agricultural income and upheld the disallowances made by the AO. On appeal, dismissing the appeal, that the Tribunal was right in restoring the view of the Assessing Officer that the sale of agricultural land and its exclusion from the minimum alternate tax provisions had resulted in its exclusion from the calculation of the book profits of the assessee which was wrong. Textually, "revenue" derived from land is not deemed to have been included in any income arising from transfer of land. The Explanation to section 2(1A) was introduced by the Finance Act, 1989, with retrospective effect from April 1, 1989. The provision, per se, itself is clinching. In the absence of any specific definition as to what constitutes "revenue" under the Act, the normal meaning attributable (having regard to the rule of ejusdem generis, with respect to the expression "rent" used) would necessarily mean any form of income derived from the asset, i. e., the land which in turn pre-supposes its existence in the hands of the assessee. The other interpretation given by the assessee that even sale constituted "revenue" could not be accepted because the transaction of sale had resulted in destruction of a revenue generating asset. No question of law arose.(AY. 2014-15)

Krish Homes Pvt. Ltd. v. ITO (2020) 421 ITR 105 / 193 DTR 165 / 316 CTR 443 (Raj.)(HC)

Editorial : SLP of the assessee is dismissed Krish Homes Pvt. Ltd. v. ITO (2020) 420 ITR 2 (St)(SC)

S. 115JB : Book profit – Forward foreign exchange – Not contingent in nature – Binding obligation on date of contract against the assessee – Deletion of addition by the Tribunal is affirmed – Question which was not raised before the Tribunal cannot be raised first time before Court during the Course of oral arguments. [S. 37(1), 260A] 1510

Dismissing the appeal of the revenue the Court held that, Forward foreign exchange is not contingent in nature it is binding obligation on date of contract against the assessee. Accordingly the deletion of addition by the Tribunal is affirmed. Court also held that question which was not raised before the Tribunal cannot be raised first time before Court during the Course of oral arguments. (Arising from ITA No. 617 /Mum/2014 dt 28-07 2016)(ITA No. 1097of 2017 dt 5-11-2019. (AY. 2009-10)

PCIT v. Hotel Leela Venture Ltd. (2019) 112 taxmann.com 377 (Bom.)(HC)

S. 115JB : Book profit – Provision for leave encashment – Actuarial basis – Ascertained liability – Provision for Wealth tax – Provision for bad debt – Written back – Not to be added to book profit. 1511

Where assessee made provision for leave encashment on actuarial basis, same being in nature of ascertained liability could not be added back for purpose of determining book profit under section 115JB. Provision for Wealth tax could not be added while computing book profit under section 115JB. Where assessee already added provision of doubtful debts in earlier years and credited same in year under consideration, therefore, same could not be added for purpose of computing book profit under section 115JB. (AY. 2005-06 to 2007-08)

Caprihans India Ltd. v. Dy. CIT (2020) 203 TTJ 450 (Mum.)(Trib.)

S. 115JB : Book profit – Transfer pricing adjustment – Held to be not justified – Additional ground allowed.[S.254(1)] 1512

Allowing the additional ground regarding Transfer pricing adjustment the Tribunal held that Book profits of a company cannot be adjusted except as provided in Explanation 1 of Section 115JB(2). (AY. 2012-13)

DCIT v. Alstom India Ltd. (2020) 207 TTJ 932 (Mum.) (Trib.)

Alston Projects (India) Ltd v. ITO (2020) 207 TTJ 932 (Mum.) (Trib.)

S. 115JB : Book profit – Statement of accounts drawn in accordance with Companies Act – Disallowance under Income – Tax Act cannot be exporting for computation of book profits – Provision for doubtful trade receivables and advances debited to Profit and Loss Account – Writing off sum from its trade receivables in balance – sheet – Sum loses character of provision – No adjustment Called for – No adjustment on account of corporate Social responsibility expenses and donations – Provision for taxes made by Companies with whom assessee amalgamated – Reversal of unutilised provision for taxes in current Year – Matter remanded for verification – Debenture redemption reserve – Appropriation of profits and not provision for ascertained liability. 1513

Tribunal held that the statement of accounts had been drawn in accordance with Companies Act itself. The disallowance made under provisions of the Income-tax Act, would not justify exporting the disallowance for the computation of book profits

under section 115JB of the Act.. That since the disallowance made under section 14A of the Act had been deleted, no adjustment was required on this count.. Provision for doubtful trade receivables and advances debited to Profit and Loss Account,writing off sum from its trade receivables in balance-sheet. Sum loses character of provision hence no adjustment Called for. No adjustment on account of corporate Social responsibility expenses and donations-Provision for taxes made by Companies with whom assessee amalgamated. Reversal of unutilised provision for taxes in current Year. Matter remanded for verification. Debenture redemption reserve-Appropriation of profits and not provision for ascertained liability. (AY. 2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

1514 **S. 115JB : Book profit – Net worth turned positive – Discharged by the Sick Industrial Companies (Special Provisions) Act, 1985 – Liable to be assessed on book profit – Matter remanded to pass speaking order – COVID 19 pandemic lockdown period would be excluded in computing 90 days total time limit for pronouncing appellate order. [S. 255, SICAS, S. 17]**
Assessee's net worth turned positive on 31-3-2011 by virtue of implementation of revival scheme. BIFR discharged company from purview of SICA vide order dated 16-8-2011 on ground that revival of company had substantially been implemented and net worth had turned positive. Tribunal held that assessee would be precluded from relief under section 115JB in view of Explanation 1(vii) to section 115JB (2) and, therefore, no relief would be available from assessment years 2011-12 onwards. Matter remanded to pass speaking order. Tribunal also held that COVID 19 pandemic lockdown period would be excluded in computing 90 days total time limit for pronouncing appellate order. (AY. 2013-14, 2014-15)
Windsor Machines Ltd. v. DCIT (2020) 81 ITR 41 / 185 ITD 576 / 206 TTJ 148 / (2021) 199 DTR 79 (Mum.)(Trib.)

1515 **S. 115JB : Book profit – Amalgamation – Revaluation reserve – Up word adjustment made by the AO was deleted – Loss incurred on account of redemption of mutual fund could not be added in business profit. [S. 94]**
As per scheme of amalgamation, five companies amalgamated with assessee-company. Amalgamation was recorded in books of account by assessee in accordance with Purchase method of accounting. Accordingly, difference between fair value of assets acquired and liabilities taken over, was recorded as Capital reserve in audited financial statements by assessee. Assessing Office held that scheme of amalgamation was conceived and implemented by assessee with intent of evading payment of tax on book profit and assessee had, under garb of amalgamation, deliberately adopted Purchase method in order to artificially jack up value of assets/investments with intent of undermining its book profit for purpose of section 115JB. He accordingly made upward adjustment to book profits in terms of clause (j) of Explanation 1 to section 115JB holding that amount transferred to capital reserve actually qualified as revaluation reserve. Tribunal held that since revenue had not brought anything tangible on record to prove surreptitious nature of assessee to treat scheme of amalgamation as sham and moreover motive of tax evasion or scheme being a colourable device had not been proven by revenue, allegation of revenue regarding shame transaction could not be sustained. Accordingly upward adjustment made

in book profits was to be set aside. Tribunal also held that Loss incurred on account of redemption of mutual fund could not be added in business profit. (AY. 2015-16)
Hespera Realty (P.) Ltd. v. DCIT (2020) 82 ITR 557 / 185 ITD 865 / (2021) 210 TTJ 214 (Delhi)(Trib.)

S. 115JB : Book profit – Exempt income – Credited to the profit and loss account – Reduced while computing book profit. [S. 10] 1516
Tribunal held that exempt income which is credited to the profit and loss account must be calculated by reducing amount of income to which section 10 applies, if such amount is credited to profit and loss account. (AY. 2009 10)
ITO v. Buniyad Developers (P.) Ltd. (2020) 185 ITD 854 (Delhi)(Trib.)

S. 115JB : Book profit – No addition will be made in respect of disallowance under section 14A, read with rule 8D – Benefit of clause (i) of Explanation 1 to section 115JB (2) will not be available to assessee if book profit was not increased by amount of provision made in year of making provision for whatever reason. [S. 14A, R.8D] 1517
For purpose of computing book profit, no addition will be made in respect of disallowance under section 14A, read with rule 8D. If any provision was made by assessee after 1-4-1997 and same is withdrawn in present year, then book profit has to be reduced by amount of provisions written back but such reduction from book profit is not allowable if in year of creation of provision, it was not added back to book profit and, thus, benefit of clause (i) of Explanation 1 to section 115JB (2) will not be available to assessee if book profit was not increased by amount of provision made in year of making provision for whatever reason. (AY. 2011-12)
Karnataka State Industrial Infrastructure Development Corporation Ltd. v. DCIT (2020) 83 ITR 386 / 185 ITD 441 /(2021) 211 TTJ 362 (Bang.)(Trib.)

S. 115JB : Book profit – Disallowances made under section 14A could not be applied while computing book profit. [S. 14A, R. 8D] 1518
Tribunal held that since there is no mechanism provided under clause (f) to make disallowance independently, disallowance was to be limited to 1 per cent of exempted income on an adhoc basis subject to condition that disallowance should not exceed amount of disallowance as determined under section 14A. (AY. 2011-12)
K. B. Mehta Construction (P.) Ltd. v. DCIT (2020) 185 ITD 81 (Ahd.)(Trib.)

S. 115JB : Book profit – Additional revenue on account of subsequent realization of export – Addition cannot be made while computing book profit. [S. 10A] 1519
Dismissing the appeal of the revenue the Tribunal held that additional revenue on account of subsequent realization of export, addition cannot be made while computing book profit. (AY. 2009-10)
Dy.CIT v. Yahoo Software Development (P.) Ltd. (2020) 80 ITR 528 / 184 ITD 305 / 196 DTR 241 / 208 TTJ 1072 (Bang.)(Trib.)

1520 **S. 115JB : Book profit – Computation for purpose of clause (f) of Explanation 1 to section 115JB(2) is to be made without restoring to computation as contemplated under section 14A, read with rule 8D. [S. 14A, R. 8D]**
Tribunal held that for the purpose of computation of book profit for purpose of clause (f) of Explanation 1 to section 115JB(2) is to be made without restoring to computation as contemplated under section 14A, read with rule 8D. (AY. 2012-13, 2013-14)
Zaveri & Co. (P.) Ltd. v. DCIT (2020) 184 ITD 777 (Ahd.)(Trib.)

1521 **S. 115JB : Book profit – Disallowance made under section 14A cannot be subject matter of disallowances while determining book profit. [S. 14A, R.8D]**
Tribunal held that disallowance made under section 14A cannot be subject matter of disallowance while determining book profit. (AY. 2010-11)
Gujarat State Energy Generation Ltd. v. ACIT (2020) 183 ITD 590 (Ahd.)(Trib.)

1522 **S. 115JB : Book profit – Exempt income – Disallowance u/s. 14A read with Rule 8D cannot resorted while determining the book profit. [S. 14A, R.8D]**
Dismissing the appeal of the revenue the Tribunal held that, disallowance u/s. 14A read with Rule 8D cannot resorted while determining the book profit. (AY. 2012-13, 2013-14)
DCIT v. Asian Grantio India Ltd. (2020) 182 ITD 441 (Ahd.)(Trib.)

1523 **S. 115JB : Book profit – Profit on sale of agricultural land – Direction of CIT(A) to exclude sum from book profits – Held to be proper. [S. 10, 115JB(2)(k)(ii)]**
Tribunal held that it is an admitted fact that the land, located more than 8 kms. from the municipal limit, the profits earned from sale thereof were exempt under section 10 of the Act. According to section 115JB(2)(k)(ii), the amount of income to which sections 10, 11 or 12 apply shall be reduced from computation of book profits, if such amount is credited to the profit and loss statement. As the assessee had so credited the amount and not reduced it in computing the book profit, it was obviously a mistake. Such a mistake has to be rectified by the Revenue authorities when it is brought to their notice and they are satisfied with the genuineness of the claim. The Commissioner (Appeals) was justified in directing the Assessing Officer to reduce the amount of income to which section 10 applied, if the amount was credited to the profit and loss account. (AY. 2009-10)
ITO v. Buniyad Developers Pvt. Ltd. (2020) 83 ITR 23 (SN) (Delhi)(Trib.)

1524 **S. 115JB : Book profit – Disallowance under Section 14A not to be included while computing book profit. [S. 14A]**
Tribunal held that the Assessing Officer while computing the "book profits" under section 115JB of the Act shall not resort to the computation as contemplated under section 14A read with rule 8D of the Income-tax Rules, 1962. Followed *ACIT v. Vireet Investment Pvt. Ltd. [2017 58 ITR (Trib.) 313 (Delhi)(Trib.)* (AY.2015-16)
Ameya Logistics Pvt. Ltd. v. Dy.CIT (2020) 83 ITR 46 (SN) (Mum.)(Trib.)

S. 115JB : Book profit – Capital gains – Capital asset – Sale of agricultural land – Gains from sale of agricultural land which is not a capital asset cannot be included for computing book profit. [S. 2(14)(iii), 2(IA), 5, 10(1), 45] 1525

Dismissing the appeal of the revenue the Tribunal held that Gains from sale of agricultural land which is not a capital asset cannot be included for computing book profit. Followed *Satlej Cotton Mills Ltd v. CIT (1993) 45 ITD 22 (SB) (Cal.) (Trib.)*
DCIT v. Motisons Buildtech (P.) Ltd. (2020) 182 ITD 72 / 116 taxmann.com 337 / 205 TTJ 484 (Jaipur)(Trib.)
DCIT v. Motisons Entertainment (P.) Ltd. (2020) 182 ITD 72 / 205 TTJ 484 (Jaipur)(Trib.)
DCIT v. Mitisons Global (P) Ltd. (2020) 182 ITD 72 / 205 TTJ 484 (Jaipur)(Trib.)

S. 115JB : Book Profit – Subsidy received in form of Excise Duty refund for establishment of new industrial undertaking – Capital subsidy not liable to tax – Excludible from computation of book profits. 1526

Tribunal held that the excise duty refund was on account of establishment of a new industrial undertaking in the State of Jammu and Kashmir as an incentive to promote industrial activity in the State of Jammu and Kashmir and was in the nature of capital subsidy not liable to tax. Thus, the excise duty refund had to be excluded from the computation of section 115JB as well as it was a capital receipt. (AY. 2007-08 to 2011-12)
Ultimate Flexipack Ltd. v. Dy. CIT (2020) 78 ITR 410 (Delhi)(Trib.)

S. 115JB : Book profit – Retention money – Not to be considered for computing book profits – Exemption under section 80IA is not allowable while computing book profit – Secondary and higher education cess – Deduction can be claimed in appellate proceedings. [S. 40(a)(i), 80IA, 254(1)] 1527

Tribunal held that the retention money cannot be regarded as income even for the purpose of computing the book profits under section 115JB. The retention money did not partake of the character of income till the time the contractual obligation were fully performed to the satisfaction of the payer or other parties concerned. Accordingly the retention money not to be considered for computing book profits. Tribunal held that section 115JB is in the nature of a non obstante clause, there was no exception thereto in the deduction provision under section 80-IA. The maxim generalia specialibus non derogant was applicable. Minimum alternate tax exemption regarding its section 80-IA deduction was not allowable. Followed *Rockline Developers P. Ltd. v. ITO (ITA. No. 5125/Mum/2016 dt.6-7-2018)* Tribunal also held that the Explanation 2(iv) and (v) to section 115JB makes it clear that the secondary and higher education cess(es) on Income-tax had been included in Explanation (1)(a) thereto. Therefore the assessee was not entitled to exclude the section 40(a)(i) disallowance from the computation under section 115JB. Tribunal also held that the statutory expression "tax" does not exclude "cess". The Assessing Officer was directed to allow the assessee's education cess. Deduction under section 80IA can be claimed in appellate proceedings. (AY.2010-11, 2011-12)
Dy.CIT v. MBL Infrastructure Ltd. (2020) 78 ITR 156 (Kol.)(Trib.)

1528 **S. 115JB : Book profit – Carrying forward of unabsorbed business losses for more than 8 years does not apply while computing adjusted book profits. [S. 72]**
Assessee claimed deduction on account of brought forward business losses in terms of Explanation 1 to section 115JB(1) while computing adjusted book profit. AO disallowed the same on ground that as per section 72 brought forward losses could not be set off after a period of 8 years. CIT(A) confirmed the addition. On appeal the appellate Tribunal held that S. 115JB is a stand-alone provision which does not contain any provision about carry forward of brought forward of business losses, while computing book profit therefore, restriction contained in S. 72 on carrying forward unabsorbed business losses for more than 8 years, does not apply while computing adjusted book profit. (AY. 2009-10, 2013-14)
Peerless Hospitex Hospital & Research Centre Ltd. v. DCIT (2020) 181 ITD 446 / 196 DTR 57 / 207 TTJ 300 (Kol.)(Trib.)

1529 **S. 115JB : Book profit – Waiver of loan – Loss or depreciation – Reduction of lower of loss or depreciation of the past years is allowable even where the same did not appear in the books of the current years on being absorbed against the credits not otherwise liable to tax in the past years – Matter remanded to CIT(A) for on a short point that the aspect of the adjustments had not been delved upon. [S. 32, 72]**
The Tribunal permitted the assessee for set-off of amount of the lower of loss or depreciation, pertaining to A.Y. 2010-11 as per books of accounts and allowed the deduction of the amount credited to Profit & Loss Account of AY. 2011-12 on account of waiver of loans and other payables and also disregarded the reduction made in the accumulated debit balance of Profit & Loss Account through the Restructuring Account. The Tribunal held that the debit balance of Profit & Loss A/c through absorbed and wiped off in books, now positive was deemed to have survived for set-off in a later year in computing book profit. The matter is remanded to the CIT(A) on a short point that the aspect of the adjustments had not been delved upon. (AY. 2013-14, 2014-2015)
Windsor Machine Ltd. v. DCIT (2020) 185 ITD 576 / 81 ITR 41 / (2021) 199 DTR 79 (Mum.)(Trib.)

1530 **S. 115JB : Book profit – Sales tax subsidy – Capital in nature – A receipt exempt from tax under Income tax law, cannot be considered for purpose of computation of book profit – Sales tax subsidy received by assessee being capital in nature is to be reduced from book profit. [S. 4, 28(i)]**
Tribunal held that when a particular receipt is exempt from tax under Income tax law, then the same cannot be considered for purpose of computation of book profit. Accordingly sales tax subsidy received by assessee being capital in nature was to be reduced from book profit. AY. 2006-07)
ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 (Mum.)(Trib.)

S. 115JB : Book profit – Liabilities of gratuity and leave encashment – Notes appended to accounts – Should be adjusted while computing book profit – Adjustment in respect of prior period items comprising of impact of lease rent equalization and gratuity expenses of earlier years should be made, while computing book profit – Exempt income – Disallowance is not considered while computing book profit – Dividend income is exempt,should be excluded in computing book profit. [S. 10(34), 14A, 145, R.8D AS. 15] 1531

Tribunal held that liabilities of gratuity and leave encashment as per provisions of AS-15 which were disclosed in Notes appended to accounts and adjusted against opening general reserve, should be reduced from current year's profit for computation of book profit Notes to accounts are part of financial statements (profit and loss account and balance sheet, cash flow statement etc.) and, therefore, computation of book profit should be done taking into account figures mentioned in Notes to accounts. Adjustment in respect of prior period items comprising of impact of lease rent equalization and gratuity expenses of earlier years should be made, while computing book profit. The AO made upward revision in book profit computed under S. 115JB by making disallowance under S.14A. The CIT(A) upheld action of the AO. Tribunal held that the adjustment by the AO other than those mentioned in Explanation 1 to S. 115JB to the net profit reflected in the accounts of any assessee and adjustment by way of disallowance under S. 14A is not included in the said Explanation. Dividend income is exempt in terms of section 10(34) and, therefore, it should be excluded in computing book profit in terms of clause (ii) of Explanation 1 to S. 115JB of the Act. (AY. 2008-09)

Bata India Ltd. v. DCIT (2020) 180 ITD 464 (Kol.)(Trib.)

S. 115O : Domestic companies – Tax on distributed profits – Buy back of shares – Approval of Scheme – Capital gains or dividend income – Direction to file an appeal before CIT(A) and also finding on merits – Decision on merit is held to be not valid – Direction to file an appeal is held to be justified. [S. 2(22)(d), 10(34A), 46A, 115QA, 246A, Art. 226] 1532

Assessee sought for an approval of thee scheme under sections 391 to 393 of Companies Act, 1956, involving purchase of shares from its shareholders. Scheme was approved by Court In pursuance to same, assessee bought back shares from its shareholders and, accordingly it was treated as capital gains. Respondent passed impugned order inter alia holding that transactions made in pursuant to buy back arrangement effected as a consequence to approval of Scheme required to be taxed under section 115-O on premise that it would constitute dividend and not capital gain. Against said order, assessee filed a writ petition. Single Judge held that there was no merit in assessee's contention that shares purchased pursuant to order of Company Court would be a capital gain and not to be treated as dividend. He, however, dismissed assessee's petition with a liberty to them to file an appeal under section 246A in view of fact that assessee had already deposited a part of amount demanded. On appeal the Division bench held that Single Judge was not right in going to merit while granting liberty to file an appeal, accordingly findings rendered by Single Judge on nature of transaction and scope under section 115-O was set aside.

Cognizant Technology Solutions India (P.) Ltd. v. Dy.CIT (2019) 181 DTR 371 / 310 CTR 515 / (2020) 269 Taxman 151 (Mad.)(HC)

Editorial : Refer Cognizant Technology Solutions India (P.) Ltd. v. Dy. CIT (2020) 424 ITR 302 / 187 DTR 369 / 313 CTR 510 / 274 Taxman 381 (SC)

1533 **S. 115QA : Tax on distributed income to share holders – Buy back of shares – Remittances to non-residents – Appeal pending before Supreme Court – Department agreeing to treat communication as show – cause notice – Direction to assessee to file reply thereto and further directions as to continuance of interim orders. [S. 2(22)(a), 2(22(d), 115O, 245Q]**

The assessee filed a writ appeal whereupon the Division Bench observed that the single judge after having found the writ petition not maintainable, ought not to have gone into the merits. As regards the nature of the communication dated March 22, 2018 and maintainability of an appeal challenging it, it observed that order was a final one, and that the further question whether the order under challenge violated the principles of natural justice or requisite procedure contemplated under the Act was a matter for consideration by the appellate authority. On appeal the Court held that, the Department having agreed before the court that the communication dated March 22, 2018 could be treated as a show-cause notice and the Department permitted to conclude the issue within a reasonable time, provided the interim order passed by the single judge of the High Court was continued, and this course having been accepted by the assessee and an appropriate affidavit of undertaking to withdraw the proceedings initiated before the Authority for Advance Rulings having been filed by the assessee, the court in the peculiar facts of the case, directed that the communication dated March 22, 2018 shall be treated as a show-cause notice calling upon the assessee to respond with regard to the aspects adverted to in the communication, that the assessee shall be entitled to put in its reply and place such material, on which it sought to place reliance, within ten days, that the assessee shall thereafter be afforded oral hearing in the matter, and that the matter shall be decided on the merits by the concerned authority within two months, and that pending such consideration, as also till the period to prefer an appeal from the decision on the merits was over, the interim order passed by the single judge of the High Court shall continue to be in operation. The court directed that the amount deposited towards payment of tax and the amounts which stood deposited and invested in the form of fixed deposit receipts shall be subject to the decision to be taken by the authority on the merits or to such directions as may be issued by the appellate authority. The court directed that the merits of the matter shall be gone into independently by the authorities without being influenced, in any way, by any of the observations made by the court. (AY. 2016-17) (Refer *Cognizant Technology Solutions India P. Ltd. v. Dy.CIT (LTU) [2019] 416 ITR 462 (Mad.) (HC).*

Cognizant Technology Solutions India Pvt. Ltd. v. Dy. CIT(Large Taxpayer Unit) (2020) 424 ITR 302 187 DTR 369 / 313 CTR 510 / 274 Taxman 381 (SC)

1534 **S. 115WA : Fringe benefit tax – Relationship of employer and employee – Free medical samples distributed to doctors is in the nature of sales promotion – Not liable to pay fringe benefit tax. [S. 115WG]**

Dismissing the appeal of the revenue the Court held that since there is no employer-employee relationship between the assessee on one hand and doctors on the other hand to whom the free samples were provided, the expenditure incurred for the same cannot be construed as fringe benefits to be brought with in the additional tax net by levy of

fringe benefit tax. Followed *CIT v. Tata Consultancy Services Ltd (2015) 374 ITR 112 (Bom.) (HC) (ITA No. 7899 / Mum/2011 dt 25-01 2017.* (AY. 2006-07)
(ITA NO.1961 of 2017 dt 23-1-2020
PCIT v. Aristo Pharmaceuticals P. Ltd. (2020) 423 ITR 295 / 187 DTR 388 (Bom.)(HC)

S. 115WB : Fringe benefits – Expenditure incurred in imparting in – house training to employees Loan obtained for car and maintenance expenditure Excluded from ambit of fringe benefit tax. 1535

Dismissing the appeal of the revenue the Court held that in-house expenses incurred by assessee-company for training of employees cannot be subjected to fringe benefit tax. Court also held that repayment of loan obtained for purchase of car cannot be brought within purview of fringe benefit tax and it is only actual running and maintenance expenditure of cars taken on finance lease which is liable for fringe benefit tax. (AY. 2009-10)
CIT v. IBM India (P.) Ltd. (2020) 275 Taxman 610 (Karn.)(HC)

S. 115WB : Fringe benefits – Sales promotion and dealers conference – No nexus with employer and employee relationship – Not assessable as Fringe benefits. [S. 17(2), 115WB(2)(c), 115WB(2)(d)] 1536

Dismissing the appeal of the revenue the Court held that the expenditure incurred by the assessee on sales promotion had no nexus on employer-employee relationship and for expenses incurred in holding dealers' meet, the question of employer-employee relationship did not arise. The Tribunal was correct in holding that the fringe benefits brought to tax on account of sales promotion expenses and conference charges did not attract the provisions of section 115WB. The expenditure was incurred by the assessee for the purpose of holding a dealers' conference. Therefore, such expenditure could not have been considered for determining the assessee's liability towards fringe benefits tax under section 115WB(2)(c). Similarly, the expenses incurred by the assessee towards sales promotion could not be taxed in view of the provision contained in section 115WB(2)(d). Order of the Tribunal is affirmed. (AY.2009-10)
CIT(LTU) v. Toyota Kirloskar Motor Pvt. Ltd. (2020) 194 DTR 297 / 317 CTR 244 / (2021) 430 ITR 65 / 278 Taxman 100 (Karn.)(HC)

S. 115WC : Fringe benefits – Constitutional validity – Parliament had power to enact Chapter Xii – H under entry 97 of Seventh Schedule to Constitution of India – Not violate of Article 14 of Constitution of India. [Art. 14] 1537

Dismissing the petition the Court held that the question of extending opportunity while assigning percentages under section 115WC may not arise, since it is a policy matter. The contention of non-inclusion of fringe benefits under clause (24) of section 2 and its inclusion under clause (43) does not vitiate the provisions of fringe benefits tax with reference to the charging section 4, since fringe benefits tax is incorporated as an independent provision. The power to incorporate Chapter XII-H of the Income-tax Act, 1961 is available under the Seventh Schedule to the Constitution under entry 97. Further violation of article 14 is not made out. Hence neither Chapter XII-H or any part thereof is unconstitutional or opposed to

articles 14 and 246(1) read with entry 82 of List I of the Seventh Schedule to the Constitution of India.
T. T. K. Prestige Ltd. v. UOI (2020) 422 ITR 13 / 192 DTR 305 / 316 CTR 33 / 275 Taxman 455 (Karn.)(HC)
Karnataka Drugs & Pharmaceuticals Manufacturers Association v. UOI (2020) 422 ITR 13 / 192 DTR 305 / 316 CTR 33 / 275 Taxman 455 (Karn.)(HC)
N. Rnaga Rao & Sons v. CIT (2020) 422 ITR 13 / 192 DTR 305 / 316 CTR 33 / 275 Taxman 455 (Karn.)(HC)

1538 **S. 116 : Inspectors of Income-tax – Service matter – Pay scale – Technical Assistant claimed parity of allowances and salary with that of Inspector of Income Tax, such parity was to be decided by CAT on basis of recommendations of expert bodies like Pay Commission or Anomalies Committee, and not on basis of fact that in past, pay scale of two posts were at par. [S. 116(h)]**
Technical Assistants claimed that their salaries and allowances should be at par with Inspectors of Income Tax. However, scope of functions as well as educational qualifications of both posts were very different from one another. CAT considered this to be a case of 'anomaly' and went by fact that in past, pay scales for two posts were at par for a short period. CAT did not examine if principle of 'equal pay for equal work' would apply. Court held that since it was not a case of rectifying an anomaly but of demand for equating pay scales of two dissimilar posts, in absence of any recommendations of an expert body like Central Pay Commission or Anomalies Committee, CAT could not grant parity in pay scales.
DDIT v. Ramesh Dang (2020) 269 Taxman 110 (Delhi)(HC)

1539 **S. 119 : Central Board of Direct Taxes – Instructions – Deduction at source – Computer software – There is no legal right to petitioner and/or its customers to compel CBDT to give ruling/clarifications on issue of tax deduction at source under section 194C/194J as regards shrink – wrapped – packaged software. [S. 119(1), 194C, 194J, Art. 226]**
Assessee by way of instant writ petition pleaded before Court to direct CBDT to issue direction that sale of shrink-wrapped-packaged software on CD/DVD was sale of goods and was not subjected to tax deduction at source under section 194J/194C by its customers. In terms of section 119(1), there is no duty cast upon CBDT to issue clarification and decide matters which would be essentially in realm of adjudication before revenue authorities. Court also held that there was no legal right to assessee and/or its customers to compel CBDT to give ruling on issue of tax deduction at source, therefore, instant writ was to be dismissed.
Quick Heal Technologies Ltd. v. UOI (2020) 272 Taxman 163 (Bom.)(HC)

1540 **S. 119 : Central Board of Direct Taxes – Return – Condonation of delay – Genuine hardship – Should be construed liberally – Order being cryptic – Delay is condoned. [S. 119(2)(b), 139, Art. 226, 227]**
Due to change in the share holdings and prolonged litigation, return for the AY. 2014-15 was filed beyond prescribed date under the Act. Petition was filed before the CBDT u/s 119 (2) (b) of the Act to condone the delay. CBDT rejected the petition. On writ allowing the petition the Court held that the genuine hardship, should be construed liberally.

The Court also observed that order of CBDT being cryptic, the delay was condoned. The order of the CBDT was quashed. Followed *B.M Malani v. CIT (2008) 219 CTR 313/ 13 DTR 186 (SC) / 10 SCC 617.* (AY. 2014-15)
Vasudev Adigas Fast Foods Pvt. Ltd v. CBDT (2020) 186 DTR 89 / 314 CTR 852 (Karn.)(HC)

S. 120 : Jurisdiction of income-tax authorities – Power to transfer cases – Commissioner – Lucknow transferred different cases to Central Circle, Lucknow – Jurisdiction of TDS matters was not transferred – Order passed by Assistant Commissioner, Central Circle, Lucknow in case of assessee under section 201 was without jurisdiction. [S. 127, 201] 1541
Commissioner-Lucknow passed an order under section 127 and vide this order different cases belonging to assessee group were transferred to Central Circle, Lucknow, however, he did not transfer cases from ITO (TDS) Ward-2, Lucknow. Jurisdiction of all TDS matters over assessee was with ITO (TDS) Ward-2, Lucknow Accordingly order passed by Assistant Commissioner, Central Circle, Lucknow in case of assessee under section 201 was without jurisdiction (AY. 1996-97)
DCIT v. Sahara India Financial Corporation Ltd. (2020) 183 ITD 266 / 194 DTR 153 / 297 TTJ 555 (Delhi)(Trib.)

S. 120 : Jurisdiction of income-tax authorities – Additional Commissioner can function as an AO only when jurisdiction has been assigned to him – No directions or orders assessment order passed by Additional Commissioner was illegal and without jurisdiction. [S. 120(4)(b), 124] 1542
Tribunal held that Additional Commissioner can function as an AO only when jurisdiction has been assigned to him by virtue of directions or orders issued under S. 120(4)(b) of the Act. No directions or orders passed. Assessment order passed by Additional Commissioner was illegal and without jurisdiction. (AY. 2011-12)
Nasir Ali v. ACIT (2020) 181 ITD 30 (Delhi)(Trib.)

S. 127 : Power to transfer cases – Transfer from Assessing Officer – Agreement between two higher authorities – Opportunity of hearing should be given. [Art. 226] 1543
Allowing the petition the Court held that the expression used in clause (a) to sub-section (2) is "agreement"; "agreement" per se would mean that the concerned parties have to agree to a specific course of action. Furnishing a proposal may not amount to an agreement of the designated higher authorities as contemplated under clause (a) to sub-section (2) of section 127. It was quite evident that before passing the order no opportunity of hearing was granted to the assessees. Hearing was granted after the decision was taken culminating in the second order. That apart. from the second order it was discernible that there was no agreement between the two jurisdictional Principal Commissioners to transfer assessment jurisdiction from Mumbai to Kochi. Evidently, the procedure prescribed under section 127(2)(a) of the Act had not been complied with. The order of transfer was not valid.
Parappurathu Varghese Mathai and Sarakutty Mathai v. PCIT (2020) 428 ITR 79 / 193 DTR 337 / 316 CTR 833 (Bom.)(HC)
Olive Builders v. PCIT (2020) 428 ITR 79 / 193 DTR 337 / 316 CTR 833 (Bom.)(HC)

1544 **S. 127 : Power to transfer cases – Order of transfer not challenged till Issuance of notice – Delay not explained – Opportunity given to file objections not utilised – Transfer of case for centralisation of cases to facilitate investigation – Order need not be interfered with. [S.127(2) 132, 153A]**

Search and seizure operations under S. 132 of the Act were conducted in the premises of the partners of the assessee-firm and their relatives. The PCIT issued notice to the assessee under S. 127(2) for transfer of the cases from the Assistant Commissioner, Tirunelveli, to the Deputy Commissioner, Central Circle, Madurai under S.127 since it was necessary for detailed, co-ordinated and centralized investigation of all the assessees involved. The assessee sought for certain documents in order to file its objections. However, the request of the assessee was ignored and without furnishing the documents sought for, the transfer order was passed. The single judge dismissed the writ petition filed by the assessee and sustained the transfer order. On appeal, the Division Bench granted interim stay of the order passed by the single judge but the Department sought vacation of the stay order contending that after the cases were transferred to the Central Circle, Madurai and notice was issued under S. 153A and those proceedings were to be completed within the time stipulated therein and that the stay granted by this court would impede the process dismissing the appeal the Court held that this was not a case where no reason had been assigned in the notice for transfer of the cases. The cases had been transferred from the Tirunelveli Circle to the Central Circle, Madurai and not out of the State of Tamil Nadu. S. 127 did not create any geographical classification. Search and seizure documents could not be furnished to the assessee in proceedings under section 127. The notice had spelt out the reasons for the proposed transfer of the cases. Whether the reasons were sufficient or insufficient, could not be the subject matter of judicial review. Court also observed that the assessee had challenged only the transfer order, that too belatedly, and had obtained the order of stay of the transfer and not of the proceedings under S. 153A. Therefore, in the absence of stay of the proceedings under the section, the stay that had been granted in respect of transfer of proceedings would not save running of the period of limitation of the proceedings under S. 153A.

V. V. Minerals (NO. 2) v. PCIT (2020) 426 ITR 36 / 315 CTR 685 / 272 Taxman 207 / 191 DTR 127 (Madurai) (Mad.)(HC)

Editorial : Order of Single judge is affirmed V. V. Minerals (NO. 1) v. PCIT (2020) 426 ITR 23 / 315 CTR 696 / 191 DTR 139 (Madurai) (Mad.)(HC)

1545 **S. 127 : Power to transfer cases – Survey – Purpose of transfer for co-ordinated investigation of connected cases – Possibility Of Involvement Of Scam having international ramifications – Transfer order is held to be valid. [S. 133A, Art. 226]**

Dismissing the petition held that when the survey was conducted a detailed questionnaire was put to the chairman-cum-managing director of the assessee, and the replies he had given to the questions indicated that he was aware of the reasons for which the assessments were transferred. The pleadings and the documents shown to the court in a sealed cover revealed that the assessees had full and complete knowledge of the reasons which had weighed with the competent authority while passing the order for centralization of the cases. The assessees in the reply had also not denied any of the averments made by the Department in the preliminary objections of their

written statement. Vague and evasive replies had been given in the written statement and there was no categoric denial to the averment that the assessees were connected in some manner to the AW scam and to the case of the GK group of companies. Because of the possibility of the involvement of the assessee in a scam having international ramifications it might not have been possible for the Department to have expressed or given more reasons than were given in the order in question and, on the facts, it would be in the larger public interest, particularly when the reasons were well known to the assessees.

IDS Infotech Ltd. v. PCIT (2020) 423 ITR 82 / 275 Taxman 358 (P&H)(HC)

S. 127 : Power to transfer cases – Transfer Of Assessments for purpose of Co-ordinated investigation – Reasons not disclosed in orders of transfer – Orders set aside. [S. 132, 133A] 1546

Allowing the petition the Court held that the notice did not contain any reasons. The order passed under S. 127(2) for the transfer of the assessees' cases was cryptic and there was no reason stated why the report of the Deputy Director (Investigation) could not have been put to the assessees. The orders had proceeded on the basis that the assessees and the group which was subjected to search were "related concerns". On this limited ground, the order was to be set aside and liberty was granted to the Department to cure the illegality. (AY. 2013-14)

H. M. Steels Ltd. v. PCIT (2019) 103 CCH 492 / (2020) 422 ITR 160 (P&H)(HC)

S. 127 : Power to transfer cases – Reasons for transfer to be recorded and communicated and an opportunity of hearing is mandatory – Transfer order and consequent proceedings is quashed. [S. 127(2), 132(4), Art.226] 1547

Allowing the petition the court held that the need of the Department for better investigation of the case could not override and supersede the statutory provision. The procedural requirement as provided under section 127 had not been complied with. At no point of time were the reasons recorded, if any, communicated to the assessee and therefore, no opportunity of hearing was granted to the assessee on the issue of reasons recorded by the Department. The order of transfer of the assessee's case and consequential proceedings were to be quashed.

Athena Trade Winds Pvt. Ltd. v. CIT (2020) 421 ITR 267 /186 DTR 347/ 316 CTR 219 (MP) (HC)

S. 127 : Power to transfer cases – Assessee was given opportunity to be heard – Order for transfer is valid – Notice sent by post to correct address of assessee – Presumption that notice had been served [General Clauses Act, 1897, S. 27, Art. 226] 1548

Dismissing the petitions the Court held that prior to sending the notice there was an agreement between the Director General of Income-tax (Inv), Kochi and the Principal Chief Commissioner of Income-tax, NER, Guwahati belonging to the two jurisdictions. Assessee was given an opportunity to be heard. Notice was sent by post to correct address of assessee, Presumption that notice had been served. Order for transfer is valid.

M. K. Rajendran Pillai v. CIT (2020) 421 ITR 274 / 189 DTR 172 / 315 CTR 656 (Gau.) (HC)

1549 **S. 131 : Power – Discovery – Production of evidence – Summons stating not to depart until permission granted – Violates fundamental rights guaranteed under Part III of the Constitution of India. [S. 148, Constitution of India, 1950 Arts, 12 to 35]**

The ACIT issued the summons to the assessee under section 131 of the Act, on 31-1 2020 at 2.30 p.m to give evidence and produce documents personally the books of accounts or other documents specified therein and not to depart until he grants permission to do so. Aggrieved the assessee approached High Court on the ground that the action of the ACIT directing the assessee not to depart until grants permission to do so, is a patent violative of the Fundamental Rights guaranteed under Part III of the Constitution of India. The Court held the summons stating not to depart until permission granted is highly unreasonable. However the Court directed the assesee to co-operate with the enquiry and present before the Assessing Officer on the day on which the officer asks the assesseee to be present, till 7.PM or any other time earlier thereto specified by the officer concerned. (WP No. 3187 of 2020 dt. 12-2-2020). (AY. 2012-13)

Sri Naval Kishore Khaitan v. PCIT (2020) The Chamber's Journal-May-P. 86 (AP)(HC)

1550 **S. 132 : Search and seizure – Stock in trade – Gold Dore Bars – Directed to be released after proper verification. [Art. 226]**

Allowing the appeal of assessee the Court held that, the Gold Dore Bars, which have been seized were stock-in-trade of the petitioner and have been imported as raw materials and also; that the goods were custom cleared and duty paid. This fact is not denied by the respondent-department. Therefore, goods may now be released to the petitioner.

Kundan Care Product Ltd. v. Dy. DIT (Inv.) (2020) 113 taxmann.com 90 (All.)(HC)

Editorial : SLP of revenue is dismissed, Dy.DIT v. Kundan Care Product Ltd. (2020) 269 Taxman 12 (SC)

1551 **S. 132 : Search and seizure – Validity – Assessing Officer found contraband substance, but it was seizure by empowered officers of Narcotics Control Bureau, it could not be said that there was seizure by Income-tax Officers. [Narcotic Drugs and Psychotropic Substances Act, 1985 S. 8(c), 21(b)]**

During Income-tax search and seizure operation at a particular hotel room, applicant alongwith co-accused was found in possession of cocaine Narcotics Control Board (NCB) was empowered to seize said contraband material in adherence to procedure and accused were charged for offence punishable under Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Applicant filed an application for discharge on ground that seizure of contraband by Income-tax Officers did not constitute a legal seizure and same being done by officers neither-armed with a warrant nor authorization and empowerment under provisions of NDPS Act, prosecution was wholly untenable. Since Income-tax Officers had simply stumbled upon contraband substance in possession of accused and stored it in safe and it was, in effect, seized by empowered officers of NCB, it could not be said that act of Income Tax Officers in taking over substance from possession of accused amounted to seizure and, therefore, intent to carry on search to find out contraband substance could not have been attributed to officers of Income Tax department. Special Judge was within his rights in recording a finding that there

was adequate material which justified a strong suspicion of accused applicant having committed offence punishable under NDPS Act.
Anant Vardhan Pathak v. UOI (2020) 273 Taxman 23 (Bom.)(HC)

S. 132 : Search and seizure – Firm – Person actively involved in the activities of the firm – Search is held to be valid – Order of Tribunal is affirmed. [S. 40A(3), 68] 1552
Assessee and revenue filed appeals against the order of Tribunal in respect of addition and also challenging the validity of the search proceeding. Tribunal up held the addition though the name of the assessee was not mentioned in the search warrant on the ground that the assessee was physically present at premises of firm when search was conducted and he was actively involved in affairs of firm and continued to manage its affairs. Tribunal also noticed that materials were seized from premises, which would substantiate allegations made against assessee firm, so as to proceed against firm under provisions of Act. Tribunal upheld validity of search proceedings and also certain additions. (AY. 1992-93, 1993-94)
CIT v. Chekkattu Chitty Funds (2020) 113 taxmann.com 604 (Ker.)(HC)
Editorial : SLP of assessee dismissed, Chekkattu Chitty Funds v. CIT (2020) 113 taxmann.com 606 / 269 Taxman 373 (SC)

S. 132 : Search and seizure – Reason to believe – Recording of satisfaction – Jewellery – Stock in trade – No cogent basis for arriving at conclusion that assessee was in possession of jewellery which represented his undisclosed income or property was discernible from satisfaction note, impugned search and seizure was to be quashed and all actions taken pursuant to such search and seizure were to be declared illegal – The respondents were ordered to pay costs quantified at Rs. 50,000. [S. 132B, Art. 226] 1553
Search and seizure is a serious invasion on privacy of citizens, and has to be resorted to when there are pre-existing and pre-recorded good reasons to believe that action is called for. Sole ground for action of search and seizure was that Investigation Wing of Income Tax department was in possession of credible information that assessee was in possession of jewellery which represented his undisclosed income or property. However, no cogent basis for arriving at this conclusion was discernible from satisfaction note. Mandatory reasons to believe were not recorded and search authorisation was not obtained prior to interception and conduct of search. Thus, search action was a completely unauthorized and a high-handed action on part of revenue, as mere possession of jewellery ipso facto would not be sufficient for officer to form a belief that same had not been, or would not be disclosed. Moreover, even clause (c) to section 132(1) could not be invoked since assessee was carrying on business of sale and purchase of jewellery and he was legitimately carrying the same as his stock-in-trade. Accordingly search and seizure and ex post facto warrant of authorization issued by respondent revenue under S. 132 was to be quashed and all actions taken pursuant to such search and seizure were to be declared illegal and revenue was to be directed to forthwith return jewellery seized to assessee. The respondents were ordered to pay costs quantified at Rs. 50,000.
Khem Chand Mukim v. PCIT (2020) 423 ITR 129 / 186 DTR 145 / 113 taxmann.com 529 / 313 CTR 14 / 270 Taxman 252 (Delhi) (HC)
Editorial : Review petition of revenue is dismissed, Khem Chand Mukim v. PDIT (Inv.) (2021) 277 Taxman 222 / 201 DTR 70 / 320 CTR 781 (Delhi)(HC)

1554 **S. 132 : Search and seizure – Stock in trade – High Court directed to release of seized goods. [Art. 226]**
Stock in trade was seized by the department. On writ it was found that Gold Dore Bars, which had been seized were stock-in-trade of assessee and had been imported as raw materials and also those goods were customs cleared. High Court directed that said goods could be released to assessee after proper verification and identification of goods to satisfaction of authority concerned.
Kundan Care Products Ltd. v. Dy.DIT (2020) 113 taxmann.com 90 (All.)(HC)
Editorial : SLP of revenue is dismissed; DIT (Inv) v. Kundan Care Products Ltd. (2020) 269 Taxman 12 (SC)

1555 **S. 132(4) : Search and seizure – Statement on oath – Opportunity to cross examine witness not given – Addition was deleted – Presumption as to assets, books of account – In whose possession in found – it is presumed it belongs to the person. [S.292C]**
It was held that in the view of the judgment of the Hon'ble Supreme Court in the case of *Andaman Timber Industries v. Commercial Taxes (2015) 281 CTR 214 (SC)* has held that failure to give the assessee the right to cross-examine witnesses whose statements are relied upon results in breach of principles of natural justice. It is the duty of the Assessing Officer to give opportunity to the assessee and allow him cross-examination. The addition made by the Assessing was deleted . It was held that any material found in the possession of a person is presumed to be belonging to that person whose possession the material is found. In this case, the seized material was found in the premises of the college and therefore it has to be presumed that the seized material is belonging to the college. The addition solely based on the seized material is not valid. (AY. 2012-13)
Venkata Satya Surya Sree Ranganadha Raju Alluri v. ITO (2020) 203 TTJ 25 (SMC) (UO) (Hyd.) (Trib.)

1556 **S. 132(4) : Search and seizure – Statement on oath – Excess stock and cash – Not supported by documentary evidences – Cannot be sustained – Appeal allowed. [S.131, 143(3)]**
When excess cash found during search was indeed on account of genuine cash sales made, which were remained to be entered in the books, as on the date of search. The statements recorded u/s. 132(4) by the assessee cannot be made the sole basis for making additions unless it is supported by any documentary evidence. In the instant case, the retraction was made indirectly by not declaring the undisclosed income as declared U/s 132(4)/131 in the return of income filed by the assessee. Deletion of stock is held to be valid. (AY. 2015-16)
Jewels Emporium v. ACIT (2020) 208 TTJ 430 (Jaiour) (Trib.)

1557 **S. 132(4) : Search and seizure – Statement on oath – Short term capital gains – Offered in statement recorded during search – Brought forward capital loss of earlier years – Eligible to be set off against short term gains of current year – Set off of loss not to be denied on ground that not claimed in statement recorded during search. [S. 74]**
Tribunal held that the view of the Assessing Officer that the assessee had not claimed adjustment of brought forward loss in the statement recorded under section 132(4) was

not sustainable. The Assessing Officer can neither expect the assessee to suo motu seek such set off against the brought forward losses nor expect the authorised officer recording the statement to pose a question regarding any brought forward losses, during the process of recording of the statement on oath during the search and seizure operation. Hence, the rationale given by the Assessing Officer while disallowing the set off was not statutorily tenable. The statute permits carry forward and set off of losses and this cannot be denied in the absence of any specific provisions or conditions laid down in the statute to disallow such benefits. The short-term capital loss which had been incurred in the assessment year 2007-08 and the loss had been allowed by the Department to be carried forward till the assessment year 2010-11. Hence, set off of the loss against the short-term capital gain earned by the assessee during the assessment year 2011-12 could not be disallowed. (AY. 2011-12)
Roop Kishore Madan v. Dy.CIT (2020) 81 ITR 55 (SN) (Delhi)(Trib.)

S. 132(4A) : Search and seizure – Presumption – Appellate Tribunal – Duties – Loose papers found during search – Not absolute – Order of Tribunal is set aside. [S. 158BC, 254(1)] 1558
The AO made addition on the basis of loose papers found during the search proceedings. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that CIT(A) had overlooked the provision of S.132(4A) of the Act hence allowed the appeal of the revenue. On appeal the High Court held that, The Tribunal only on basis of presumption u/s. 132(4A) reversed the finding of the CIT(A), without recording any finding as to how the loose sheets which were recovered during search were linked with the assesee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding of the CIT(A). The matter is set aside to decide on merit. (ITA No. 357 of 2010 dt. 13-11-2019)
Ajay Gupta v. CIT (2019) CTCJ-December-P, 151 / (2020) 185 DTR 217 / 312 CTR 381 / 270 Taxman 71 (All.)(HC)

S. 132B : Application of seized or requisitioned assets – Recovery of tax – Money seized by police and deposited in Court – Remedy to the Assessing Officer to apply to appropriate Court. [S. 226(4), Art. 226] 1559
Dismissing the writ petition of the revenue the Court held that where money had been seized by police from a person and deposited in criminal court appropriate remedy open to ITO was to apply under section 226(4) for payment of money towards tax and other amounts due and Income-tax authorities were not justified in issuing any command to Court demanding release of cash. Court also directed to retain the entire amount of cash in deposit intact and await finality of the assessment proceedings initiated against the first respondent. The right to recover the amount will enure to the first respondent only in the situation of the order of assessment being either set aside in appeal or other appropriate legal proceedings. Otherwise, the authorities under the Act will be entitled to move the court for release of the requisite portion of amount of tax etc. due to the Department and recoverable under the Act.
UOI v. Hashir and Ors. (2020) 275 Taxman 568 / (2021) 432 ITR 465 (Ker.)(HC)

1560 **S. 133 : Power to call for information – Authorities – ITO (Intelligence) is an authority to issue notice under section 133(6) to the assessee Co-Operative banks prior to CBDT Notification No. 77 of 2014 dt. 10-12-2014. [S. 90, 90A, 120, 124, 133(6), 272A(2)(c)]**
ITO (Intelligence) issued notice u/s 133 (6) to the assessee for calling for particulars of cash transactions above Rs 1 lakhs with details of account holders in the format prepared by the Authority. The Societies have challenged the validity of the notices. Jurisdiction to issue notice was up held by the CIT(A) and Appellate Tribunal. On appeal by the assessee dismissing the appeal the Court held that, ITO (Intelligence) is an authority to issue notice under section 133(6) to the assessee Co-Operative banks prior to CBDT Notification No 77 of 2014 dt 10-12-2014 (AY. 2010-11 to 2012-13)
Enanalloor Service Co-op. Bank Ltd. v. ITO (2020) 317 CTR 191 (Ker.)(HC)

1561 **S. 133 : Power to call for information – Survey – Notifications Dt. 19-8-2011 and 1-11-2011 – ITO (Intelligence) has power to issue notices to Co-Operative Banks. [S. 120, 133(6)]**
Thirty four appeals were preferred by various co-operative banks impugning the action of the ITO(Intelligence), calling for information under S. 133(6). All the banks remained unsuccessful before the CIT(A) as well as the Income-tax Appellate Tribunal. On appeals dismissing the appeals the Court held that that the procedure prescribed under sub-section (6) of S. 133 was akin to a survey in order to ascertain whether the co-operative banks failed to disclose information with regard to receipts of more than Rs. 5 lakhs within three immediate assessment years. The appellants did not provide any information on receipt of the notices. The notices were valid. (Referred *Kathiroor Service Co-operative Bank Ltd. v. CIT(CIB) (2014) 360 ITR 243 (SC) Kodur Service Co-operative Bank Ltd. v. DIT (Intelligence)(2014) 367 ITR 22 (Ker.)(HC). (Notification dt. 19-8-2011) [2011] 338 ITR (St.) 2) and 11-1-2011)*
Enanalloor Service Co-Operative Bank Ltd. v. ITO(Int) (2020) 426 ITR 180 / 194 DTR 189 / (2021) 276 Taxman 368 (Ker.)(HC)

1562 **S. 133A : Power of survey – Rejection of books of account and estimation of income – Accommodation entries – Statement of director recorded two Thousand days after survey and not under oath – Merely on the basis of statement addition is held to be not valid. [S. 144]**
Dismissing the appeals of the revenue the Court held that the statement recorded under S. 133A not being recorded on oath could not have any evidentiary value and no addition could be made on the basis of such statement. The Tribunal had found that the assessee had discharged the onus to prove that the transactions were genuine by furnishing the relevant documents, such as, copies of bank statements, ledger copies of various purchases, xerox copies of purchase invoices, relevant copies of daily stock register, confirmation letters, etc. The order of the Tribunal holding that on the basis of the statement given by a director of the assessee the Assessing Officer could not have concluded that the assessee had issued accommodation bills and rejected the books of account, was justified. (AY. 2008-09, 2009-10)
PCIT v. Sunshine Import and Export Pvt. Ltd. (2020) 424 ITR 195 / 273 Taxman 173 (Bom.)(HC)

S. 133A : Power of survey – Excess stock – Surrender in the course of survey – Merely on the basis surrender made in the course of survey addition is held to be not justified – Estimated addition on net profit was also deleted. [S. 143(3)] 1563

Allowing the appeal of the assessee the Tribunal held that no other incriminating material was found during the course of survey relating to unaccounted stock, excess physical stock was calculated by Revenue authority on estimative and presumptive basis. The stock statement prepared by the survey team on the date of survey itself seems to be on a loose wicket since the remarks column mentioning about the weighment of stock in trucks do not correlate with any actual weighment slip and also the alleged unrecorded stock is practically impossible to be stored on the available space with the assessee. Even after the retraction assessee had not retracted the total surrender but he prudently kept separate record of the sales of physical stock which was 250.03 MT whereas the book stock on the date of survey was 85.433 MT. The difference i.e. 165.27 MT is accepted as unrecorded stock which has been offered to tax by the assessee. Therefore the addition deleted. Tribunal also deleted the estimation of net profit by the Assessing Officer. (AY. 2012-13)

Sayyed Hamid Ali v. ACIT (2020) 189 DTR 369 / 205 TTJ 453 (Indore)(Trib.)

S. 133A : Power of survey – Undisclosed Sales – Quantity tally of stock maintained – Merely on the basis of confessional statement addition cannot be made. 1564

Tribunal held that the entire purchases made by the assessee either on its own account or even the goods received on account of aadhat sale, had duly been entered in the quantitative stock register and this way, the entire purchases made were fully accounted for. It was not a case of unexplained investment or unaccounted purchases. It was not the case of the Assessing Officer that diary or other evidence was found showing unexplained purchases. The addition made and confirmed was solely based on the statement of the assessee without any corroborative evidence. Computation of undisclosed income solely on the basis of the confessional statement of the assessee was not justified. (AY. 2010-11)

Murlidhar Deendayal v. ITO (2020) 82 ITR 223 (Jaipur)(Trib.)

S. 133A : Power of survey – Stock discrepancy and unexplained cash Offered for taxation in earlier year but Commitment retracted – Once statements accepted by survey team tax should be calculated for relevant year accepted by assessee – Addition made for the year under consideration was deleted. 1565

Tribunal held that the total discrepancy in stock was Rs.1,30,26,864. The total declaration made by the assessee was Rs.1,30,26,864 only for the assessment year 2012-13 in which it had undertaken payment of self-assessment tax of Rs. 40 lakhs in four instalments. No other declaration of the partners was recorded during the course of search. Once the statements had been accepted by the survey team the tax should be calculated for the years accepted by the assessee. Accordingly, the orders of both the authorities were quashed and the entire addition made by the Assessing Officer were to be deleted. In regard to the issue of cash balance found in the cash box the declaration should be added in the assessment year 2012-13, and there was no question for deciding

this issue again because the amount was included in the entire amount of declaration made by the partners. (AY. 2013-14)
Laxmi Narayan Jewellery v. ITO (2020) 80 ITR 17(SN) (Cuttack) (Trib.)

1566 **S. 139 : Return of income – Condonation of delay – Treatment of daughter – Matter remanded to Commissioner for giving one more opportunity to the assessee to produce all documents relating to treatment of his child. [S. 119, Art. 226]**
Assessee filed an application for condonation of delay in filing return which was rejected by impugned order of Commissioner. On writ the assessee submitted that he could not concentrate on his business activities as his 2 years old daughter was diagnosed with a serious cancerous ailment and he had to visit different hospitals for treatment of his child due to which delay had occurred in filing return. However, it was found that the assessee had not placed material particulars regarding his pressing compulsions to give more devoted attention to treatment of his daughter. Though, in absence of such materials, Commissioner could not be blamed for taking an approach of this nature in impugned order, however, in view of serious cancer ailments, that had affected his young and infant daughter, matter was to be remanded back for consideration afresh giving one more opportunity to assessee to produce all material particulars relating to treatment of child. Matter remanded. (AY. 2012-13, 2013-14, 2014-15)
Daison Joseph v. CIT (2020) 272 taxman 51 (Ker.)(HC)

1567 **S. 139 : Return of income – Mandatory file E-filing of return – Notice issued to Additional Solicitor General of India. [Rule 12, Art. 226]**
Assessee filed a writ petition on ground that rule 12 requiring assessee to mandatorily file electronic return of income for assessment year 2019-20 when same was not possible for assessee for reason beyond its control was ultra vires to provisions of Act and Constitution and, hence, same was void. Notice was to be issued to Additional Solicitor General of India. (AY. 2019-20)
City Industrial Development Corporation of Maharashtra Ltd. v. ACIT (2020) 275 Taxman 50 (Bom.)(HC)

1568 **S. 139 : Return of income – Intimation – Demerger – Revised return can be filed even after issue of intimation. [S. 2(19AA), 72(4A), 139(5), 143(1)]**
Assessee filed return on 28-9-2010 and intimation under section 143(1) was issued on 14-4-2011. High Court passed order of demerger on 8-3-2011 and 21-4-2011. For claiming set off under section 72A(4) of demerged company, assessee filed revised return on 9-6-2011 much before last date of filing revised return of income on 31-3-2012. AO disallowed the claim. CIT(A) allowed the appeal of the assessee. On appeal by the revenue the Tribunal held that merely because an intimation was issued under section 143(1), same would not preclude assessee from filing revised return of income claiming set off of accumulated losses. (AY. 2010-11)
ACIT v. Padma Logistics & Khanij (P.) Ltd. (2020) 81 ITR 61 / 183 ITD 891 / 208 TTJ 67 (Kol.)(Trib.)

S. 139 : Return of income – A representative office of a foreign enterprise is not a taxable unit – The foreign enterprise is the taxable unit – A return of income filed in the name of the representative office, with the PAN of the enterprise, offering only the income of the representative office & excluding the other Indian income of the enterprise is not proper – DTAA-India-Germany. [S. 9(1)(i), 115A(5), Art. 7, 11(5)] 1569

Tribunal held that a representative office of a foreign enterprise is not a taxable unit. The foreign enterprise is the taxable unit. A return of income filed in the name of the representative office, with the PAN of the enterprise, offering only the income of the representative office & excluding the other Indian income of the enterprise is not proper. However, as the error is inadvertent and without any consequences in terms of loss of revenue, a pragmatic approach must be adopted and the assessee should not be subjected to avoidable inconvenience (ii) As regards the taxability of interest income under the India-Germany DTAA, as the debt claim in question was not "effectively connected" to the alleged PE, the exclusion article 11(5) was not triggered and the taxability under article 7 does not come into play (ITA No.: 1815/Mum/18, dt. 04.12.2020). (AY.2014-15)

DZ Bank AG-India Representative Office v. DCIT (Mum.)(Trib.), www.itatonline.org

S. 139A : Permanent account number – Petitioner would not be in default in any proceedings only for the reason that the permanent account number is not linked with Aadhaar or Aadhaar number is not quoted; and that pending the petition, the petitioner may not be subjected to the proviso to sub-section (2) of section 139AA of the Act. [S. 39AA(2), Art. 226] 1570

The Court held that, on the question as to whether the Aadhaar Act was rightly introduced as a "Money Bill", the Supreme Court vide it's judgment and order dated 13th November, 2019 made in the case of Rojer Mathew v. South Indian Bank Ltd. rendered in Civil Appeal No.8588 of 2019, has referred the issue for consideration by a larger Bench. The validity of the Aadhaar Act therefore, has not attained finality. In the event, the larger Bench holds that the Aadhaar Act could not have been introduced as a Money Bill, S. 139AA of the Act would be rendered redundant. Therefore, if the applicant is directed to abide by the provisions of s. 139AA of the Act, in the event the challenge to the Aadhaar Act being introduced as a Money Bill were to succeed, it would not be possible to turn the clock back as the applicant would be required to provide all the necessary information for obtaining an Aadhaar card and the claim of privacy of the applicant would be lost for all times to come. Under the circumstances, in the opinion of this court, with a view to balance the equities, the applicant needs to be protected by directing that his PAN shall not be declared inoperative and the applicant may not be subjected to the proviso to sub-section (2) of S. 139AA of the Act till the judgment of the Supreme Court in Rojer Mathew v. South Indian Bank Ltd. is delivered and available. In the opinion of this court, grant of such interim relief in favour of the applicant can in no manner have wide repercussions as is sought to be contended on behalf of the revenue. Accordingly the Court held that PAN of the applicant shall not be declared inoperative and the applicant would not be in default in any proceedings only for the reason that the permanent account number is not linked with Aadhaar or Aadhaar number is not quoted and the applicant shall not be subjected to the proviso to sub-section (2) of S. 139AA of the Act till the judgment of the Supreme Court in the

Rojer Mathew v. South Indian Bank Ltd. and others (2020) 6 SCC 1 (Civil Application No.8588 of 2019) is delivered and available. Rule is made absolute accordingly to the aforesaid extent. Referred, Justice K.S. Puttaswamy (Retd.). (2019) 1 SCC 1 (AY. 2017-18)
Bandish Saurabh Soparkar v. UOI (2020) 312 CTR 545 / 186 DTR 141 / 113 taxman.com 416 / 271 Taxman 145 (Guj.) (HC)

1571 **S. 142(2A) : Inquiry before assessment – Special audit – Limitation – Block assessment – Date of order on special audit to be taken and not date on which order was served on the assessee – Order is not barred by limitation. [S. 158BE]**
Court held that the order under section 142(2A) was made by the assessing authority on April 17, 2000 directing the assessee to get the special audit completed and furnish the report on or before July 31, 2000. The difference between these two dates was 105 days. If these 105 days were added to the last date before which the audit report was furnished, viz., July 31, 2000, the date of assessment would get extended up to November 13, 2000. The assessment for the block period was made by the assessing authority admittedly on November 13, 2000 itself and therefore the assessment was within limitation. The contention of the assessee that the period of exclusion should be computed from the date on which the order under section 142(2A) of the Act was served upon the assessee, viz., on April 20, 2000 till July 31, 2000 which was 102 days only and therefore, the assessment order passed on November 13, 2000 was barred by limitation was contrary to the clear and bare language of the provisions of the Act which employed the word "directs the assessee to get his accounts audited". (BP. 1-4-1988 to 1-7-1998)
A. P. Shanmugaraj v. Dy. CIT (2020) 424 ITR 347 / 186 DTR 43 / 313 CTR 225 (Mad.)(HC)

1572 **S. 142(2A) : Inquiry before assessment – Special audit – Opportunity of hearing was given – Writ to quash the special audit is dismissed. [S. 142(1)]**
Dismissing the petition the Court held that, the essential mandate of S. 142(2A) requires an opportunity of hearing, which in the present case has been met for the reasons discussed in detail hereinbefore. Petitioner does not dispute that notice dated 13.09.2019 was served upon the petitioner. Resultantly, it had an opportunity to put forth its case and objections for ordering special audit. (AY. 2017-18)
NBCC (India) Ltd. v. Addl. CIT (2020) 422 ITR 429 / 186 DTR 1 / 313 CTR 254 / 313 CTR 254 / 272 Taxman 65 (Delhi)(HC)
Editorial : Notice is issued in SLP filed against the order of High Court NBCC (India) Ltd v. Addl.CIT (2020) 275 Taxman 1 (SC)

1573 **S. 142(2A) : Inquiry before assessment – Special Audit – Show cause is mandatory – Order passed without issuing the show cause notice is held to be bad in law – Order of Tribunal is affirmed. [S. 132, 260A]**
On appeal by the assessee, the Tribunal held that show cause notice was required to be given to the assessee by the Assessing Officer before making the order proposing conduct of special audit under S. 142(2A) of the Act and even if the administrative Commissioner approves the said proposal after giving opportunity to the assessee, nonetheless such a course of action would be vitiated because of non-compliance to the principles of natural justice at the stage of making the proposal. Accordingly,

Tribunal interfered with the same. It may also be mentioned that following the setting aside of the approval given by the administrative Commissioner, the assessment order in the present case (following search) was found to be beyond the period of limitation. Therefore, the same was declared invalid and bad in law. Dismissing the appeal of revenue thee High Court affirmed the order of the Tribunal. (AY.2005-06, 2006-07)
PCIT v. Vilson Particle Board Industries Ltd. (2020) 423 ITR 227 / 193 DTR 465 / 317 CTR 1009 / 271 Taxman 90 (Bom.)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – Appeal maintainable before Appellate Tribunal – Complexity of Books of account established – Order for special audit sustainable. [S. 253] 1574
Tribunal held that considering the volume of transactions involved, the details of which were not reconcilable on account of different particulars mentioned therein, some being signed by truck owners, others by third parties, and payments being made in part in cash that too to different parties, the documents and accounts drawn therefrom were definitely not capable of presenting a clear picture of each transaction. On the contrary, the different details mentioned in the documents pertaining to each transaction made it very complex requiring deeper verification of each transaction. The Commissioner (Appeals) was correct in upholding the reference made for special audit. Consequently, the challenge by the assessee to the validity of the assessment order as being barred by limitation on account of the extended time taken by the Assessing Officer for passing the assessment order was also to be dismissed. (AY. 2007-08)
Bal Krishan Sood v. ITO (2020) 84 ITR 307 (Chand)(Trib.)

S. 142(2A) : Inquiry before assessment – Special audit – Extension of time given by Commissioner instead the Assessing Officer in getting books of account audited – Assessment completed after due date was void ab initio. 1575
Dismissing the appeal of the revenue the Tribunal held that in order to get books of account audited under section 142(2A), law mandates prior approval of Chief Commissioner or Commissioner, while in proviso to section 142(2C), sole power is vested with Assessing Officer for granting extension of time to get accounts audited. On the facts extension of time to get accounts audited was not given by Assessing Officer but by Commissioner, said extension is beyond powers vested in Commissioner as per statute and, thus, assessment completed after due date was void ab initio. (AY. 2007-08, 2008-09)
ACIT v. Soul Space Projects Ltd. (2020) 82 ITR 399 / 183 ITD 281 (Delhi)(Trib.)

S. 142A : Estimate of value of assets by Valuation Officer – Under valuation – Capital gains – Valuation as on 1-4-1981 – Reference to Valuation Officer is held to be not valid. [S. 45, 55A(b)(i), 69, 69A, 69B] 1576
Assessee sold ancestral land which was acquired prior to 1-4-1981 by adopting Fair Market Value (FMV) as on 1-4-1981 based on the report of Registered Valuer. The AO made reference to District Valuation Officer (DVO) under section 142A of the Act who determined the value as on 1-4-1981 lower than the value shown by the assessee. On appeal the Tribunal held that reference to District Valuation is held to be bad in law as the reference u/s 142A is restricted to matters concerning section 69, 69A or 69B of

the Act. Accordingly the value shown by the assessee as per the valuation report of the Registered valuer was directed to be accepted. (AY. 2013-14)
Dashrathbhai G. Patel v. DCIT (2020) 182 ITD 327 (Ahd.)(Trib.)

1577 **S. 143(1A) : Assessment – Intimation – Amendment made to section 143(1A) by Finance Act, 1993 with retrospective effect from 1-4-1989 is constitutionally valid.**
Dismissing the appeal of the assessee the Court held that Amendment made to section 143(1A) by Finance Act, 1993 with retrospective effect from 1-4-1989 is constitutionally valid.
Rajasthan State Electricity Board, Jaipur v. UOI (2020) 275 Taxman 501 / 187 DTR 466 / 313 CTR 754 (SC)

1578 **S. 143(1A) : Assessment – Intimation – Additional tax – The object of S. 143(1A) is the prevention of evasion of tax – The burden of proving that the assessee has so attempted to evade tax is on the Revenue which may be discharged by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has, in fact, attempted to evade tax lawfully payable by it – Levy of additional tax was quashed. [S. 32, 143(1), 154, 264, Art.226]**
An intimation under S. 143(1)(a) of the Income Tax Act, 1961 dated 12.02.1992 was issued by the Assessing Officer disallowing 25% of the depreciation, restricting the depreciation to 75%. Additional tax under Section 143(1A) of the Income Tax Act, 1961amounting to Rs.8,63,64,827/-was demanded. The assessee filed an application under Section 154 of the Income Tax Act, 1961 dated 18.02.1992 praying for rectification of the demand. The assessee also filed a petition under Section 264 of the Income Tax Act, 1961 against the demand of additional tax. In the petition it was stated that even after allowing only 75% of depreciation the income of the assessee remained to be in loss to Rs.3,43,94,90,393/-. The assessee prayed for quashing the demand of additional tax. The application filed under Section 154 of the Income Tax Act, 1961 was rejected by the Assessing Officer on 28.02.1992. The revision petition under Section 264 of the Income Tax Act, 1961 came to be dismissed by the Commissioner of Income Tax by order dated 31.03.1992. Aggrieved by the order of the Commissioner of Income Tax challenging the demand of additional tax which was reduced to amount of Rs.7,67,68,717/-Writ Petition No.2267 of 1992 was filed by the assessee in the High Court of Judicature for Rajasthan, Bench at Jaipur. Learned Single Judge vide judgment dated 19.01.1993 allowed the writ petition quashing the levy of additional tax under Section 143(1-A). The Revenue aggrieved by the judgment of the learned Single Judge filed a Special Appeal which has been allowed by the Division Bench of the High Court vide its judgment dated 13.11.2007 upholding the demand of additional tax. The assessee aggrieved by the judgment of the Division Bench has come up in this appeal. On appeal to Supreme Court held that,the object of s. 143(1A) is the prevention of evasion of tax. As it has the deterrent effect of preventing tax evasion, it should be made to apply only to tax evaders. It can only be invoked where it is found on facts that the lesser amount stated in the return filed by the assessee is a result of an attempt to evade tax lawfully payable by the assessee. The burden of proving that the assessee has so attempted to evade tax is on the Revenue which may be discharged by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has, in fact, attempted to evade tax lawfully payable by it. Order of division bench is set aside

and levy of addition tax was quashed. (The Memorandum Explaining the Provisions of the Finance Bill ([1993] 200 ITR (St.) 140)(AY.1991-92)
Rajasthan State Electricity Board v. Dy. CIT (2020) 424 ITR 704 187 DTR 457 / 313 CTR 745 / 115 taxmann.com 330 / 273 Taxman 1 (SC)
Editorial : Order in Dy CIT v. Rajasthan State Electricity Board (2008) 171 Taxman 331 / 299 ITR 253 / 217 CTR (Raj) (HC) is set aside.

S. 143(1A) : Assessment – Intimation – Late filing of return – Denial of exemption – No intimation was given to the assessee, the adjustment was liable to be deleted. [S. 80AC, 80IC, 139(4), 143(1)(a)(v)] 1579
Tribunal held that the return of the assessee pertaining to the assessment year 2016-17 was processed under section 143(1) on June 25, 2017, i. e., after the date of insertion of clause (v) to section 143(1), i. e, after April 1, 2017. The contention of the Department was that, if the processing of return of any assessment year was done after April 1, 2017, the provisions of clauses (iii) to (vi) inserted with effect from April 1, 2017 could be applied. In that case, the proviso mandating giving of intimation to the assessee to the proposed adjustment should have also been followed by the Department. It was so because the proviso was also inserted in section 143(1) along with clauses (iii) to (vi) by the Finance Act, 2016. Since no such intimation was given to the assessee, the adjustment was liable to be deleted. Since the controversy was related to the power of the Assessing Officer in processing return under section 143(1) there was no need to examine the provisions of section 80AC. (AY.2016-17)
Neelam Pachisia (Smt.) v. Dy.CIT (CPC) (2020) 79 ITR 14 (SN) (Bang.)(Trib.)

S. 143(2) : Assessment – Notice – non-issuance of notice under section 143(2) is not a procedural irregularity and same cannot be cured under section 292BB – Notice issued to prior to filing of return of income, said notice being invalid, assessment order passed in pursuance of same deserved to be set aside. [S. 143(3), 292BB)] 1580
Dismissing the appeal of the revenue the High Court held that where notice under section 143(2) was issued to assessee prior to filing of return of income, said notice being invalid, assessment order passed in pursuance of same deserved to be set aside. Court also held that non-issuance of notice under section is not a procedural irregularity and the same cannot be cured under section 292BB of the Act. Order of Tribunal quashing the assessment order is affirmed. (AY. 2005-06)
PCIT v. Marck Biosciences Ltd. (2019) 106 taxmann.com 399 (Guj.)(HC)
Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, PCIT v. Amantha Health Care Ltd. (2020) 272 Taxman 35 (SC)

S. 143(2) : Assessment – Notice – Barred by limitation – Defective return – On removal of defect the return would relate back to the date of filing of the original return – Period of limitation has to be computed from the filing of original return – Order is bad in law. [S. 139, Art. 226] 1581
The notice issued u/s.143 (2) was challenged on the ground that the notice is barred by limitation. The petitioner filed its return of income under sub-section (1) of section 139 of the Act on 29.11.2016. Since the return was defective, the petitioner was called upon to remove such defects, which came to be removed on 19.07.2017, that is, within the

time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing of the original return, that is, 29.11.2016 and consequently, the limitation for issuance of notice under subsection (2) of section 143 of the Act would be 30.09.2017, viz. six months from the end of the financial year in which the return under subsection (1) of section 139 came to be filed. In the present case, it is an admitted position that the impugned notice under sub-section (2) of section 143 of the Act has been issued on 11.08.2018, which is much beyond the period of limitation for issuance of such notice as envisaged under that sub-section. The impugned notice, therefore, is clearly barred by limitation and cannot be sustained. Accordingly the petition was allowed. (AY. 2016-17)

Travel Designer India P. Ltd. v. Dy.CIT (2020) 269 Taxman 575 / 191 DTR 310 / 315 CTR 800 (Guj.)(HC)

1582 **S. 143(2) : Assessment – Notice – Refund – Issue of notice does not prevent Assessing Officer from processing return – Assessing Officer must apply his mind and decide whether refund can be given. [S. 241A]**

In cases where the assessee claims refund and the one year period is over, the Revenue cannot be inactive and the Assessing Officer must apply his mind to consider whether the facts and circumstances of the case warrant the refund. It is an unjust and arbitrary approach to withhold refunds in anticipation of additions or disallowances that may be made after completion of assessment proceedings. The Court held that the Revenue was unable to demonstrate any cogent reasoning for withholding the refunds, except for arguing that since the regular assessment was pending, the Department was not obliged to issue the refund. The Assessing Officer was to process the returns and pass a consequential order. (AY. 2016-17, 2017-18, 2018-19)

Ericsson India Private Ltd. v. Add. CIT (2020) 425 ITR 186 / 194 DTR 121 / 316 CTR 861 / 275 Taxman 227 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, Add.CIT v. Ericsson India Private Ltd (2021) 281 Taxman 298 (SC)

1583 **S. 143(2) : Assessment – Notice – Defective return – Rectification of defects relates back to date of original return – Original return was filed on 10-09-1996 – Defects removed on July 7, 2017 – Notice u/s. 143(2) was issued on August 9, 2018 – Barred by limitation. [S. 139(1), 139(9), 143(3)]**

The assessee filed its return of income under sub-section (1) of section 139 on September 10, 2016. Since the return was defective, the assessee was called upon to remove such defects, which came to be removed on July 7, 2017, that is, within the time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing of the original return, that is September 10, 2016 and consequently, the limitation for issuance of notice under sub-section (2) of section 143 of the Act would be September 30, 2017, viz., six months from the end of the financial year in which the return under sub-section (1) of section 139 was filed. The notice under sub-section (2) of section 143 of the Act had been issued on August 9, 2018, which was much beyond the period of limitation for issuance of such notice as envisaged under that sub-section. The notice, therefore, was barred by limitation and could not be sustained. Court held that the action of removal of the defects would

relate back to the filing of the original return of income and accordingly, it is the date of filing of the original return which has to be considered for the purpose of computing the period of limitation under sub-section (2) of section 143 of the Act and not the date on which the defects actually came to be removed. Relied on *Dhampur Sugar Mills Ltd. v. CIT (1973) 90 ITR 236 (All) (HC).* (AY. 2016-17)
Kunal Structure (India) Pvt. Ltd. v. Dy.CIT (2020) 422 ITR 482 / 269 taxman 440 (Guj.)(HC)
Editorial : SLP of revenue is dismissed. Dy.CIT v. Kunal Structure (India) Pvt. Ltd. (2021) 277 Taxman 401 (SC)

S. 143(2) : Assessment – Notice – Appellate Tribunal – Ground on pure question of law can be raised before the ITAT – Notice issued by the ITO who did not have a jurisdiction to issue notice – Statutory notice u/s. 143(2) lacks jurisdiction and order is bad in law. [S. 143(3), 254(1)] 1584
The jurisdictional issue was first time raised by the assessee before the ITAT which was admitted by the ITAT. The assessee contended that as per the instruction No 1/2011 dt 31-1 2011,when the monetary limits falls above Rs 30 lakh the jurisdiction for the year was lie with DCIT /ACIT and the notice issued u/s.143(2) by the ITO and assessment order was passed by DCIT without issuing the notice u/s 143(2) is held to be bad in law. Tribunal held that as per the Instruction No 1/2011 dt 31-1 2011 when a notice ought to have been issued by ACIT/ DCIT a statutory notice issued by ITO u/s. 143(2) lacks jurisdiction and assessment is bad in law. Referred *West Bengal State Electricity Board v. DCIT (2005) 278 ITR 218 9 Cal) (HC), Krishnendu Chowdhury v. ITO (2017) 78 taxmann.com 89 (Kol.) (Trib.), Sukumar Ch. Sahoo v. ACIT (ITA No. 2073 /Kol/2016. (ITA No. 1346/Kol/ 2016 dt.18-3-2020)* (AY. 2012-13)
DCIT v. Proficient Commodities Pvt. Ltd. (2020) The Chamber's Journal-June-P. 82 (Kol.)(Trib.)

S. 143(2) : Assessment – Notice issued beyond period of limitation is held to be not valid. [S. 292BB] 1585
Tribunal held that as far as section 292BB was concerned, the objection to service of notice stood waived if the assessee had participated in the assessment proceedings. But in the instant case, according to the proviso to section 143(2) of the Act, no notice could have been served on the assessee after the expiry of the six-month period from the end of the financial year in which return was filed. Accordingly, the notice dated September 1, 2011 issued by the Asst .Commissioner, Circle-37(1) was without jurisdiction and invalid and the notice dated August 30, 2012 issued by the ITO, Ward-38(2), New Delhi issued by the correct jurisdictional Officer, was beyond the period of limitation and therefore, also invalid. The assessment order was void ab initio and liable to be quashed. (AY.2010-11)
Manoj Kumar v. ACIT (2020) 79 ITR 158 / 195 DTR 105 / 207 TTJ 48 (Delhi)(Trib.)

S. 143(2) : Assessment – Notice – Beyond the period of limitation – Order passed is held to be bad in law. [S. 139(9)] 1586
Pursuant to the original return filed on 28th Sept 2016 for AY 2016-17 being found as defective, assessee filed corrected return on 23rd June 2017 and thereafter notice u/s.142(1) after one year on 14th Aug 2018. Tribunal held that time limit for issuance of notice u/s.143(2) ended on 30th Sept 2017[being 6 months from end of FY in which return is filed, thus the notice was issued beyond period of limitation; Relies on Gujarat High Court

decision in *Structures India Pvt. Ltd. v DCIT, reported in (2020) 113 Taxmann.com 577 (Guj.) (HC)* wherein it was held that upon such defects being removed, the return would relate back to the date of filing of the original return and accordingly, the limitation for issuance of notice u/s.143(2) would be calculated; Thus, holds that "the impugned notice dated 14/08/2018 is issued beyond the period of limitation is quashed and all proceedings taken pursuant thereto. (ITA No.1776/Bang/2019. Dt. 16-09-2020. (AY. 2016-17)
Sindhu Cargo Services Pvt. Ltd v. Dy.CIT (Bang.)(Trib.) www.itatonline.org

1587 **S. 143(2) : Assessment – Notice – Notice issued after date of transfer was regarded as invalid notice – Assessment framed pursuant to illegal notice is held to be void ab initio. [S. 124, 127, 143(3)]**
Allowing the appeal of the assessee the Tribunal held that once transfer of case of assessee was ordered under S. 127 of the Act. AO who was vested with jurisdiction by virtue of direction or order issued under Sub-Section (1) o (2) of S. 120 And S. 124, stood divested of same and in such a case notice issued under S. 143(2) by said AO after date of transfer, was to be regarded as invalid notice and consequently, assessment framed under S. 43(3) pursuant to notice issued would be void ab initio. (AY. 2015-16)
Rungta Irrigation Ltd. v. ACIT (2020) 181 ITD 95 / 206 TTJ 449 / 193 DTR 121 (Kol.)(Trib.)

1588 **S. 143(2) : Assessment – Notice – Notice issued to wrong address – Department acknowledging mistake and serving notice by affixture at correct address – Service by affixture not permissible and could not be taken into account – Notice invalid and assessment is void ab initio. [S. 143(3), 282, 292BB]**
Allowing the appeal of the assessee the Tribunal held that the notices were never issued to the correct address. The Department itself had acknowledged its mistake by substituting service of notice by way of affixation by mentioning the correct address but this could not be taken into account as there was no effort whatsoever on the part of the Department to get the service effected through ordinary course. Notice by way of affixation was only to be served when the correct address was not available or the assessee had refused to accept the service of notice. Consequently, the assessment framed under S. 143(3) is void ab initio. (AY.2013-14)
Tourism India Management Enterprises (P.) Ltd. v. Dy. CIT (2020) 77 ITR 311 / 185 DTR 361 / 203 TTJ 509 (Delhi)(Trib.)

1589 **S. 143(3) : Assessment – In adequate sale consideration based on valuation report – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that the amount was never received by the assessee but rather remained with the company of which the most significant control went to the purchaser. In these circumstances, the rejection of the valuation and the amount brought to tax by the AO was correctly held by the lower appellate authorities to be unjustified. In view of these concurrent findings of fact, no substantial question of law arise on this aspect.
PCIT v. Gyan Enterprises (P.) Ltd. (2020) 117 taxmann.com 113 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Gyan Enterprises (P) Ltd (2020) 274 Taxman 107 (SC)

S. 143(3) : Assessment – Suppression of sales – Addition is held to be not justified on the basis of material collected from Excise Department. [S. 68, 145] 1590

Dismissing the appeal of the revenue the Court held that addition is held to be not justified on the basis of material collected from Excise Department. (AY. 2008-09)

PCIT v. Gokul Ceramics (P.) Ltd. (2020) 120 taxmann.com 240 (Guj.)(HC)

Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, PCIT v. Gokul Ceramics Pvt Ltd (2020) 275 Taxman 12 (SC)

S. 143(3) : Assessment – No violation of principle of natural justice – Alternative remedy is available – Writ is held to be not maintainable. [S. 156, 281B, Art. 226] 1591

Dismissing the petition the Court held that there was no violation of the principles of natural justice, and there was no reason to interfere with the assessment order. The ITO had not acted without jurisdiction. Whether such jurisdiction had been exercised incorrectly or there was an error in such exercise was a different issue to be tested under the statutory appeal available under the Act. The ITO had dealt with the contentions raised by the assessee and had arrived at a particular finding and interfering with it at this stage might not be the correct course of action. The assessee was relegated to the remedy of statutory appeal under section 246A before the Commissioner (Appeals). Relied on *UOI v. Guwahati Carbon Ltd. [2012] 278 ELT 26 (SC) and CIT v. Chhabil Dass Agarwal [2013] 357 ITR 357 (SC)*, distinguished *ACIT v. Balmiki Prasad Singh [2018] 408 ITR (St.) 19 (SC)*. Court observed that the extraordinary jurisdiction under article 226 of the Constitution of India is required to be sparingly used only when the court finds that the action of the State is without jurisdiction, in violation of principles of natural justice or the order passed is palpably illegal. However the provisional attachment u/s 281B was quashed. (AY. 2017-18)

Abul Kalam v. ACIT (2020) 272 Taxman 467 / 194 DTR 379 / 317 CTR 477 / (2021) 431 ITR 395 (Cal.)(HC)

S. 143(3) : Assessment – Unexplained money – Alternative remedy is available – Writ is not maintainable. [S. 69A, 142(1), Art. 226] 1592

During demonetization period, assessee deposited cash in his saving bank account. Assessing Officer issued section 142 notice which was not responded by assessee. Assessing Officer treated said deposits as unexplained money of assessee. On writ, Single Judge disposed of writ petition granting liberty to assessee to file appeal before appellate authority. On appeal the Court held that since Act provides effective and sufficient forum for any aggrieved party to work out their remedy, view expressed by Single Judge was to be agreed and there was no merit in appeal. (AY. 2017-18)

Narasimman Padmavathy v. ITO (2020) 196 DTR 365 / (2021) 431 ITR 374 / 276 Taxman 352 / 318 CTR 472 (Mad.)(HC)

1593 **S. 143(3) : Assessment – Capital gains – Observation by Tribunal in quantum appeal that capital gains arose in the year ending in December 1993 – Admitted tax – The assessee could not approbate and reprobate that what is not paid on the due date cannot be assessed at all – The claim for refund of tax paid on the admitted income was not sustainable. [S. 2(47), 45(5)(b), Transfer of Property Act, 1882, S.53A]**

The assessee filed returns for the year ended March 31, 2002, for the assessment year 2002-03 admitting the income towards capital gains and interest and paid the tax. However, the Assessing Officer added the sale consideration of Rs. 4.30 crores in addition to Rs. 62,00,000 received by the assessee and passed an assessment order. The Commissioner (Appeals) confirmed the assessment order, against which, the assessee preferred an appeal to the Appellate Tribunal. The Tribunal quashed the addition of Rs.4.30 crores under section 45(5)(b) of the Income-tax Act, 1961, and held that the transfer, as contemplated in section 2(47) had happened in the year ended March 31, 1993, the relevant assessment year 1993-94 and not in the assessment years 2000-01 or 2002-03. The assessee claimed that the capital gains were assessable only in the relevant year 1993-94 and not in 2001-02 or 2002-03 and hence, the voluntary admission made by the assessee on wrong advice, should be ignored. Since no tax was payable in 2002-03, the amount remitted should be refunded. The claim was rejected. On a writ petition challenging the order dismissing the petition the Court held that the income which is assessable to tax, which was not assessed in the relevant year, but, admitted by the assessee on a later date, cannot be said not assessable. The assessee paid the tax which was admittedly payable. Even if the assessment order were to be set aside, it would not have any impact on the self-assessment made by the assessee. The Tribunal had considered the addition of income under section 45(5)(b) as incorrect and nullified it. But the assessment order on the admitted income was not nullified. Only because there was an observation that the relevant year of the assessment was 1993-94 in view of section 53A of the Transfer of Property Act, 1882, it would not confer any legal right on the assessee to claim refund. Admittedly, the income was assessable to tax and it was not assessed due to the statement made by the assessee that the transfer was not complete in terms of the sale agreement. The assessee could not approbate and reprobate that what is not paid on the due date cannot be assessed at all. In other words, the assessment authority had not assessed the income which is not assessable to tax. Hence, the claim for refund of tax paid on the admitted income was not sustainable. (AY. 2002-03)

Visalakshi Anandkumar v. ACIT (2020) 429 ITR 396 / 317 CTR 982 / 196 DTR 265 / (2021) 277 Taxman 532 (Mad.)(HC)

1594 **S. 143(3) : Assessment – Income from undisclosed sources – Bogus purchases – Assessing Officer disallowing entire purchases – Estimation of profit element embedded in purchases at 17.5 Per Cent affirmed by Tribunal – Order of Tribunal is affirmed. [S. 69C]**

Dismissing the appeal of the revenue the Court held that the Tribunal was correct in confirming the order of the Commissioner (Appeals) restricting the disallowance to 17.5 per cent. of the total alleged bogus purchases. No question of law. (AY.2010-11)

PCIT v.Jakharia Fabric Pvt. Ltd. (2020) 429 ITR 332 / 274 Taxman 52 (Bom.)(HC)

S. 143(3) : Assessment – Stock Exchange – Duty only to ensure tax collected, Determined In Accordance with Act and Rules – Stock Exchange Cannot Collect Securities Transaction Tax Beyond Client Code – Addition to income of Stock Exchange on the ground that higher Securities Transaction Tax ought to have been collected – Held to be not Justified. [Securities Transaction Tax Act, 2004] 1595

The assessee was the National Stock Exchange of India Limited. The AO expressed apprehension that there was some under-collection of securities transaction tax by the assessee in respect of certain institutional investors such as foreign institutional investors. The AO made an enquiry on sample basis amongst the brokers registered with the assessee. According to the AO there was discrepancy between the total amount of securities transaction tax collected by at least by nine brokers from their foreign institutional investors, and the amount of securities transaction tax collected by the assessee. After considering the response of the assessee the AO passed an assessment order raising securities transaction tax collectible by the assessee by an additional amount of Rs. 5 crores over and above the securities transaction tax collected and deposited by the assessee during the year under consideration. Penalty proceedings were also initiated. The Tribunal deleted the addition made on this count as modified by the first appellate authority, holding that the assessee had not committed any default and that under the statute the assessee was not liable for any alleged short deduction of securities transaction tax. Consequently, the levy of interest and penalty were also deleted. On appeal dismissing the appeal the Court held that the Tribunal had returned a finding of fact that the securities transaction tax collected by the assessee was through and under the client codes of the member brokers and the collected securities transaction tax had been credited into the account of the Central Government. Hence the deletion of the addition and the consequent interest and penalty were justified.

PCIT v. National Stock Exchange (2020) 425 ITR 588 / (2021) 277 Taxman 196 (Bom.)(HC)

S. 143(3) : Assessment – Survey – Telescoping and reducing the addition – Income from undisclosed sources – Additions deleted by Tribunal on facts – No substantial question of law. [S. 133A, 260A, 292C] 1596

Dismissing the appeal of the revenue the Court held that the question raised by the Revenue could not be termed a substantial question of law as the Tribunal had considered the effect of the provisions of S. 292C as applied by the CIT(A) by telescoping and reducing the addition giving partial relief to the assessee. As regards deleting the other addition, the Tribunal on the basis of the materials produced before it and after analysing them had arrived at a finding of fact. No interference was warranted. As there were concurrent findings of fact by both the authorities, none of the other deletions could be questioned. (AY. 2009-10)

PCIT v. Ghanshyam Dungarbhai Sutaria (2020) 425 ITR 601 (Guj.)(HC)

S. 143(3) : Assessment – Income from undisclosed sources – Deletion of additions based on facts – Held to be justified. [S. 132] 1597

Court held while deleting the additions, the Tribunal recorded that the figures mentioned in the document could at best be said to be tentative or expected amounts. It was not the case of the Revenue that the circle rate was more than what had been disclosed. No

unaccounted cash was found to be paid by the buyer to the seller. There was no statement of the seller regarding obtaining the money and therefore the addition was not sustained. There was nothing on record to show that any addition was made in the hands of the seller or the managing director of the seller-company for the alleged cash amount received. The deletion of the addition was justified. (AY. 2001-02 to 2003-04)
Navneet Jhamb v. ACIT (2020) 422 ITR 332 / 275 Taxman 166 (P&H)(HC)

1598 **S. 143(3) : Assessment – Estimation of rate of gross profit – Direction of the Tribunal – AO has followed the direction of Appellate Tribunal – Addition made by the AO is held to be valid. [S. 132, 158BC, 254(1)]**
Dismissing the appeal of the assessee the Court held that the Tribunal has directed the AO to recalculate the addition at the rate of 2 per cent. on the gross profit. The Tribunal nowhere had said that the undisclosed income which was filed by the assessee himself should not be taken into account. The assessee himself before the Assessing Officer had made a request that the income of Rs.62,27,305 declared by him be accepted and the assessment be completed. From a perusal of the order passed by the Commissioner (Appeals) also, it was evident that the dispute was only with regard to the rate of gross profit on the income which was not disclosed by the assessee. Therefore, it could not be said that the AO had disobeyed the direction contained in the order passed by the Tribunal. The assessment order was valid.
Jayesh S. Mehta v. Dy. CIT (2020) 421 ITR 353 / 313 CTR 721 / 273 Taxmann 469 (Karn.) (HC)

1599 **S. 143(3) : Assessment – Direction of appellate Tribunal – Decide the issue a fresh – AO cannot go beyond the direction – Writ of the assessee is allowed. [S. 44AD, 254(1), Art.226]**
Allowing the petition the Court held that, the Tribunal directed the assessee to attend the assessment proceedings and justify its case on lower rate of profit in accordance with its books of account. The AO directed to verify the same and decide the issue a fresh (the Tribunal says that "decide the issue a fresh" means the issue with regard to the claim of lower rate of profit. Writ application succeeds and is hereby allowed. The impugned order passed by the Assessing Officer is hereby quashed and set aside. The matter is remitted to the Assessing Officer for fresh consideration of the issue as specifically directed by the Appellate Tribunal. Court also observed that the Assessing Officer now needs to reconsider the issue with regard to the claim of the writ applicant for lower rate of profit and not at the rate of 8%. Rule is made absolute to the aforesaid extent. (AY. 2004-05)
Engineering professional Co. Pvt. Ltd. v. Dy.CIT (2020) 186 DTR 33 (Guj.)(HC)

1600 **S. 143(3) : Assessment – Ad-hoc addition – Labour charges – On facts the High Court affirmed the order of the Tribunal. [S. 260A]**
The AO has disallowed 10% of the labour charges. Similar disallowances were made in earlier years which were not contested in appeal. Order of the AO is affirmed by CIT(A) and Tribunal. High Court held on facts no substantial question of law. (*Abdul Qayume v. CIT (1990) 184 ITR 404 (All(HC),Laxmi Engineering Industries v. ITO [2008] 298 ITR 203 (Raj)(HC), J.K. Woollen Manufacturers v. CIT (1969) 72 ITR 612 (SC) PCIT v.*

Chawla Interbild Construction Co. (P) Ltd., [2019] 104 taxmann.com 402 (Bom.)(HC) is distinguished.). (AY. 2009-10)
Ivan Singh v. ACIT (2020) 422 ITR 128 (Bom.)(HC

S. 143(3) : Assessment – E-Assessment – Post demonetization – The AO should at least call for an explanation in writing before proceeding to conclude that the amount collected by the assessee was unusual – The AO could have come to a definite conclusion on facts after fully understanding the nature of business of the assessee – Order of AO is set aside and directed to dispose the matter with in sixty days of receipt of the order. [S. 69A, 115BBE] 1601

The petitioner has challenged the order passed by the respondent on 27.12.2019 in respect of the amount received by the petitioner post demonetization i.e., between 09.11.2016 and 31.12.2016. The petitioner has prima facie demonstrated that the assessment proceeding has resulted in distorted conclusion on facts that amount collected by the petitioner during the period was huge and remained unexplained by the petitioner and therefore same was liable to be treated as unaccounted money in the hands of the petitioner under S. 69A of the Act. Therefore, the impugned order making the petitioner liable to tax at the maximum marginal rate of tax by invoking S. 115BBE of the Act. Court held that while E-Assessment without human interaction is laudable, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and accounts of an assessee without a personal hearing. Assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the assessee and the AO. The AO should at least call for an explanation in writing before proceeding to conclude that the amount collected by the assessee was unusual. Also, since the assessment proceedings no longer involve human interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before passing assessment order, the AO could have come to a definite conclusion on facts after fully understanding the nature of business of the assessee. AO is directed to dispose the matter with in sixty days of receipt of the order. (AY. 2017-18)
Salem Sree Ramavilas Chit Company v. DCIT(2020) 423 ITR 525 / 114 taxmann.com 492 / 273 Taxman 68 / 187 DTR 217 / 313 CTR 473 (Mad.)(HC)

S. 143(3) : Assessment – Notice – Dead person – Order is non est in law – Notice was quashed. [S. 143(2), 292B, Art. 226] 1602

The assessee was the son and the legal heir of deceased who died on 9-6-2014. For the relevant assessment year, the assessee being the legal heir of the deceased filed a return of income declaring certain taxable income.
The assessee also uploaded a request to be registered as the legal heir of deceased The request of the assessee was accepted by the respondent-revenue. Notice u/s 143(2) was issued in the name of the deceased.
The assessee by his letter called upon the AO to withdraw the impugned notice issued under S. 143(3) as it had been issued in the name of the dead person. The AO rejected the assessee's objection to the impugned notice having been issued in the name of the dead person on the ground that the nature of the defect viz. issue of notice in case of

wrong person stood cured by S. 292B and that the legal heir of the deceased was not registered with the database of the Department, thus, no fault in having issued the notice in the name of the deceased. On a Writ the Court held that a notice issued under S. 143(2) which gives jurisdiction to complete the assessment having been issued in the name of the dead person is non est in law and it is not saved by section 292B. The issue of a notice under section 143(2) of the Act so as to take up the assessment for scrutiny is not a procedural but a substantive provision. Therefore, where a notice is issued in the name of a wrong person, there would be no issuing of notice as required under the Act. In such cases, as in the case of section 148 of the Act, the issuing of a notice in the name of the wrong person is not a procedural and / or clerical error. Therefore, being a substantive defect, the notice cannot be saved by section 292B of the Act. Accordingly the notice is quashed. (AY. 2016-17)
Sumit Balkrishna Gupta v. ACIT (2020) 268 Taxman 42 (Bom.)(HC)

1603 **S. 143(3) : Assessment – Natural justice – Opportunity of hearing – Agricultural income – Capital gains – Notice given – Reply furnished by the assessment – Assessment order passed denying the exemption without giving personal hearing – Order is not bad in law – No prejudice caused to the assessee through denial of personal hearing. [S. 2(1A), 10(1), 143(2), Art.226]**
Assessee had sold several agricultural plots and showed sale consideration as agricultural income and claimed the same as exempt from tax under head capital gains. In response to notice u/s 143(2) various queries were raised and replies were filed. After considering the replies assessment order is passed u/s 143(3) denying exemption. The assessee challenged the order by a Writ on the ground that no personal hearing was given. Dismissing the petition the Court held that there was no any prejudice caused to assessee through denial of a personal hearing. Accordingly the writ petition is dismissed. (AY. 2016-17)
Parakkadavil Mohammed Kunju Ansari v. ITO (2019) 112 taxmann.com 73 / (2020) 268 Taxman 6 / 196 DTR 443 (Ker.)(HC)

1604 **S. 143(3) : Assessment – Remand – Order giving effect to the order of Tribunal – Enhancement – Capital gains – business income – Client code modification – The AO is not entitle to expand the scope of the assessment proceedings beyond the issue remanded – Order of the AO is set aside. [S. 28(i), 45, 254(1), Art.226]**
Assessee filed its return of income offering income on sale of shares under head capital gains. Assessment was completed. A reopening notice was issued against assessee on ground that AO had received an information that assessee had evaded tax through client code modifications with regard to brokers in future and option business. Order was passed making additions to income of assessee as an income from short-term capital gains. On appeal the Tribunal questioning erroneous addition as short-term capital gains remanded matter back to AO. After remand the AO completed assessment and entire income of assessee, which was accepted in reopening of assessment under head 'capital gains', was now being assessed under head 'profits and gains from business and profession' and accordingly enhanced income of assessee by making addition. AO had also disallowed claim of set off of brought forward losses as there was no capital gain/loss. On writ the Court held that ; two issues viz. change of nature of income from

sale of shares and set off of brought forward losses taken up for consideration by AO during remand, were not considered by Tribunal while remitting matter and, therefore, reconsideration of these two issues by taking advantage of remand order, could not be sustained as AO exceeded his jurisdiction over issues which were not remitted to him Accordingly the matter remitted back to AO to redo assessment only in respect of issue relegated by Tribunal while remitting matter viz., income from short-term capital gain and consequential addition. (Relied *S.P. Kochhar v. ITO (1984) 145 ITR 255 (All) (HC), Mcorp Global (P) Ltd v CIT (2009) 309 ITR 434 (SC), Saheli Sysnthetics (P) Ltd v. CIT (2008) 302 ITR 126 (Guj.) (HC), Sanmar Speciality Chemicals Ltd v. ITO (2018) 256 Taxman 46 (Mad.) (HC), Raja D.V. Seetharamayya Bahadur v. Sixth WTO (1995) 213 ITR 520 (Mad.) (HC).)* (AY. 2010-11)
Neetaa Suneel Shah (Smt.) v. ITO (2020) 268 Taxman 213 / 196 DTR 253 / 317 CTR 789 (Mad.)(HC)

S. 143(3) : Assessment – Capital – Revenue – Share premium – Reassessment – Addition is made on account of share premium, without issuing show cause notice and without following the principle of natural justice – Income from other sources – Alternative remedy is available – Directed to file an appeal with in four weeks. [S. 4, 56(1), 148, 246A, Art.226] 1605
The AO passed the order on 28.12.2019 by making addition of sum of Rs.394,46,61,260.00 to the income of the assessee under S. 56(1) of the Act as benefit received on account of receipt of share premium by the assessee by way of getting control and management of M/s. NRPL during the relevant previous year. The assessee filed the writ petition against the said order and submitted that the addition was made without any notice to the petitioner and without hearing the petitioner. That apart. the addition is devoid of any deliberation by the Assessing Officer leading to such addition and principle of natural justice is violated. Revenue contended that the alternative remedy is available to the assessee hence the writ is not maintainable. Court observed that, after hearing learned counsel for the parties and on due consideration, Court is of the view that petitioner may file appeal under S. 246-A of the Act before the first appellate authority against the assessment order dated 28.12.2019 within a period of four weeks from today. It is also open to the petitioner to file an application for stay along with the appeal in which event the same shall be considered by the appellate authority in accordance with law. (WP NO. 261 of 2020 dt 24-01-2020) (AY.2012-13)
Deepak Kochhar v. UOI (Bom.)(HC) (UR)

S.143 (3) : Assessment – Audit of accounts – Audited financial statements along with audit report was not filed – In the interest of substantial justice AO to make assessment after considering audited financial statement and audit report. [S.44AB] 1606
Where the assessee did not file audited financial statements along with audit report, it was noted that such non filing was due to factors entirely beyond the control of the assessee. The AO was directed to make the assessment after duly considering the audited financial statements and the audited report, after providing proper opportunity to the assessee to present its case. Referred CBDT Instruction No 14 (XL) dt 11-4-1955 (AY. 2003-04, 2004-05, 2006-07)
Global One India Pvt. Ltd v. DCIT (2020) 194 DTR 361 / 208 TTJ 129 (Delhi)(Trib.)

1607 **S. 143(3) : Assessment – Estimate of sales – Only profit element can be considered as income – Matter remanded.**
It was held that the profit embedded in the amount of estimated sales would be subjected to tax after taking into account the expenditures incurred to effect such sales. Therefore, appeal of the assessee was allowed and was send back to the AO for assessment. (AY 2010-11, 2011-12, 2012-13)
Grand Lilly Motels Limited v. ACIT (2020) 203 TTJ 30 (UO (Amritsar) (Trib.)

1608 **S. 143(3) : Assessment – Search and seizure – Loose sheet Pen drive – Not corroborated by other evidence – Deletion of addition is held to be justified. [S.132]**
The entries in loose sheet of paper are not corroborated by other evidence found during search therefore no addition can be made only on the basis of such entries (AY. 2009-10)
Dy. CIT v. Ashok Vihar (2020) 205 TTJ 547 (Raipur) (Trib.)

1609 **S.143 (3) : Assessment – Cash credits – Sufficient cause for failure to appear before the AO – Matter remanded to the Assessing Officer. [S. 68, 133(6)]**
It was held that there was a sufficient cause for the failure of the assessee to produce the required documents before the AO as the assessment was finalized before the appointed date on which the assessee was directed to appear before the AO. The issues are restored to the AO with the direction to re-examine the same and frame the assessment in accordance with law. (AY. 2015-16)
Eva Developers (P) Ltd v. ITO (2020) 203 TTJ 355 (Delhi) (Trib.)

1610 **S. 143(3) : Assessment – Protective assessment – Director – Substantive addition in hands of company deleted – Protective assessment in hands of director not sustainable. [S. 179, 292C]**
Tribunal held that the Assessing Officer had admitted in the body of the order itself that the seized documents pertained to G and not to the assessee who was a director in G. The protective assessment was made on the ground that the assessment proceedings were getting time barred by limitation. Since the substantive addition was deleted in the hands of G, the liability under section 179 on the assessee, in the capacity of the director of G also stood absolved. Nowhere had the Commissioner (Appeals) confirmed the protective addition on the ground that the amount was paid by the assessee. Thus, the protective addition under section 179 stood nullified as the substantive addition stood deleted in the hands of G. Further, the arbitral tribunal had negated the accusations of fraud, corrupt practices, collusion, etc., against G and had also held that the accusations were purely and solely based on the Shunglu Committee report, the CAG report and the FIR lodged by the CBI which remained unsubstantiated and unproven. The arbitral award was confirmed by the High Court. Thus the protective addition in the hands of the assessee was not sustainable. (AY. 2011-12)
Binu Nanu v. Dy.CIT (2020) 192 DTR 121 / 206 TTJ 854 / (2021) 86 ITR 160 (Delhi)(Trib.)

S. 143(3) : Assessment – Amalgamation – Assessment order made in name of amalgamating company – Entity non – existent on date of passing of order – Order null and void. 1611

Allowing the appeal held that as the scheme of amalgamation of ITS and the assessee was approved by the Karnataka High Court prior to filing of the revised return, ITS ceased to exist as a company as it had been dissolved without winding up when the order of assessment was passed by the Assessing Officer. As a result, the assessment so framed was not sustainable in the eyes of law being a nullity, and was to be annulled. (AY.2004-05)

Blue Yonder India Pvt. Ltd. v. Dy.CIT (2020) 84 ITR 34 (SN) (Bang.) (Trib.)

S. 143(3) : Assessment – Income from undisclosed sources – Ad hoc addition basis of third party information – Matter remanded to the Assessing Officer. [S. 194J] 1612

Tribunal held that ad hoc addition on basis of third party information that assessee has received consultation charges in cash is held to be not permissible. Matter remanded to Assessing Officer to ascertain whether amount was part of income declared by assessee and if so delete additions. (AY.2012-13 to 2016-17)

Dr. S. Chandrasekara Chandilya v. ACIT (2020) 84 ITR 46 (SN.) (Chennai)(Trib.)

S. 143(3) : Assessment – Bogus purchases – Sales not doubted – Purchases to be treated as genuine. [S. 145(3)] 1613

Tribunal held that the Assessing Officer himself having admitted that the stock register was filed by the assessee before him, the observation of the Commissioner (Appeals) was factually incorrect. The Tribunal in the assessee's own case for the assessment year 2012-13 had held on the same facts that the documentary evidence produced before the authorities below established the genuineness of the transactions or the year under consideration also, the sales made by the assessee were not disputed. Without the purchases, there could not be any sales. Disallowance made was directed to be deleted (AY.2011-12, 2014-15)

Diagold Designs Ltd. v. Dy.CIT (2020) 84 ITR 11 (SN) (Mum.)(Trib.)

S. 143(3) : Assessment – Deduction not claimed in return but later by letter to Assessing Officer during assessment proceedings – Appellate authority can consider – Foreign exchange loss – Loss pertaining to current year alone is allowable [S. 28(i), 139, Art. 265] 1614

Tribunal held that Under article 265 of the Constitution of India, only legitimate tax can be recovered and even a concession by a taxpayer does not give authority to the tax collector to recover more than what is due from him. CBDT Circular No. 14(XL35) dated April 11, 1955 states that officers of the Department must not take advantage of the ignorance of an assessee as to its rights and that they shall draw his attention to any refund or relief to which the assessee appears to be clearly entitled and which he has omitted to claim.

Allowing the assessee's appeal, that the assessee filed a letter seeking the deduction towards foreign exchange loss. The Commissioner (Appeals) could have considered the claim of the assessee. The loss up to March 31, 2013 was at Rs. 20,63,782 and for the

year ended March 31, 2014 cumulatively it was Rs. 62,60,284. Thus, the loss relating to the assessment year under consideration was only Rs. 41,96,702. The loss relating to the relevant assessment year alone and not the cumulative amount was allowable, i.e., of Rs. 41,96,702 only. Accordingly, the Assessing Officer was directed to grant deduction of foreign exchange loss only to that extent. (AY. 2014-15)
TRC Engineering India Pvt. Ltd. v. ITO (2020) 84 ITR 40 (SN) (Bang.)(Trib.)

1615 **S. 143(3) : Assessment – Amalgamation of Companies – Additional ground – Legal issue – Non issue of notice – Assessment is held to be void ab initio [S. 143(2), 254(1)]**
Allowing the appeal held that according to the records, the assessee had pursuant to the orders issued under section 391 to section 394 of the Companies Act, 1956 by the Punjab and Haryana High Court and the Bombay High Court was amalgamated with S with the appointed date as October 1, 2011. Admittedly, the assessee had informed the Assessing Officer by letters dated May 4, 2013 and May 14, 2013 that it was amalgamated with S with effect from October 1, 2011. The assessee had also by its letter dated May 14, 2013 addressed to the Commissioner, Gurgaon, brought the fact of its amalgamation with S to his notice, along with a request that its case might be transferred to the Commissioner, Mumbai, who exercised the requisite jurisdiction over the case of the amalgamated company, S. Despite having been informed about the fact of amalgamation, with effect from October 1, 2011, the Assessing Officer had issued the notice under section 143(2), dated August 7, 2013 in the name of the amalgamating company. No notice under section 143(2) was ever issued by the Assessing Officer to the amalgamated company S. Neither the issuance of the notice under section 143(2) to the amalgamating company, a non-existent entity, could be construed as a notice issued to the amalgamated company, nor be validated bringing it within the realm of a procedural irregularity within the meaning of section 292B of the Act. The non-issuance of a notice under section 143(2) to the amalgamated company, S would render the assessment framed by the Assessing Officer under section 143(3) read with section 144C(13), dated January 30, 2017 invalid and void ab initio. Accordingly, the assessment framed by the Assessing Officer was thus quashed for want of jurisdiction. (AY. 2012-13)
Siemens Ltd. v. Dy. CIT (2020) 83 ITR 131 (Mum.)(Trib.)

1616 **S. 143(3) : Assessment – Same turnover cannot be taxed in hands of two different assesses – Addition unsustainable – AO is directed to adopt Profit ratio of eight Per Cent as net profit on gross receipts. [S. 147, 148]**
Tribunal held one turnover could not be taxed in the hands of two different assessees one being the partnership and the other the proprietary concern of the assessee. The Assessing Officer was to delete the addition in the hands of the assessee to the extent of the turnover considered in the case of partnership. In the case of the partnership, in the assessment proceeding for the AY. 2008-09, the Assessing Officer had accepted the profit ratio at 8 per cent. There was no change in the business model of the partnership or the business of the assessee. Therefore, the Assessing Officer was to adopt the profit ratio of 8 per cent as net profit on the gross receipts.(AY. 2008-09)
Rajesh Gupta v. ITO (2020) 82 ITR 517 (Delhi)(Trib.)

S. 143(3) : Assessment – Income from undisclosed sources – Short-term capital loss – Bogus transaction – Denial of opportunity of cross examination – Disallowance not solely on basis of statement of persons but on other corroborative materials – Denial of opportunity to cross-examine and mentioning wrong section would not render the assessment order null and void. [S. 68, 69C] 1617

Tribunal held that the addition was not based solely on the statement of the persons. The Assessing Officer had relied on other materials. The statements of the persons who controlled the business of providing accommodation entries had been corroborated with the materials, surrounding circumstances and preponderance of probability. Where one leg of the sale transaction was bogus, in the same set of circumstances, the other leg of the transaction (purchase of share for capital loss) was bound to be bogus and not genuine. Thus, the transactions of the assessee of purchase and subsequent sale leading to short-term capital loss were not genuinely entered into. The short-term capital loss claimed by the assessee was disallowed. However, the addition for short-term capital loss could not be made under section 68 because the addition had not been made for unexplained credit on sale of the shares during the year but in respect of the claim of bogus short-term capital loss. In the case of the assessee, the correct action would be disallowance of claim of the short-term capital loss of the assessee. However, mention of a wrong section in the assessment order would not render the entire assessment null and void. It is not the jurisdictional requirement for completing the assessment. The Assessing Officer had correctly acquired the jurisdiction over the case and the mistake was only under which section the addition should be made. (AY. 2015-16)

Sanjay Kaul v. ITO (2020) 181 ITD 146 / 82 ITR 441 / 191 DTR 60 / 206 TTJ 176 (Delhi) (Trib.)

Editorial : Affirmed in Sanjay Kaul v. PCIT (2020) 427 ITR 63/ 274 Taxman 301/ 119 taxmann.com 470 /193 DTR 57 (Delhi) (HC)

S. 143(3) : Assessment – Business income – Joint Development Agreement – Percentage of completion method – Entries in books of account – No addition could be made based on difference between Form 26AS and amount shown in profit and loss account. [S. 28(i), 194A] 1618

Tribunal held that the issue had to be decided having regard to the terms of the joint development agreement and the intention of the parties to the agreement. Thus, the intention of the parties could be gauged from the entries made in the books of account. The entries in the books of account clearly showed that the assessee was only a partner in the development of scheduled property of the agreement. In any event, no addition could be made based on a mere difference between form 26AS and the amount shown in the profit and loss account and in the absence of any reconciliation and corroborative evidence. It was not the case of the Department that there was leakage of revenue during the period of joint development, the transaction was tax neutral. Therefore, no addition was warranted and the Assessing Officer was directed to delete the addition. (AY. 2016-17)

Sree Sankeswara Foundations and Investments v. ACIT (2020) 82 ITR 513 (Chennai)(Trib.)

1619 **S. 143(3) : Assessment – Bogus purchases – No ad hoc addition can be made – Only difference between gross profit rate on genuine purchases and hawala purchases can be made. [S. 37(1)]**

Tribunal held that no ad hoc addition for bogus purchases should be made. The addition should be made to the extent of difference between the gross profit rate on genuine purchases and gross profit rate on hawala purchases. Since specific details were not available for facilitating the calculation of gross profit rates of genuine and hawala purchases the matter was remanded to the Assessing Officer.(AY.2009-10)

Anil Jairam Goel v. ITO (2020) 80 ITR 47 (SN) (Pune)(Trib.)

1620 **S. 143(3) : Assessment – Non-Existing entity – Merger – Succession to business otherwise than on death – Order passed in non – existing entity is held to be invalid [S. 170, 292B]**

BASF Polyurethanes amalgamted/merged with assessee by virtue of scheme of amalgamation/merger approved by High Court with effect from 1-4-2010. In spite of being informed about the fact that BASF Polyurethanes had amalgamated/merged and was no longer in existence, still, Assessing Officer passed final assessment order in name of erstwhile company i.e., BASF Polyurethanes. Tribunal held that since Assessing Officer had passed final assessment order in name of a non-existing entity, therefore, same would be invalid and quashed. (AY. 2008-09)

BASF India Ltd. v. DCIT (2020) 185 ITD 919 (Mum.)(Trib.)

1621 **S. 143(3) : Assessment – Amalgamation – Succession to business otherwise than on death – Amalgamating company was not in existence at time of conduct of assessment proceedings as well as on date of passing Assessment Order – Assessment Order passed in name of amalgamating company being void ab initio was to be set aside. [S. 170, 292B]**

Tribunal held that pursuant to scheme of amalgamation as approved by High Court, a company was merged with assessee company and amalgamating company was not in existence at time of conduct of assessment proceedings as well as on date of passing Assessment Order, Assessment Order passed in name of amalgamating company was to be set aside, it does not remain a procedural irregularity of nature which could be cured under section 292B of the Act. (AY. 2014-15)

Genpact India (P.) Ltd. v. DCIT (2020) 184 ITD 1 (Delhi)(Trib.)

1622 **S. 143(3) : Assessment – Notice issued without examining the return – Assessment order was quashed. [S. 142(1), 143(2)]**

Return of income filed by assessee was accompanied with computation of income, trading and profit and loss account as well as balance sheet along with fixed assets account and capital account. At time of issue of notice, Assessing Officer was merely having information about cash deposit of Rs. 12,97,900 in his savings bank account. The Assessing Officer had issued notice under section 143(2)/142(1) but also issued questionnaire, that too along with notices which was served on spot on date of filing of return to counsel of assessee. Tribunal held that the Assessing Officer did not have any information about what kind of business assessee was doing, whether bank

account in which alleged cash was deposited appeared in balance sheet, whether level of income shown by assessee justified amount of cash deposited, etc. It could be said that, Assessing Officer did not thought it 'necessary' but issued notice in a mechanical manner. Tribunal also held that before issue of notice, Assessing Officer had to examine return filed by assessee but same was not done and in such a situation, assessment order passed under section 143(3) was to be quashed. (AY. 2010-11)
Hemant Mittal v. ITO (2020) 183 ITD 295 (Delhi)(Trib.)

S. 143(3) : Assessment – Survey – Undisclosed income – Accommodation entries – Commission income – Amount not recovered allowable as deduction from the undisclosed income estimated. [S. 28(i), 68, 133A] 1623
During survey, assessee disclosed his undisclosed income at Rs. 3 crore however, when assessee filed his return, he offered only Rs. 1.38 crore out of Rs. 3 crore as undisclosed income. The assessee contended that the assessee could not recover the balance amount. The AO has assessed the income as disclosed in the course of survey. On appeal the Tribunal held that even if it was accepted that assessee's estimate of Rs. 3 crore as his undisclosed income was correct, still, since he could retrieve only Rs. 1.38 crore this year and there was no possibility to recover balance of Rs. 1.68 crore, loss occurred to assessee being connected to carrying on of business of providing accommodation entry to beneficiaries had to be allowed as a deduction. (AY. 2015-16)
Uday Shankar Mahawar v. ACIT (2020) 183 ITD 305 (Kol.) (Trib.)

S. 143(3) : Assessment – Estimate of income – The AO cannot make addition on estimate basis when no specific defect or infirmity in the books of account maintained by the assessee. [S. 145] 1624
Dismissing the appeal of the revenue the Tribunal held that the AO cannot estimate the income and make addition without pointing out specific defect or infirmity in the books of account maintained by the assessee. (AY. 2012-13, 2013-14)
DCIT v. Asian Grantio India Ltd. (2020) 182 ITD 441 (Ahd.) (Trib.)

S. 143(3) : Assessment – Income from undisclosed Sources – Difference in stock – Books of account not rejected – Reconciliation of stock filed – Addition is held to be not valid. [S. 69, 132] 1625
Tribunal held that at no point of time had the books of account been rejected by the Assessing Officer. There was no denial by the Assessing Officer that stocks were lying outside the factory premises and cold storages. The Assessing Officer had not pointed out any defect in the reconciled stock. The Commissioner (Appeals) had also not taken cognizance of the proper gross profit rate applied. Therefore, the Assessing Officer as well as the Commissioner (Appeals) had not considered the actual material in consonance with the physical stock. The assessee had justified its difference through documents which were at no point of time doubted by any of the Revenue authorities. Therefore, the Commissioner (Appeals) was not justified in sustaining the addition on account of difference in stocks. (AY.2012-13)
SMC Food Ltd. v. ACIT (2020) 83 ITR 6 (SN) (Delhi)(Trib.)

1626 **S. 143(3) : Assessment – Management services – Sponsorship and promotional income – Power and fuel Charges – Marketing income considered net of expenses and not separately credited to profit and loss account – Addition is held to be not valid – Security charges, matter remanded. [S. 28(i)]**

Tribunal held that marketing income had been considered as net of expenses, and therefore did not appear separately having been credited under the head income. The assessee had considered the respective income under the relevant heads before debiting expenses to the profit and loss account. Therefore there was no justification for the disallowance. As regards security charges in the ledger account. This aspect needed verification vis-a-vis the debit notes and invoices raised. The assessee was to file relevant documents to establish its claim. The Commissioner (Appeals) was to verify the documents filed by the assessee. In the event it was found that had been included, the addition was to be deleted. (AY. 2014-15)

Orion Property Management Services Ltd. v. ITO (2020) 83 ITR 4 (SN) (Bang.)(Trib.)

1627 **S. 143(3) : Assessment – Amalgamation of Companies – Assessing Officer required to take successor entity on record and authorised representative required to file Power of Attorney duly authorised by amalgamated entity – Assessment made on non existent entity void ab-initio.**

Tribunal held that if an individual dies during the assessment proceeding, the onus is on the representatives to bring his legal heir on record so that assessment proceedings thereafter could be continued on the legal heir and the authorised representative should also be authorised thereafter by the legal representative to appear in the assessment proceedings. A dead person cannot be represented by the authorised representative in proceedings subsequent to his death, though he was authorised to appear in the assessment proceeding prior to his death. Similarly, when one entity is amalgamated with another, the erstwhile entity does not exist from the effective date of the amalgamation. Not will the amalgamation be effective in relation to the assessment year when it came into effect, but the pending proceedings of earlier assessment years also cannot be continued against such non-existent person and once the merger of the erstwhile entity with the new entity was brought to the notice of the Assessing Officer, the Assessing Officer was required to take the successor entity on record and the authorized representative appearing also was required to file the power of attorney duly authorised by the amalgamated entity, i.e., the new entity. Thus assessment made on the non-existent entity was void ab initio and hence the assessment was to be quashed. (AY.2012-13)

Haryana Gramin Bank v. Dy.CIT (2020) 83 ITR 8 (SN) (Delhi)(Trib.)

1628 **S. 143(3) : Assessment – Ad hoc addition – Weight and rate difference – Evidence not produced – Addition is held to be justified. [S. 37(1)]**

Tribunal held that even during the hearing before the Tribunal the assessee could not substantiate the claim. Under these circumstances, the addition of Rs. 1 lakh made by the Assessing Officer was confirmed. (AY. 2010-11)

Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29 (SN) (Delhi)(Trib.)

S. 143(3) : Assessment – Conversion of limited scrutiny into complete scrutiny – Assessing Officer is bound to follow the instructions – Prior approval from competent authority mandatory – In the absence of communication in writing to Assessing Officer about approval, assumption of jurisdiction by Assessing Officer invalid. [S. 54B] 1629
Tribunal held that the Assessing Officer is duty bound to follow the instructions in case limited scrutiny assessment proceedings are proposed to be converted into complete scrutiny and without following procedure and necessary approval of the competent authority, enquiry into an issue which was outside the limited scrutiny would be beyond the jurisdiction of the Assessing Officer. The Assessing Officer is also required to intimate the assessee regarding conversion of limited scrutiny to complete scrutiny in such cases. Therefore, in the absence of communication in writing to the Assessing Officer about the approval, the assumption of jurisdiction by the Assessing Officer was invalid. Consequently, the addition made by the Assessing Officer denying the deduction under section 54B was not sustainable. (AY.2014-15)
Manju Kaushik (Smt.) v. Dy.CIT (2020) 78 ITR 564 / 192 DTR 227 / 206 TTJ 435 (Jaipur)(Trib.)

S. 143(3) : Assessment – Search and seizure – Excess consumption – Suppression of receipts – Discounts – Addition is held to be not valid. [S.132A] 1630
Tribunal held that the addition having been made only on the basis of suspicion, the addition was deleted.(AY.2011-12)
Mewar Hospital Pvt. Ltd. v. ACIT (2020)79 ITR 12 (SN) (Jodhpur) (Trib.)

S. 143(3) : Assessment – Estimation of income – Milk Supplier earning Commission – Real income theory – Profit is directed to be estimated at seven Per Cent. [S. 144, 145] 1631
The assessee based on his commission income declared a profit margin of 2.63 per cent. instead of 11.08 per cent declared in the original return. The Assessing Officer estimated the gross profit at 15 per cent. The Commissioner (Appeals) accepted the findings of the Assessing Officer for rejecting the book results but reduced the estimation of gross profit to 11 per cent instead of 15 per cent. in terms of the rate as disclosed by the assessee in its original return. On appeal the Tribunal held that t he assessee could be assessed to tax only on real income and not on any estimation or surmises. The assessee had declared 11.08 per cent. as gross profit without substantiating the result declared by it. The assessee should be charged to tax at seven per cent. Considering the gross profit declared by the assessee in the assessment years 2011-12 and 2012-13, where there was six per cent increase in the gross profit and the assessee must have increased its gross profit by 10 per cent. The Assessing Officer was directed to estimate the income at seven per cent. (AY.2013-14)
Vithal Baban Bangar v. ITO (2020) 79 ITR 55 (Mum.)(Trib.)

S. 143(3) : Assessment – Bogus purchases – Purchase and sales matching figures certified by sales tax department and value added tax Return – No addition could be made on basis of earlier tentative figure shown as per sales tax department – Contribution to provident fund – Matter remanded. [S. 37(1)] 1632
Tribunal held that when the figures of purchase shown by the assessee in the profit and loss account matched the figures certified by the Sales Tax Department and the

value added tax return filed by the assessee, no addition could be made on the basis of the earlier tentative figure shown by the assessee as per the Sales Tax Department. As regards contribution of payment to Provident fund, the matter remanded to the Assessing Officer. (AY.2010-11)
Pabitra Banerjee v. ITO (2020) 79 ITR 480 (Cuttack)(Trib.)

1633 **S. 143(3) : Assessment – Search and Seizure – Unaccounted income – Medical college – Donations and capitation fees – Onus upon revenue – Addition based on statement by Chairman of Trust – No cross examination allowed – Addition is deleted. [S. 69, 132, 147, 148]**
The Tribunal held that the entire addition was based on the statement made by the chairman in which, he had admitted to have received donation/capitation fees in cash which was surrendered for taxation. The assessee denied to have paid any amount in cash on account of donation/capitation fees to the chairman or the college in which his son was admitted for MBBS course. Since the Department alleged that the assessee had paid cash of Rs. 27 lakhs as donation/capitation fees, the onus was upon the Assessing Officer to prove through cogent and reliable evidence that the assessee had in fact paid cash by way of donation of capitation fees to the medical college and the chairman. In the present case, the entire case was set up on the basis of the statement of the chairman recorded during the course of search in which he had admitted to have received donation/capitation fees in cash. However, the assessment order was silent if any right of cross-examination had been allowed on behalf of the assessee at the assessment stage. Thus, the statement of the chairman could not be relied upon against the assessee. There was no other material available on record so as to make any addition against the assessee. Thus, the onus upon the Department to prove that the assessee paid cash to the chairman was not discharged in the present case. Therefore the addition was deleted. (AY.2007-08)
Sulekh Chand Singhal v. ACIT (2020) 81 ITR 26 (SN) (Delhi)(Trib.)

1634 **S. 143(3) : Assessment – Unverifiable purchases – Bogus purchases – Sales accepted – Failure by some parties to respond to notice – Entire purchases cannot be disallowed – Directed to estimation of gross profit rate on the turnover. [S. 37(1), 69C]**
Tribunal held that the payments had been made through banking channels and the assessee had substantiated the purchases by providing various documents such as purchase invoices, copies of the ledger account, evidence of payment through banking channels, value added tax returns duly reflecting the purchases, etc. Merely because some of the parties did not respond to the notice that could not be held against the assessee to make such a huge addition especially when purchases from those parties were accepted in the preceding year and no reopening of assessment under section 147 or 263 of the Income-tax Act, 1961 had taken place. Adoption of the gross profit rate of 4.5 per cent on the turnover of Rs. 9,93,23,196 under the facts and circumstances of the case would meet the ends of justice. The Assessing Officer was directed to recompute the addition accordingly.(AY.2013-14)
Silburn Papers Pvt. Ltd. v. ITO (2020) 81 ITR 85 (SN) (Delhi)(Trib.)

S. 143(3) : Assessment – Revision – Addition made pursuant to revisional order – Tribunal quashing revisional order – Resultant Proceedings would not survive [S.14A, 115JB, 254(1), 263] 1635

Dismissing the appeal of the revenue the Tribunal held that, order passed pursuant to the order passed by the Principal Commissioner under section 263. Since the order under section 263 had been quashed by the Tribunal, all resultant proceedings including the present appeals would not survive. (AY.2011-12)

ACIT v. Oscar Investment Ltd. (2020) 81 ITR 81 (SN) (Delhi) (Trib.)

S. 143(3) : Assessment – Joint development – Share of profits paid to co-developer based on oral understanding can not disallowed as the recipient had offered it to tax and there being no revenue loss and the transaction was tax neutral. [S. 28(i), 37(1)] 1636

Allowing the appeal of the assessee the Tribunal held that Share of profits paid to co-developer based on oral understanding can not disallowed as the recipient had offered it to tax and there being no revenue loss and the transaction was tax neutral. (ITA No. 5929 /Mum/ 2018 dt 12-6 2020) (AY. 2011-12)

HP Associates v. ITO (2020) BCAJ-September-P. 43 (Mum.)(Trib.)

S. 143(3) : Assessment – Conversion of limited scrutiny into complete scrutiny – Principal Commissioner according approval in a mechanised manner – CBDT instructions – Violation of instruction No. 5 of 2016 dt. 14-7-2016, (2016) 385 ITR (St.) 56. [S. 142(1), 144A, 292BB] 1637

Tribunal held that there was no cogent material mentioned by the Assessing Officer which enabled him to have reached the conclusion that the assessee's case was a fit case for conversion from limited scrutiny to complete scrutiny. The statement of the assessee's director recorded after the conversion of the case showed nothing adverse vis-a-vis the transactions. In the proposal of the Assessing Officer and the approval of the Principal Commissioner no reasonable view was formed as mandated in Central Board of Direct Taxes Instruction No. 5 of 2016 dated July 14, 2016 [2016 385 ITR (St.) 56 in an objective manner and merely suspicion and inference was the foundation of the view of the Assessing Officer. There was no direct nexus brought on record by the Assessing Officer in the proposal and, therefore, the proposal for converting the limited scrutiny to complete scrutiny was merely aimed at making fishing enquiries. The Principal Commissioner had accorded the approval in a mechanical manner which was in clear violation of the Instruction No. 20 of 2015 dt 29-12-2015. Tribunal held that the Department cannot be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgates of corruption will be opened which it is not desirable to encourage. When the Department has set down a standard for itself, the Department is bound by that standard and cannot act with discrimination. Followed *Amal Kumar Ghosh v. ACIT (2014) 361 ITR 458 (Cal) (HC) and Payal Kumari (Mrs.) v. ITO (ITA. No. 23/Chd/2011 dt. 24-2-2011).*(AY. 2015-16)

DEV Milk Foods Pvt. Ltd. v. Add. CIT (2020) 81 ITR 178 (Delhi) (Trib.)

1638 **S. 143(3) : Assessment – Profit on sale of property used for residence – Capital gains – Exemption was not claimed in the return – However claimed under wrong section in the course of assessment – Merely because assessee claimed deduction under wrong provision of S. 54F assesses claim could not be disallowed if it was allowable under an appropriate provision – Entitle to exemption/s 54 of the Act. [S. 54, 54F]**

Assessee inherited a residential Flat. He entered into a development agreement and surrendered said old flat. He received new residential flat after development. In return of income assessee neither offered capital gains nor claimed any deduction under S. 54 or 54F of the Act. In course of assessment proceedings, assessee offered capital gain and Claimed deduction under wrong S. 54F of the Act. The AO disallowed the claim which was affirmed by the CIT(A). On appeal the Appellate Tribunal held that merely because assessee had not offered or disclosed capital gain on transfer of flat in his return of income, it would not disentitle him from availing statutory deduction if he was entitled to it. Tribunal held that revenue authority had no doubt that flat that was transferred and received back after re-development was residential property, merely because assessee claimed deduction under wrong provision of S. 54F assesses claim could not be disallowed if it was allowable under an appropriate provision. Accordingly the assessee is held to be entitled to deduction under S. 54 of the Act. (AY. 2012-13)

Satish S. Prabhu v. ACIT (2020) 181 ITD 63 (Mum.)(Trib.)

1639 **S. 143(3) : Assessment – Survey – Difference in stock – Statement recorded during survey not under oath – Retraction of statement with explanation – Addition is held to be not justified. [S. 133A]**

Allowing the appeal of the assessee the Tribunal held that, merely on the basis of statement, addition cannot be when the statement was retracted and detailed explanation with supporting evidence was fled in the course of assessment proceedings. The Tribunal held that the AO had simply ignored the evidence and had made the addition merely on the basis of the letter submitted by the assessee which stood retracted later. Moreover, the surrender was not under oath. The Assessing Officer had not brought any material to rebut the explanation of the assessee. S. 133A does not empower any Income-tax authority to examine any person on oath and therefore any admission made in a statement recorded during survey cannot by itself be made the basis of addition. Thus the addition was not tenable in the eyes of law and was deleted.(AY.2012-13)

MNP Turnmatics v. ITO (2020) 77 ITR 31 (SN) (Delhi)(Trib.)

1640 **S. 144 : Best judgment assessment – Specific show cause notice was not issued in respect of proposed addition under section 69A of the Act and not other issues – Matter remanded to the Assessing Officer to redo the assessment. [S. 69A, 142(1), Art. 226]**

Assessee was engaged in business of wholesale and retail sale of veterinary medicines as a partnership firm. Return was not filed in time due to certain disputes/differences between partners. Assessing officer issued a notice under section 142(1) calling upon assessee to file return of income. By time return of income was filed, Assessing Officer proceeded to complete assessment under section 144 in which he made two additions i.e. firstly under section 69A and, secondly, in respect of enhanced rate of profit on turnover. The assessee filed the writ petition and contended that in show cause notice issued under section 142(1), Assessing officer raised issue only in respect of first issue

i.e. addition under section 69A. Allowing the petition the Court held that on facts, since no show cause notice was issued in respect of other issue viz, addition on account of business income, it was appropriate to remit matter back to Assessing Officer for redoing assessment after getting a reply from assessee in respect of both issues. (AY. 2017-18)
Kandan & Kannan Medical Agency v. ITO (2020) 194 DTR 172 / 269 Taxman 291 (Mad.) (HC)

S. 144 : Best judgment assessment – Defective return – Order passed without issuing show cause notice or intimation – Principle of natural justice is violated – Matter was to be restored to Assessing Officer for afresh consideration. [S.139(9), Art. 226] 1641
Assessing Officer passed order under section 139(9) treating return filed by assessee as invalid. Further, best judgment assessment order was also passed under section 144. Assessee filed writ petition and contended that no show cause notice was issued while passing said orders. Allowing the petition the Court held that issuance of notice/ intimation is sine qua non for passing order under section 139(9). Since case of assessee was hit by principles of natural justice, hence, impugned orders should be considered as non-est and, thus, matter was to be restored to Assessing Officer for afresh consideration. Matter remanded.
Shaikh Madar Amanulla v. ITO (2020) 269 Taxman 280 (Karn.)(HC)

S. 144 : Best judgment assessment – Addition made of cash deposited during demonetization period – Addition on account of business income – Violation of principle of natural justice – Matter remanded to Assessing Officer. [S. 142(1), Art. 226] 1642
The petitioner has filed writ against the order passed u/s 144 of the Act. Allowing the petition the Court held that ; (a) The petitioner shall file their reply within a period of two weeks from the date of receipt of a copy of this order in respect of both issues. (b) On receipt of such reply, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law, as this Court is not expressing any view on the merits of the assessment in respect of both the issues, since it is for the Assessing Officer to consider and decide. (c) The whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of the reply. (d) The Assessing Officer shall afford an opportunity of personal hearing to the petitioner before concluding the assessment. (AY. 2017-18)
Kandan & Kannan Medical Agency v. ITO (2020) 194 DTR 172 (Mad.)(HC)

S. 144 : Best judgment assessment – Arbitrary estimation is held to be not justified – Matter remanded. 1643
Tribunal held that there was a glaring perversity in the assessment order itself. The "market standards" adopted by the assessing authority to enhance the net profit from 1.56 per cent on the turnover declared by the assessee to 8 per cent had been made without any basis whatsoever. There was no evidence or reference to any material or any parallel case referred to by the assessing authority to adopt the rate of 8 per cent. of turnover. Matter remanded to the assessing authority to pass fresh assessments in accordance with law giving reasons for particular findings arrived at by the assessing authority. (AY:2011-12)
CIT v. S. Albert and Co. P. Ltd. (2020) 427 ITR 145 (Mad.)(HC)

1644 **S. 144 : Best judgment assessment – Bogus purchases – Hawala entries – Sales tax department – Income from undisclosed sources – Estimate of profits at 5% of bogus based is held to be justified. [S.142(1)]**

The AO disallowed the entire purchases on the ground that the assessee ha obtained bogus purchase bills from entry provider on the basis of information from sales tax department. On appeal the CIT(A) has confirmed addition of two per cent. of the purchase amount as profit. On appeal the Tribunal directed the Assessing Officer to make a further addition of three per cent. On appeal by the revenue dismissing the appeal the Court held that the Tribunal has observed that the assessee's gross profit varied from five per cent. to 8.77 per cent. Since the purchases were made from the grey market, the corresponding profit element would be little higher. Therefore, the Tribunal directed the Assessing Officer to make a further addition of three per cent. on the bogus purchases and to estimate the income on such basis. There was no error or infirmity in the order of the Tribunal. (AY.2010-11)

PCIT v. Rishabhdev Technocable Ltd. (2020) 424 ITR 338 / 187 DTR 473 (Bom.)(HC)

1645 **S. 144 : Best judgment assessment – Maintaining huge cash balance in particular period – Cash withdrawal from bank – Additions cannot be made on the presumption that the assessee could have discharged sundry creditors instead of having cash in hand. [S. 36(1)(iii), 145(3)]**

Allowing the appeal of the assessee the Tribunal held that, the Assessing Officer having accepted the correctness of the cash book in his remand report was not justified in expressing doubts on the genuineness of the cash book maintained by the assessee. The fact that there was low cash balance during the opening and closing days of the financial year and maintenance of a huge balance in a particular period, cash was withdrawn from the bank despite cash balances being available in the cash book and the presence of sundry creditors and the fact that the assessee could have discharged sundry creditors instead of having cash in hand, could not be the basis to doubt the genuineness of the cash book. Since the source of funds for the cash deposit in the bank account stood duly explained, the addition made were deleted and the addition sustained by the Commissioner (Appeals) were also to be deleted.(AY. 2015-16)

Mahadevappa Basappa Edaramani v. ACIT (2020) 84 ITR 300 (Bang.)(Trib.)

1646 **S. 144 : Best judgment assessment – Books of account audited – Income estimated on the basis of estimate basis is held to be not justified – Income has to be determined as per the audited books of account in accordance with law. [S. 271B]**

Allowing the appeal the Tribunal held that when the audited books of a account were furnished, the books could not have been ignored and rejected without assigning any reasons and the assessee's income determined on an estimate basis. The Assessing Officer has to determine the total income, based on the audited books of account in accordance with law after providing reasonable opportunity of hearing. (AY.2011-12)

Andhra Pradesh Tourism Development Corporation Ltd. v. Dy. CIT (2020) 82 ITR 31 (SN) (Hyd.)(Trib.)

S. 144 : Best judgment assessment – Low gross profit rate – Ad-hoc addition – No defects in stock statement – Rejection of books of account is held to be not valid. [S. 145(3)] 1647

The Tribunal held that the Assessing Officer did not point out any defect in the stock statement, purchase and sales, bank statement furnished by the assessee. Therefore the books of account of the assessee could not be rejected until and unless the Assessing Officer point out the specific mistakes. Furthermore, the Commissioner (Appeals) had confirmed the addition of Rs. 10 lakhs on ad hoc basis without pointing out any specific material. Such ad hoc disallowance was not permissible. He had given a contrary finding by accepting the books of account. The Assessing Officer was directed to delete the addition made by him. (AY.2011-12)

Panchshil Exim P. Ltd. v. Dy.CIT (2020) 79 ITR 472 (Rajkot) (Trib.)

S. 144 : Best judgment assessment – No new facts – Addition is held to be justified. [S. 69B] 1648

Tribunal held that the assessee was not interested in pursuing his present appeal and had failed to explain the assessment before the Assessing Officer and the Commissioner (Appeals). No new facts or circumstances had been placed on record and the orders passed by the Revenue authorities had also gone unrebutted. Order of CIT(A) is affirmed. (AY.2009-10)

Ajay Baldevbhai Patel v. ITO (2020) 80 ITR 367 (Ahd.)(Trib.)

S. 144C : Reference to dispute resolution panel Limited remand by the Appellate Tribunal – Order structured on wrong legal premises – Alternative remedy is not a bar – Order quashed and directed to pass the order in accordance with the direction of the Appellate Tribunal. [Art. 226] 1649

The appellate Tribunal remanded the matter. There was a limited remand of the matter for judicious consideration afresh. However the Assessing Officer has passed the order contrary to the direction and raised the demand. The assessee challenged the order by filing writ petition. The Court held that Order structured on wrong legal premises. Therefore alternative remedy is not a bar. Order quashed and directed to pass the order in accordance with the direction of the Appellate Tribunal. (AY. 2009-10)

Wipro GE Health Care Pvt. Ltd. v. Dy.CIT (2020) 275 Taxman 163 / (2021) 197 DTR 356 / 319 CTR 324 (Karn.)(HC)

S. 144C : Reference to dispute resolution panel – Transfer pricing – Arm's length price – Direction By Dispute Resolution Panel – Writ is not maintainable. [S. 92C, Art. 136, 226] 1650

Dismissing the petition the Court held that merely because the order of the Dispute Resolution Panel may be binding on the Assessing Officer, against whose order, the appeal can be filed only before the Tribunal, a shortcut cannot be provided to the assessee to invoke the writ jurisdiction, which itself has three tiers of remedies ; before the High Court, two tiers, viz., the single judge dealing with the writ petition and the intra-court writ appeal before the Division Bench and then if the matter is taken up to the Supreme Court by way of a special leave petition under article 136 of the Constitution of India. If the matter is dragged through these three tiers, it would be impossible for the orders of the Dispute Resolution Panel to be executed by the Assessing Officer and the Tribunal to apply its mind to the factual aspects of the matter for a long period. Even questions

of law which are coupled or mixed with the findings of fact can be raised and argued before the concerned authorities below, including the Transfer Pricing Officer and before the Tribunal. Such a digression from the normal channel of the remedies provided in the Act in Chapter X, need not be cut short by allowing the assessee to invoke the writ jurisdiction in such cases. The streamlined procedure, provided under the Act should not normally be allowed to be breached in cases where a deeper analysis of facts has to be done by the authorities under the Act up to the Tribunal and a factual exercise has to be undertaken by them with regard to comparables, transfer pricing adjustments and methods for making transfer pricing adjustments as prescribed in rule 10B of the Income-tax Rules, 1962, and section 92C of the Income-tax Act, 1961. Prematurely pronouncing on these issues, definitely curtails the discretion of the assessing authorities in this regard and it is a self defeating exercise, which the High Court in its writ jurisdiction would be reluctant to undertake. (AY. 2012-13)

Hyundai Motor India Ltd. v. Secretary, Income-Tax Department (2020) 428 ITR 545 / 195 DTR 260 / 317 CTR 603 / (2021) 276 Taxman 453 (Mad.)(HC)

1651 **S. 144C : Reference to dispute resolution panel – Draft assessment order – Limitation for filing objections – Draft assessment order served through Electronic mode on an earlier date but assessee opting for manual proceedings – Limitation to be calculated from date of receipt of draft assessment order manually. [S. 144C(2), Art. 226]**

On a writ allowing the petition the Court held that when the assessee had not opted for the e-proceeding facility, and had chosen to have its assessment proceedings continued in the manual mode, the date of receipt of the draft assessment order in the manual mode had to be seen as the date of service of the draft assessment order. It was the receipt of the draft assessment order on January 5, 2019 through the manual mode, that determined the starting point of limitation for the period of 30 days under section 144C(2) for the assessee to have submitted his objections before the Dispute Resolution Panel. Reckoning the period of 30 days from January 5, 2019 the objection filed by the assessee on February 1, 2019 before the Panel was within time and its order was to be set aside. The order of assessment that did not await the decision of the Panel on the merits was also illegal. (AY.2015-16)

FCI OEN Connectors Ltd. v. Dy.CIT (2020) 425 ITR 128 / 185 DTR 228 / 314 CTR 847 / 268 Taxman 107 (Ker.) (HC)

1652 **S. 144C : Reference to dispute resolution panel – Draft assessment order – Natural justice – Appellate Tribunal – Admission of additional evidence is held to be justified on question of law – When the Tribunal set aside the proceedings on the ground of violation of the principles of natural justice, the first exercise was void and without jurisdiction – Nothing remained on the record, including the draft assessment order – Issuance of a draft assessment order was necessary – Proceedings were to be started afresh on remand – Non-issuance of the draft assessment order thus vitiated the final assessment order. [S. 92C, 254(1)]**

The assessee filed its return of income declaring a loss. The assessment order was passed under section 143(3) on the basis of the order passed by the Transfer Pricing Officer under S. 92CA(3). The assessee filed its objection before the Dispute Resolution Panel. The Panel directed the Assessing Officer to modify the order. The Assessing

Officer passed an order giving effect to the revised transfer pricing adjustment The assessee filed an appeal before the Tribunal against the order passed by the Assessing Officer under section 144C(13). Since the Transfer Pricing Officer had changed in the meanwhile, the Tribunal held that the new Transfer Pricing Officer should have given hearing to the assessee and by an order set aside the assessment order. An appeal to the Commissioner (Appeals) was partly allowed. On further appeal to the Tribunal, the assessee raised the additional ground that after the remand, a fresh draft assessment order had not been passed. The Tribunal allowed the additional ground and held that the assessment was not valid. On appeal, the Court held that a draft assessment order was an essential requirement of the scheme of section 144C and in view of the admitted factual position, the Tribunal was not in error in admitting the additional ground of appeal. Court also held that the Tribunal set aside the entire exercise and the matter was relegated to the Assessing Officer. Once the matter was sent back to be decided afresh it went back to the stage of section 144C(1) of the Act. Since the Tribunal set aside the proceedings on the ground of violation of the principles of natural justice, the first exercise was void and without jurisdiction. Therefore, nothing remained on the record, including the draft assessment order. Therefore, issuance of a draft assessment order was necessary. Proceedings were to be started afresh on remand. Non-issuance of the draft assessment order thus vitiated the final assessment order.
PCIT v. Andrew Telecommunications P. Ltd. (2020) 423 ITR 503 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel – E-proceedings facility – Manual mode – Period of limitation – Receipt of a draft assessment order in manual mode had to be seen as date of draft assessment order – Judgment is peculiar factual circumstances, hence not to be cited as a precedent in subsequent cases. [S. 92C, Art. 226] 1653
The petitioner opted for E-proceedings facility. Draft assessment was received in electronic format was served on the asseseee on 31-12-2018 /1-1-2019 and petitioner had to file its objection before Dispute Resolution Panel by 1-2-2019. The petitioner had filed the objection on 5-02-2019. DRP issued the show cause notice stating that the objection was filed beyond period of 30 days of the service of draft assessment order by electronic mode. The AO passed the order without considering the objection of the petitioner. The petitioner filed the petition and contended that, they have opted for manual mode hence receipt of a draft assessment order in manual mode had to be seen as date of draft assessment order. Allowing the petition the Court held that for computing the period of limitation the receipt of the order on manual mode to be taken in to consideration. Accordingly the order of the AO is set a side. Court also observed that this Judgment is rendered in peculiar factual circumstances, hence not to be cited as a precedent in subsequent cases. (WP No 11952 of 2019 dt 13-11-2019) (SJ) (AY. 2015-16)
FCIOEN Connectors Ltd. v. Dy.CIT (2020) 268 Taxman 107 / 185 DTR 228 (Ker.)(HC)

S. 144C : Reference to dispute resolution panel – Provision Applicable From Assessment Year 2011-12 – Insertion of S.144C By Finance (No. 2) Act Of 2009 – Provision applicable from assessment Year 2011-12 – Circular In 2013 stating that provision would be applicable from October 2009 is held to be not valid. 1654
Court held that circulars and instructions issued by the Board are, no doubt, binding in law on the authorities, they are not binding upon the courts. The explanatory circular

made it clear that the scheme of assessment under S. 144C will apply in relation to the assessment year 2010-11 and subsequent assessment years only. However a circular issued in 2013 stated that section 144C is applicable to any order which proposes to make variation in income or loss returned by an eligible assessee, on or after October 1, 2009 irrespective of the assessment year to which it pertains. The right that has enured to the parties in 2009 cannot be modified by a clarification issued by the Board, three years thereafter. This circular will not bind the Assessing Officer, particularly when it does not lay down the correct position of law. (AY.2007-08)
Vedanta Ltd. v. ACIT (2019) 106 CCH 0430 / (2020) 422 ITR 262 / 191 DTR 200 / 315 CTR 832 (Mad.)(HC)

1655 **S. 144C : Reference to dispute resolution panel – International Transactions – Draft assessment order after hearing objections – Alternative remedy – Writ is not maintainable. [Art. 226]**
Dismissing the petition the Court held that it was the specific claim of the AO that the entire activities of the assessee squarely fell within his power and jurisdiction for determination of the taxable income by himself without referring to the Transfer Pricing Officer. Therefore, this factual dispute had to be settled first for which purpose only the Dispute Resolution Panel was constituted. Secondly the AO had only passed a draft assessment order thereby giving sufficient opportunity to the assessee to raise its objections. (WP No. 2919 of 2019 dt 22-10 2019) (AY. 2016-17)
EOS Gmbh-India Branch v. DCIT (2020) 420 ITR 119 / 269 Taxman 223 / 187 DTR 222 / 313 ITR 755 (Mad.)(HC)

1656 **S. 144C : Reference to dispute resolution panel – Assessment order passed – Disregard to directions by DRP – Not within the sanctity of law – Order was quashed. [S.143(3), 153, 153B]**
The Assessment order is quashed and declared that it has no sanctity of law, as the assessment order was passed by the AO without following the directions issued by the DRP, thereby deliberately defying provisions of section 144C. Order was quashed as null and void. (AY. 2012-13)
Basware Corporation India v. DCIT (2020) 194 DTR 75 / 207 TTJ 115 (Chd.)(HC)

1657 **S. 144C : Reference to dispute resolution panel – Time barred objections – DRP rejected the application as time barred – Assessing Officer is required to complete the assessment with one month from end of month in which period of filing of objections under sub-section (2) expires – Assessment order is barred by limitation [S. 92CA, 144C(2), 144C(3), 144C(13)]**
Assessee filed the return showing certain international transactions. Pursuant to order passed by TPO, AO passed a draft order determining total income by making an addition on account of 'Income from fees for technical services. The assessee filed the objection belatedly before DRP. DRP dismissed assessee's objection in limine as time barred. AO passed final assessment order onn the same amount as was determined in draft order. On appeal the Tribunal held that if an assessee accepts variation as per draft order, then there is no need to sail through DRP or appellate route. AO, in terms of section 144C(4)

(a), will be required to complete assessment on the basis of the draft order within a period of one month from end of month in which acceptance is received. Clause (b) of section 144C(3) deals with a situation of completing assessment on basis of the draft order in a case in which no objections are received within period specified in sub-section (2). In latter situation, clause (b) of section 144C(4) provides that AO will pass assessment order within one month from end of month in which the period of filing objections under sub-section (2), expires. It means that if an assessee does not file objections against draft order before DRP within a period of thirty days as per sub-section (2), AO, without waiting for anything else, will have to complete assessment within one month from end of month in which period of filing of objections under sub-section (2) expires. DRP dismissed objections of assessee in limine by opining that assessee could not have filed objections outside time limit provided under sub-section (2) of section 144C. Net effect of order of DRP is that objections filed by assessee were time barred and hence no cognizance could have been taken of them. Once objections filed by assessee are time barred, natural corollary is that no valid objections were filed by assessee. One cannot contemplate a situation where objections are invalid for DRP so as not to issue any direction u/s 144C(5) and valid for AO so as to pass order u/s 144C(13). If objections are invalid as time barred having not been filed within time prescribed under sub-section (2) of section 144C, AO will have to act in terms of Section 144C(3)(b) and complete assessment within time prescribed u/s 144C(4)(b) namely, within one month from end of month in which period of filing of objections under sub-section (2) expires. Period of 30 days for filing objections within sub-section (2) of section 144C expired on 23.01.201. Going by mandate of subsection (3) of section 144C(3)/144C(4), AO was supposed to complete assessment on basis of draft order by February, 2019-As against this, AO actually completed assessment u/s. 144C(13) on 24.10.2019. Such a completion of assessment not only under wrong provision but also beyond limitation period is ultra vires and hence cannot stand-Assessment order is time barred and consequently null and void, with effect that returned income will automatically get accepted as finally assessed income. Assessee's appeal allowed. (AY. 2015-16)

TDK Electronics AG (Formerly known as EPCOS AG) v. ACIT (2020) 188 DTR 328 / 204 TTJ 273 (Pune)(Trib.)

S. 144C : Reference to dispute resolution panel – Draft order was not signed and stamped by the Assessing Officer – Order is not invalid. [S. 143(3), 292B] 1658

Tribunal held that though the draft assessment order was not signed, when the final assessment order was signed the order is not bad in law. (AY. 2014-15)

Reuters Transaction Services Ltd. v. Dy. CIT (2020) 187 DTR 268 / 204 TTJ 624 (Mum.)(Trib.)

S. 144C : Reference to dispute resolution panel – In respect of period prior to 1-4-2020 cases in which no variations in returned income or loss were proposed, draft assessment orders were not required to be issued. [S. 92C] 1659

Finance Bill, 2020 which proposes to make issuance of draft assessment orders in case of eligible assessees mandatory even when there is no variation in income or loss returned by assessee, is applicable with effect from 1-4-2020, therefore, so far as period prior to 1-4-2020 is concerned, cases in which no variations in returned income or loss

were proposed, draft assessment orders were not required to be issued. (AY. 2014-15)
IPF India Property Cyprus (No. 1) Ltd. v. DCIT (2020) 183 ITD 46 / 193 DTR 337 / 207 TTJ 449 (Mum.)(Trib.)

1660 **S. 144C : Reference to dispute resolution panel – Non-speaking order – Matter remanded. [S. 92C]**
Tribunal has remanded the matter to DRP as the order was non-speaking. (AY. 2011-12)
Delphi Connection Systems India (P.) Ltd. v. ACIT (2020) 182 ITD 382 (Cochin)(Trib.)

1661 **S. 144C : Reference to dispute resolution panel – Order passed without following the directions issued by Dispute Resolution Panel is null and void. [S. 144C(10)]**
Tribunal held that the final order passed by the Assessing Officer without following directions of DRP, thus, deliberately chose not to follow a binding provision under section 144C, assessment order itself became null and void and hence was to be quashed. (AY. 2009-10)
Global One India (P.) Ltd. v. DCIT (2019) 76 ITR 63 (SN) / (2020) 182 ITD 355 (Delhi)(Trib.)

1662 **S. 144C : Reference to dispute resolution panel – Speaking order – Functionally different – Remanded to DRP to pass speaking order. [S. 92C]**
Tribunal held that it was incumbent upon DRP to consider objections raised by assessee and then decide the same. Accordingly the order was to be set aside and, matter was to be remanded back to DRP with a direction to consider whether concerns finally selected by TPO were functionally comparable or not. (AY. 2011-12)
Rio Tinto India (P.) Ltd. v. DCIT (2020) 182 ITD 389 (Delhi) (Trib.)

1663 **S. 144C : Reference to dispute resolution panel – Section 144C inserted by the Finance (No.2) Act, 2009 with retrospective effect from 1st April, 2009 is prospective in nature and would not apply to AY. 2009-10 or earlier assessment years – Order passed is beyond limitation hence null and void. [S. 143(3), 153(1)]**
Allowing the appeal of the assessee the Tribunal held that the provisions of section 144C would not apply in the impugned assessment year and hence the time period for passing the assessment order would not get enlarged. The Assessing Officer under obligation to pass the assessment order within the time specified under the third proviso to section 153(1).i.e. on or before 31 st March, 2013. Since the order has been passed beyond the period of limitation, the same is null and void, accordingly the assessment order is quashed. (ITA No. 1949/Mum/ 2015 dt 30-9-2020). (AY. 2009-10)
Truetzschler India Ltd. v. DCIT (2020) BCAJ-November-P 55 (Mum.)(Trib.)

1664 **S. 144C : Reference to dispute resolution panel – Draft assessment order – Proceedings concluded – Assessing Officer quantifying taxable income and determining tax payable and issuing and serving demand notice – Subsequent proceedings and orders non est – Subsequent participation would not debar assessee to raise validity before appellate authority.**
Tribunal held that on December 27, 2018, the Assessing Officer had quantified the taxable income and determined tax payable and had issued and served the demand

notice. This action of the Assessing Officer had brought the proceedings to an end and the proceedings initiated under section 144C of the Income-tax Act, 1961 stood concluded. There is no provision in the Act for a proposed draft notice of demand and secondly, whether the demand had been entered in the demand and collection register or the order uploaded in the Department was an internal matter of the Department and could not be taken into consideration to decide whether the demand notice issued along with the order dated December 27, 2018 completed the proceedings. The Assessing Officer had bypassed sub-sections (3) and (13) of section 144C. The proceedings culminated on December 27, 2018 when the demand notice was issued and served upon the assessee along with the penalty notice under section 274 and, therefore, all the subsequent proceedings and orders become non est.(AY.2015-16)
Perfetti Van Melle (India) Pvt. Ltd. v. ACIT (2020) 81 ITR 79 (SN) (Delhi)(Trib.)

S. 144C : Reference to dispute resolution panel – Draft Assessment Order – Order in name of non-existing person – Not valid – Mistake neither procedural irregularity nor rectifiable. [S. 292B] 1665
Allowing the appeal the Tribunal held that issuance of a valid draft order was the sine qua non for S. 144C of the Act to apply. The passing of a draft assessment order is a jurisdictional requirement and if the Assessing Officer passes such an order in the name of a non-existing person, there can never be a valid draft order in the eyes of law, and the entire proceeding inherently would be without jurisdiction. The draft assessment order has legal connotations as it lays the foundation for any prospective reduction in the income of the assessee or creates a tax liability over and above the returned income. Thus, it is not merely a procedural step in the assessment proceedings. A draft assessment order in the name of an eligible assessee provides the requisite jurisdiction to the Assessing Officer under section 144C(1). If there is a mistake while complying with such a jurisdictional requirement, the mistake cannot be termed a procedural irregularity or mistake rectifiable under S. 292B. Followed Fedex Express Transportation and Supply Chain Services (India) (P.) Ltd. v. Dy. CIT (IT A. No. 857/Mum/2016 dt. 11-7-2019). (AY.2015-16)
Boeing India Pvt. Ltd. v. ACIT (2020) 81 ITR 94 (SN) (Delhi)(Trib.)

S. 144C : Reference to dispute resolution panel – Non-resident – Shipping business – Order under section 172(4) without passing draft assessment order – Matter remanded – DTAA-India-Singapore. [S. 9(1)(1), 172(4), Art. 24] 1666
Assessee company incorporated in Singapore was engaged in business of ship owning and borrowing, charting and related business. Assessee had appointed one ISSPL in India to render port agent services required at ports in India for certain vessels on assessee's behalf-Agent in India of assessee had filed vessel voyages return. Assessing Officer held that freight receipts of assessee were taxable in India and passed an order under section 172(4) accordingly. On appeal the assessee contended that passing of final assessment order under section 172(4) without first issuing a draft of proposed order was not in accordance with express provisions of law contained in section 144C, thus, assessment made in case of assessee was bad in law. The Tribunal held that Assessing Officer ought to have first forwarded a draft assessment order under section 172(2)

before passing final assessment order under section 172(4). Therefore, matter was to be remanded back to file of Assessing Officer for framing fresh assessment order under section 172(4) after following path envisaged in section 144C of the Act. (AY. 2017-18)
ISS Shipping India (P) Ltd. v. Dy.CIT (2020) 181 ITD 616 (Rajkot)(Trib.)

1667 **S. 145 : Method of accounting – Set aside order by Appellate Tribunal – Fresh order passed by the Assessing Officer – Order of Tribunal is affirmed. [S. 254(1)]**
Dismissing the appeal of the assessee, the Court held that on merits as the fresh assessment/remand order has been passed in terms of the order of Income Tax Appellate Tribunal in which the appellant had opportunity to participate in the proceedings and put his case before the Assessing Officer. Accordingly the appeal was dismissed.
Madhur Vegoils (P.) Ltd. v. ITO (2020) 113 taxmann.com 248 (Raj.)(HC)
Editorial : SLP of assessee is dismissed, Madhur Vegoils (P.) Ltd v. ITO (2020) 269 Taxman 102 (SC)

1668 **S. 145 : Method of accounting – Valuation of shares – No substantial question of law. [S. 260A]**
Dismissing the appeal of the revenue the Court held that the valuation of shares accepted by the Tribunal being possible view, the order of Tribunal is affirmed.
PCIT v. Microfilm Capital (P.) Ltd (2020) 113 taxmann.com 88 (Cal.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Microfilm Capital (P.) Ltd. (2020) 269 Taxman 1 (SC)

1669 **S. 145 : Method of accounting – Change in revenue recognition method – Held to be justified.**
Dismissing the appeal of the revenue the court held that as thee departmental authorities failed to prove that changed method was not correct and it distorted profits of relevant year, new method of accounting could not be rejected. (AY. 2003-04)
CIT v. NCR Corporation (P.) Ltd. (2020) 274 Taxman 139 / 193 DTR 66 (Karn.)(HC)

1670 **S. 145 : Method of accounting – Real estate developer – Percentage completion method – ICAI guidance note of AS-7 – Project completion method is accepted – Order of Appellate Tribunal is affirmed.**
Assessee real estate developer adopted project completion method of accounting. Assessing Officer held that as per provisions of accounting standard AS-7, assessee was required to mandatorily follow 'percentage completion method' and, accordingly, made addition to income of assessee. Tribunal held that revenue had accepted project completion method of accounting adopted by assessee during previous years,further, in light of guidance note of AS-7 as applicable to real estate developers, assessee had itself changed method of accounting from project completion method to percentage completion method for subsequent years and effect of such change was revenue neutral for assessment year in question. Accordingly on facts, project completion method of accounting adopted by assessee during year was to be accepted and impugned addition was to be deleted. High Court affirmed the order of the tribunal. (AY. 2005-06)
CIT v. Prestige Estate Projects (P) Ltd. (2020) 274 Taxman 6 (Karn.)(HC)

S. 145 : Method of accounting – Change in method of accounting – Proportionate completion method – Burden is on revenue to prove that change was with intent to defraud revenue – Insurance business – Third party administration services – Not insurance business. [Insurance Act, 1938, 2(9)] 1671

Dismissing the appeal of the revenue the Court held that the assessee was involved in the execution of more than one act, i.e., rendering service in the entire year, and therefore, it adopted the proportionate completion method. The revenue from service transactions usually recognised as the service was performed either by proportionate completion method or completed service contract method. The Revenue had not proved that due to the change in method the profits had been distorted. Besides that, the Revenue had accepted the change in the method of accounting in subsequent assessment years, viz., 2010-11, 2011-12 and 2012-13. Therefore there was no justification on the part of the Assessing Officer to change the method adopted by the assessee. Court also held that the activities of the assessee did not fall under the business of insurance. (AY.2009-10)

CIT v. Medi Assist (India) TPA Pvt. Ltd. (2020) 429 ITR 586 (2021) 198 DTR 186 / 320 CTR 868 (Karn.)(HC)

S. 145 : Method of accounting – Valuation of closing stock – Undervaluation – Deletion of addition is held to be justified. 1672

Dismissing the appeal of the revenue the Court held the department cannot accept rendering of service as genuine and transaction on such basis and also contend that closing stock was undervalued. Deletion of addition is held to be justified. (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 145 : Method of accounting – Mercantile system of accounting – Accrual of income – Retention money on contract – Cannot be included income. [S. 4, 5] 1673

Dismissing the appeal of the revenue the Court held that the retention money on contract could not be included in the assessee's income. (AY. 2009-10)

CIT v. Voltech Projects Pvt. Ltd. (2020) 428 ITR 270 (Mad.)(HC)

S. 145 : Method of accounting – On money – Project competition method – unaccounted cash receipts as found recorded in the seized documents. The Assessee followed project completion method of accounting and offered it to tax in the year of completion of project. [S. 4, 5] 1674

In course of search, note book and lose paper were found and seized. The assessee did not offer the unaccounted cash receipts as found recorded in the seized documents. The Assessee followed project completion method of accounting and offered it to tax in the year of completion of project. The Tribunal held that the receipts in question cannot be brought to tax in A.Y. 2003-04. These receipts have already been accounted for in the books of account can be taxed only in the year in which project is complete and income from the project is offered for tax. Order of the Tribunal is up held by the High Court.

(ITA No.5121-23/Mum/08 dt. 28 4-2009 9 (Mum.) (Trib) (AY 2003-04 to 2005-06) (ITA No 4104 of 2009 dt 22-11-2020)
CIT v. Jalaram Jagruti Development Pvt. Ltd. (Bom.)(HC) (UR) www.itatonline.org

1675 **S. 145 : Method of accounting – Completed contract method – Consistently followed and accepted by revenue – Method cannot be rejected.**
Dismissing the appeal of the revenue the Court held that the assessee was following the mercantile system of accounting and in accordance with the notes to the accounts, the assessee was following completed contract method of accounting for contracts. The method of assessment had been accepted by the Department in the past and therefore, in view of the law laid down by the Supreme Court in *CIT v. Bilahari Investments Pvt. Ltd (2008) 299 ITR 1 (SC)* the Commissioner (Appeals) and the Tribunal had rightly held that there was no justification on the part of the Assessing Officer to change the earlier method adopted by the assessee and to determine the income on estimate basis. (AY.1997-98)
CIT v. Banjara Developers and Constructions Pvt. Ltd. (2020) 425 ITR 673 / 272 Taxman 438 (Karn.)(HC)

1676 **S. 145 : Method of valuation – Stock-in-Trade – Valuation – Encroached and litigated land – Cannot be valued at nil value – Remitting the matter to the Assessing Officer is held to be proper.**
Dismissing the appeal the Court held that the land in litigation or encroachment which was still shown as part of the closing stock of the assessee could not be valued at nil. The value of the land had to be determined on the basis of the actual status of the land in each case and not be applying a standard parameter for each and every case of encroachment and litigation. The Tribunal on consideration of its decisions in the assessee's own cases had remitted the issue to the Assessing Officer for fresh adjudication after conducting a proper verification and enquiry on production of all the relevant facts in respect of each and every piece of land under litigation and encroachment so as to reveal the actual status of the land for the purpose of determination of value. For the subsequent assessment years from 2007-08 to 2012-13 also the Tribunal had restored the matter to the Assessing Officer for deciding the issue and the assessee had not appealed against those orders before this court or the Supreme Court. Order of Tribunal is affirmed.(AY.2006-07)
Rajasthan State Industrial Development And Investment Corporation Ltd. v. ACIT (2020) 423 ITR 625 (Raj.)(HC)

1677 **S. 145 : Method of Accounting – Business of giving vehicles on hire purchase basis – Changing method of accounting to sum of digits but submitting returns on EMI basis – Method is held to be proper.**
Dismissing the appeal of the revenue the Court held that the sum of digits method even though adopted by the assessee in its books of account on the basis of guidelines issued by the Institute of Chartered Accountants of India, was not adopted in the returns of income filed by it which consistently adopted the equated monthly instalment method for taxability of interest income all these years. Since, for the previous assessment

years, the court had already approved such bifurcation of income and had held that interest income (finance charges) would be taxable in the hands of the assessee on the consistently adopted basis of equated monthly instalments, the mere change of accounting method in its books of account on the basis of the sum of digits did not alter the position in the tax in the hands of the assessee.(AY.1995-96, 1996-97)
CIT v. Ashok Leyland Finance Ltd. (2020) 423 ITR 394 (Mad.)(HC)

S. 145 : Method of accounting – Rejection of books of account – Remand order of Tribunal is up held by the High Court. [S. 144, 254(1)] 1678
AO rejected assessee's books of account and made huge trading additions. Assessee filed appeal contending that since no defect had been pointed out in opening stock, purchases, sales and closing stock registers, AO could not reject books of account. Tribunal remanded matter back to AO for disposal afresh. Order of tribunal is affirmed by the High Court.
Madhur Vegoils (P.) Ltd. v. ITO (2020) 113 taxmann.com 248 / 269 Taxman 103 (Raj.)(HC)
Editorial : SLP of assessee is dismissed; Madhur Vegoils (P.) Ltd. v. ITO (2020) 269 Taxman 102 (SC)

S. 145 : Method of accounting – Valuation of shares – No question of law. [S. 260A] 1679
Tribunal held that the assessee had followed an accepted method of valuation of shares and, thus, addition made by AO is held to be not justified. High Court up held the order of the Tribunal.
PCIT v. Microfilm Capital (P.) Ltd. (2020) 113 taxmann.com 88 / 269 Taxman 2 (Cal.)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Microfilm Capital (P.) Ltd. (2020) 269 Taxman 1 (SC)

S. 145 : Method of accounting – Accommodation entries – Estimate of commission – Rejection of accounts and estimate of income – Discretion must be exercised in a judicious manner – Tribunal is not justified in confirming the addition. [S. 144, 145(3)] 1680
The AO estimated 10 per cent commission for providing accommodation entries to the tune of Rs. 12,00,02,100. The CIT(A) took the view that the estimation of commission at 10 per cent by the Assessing Officer is one-third of the benefit, which could be termed as excessive and not a reasonable estimate. The CIT(A) without there being anything on record, thought it fit to take the view that the estimate by the assessee at 3 per cent translated to 1 per cent of the benefit derived, which could be termed too low, and in such circumstances, estimated it at 2 per cent, which would translate to about 6.7 per cent of the benefit alleged to have been derived by PACL India Ltd. Tribunal confirmed the addition. On appeal the High Court held that this was nothing but pure guesswork without there being any material or basis for arriving at the same. The Tribunal was not right in law in confirming the addition. (AY. 2011-12)
Rameshchandra Rangildas Mehta, Prop. of M/s. Sunit Trading Company v. ITO (2020) 421 ITR 109 (Guj.)(HC)

1681 **S.145 : Method of accounting – Books of Accounts – Change in accounting policy – Provision for such liabilities that cannot be determined with certainty is to be determined based on best estimate.**

Where the liability for expenditure incurred during the year cannot be determined with certainty, it was held that as per the provisions of AS-1, the assessee is entitled to make an appropriate provision for the liability on the basis of best estimate made with the information available. (AY. 2008-09)

Dy. CIT v. AGC Net Work Ltd. (2020) 192 DTR 273 / 204 TTJ 850 (Mum.) (Trib.)

1682 **S.145 : Method of accounting – Survey – Valuation – No difference in physical inventory and inventory as per books – Difference in value of stock is not to be added to income. [S. 133A]**

Where there was practically no difference in physical inventory taken by survey team vis-a-vis inventory as per Books of Account, impugned addition made on account of difference in value of stock was to be deleted (AY. 2013-14)

Stone Age P. Ltd v. Dy. CIT (2019) 72 ITR 117 / (2020) 195 DTR 1 / 208 TTJ 115 (Jaipur) (Trib.)

1683 **S. 145 : Method of accounting – Non maintenance of stock register can be the ground to reject the books of account. [S. 145(3)]**

Dismissing the appeal of the revenue the Tribunal held that the books of account could not be rejected as the assessee's explanation was not controverted by the Assessing Officer, who failed to point out any specific defect in the audited financial statements of the assessee. As a result, the books of account of the assessee were not liable to be rejected under section 145(3) of the Act, and the book profits of the assessee ought be accepted. (AY.2008-09)

ITO v. Rajkalp Mudraalaya Pvt. Ltd. (2020) 84 ITR 4 (SN.)(Ahd.)(Trib.)

1684 **S. 145 : Method of accounting – Valuation of stock – Bank – Premium paid at time of purchase of securities – Valuation of securities held to maturity category at cost – Followed consistently – Addition is held to be not justified – Loss on shifting of securities from held for trading and available for sale categories to held to maturity category – allowable as business loss. [S. 28(i)]**

The assessee-bank claimed loss of Rs. 212.47 crores on account of amortisation of premium paid at the time of purchase of securities held under the held to maturity category. The Assessing Officer held that the securities were not held till maturity but were disposed of by the assessee before the period of maturity without strict compliance with the Reserve Bank of India guidelines. Further, the assessee had claimed the held to maturity securities to be stock-in-trade for the purpose of Income-tax. Since the assessee was selling the securities before maturity at will, the loss on account of amortisation of the premium could not be treated as provision for an ascertained liability. Thus, the losses claimed by the assessee on this account were notional in nature and not an allowable expenditure. CIT(A) deleted the addition. Tribunal affirmed the order of the CIT(A) under the Income-tax Act, 1961. Accordingly, he disallowed the amortisation claimed. However, the Commissioner (Appeals) had deleted the addition. On appeal Tribunal affirmed the order of the CIT(A). (AY. 2013-14)

Dy.CIT v. Punjab National Bank (2020) 82 ITR 95 (Delhi)(Trib.)

S. 145 : Method of accounting – Rejection of books of account without providing an opportunity is held to be not valid – Cash credits – Rejection of documents without any reason is held to be not justified – Matter remanded. [S. 68] 1685

Tribunal held that the Assessing Officer could not have rejected books of account of assessee and estimated gross profit at rate of 12 per cent of total sales turnover as against rate of 8.36 per cent without providing assessee an opportunity to present his claim. Matter remanded. Similarly when conformation of loan transaction was filed, rejection of claim without considering these documents was not justified. Matter remanded. (AY. 2005-06)

Ramanlal K. Darji v. ITO (2020) 184 ITD 408 (Mum.)(Trib.)

S. 145 : Method of accounting – Rehabilitation and implementation of water supply – Percentage of contract method adopted by the assessee is held to be justified. 1686

Assessee was offered a construction contract pertaining to rehabilitation and implementation of water supply which consisted of three phases, namely, Study Phase, Rehabilitation Phase and Operation and Maintenance (O&M) Phase for a period of five years. AO alleged short recognition of contract revenue and observed that entire contract value including revenue from (O&M) phase had to be considered while calculating percentage of completion method on ground that it was a composite contract and third phase could not be considered separately. Tribunal held that the assessee had raised separate invoices for O&M phase on a regular basis and same had been duly accounted in years in which it was received-Whether since O&M phase could not be a part of construction activity as O&M phase involved supply of water to residence giving connections and monitoring connections which was clearly a post construction activity, amount allotted for O&M phase could not be included in determining percentage of completion method in determination of profit out of construction activities. (AY. 2010-11)

Veolia India (P.) Ltd. v. DCIT (2020) 184 ITD 528 (Delhi)(Trib.)

S. 145 : Method of accounting – Dealing in a large number of small items – Non-maintenance of stock register could not be basis for rejection of books of account – Applying Gross Profit Rate of year is not correct method of valuation of stock which ideally should be valued at cost or market price. 1687

Tribunal held that assessee was dealing in a large number of small items and it was consistently following method of determining stock at end of year by physically verifying same, in view of fact that all purchase and sale vouchers and other records had been found to be in order, mere fact of non-maintenance of stock register could not be basis for rejection of books of account. Tribunal also held that applying Gross Profit Rate of year is not correct method of valuation of stock which ideally should be valued at cost or market price; for adopting an incorrect method of valuation, books of account could not be rejected. (AY. 2013-14)

Paramount Impex. v. ACIT (2020) 183 ITD 556 / 207 TTJ 41 (UO) (Chd.)(Trib.)

1688 **S. 145 : Method of accounting – Project Completion method – Shifting gross sales receipts to previous year in which sale deeds executed without shifting expenditure incurred in connection therewith – Violation of Accounting Standard 1 – Receipts rightly taxed by Commissioner (Appeals) in later years – No contravention of Rule 46A. [S. 145(2)]**

Dismissing the appeal the Tribunal held that, The Commissioner (Appeals) was right in holding that under the Maharashtra Ownership of Flats Act, 1963 until possession was handed over to the purchaser, there always existed a situation that the builder/ developer might become liable for refund of the amount received from the purchaser and that the effective risk of the builder was transferred only when possession was handed over to the purchaser. And the shifting of the gross sale receipts recognized by the assessee in the financial years 2011-12 and 2012-13 to financial year 2010-11 by the Assessing Officer without shifting the expenditure incurred in connection therewith was a violation of Accounting Standard 1 notified under section 145(2) of the I Act. Tribunal also held that there was no contravention of rule 46A of the Income-tax Rules, 1962 by the Commissioner (Appeals) in deleting the amount of Rs. 29,23,305 added by the Assessing Officer on the ground that in the advance columns in the audited accounts the amount of cancellation of gala did not figure, since the Commissioner (Appeals) had arrived at a definite finding that the amount had been repaid to the parties and tax had also been deducted on the compensation/premium paid on cancellation after examining the balance sheet of the assessee as on March 31, 2010 (earlier year), ledger accounts and certificates of tax deduction at source. (AY.2011-12)

ACIT v. Parmar Build Tech (2020) 83 ITR 86 (SN) (Mum.)(Trib.)

1689 **S. 145 : Method of accounting – Accrual of income – Interest – Non-performing assets – Deletion of addition is held to be justified. [S. 4, 5]**

Dismissing the appeal of the revenue the Tribunal held that the issue relating to addition of interest income accrued on non-performing assets was considered by the Tribunal in the assessee's own case for the assessment years 2009-10 and 2010-11 and decided in favour of the assessee following a binding decision of the Karnataka High Court. As a result, there was no infirmity in the Commissioner (Appeals) order. Followed, *CIT v. Siddeshwar (2016) 388 ITR 588 (Karn.) (HC) and CIT v. Canfin Homes Ltd [2012) 347 ITR 382 (Karn.) (HC).* (AY.2012-13)

Chitradurga District Co-Op. Central Bank Ltd. v. Dy.CIT (2020) 83 ITR 81 (SN) (Bang.) (Trib.)

1690 **S. 145 : Method of accounting – Books of account cannot be rejected merely for non – Maintenance of stock register. [S. 145(3)]**

The AO rejected the books of account of assessee and estimated the gross profit at 18%. On appeal the CIT(A) reduced the GP from 18% to 16%. On appeal the Tribunal held that the assessee is dealing with large number of small items. It was not possible to for it to maintain stock register and movement of stock for each and every item. The assessee verifies its stock physically at the end of the year regularly and thus all wastages,pilferages and other losses automatically get accounted for determining the true profits. All purchases and sales vouchers and other records maintained by the assessee were found to be in order. Accordingly the Tribunal held that the Books of account

cannot be rejected merely for non-maintenance of stock register. (ITA No. 1097/Chd /2016 dt 30-6-2020). (AY. 2013-14)
Paramount Impex v. ACIT (2020) 117 taxmann.com 802 (Chd.)(Trib.)

S. 145 : Method of accounting – Fall in net profit rate – No specific defects pointed out in the books of account – Remand report – Addition of higher rate of profit is held to be not justified. 1691
The Tribunal held that the Assessing Officer had not brought any material on record to link the surrender to any other income earned by the assessee. Therefore, there was no infirmity in the order of the Commissioner (Appeals) in deciding this issue in favour of the assessee. (AY. 2012-13)
Dy.CIT v. Varun Beverages Ltd. (2020) 79 ITR 133 (Delhi)(Trib.)

S. 145 : Method of accounting – Fall in gross profit – Books of account not rejected – Ad hoc addition is not justified. 1692
Tribunal held that the assessee had declared gross profit at 10.34 per cent and 8.61 per cent for the assessment years 2014-15 and 2013-14 whereas for the current year it had declared only 6.12 per cent. There was no finding by the Assessing Officer against the books of account and stock register and even the books of account had not been rejected by the authorities. Therefore, when the books of account and stock register were filed and the books of account were audited in the absence of any objection regarding the books of account and stock register, there was no substance in estimating the gross profit, by comparison to the assessment years 2014-15 and 2013-14. Therefore the Commissioner (Appeals) was not justified in confirming the ad hoc addition to an extent of Rs. 3,50,000 in the facts and circumstances of the case. (AY.2015-16)
R. K. Agro Products v. ACIT (2020) 81 ITR 50 (SN) (Pune)(Trib.)

S. 145 : Method of accounting – Bogus purchases – Estimation of Income – Addition Equivalent to Gross profit rate of 0.18 Per Cent on declared turnover upheld. [S. 37(1), 144, 145(3)] 1693
Tribunal held that once books of account rejected the Assessing Officer required to estimate income of assessee on reasonable and proper basis. Past history can form basis for estimating current year's gross profit. Gross profit estimated at 10.22 Per Cent as against gross profit declared by assessee at 10.04 Per Cent. For the year under consideration,addition equivalent to gross profit rate of 0.18 Per Cent on declared turnover upheld. (AY.2009-10, 2012-13 to 2014-15)
Kedia Exports P. Ltd. v. ACIT (2020) 81 ITR 83 (SN) (Jaipur)(Trib.)

S. 145 : Method of accounting – Estimation of commission income at a higher rate merely on basis of presumption that assessee had shown a very small margin without any convincing evidence is not sustainable – Mismatch in figures between balance – sheet of assessee and balance-sheet of other parties – Difference cannot be assumed unexplained income. [S. 68, 145(3)] 1694
Dismissing the appeal of the revenue the Tribunal held that estimation of commission income at a higher rate merely on basis of presumption that assessee had shown a very

small margin without any convincing evidence is not sustainable. Tribunal also held that mismatch in figures between balance-sheet of assessee and balance-sheet of other parties difference cannot be assumed unexplained income. (AY.2013-14, 2014-15)
Dy. CIT v. Vasu Kalia (2020) 81 ITR 507 (Chd.)(Trib.)
Dy. CIT v. Balmukhi Textiles P. Ltd (2020) 81 ITR 507 (Chd.)(Trib.)
Dy. CIT v. Shiva Spinfab P. Ltd (2020) 81 ITR 507 (Chd.)(Trib.)
Dy. CIT v. Rajinder Kumar (2020) 81 ITR 507 (Chd.)(Trib.)

1695 **S. 145A : Method of accounting – Valuation – Excise duty – Excisable goods manufactured and lying in stock, excise duty element is not to be included in valuation of closing stock.**
Dismissing the appeal of the revenue the Court held that. assessee's liability to pay excise duty on goods manufactured arises only at time of removal of same from its premises, be it distillery, or a warehouse or any other place of storage and not at any time earlier and till date of clearance of goods, assessee cannot be said to have incurred excise duty liability. Accordingly in respect of excisable goods manufactured and lying in stock, excise duty element is not to be included in valuation of closing stock. (AY. 1999-2000)
CIT v. SPR Group Holdings P. Ltd. (2020) 275 Taxman 215 (Karn.)(HC)

1696 **S. 145A : Method of accounting – Valuation – Interest cost in valuation of inventory – No provision to include interest in cost of inventory.**
Assessee-company claimed deduction on account of interest on loan borrowed for business purpose. The AO made disallowance of said claim on ground that in valuation of inventory, assessee should have taken into consideration interest attributable to bringing inventory to its present location in accordance with Explanation to section 145A(A) of the Act. Tribunal held that since there is no such provision in section 145A to include interest cost in value of inventory addition was deleted. (AY. 2009-10)
Ramesh Exports (P.) Ltd. v. DCIT (2020) 185 ITD 551 (Bang.)(Trib.)

1697 **S. 145A : Method of accounting – Valuation – Changed method – No need to apply changed method to opening stock of finished goods at beginning of previous year – Accounting Standard 2.**
Tribunal held that, if the assessee had to change the method of valuing inventory in compliance with Accounting Standard 2 the changed method of valuation had to be applied to all the components of inventory as prescribed under Accounting Standard 2 and the assessee could not be allowed to pick and chose the of valuing inventory to apply a method to some components of inventory and leaving out other components of inventory. It will lose the character of a change of method and lack bona fides and genuineness warranting a change of method of valuation of inventory. The assessee was directed to give justification before the Assessing Officer for adopting different methods for valuing different components of inventory and to prove that these differential methods were consistent with Accounting Standard 2 and there was no intent to reduce tax by applying the new method of valuing finished goods. (AY. 2004-05)
ACIT v. Thiagarajar Mills Ltd. (2020) 78 ITR 8 (SN) / (2021) 186 ITD 279 (Chennai)(Trib.)

S. 145A : Method of accounting – Valuation – MODVAT credit does not have any impact on profit of assessee and, thus, unutilised MODVAT credit could not be added to value of closing stock. 1698

Tribunal held that the MODVAT credit does not have any impact on profit of assessee and, thus, unutilised MODVAT credit could not be added to value of closing stock. (AY. 2004-05)

Mahindra & Mahindra Ltd. v. DCIT (2020) 180 ITD 776 (Mum.)(Trib.)

S.145A : Method of accounting – Valuation of Work in Progress – Valuation was accepted in subsequent year – Addition was deleted. [S.145(2A)] 1699

Revenue had disputed the method of valuation and its cost components of work in progress for the relevant assessment year. It was noted that in subsequent years AO has accepted method of valuation as well as cost component included for inventory valuation. The addition made by AO in the relevant assessment year was deleted. (AY. 2010-11, 2011-12)

Dharampal Satyapal Ltd. v. Dy. CCIT (2020) 191 DTR 87 (Delhi)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Full & true disclosure of material facts, the assessee has the duty to disclose the primary facts, It is not required to disclose the secondary facts – If the AO intends to rely upon the second Proviso to s. 148 for the extended period of 16 years limitation, the same should be stated either in the notice or in the reasons in support of the notice – It cannot be done in the order rejecting the objections or at a later stage – Reassessment was quashed. [S. 69A, 148, 149, Art. 226] 1700

Court held that, (i) Merely because the original assessment is a detailed one, the powers of the AO to reopen u/s 147 is not affected, (ii) Information which comes to the notice of the AO during proceedings for subsequent AYs can definitely form tangible material to reopen the assessment, (iii) As regards "full & true disclosure of material facts", the assessee has the duty to disclose the "primary facts". It is not required to disclose the "secondary facts". The assessee is also not required to give any assistance to the AO by disclosure of other facts. It is for the AO to decide what inference should be drawn from the facts, (iv) If the AO intends to rely upon the second Proviso to s. 148 for the extended period of 16 years limitation, the same should be stated either in the notice or in the reasons in support of the notice. It cannot be done in the order rejecting the objections or at a later stage. (AY.2007-08, 2008-09)

New Delhi Television Ltd v. Dy.CIT (2020) 424 ITR 607 / 188 DTR 36 / 314 CTR 17 / 116 taxmann.com 151 / 271 Taxman 1 (SC)

Editorial : Order in New Delhi Television Ltd. v. Dy.CIT (2017) 84 taxmann.com 136/288 CTR 430 / (2018) 405 ITR 132/ (Delhi) (HC) is set aside.

S. 147 : Reassessment – With in four years – Change of opinion – Book profit – The reasons in support of the notice is the very issue in respect of which the AO had raised a query during the assessment proceedings – The non-rejection of the explanation in the Assessment Order amounts to the AO accepting the view of the assessee, thus taking a view/forming an opinion – Reassessment on a mere change of opinion and would be completely without jurisdiction. [S. 115JB, 148, Companies Act, 1956, S. 211(6)] 1701

The ssessee claimed deduction of depreciation on account of amortization of brand value which was disclosed in notes to balance sheet and profit and loss account. Specific query

was raised in the course of assessment proceedings as regards allowability of depreciation. After considering the reply the assessment was completed u/s143(3) of the Act. Reassessment notice was issued on ground that there was no provision for granting deduction for amortization which was not charged in profit and loss account on notional basis; therefore, notional amount of depreciation was to be added back and since same was not done hence income chargeable to tax had escaped assessment. On writ the High Court held that reason in support of reassessment notice was very issue in respect of which Assessing Officer had raised query during assessment proceedings and assessee responded to same justifying its stand hence the reassessment was held to be not valid. On appeal by the revenue dismissing the appeal of the revenue the Court held that, the reasons in support of the notice is the very issue in respect of which the AO had raised a query during the assessment proceedings and the Petitioner had responded justifying its stand. The non-rejection of the explanation in the Assessment Order amounts to the AO accepting the view of the assessee, thus taking a view/forming an opinion. In these circumstances, the reasons in support of the notice proceed on a mere change of opinion and would be completely without jurisdiction. Order of High Court is affirmed. (AY.2014-15)

ACIT v. Marico Ltd. (2020) 272 Taxman 179 / 192 DTR 109 / 315 CTR 159 (SC)

Editorial : Marico Ltd. v. ACIT (Bom.) (HC) is affirmed (WP No 1917 of 2019 21-08-2019)

1702 **S. 147 : Reassessment – Anonymous donations – Appeal pending on similar issue in another issue – Notice not to be quashed – Order of High Court remanding the matter was affirmed. [S. 115BBC, 148]**

Disposing the appeal the Court held that,the Assessing Officer shall complete the assessment for Assessment Year 2013-14 pursuant to the notice for reassessment which has been issued on 23 March 2018, in accordance with law. The issue as to whether the notice under section 148 for reopening the assessment for Assessment Year 2013-14 is valid is kept open to be urged in appropriate proceedings after the assessment order is passed. Upon the passing of the order of assessment for Assessment Year 2013-14 and in order to enable the assessee to pursue its remedies before the Commissioner of Income Tax (Appeals) there shall be an interim protection in terms of the order that was passed by the Division Bench of the Bombay High Court in Saibaba Sansthan Trust. Both the appeals for the Assessment Years 2013-14 and 2015-16 shall be heard together by the Commissioner of Income Tax (Appeals). The appellant shall be at liberty to pursue its remedies in accordance with law. (AY. 2013-14)

Shri Saibaba Sansthan Trust (Shirdi) v. UOI (2020) 114 taxmann.com 489 / 270 Taxman 197 / 316 CTR 587 (SC)

Editorial : Order of High Court is affirmed Shri Saibaba Sansthan Trust (Shirdi) v. UOI (2018) 100 taxmann.com 77 / 168 DTR 364 / 304 CTR 444 (Bom.)(HC)

1703 **S. 147 : Reassessment – After the expiry of four years – Housing project – No failure to disclose material facts – Reassessment is held to be not valid. [S. 80(IB)(10)(f), 148, Art. 226]**

Petitioner had submitted returns within prescribed period and assessment was completed u/ s. 143(3) of the Act. After prescribed period of 4 years, reassessment notice was

issued to petitioner on ground that there was non-compliance on part of petitioner with respect to provisions of section 80IB of the Act, insofar as disclosure of some of sales were concerned. The assessee challenged the reassessment proceedings by filing writ petition and contended that in course of assessment proceedings before Assessing Officer, it had itself submitted that a few flats might had been allotted to persons in violation of section 80IB(10)(f) of the Act. Allowing the petition the Court held that disclosures were made in relation to sale transactions and it was even suggested that some of sale transactions might not be compliant with provisions section 8IB(10)(f) and no details were submitted by revenue as to material which was allegedly not disclosed either truly and fully and, thus, they had failed to make out any case that there was no true and full disclosures by petitioner. Since revenue had failed to establish this pre-condition even prima facie, reassessment was unjustified. (AY. 2012-13)
Anand Developers v. ACIT (2020) 271 Taxman 44 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Share capital – Change of opinion – Existing share holders – Subject matter of regular assessment – Reassessment notice is held to be bad in law. [S. 68, 148, Art. 226] 1704
Assessment was completed under section 143(3). Assessing Officer issued notice under section 148 after 4 years from end of relevant assessment year on ground that income chargeable to tax had escaped assessment doubting genuineness of transaction of issue of shares by assessee-company to its existing shareholders. The assessee filed writ before High Court. Allowing the petition the Court held that since very issue on which Assessing Officer had made reasons to believe that income chargeable to tax had escaped assessment were subject matter of regular assessment proceedings under section 143(3), it was case of change of opinion by Assessing Officer, therefore, impugned notice was to be quashed. (AY. 2012-13)
Uni VTL Precision (P) Ltd. v. Dy.CIT (2020) 269 Taxman 278 (Bom.)(HC).

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Denial of exemption – Reassessment notice is held to be not valid. [S. 10(15)(iv)(c), 148, 154, Art. 226] 1705
Allowing the petition the Court held that when the assessee brought to the notice of the Assessing Officer the details and information furnished by it by letter dated August 22, 1992, the Assessing Officer rectified the assessment order by an order passed under section 154 wherein it was held that relevant details were filed by the assessee and after going through the documents, allowed exemption under section 10(15)(iv). Thus the condition precedent for reopening the concluded assessment of the assessee was absent in the present case. In such circumstances, issuance of the notice under section 148 of the Act was clearly without jurisdiction and was therefore illegal and invalid. (AY.1990-91)
State Bank of India v. Vineet Agrawal, ACIT (2020) 428 ITR 519 / 317 CTR 388 / 195 DTR 81 / (2021) 276 Taxman 229 (Bom.)(HC)

1706 **S. 147 : Reassessment – After the expiry of four years – Transfer of shares – Gift – No failure to disclose facts – Change of opinion – Reassessment notice is held to be not valid. [S. 45, 148]**

Allowing the petition the Court held that initially the contention of the assessee that such transfer of shares was a gift without consideration was accepted, subsequently the view was revised to treat the transfer of shares not as a gift and to tax the transaction on the market value of the shares. This was nothing but a change of opinion. It was quite apparent that the assessee had placed before the Assessing Officer during the assessment proceedings all the primary facts from which he made the inference. Now it was not open to the Assessing Officer to take a second view on the same set of facts treating the earlier view as erroneous. The notice of reassessment after four years was not valid. (AY.2012-13)

Asian Satellite Broadcast Pvt. Ltd. v. ITO (2020) 428 ITR 327 / 195 DTR 153 / (2021) 276 Taxman 316 / 318 CTR 305 (Bom.)(HC)

Note : Also digested at Page No. 548, Case No. 1707

1707 **S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts necessary for Assessment – Transfer of shares as gift – Change of opinion – Notice not valid. [S. 45, 47, 148]**

Court held that though the assessment order as such was silent on this aspect of gift of shares, the communications between the assessee and the Assessing Officer would clearly demonstrate that the assessee had disclosed all the primary facts regarding transfer of shares to E without any consideration and as a gift. In any case, it was a scrutiny assessment. It was clearly discernible that the basis for reopening the assessment were two letters of the Departmental authorities. While initially the contention of the assessee that such transfer of shares was a gift without consideration was accepted, subsequently the view was revised to treat the transfer of shares not as a gift and to tax the transaction on the market value of the shares. This was nothing but a change of opinion. Now it was not open to the Assessing Officer to take a second view on the same set of facts treating the earlier view as erroneous. The notice of reassessment after four years was not valid. (AY.2012-13)

Asian Satellite Broadcast Pvt. Ltd. v. ITO (2020) 428 ITR 327 / 195 DTR 153 (Bom.)(HC)

1708 **S. 147 : Reassessment – After the expiry of four years – Purchasing non-performing asset from Bank and receiving payment – Alleged bogus entry provider – Reasons neither supported by an affidavit or oral submission – Notice is held to be invalid. [S. 148]**

The assessee is engaged in the business of securitisation and asset reconstruction and acted as trustees for the non-performing financial assets acquired from various banks and financial institutions. The assessment order was passed u/s 143(3) of the Act. After a period of four years, the Assessing Officer issued a notice under section 148. He recorded reasons that he had received information from the Investigation Wing that SCS was a main person who was engaged in providing bogus accommodation entries through several companies controlled by him, that it was found that the assessee had entered into transactions with A, that the assessee had purchased non-performing

assets of A from a bank in the year 2009, that against this A had paid a sum of Rs. 2.70 crores to the assessee, that A was engaged in providing bogus accommodation entries at the instance of SCS and that on the basis of such information, the Assessing Officer was prima facie of the view that the assessee had dealings with A which inturn had indulged in dealing with various accommodation entries and therefore, income chargeable to tax of Rs. 2.70 crores had escaped assessment. The objections raised by the assessee were rejected. On a writ allowing the petition the Court held that the reasons recorded for reopening the assessment did not provide the live link to the formation of belief by the Assessing Officer that the assessee's income chargeable to tax had escaped assessment. The assessee having purchased the non-performing assets from the bank had received the payment of Rs. 2.70 crores from A. This had nothing to do with the alleged dubious dealings of A at the instance of SCS the bogus entry provider. The very formation of the belief by the Assessing Officer that income chargeable to tax in the hands of the assessee had escaped assessment lacked validity. (AY. 2011-12)
Asset Reconstruction Company India Pvt. Ltd. v. Dy.CIT (2020) 424 ITR 715 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Bogus capital gains – Penny stocks – Information was received from the Investigation Wing of the Income Tax Department – The assessee disclosed the primary facts to the AO & also explained the queries put by the AO – It cannot be said that the assessee did not disclose fully and truly all material facts necessary for the assessment – Reassessment is held to be not valid. [S. 45, 148] 1709

Allowing the petition the Court held that the Dept's argument that though the assessee disclosed details of the transactions pertaining to purchase and sale of shares, it did not disclose the real colour / true character of the transactions and, therefore, did not make a full and true disclosure of all material facts which was also overlooked by the AO, is not correct. The assessee disclosed the primary facts to the AO & also explained the queries put by the AO. It cannot be said that the assessee did not disclose fully and truly all material facts necessary for the assessment. Reassessment notice is held to be bad in law. (AY. 2012-13)
Gateway Leasing Pvt. Ltd v. ACIT (2020) 426 ITR 228 / 272 Taxman 255 / 194 DTR 57 / 317 CTR 9 / 272 Taxman 255 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Year of chargeability – Reassessment is held to be bad in law – No failure to disclose material facts. [S. 45(1), 45(2), 143(3), 143(1), 148, Art.226] 1710

The assessee filed the return of income showing the income from business and capital gains u/s 45(2) of the Income-tax Act. In the course of the assessment proceedings the petitioner furnished all the relevant details including the nature of the activities undertaken, details of the flats sold and the closing stock. The assessment was completed u/s 143(3) of the Act. The AO reopened the assessment on the ground that the closing stock should have been valued on the basis of market price, capital gain was valued at taking higher value as cost of acquisition. Allowing the petition the Court held that the Capital gains are chargeable to tax when individual flats are sold and not when the land is transferred to the co-operative society formed by the flat purchasers. The flat purchasers,

by purchasing the flats, had certainly acquired a right or interest in the proportionate share of the land but its realisation is deferred till formation of the co-operative society by the owners of the flats and eventual transfer of the entire property to the co-operative society. Accordingly considering an overall consideration of the entire matter, it is quite evident that there was no basis or justification for respondent to reopen the assessment. The reasons rendered could not have led to formation of any belief that income had escaped assessment within the meaning of the aforesaid provision. Accordingly the reassessment notices were quashed. Relied on *Chainrup Sampatram v. CIT (1953) 24 ITR 481 (SC)* for the proposition that it would be a misconception to think that any profit arose out of valuation of the closing stock. (AY. 1992-93, 1993-94, 1994-95, 1995-96)
J. S. & M. F. Builders v. A. K. Chauhan (2020) 426 ITR 460 / 315 CTR 473 / 272 Taxman 349 (Bom.)(HC)

1711 **S. 147 : Reassessment – After expiry of four years – A mere bald assertion by the AO that the assessee has not disclosed fully and truly all the material facts is not sufficient. The AO has to give details as to which fact or the material was not disclosed by the assessee, leading to its income escaping assessment. Otherwise, the reopening is not valid. [S. 80IB(10)(f), 148, Art. 226]**
Allowing the petition the court held that a mere bald assertion by the AO that the assessee has not disclosed fully and truly all the material facts is not sufficient. The AO has to give details as to which fact or the material was not disclosed by the assessee, leading to its income escaping assessment. Otherwise, the reopening is not valid. In order to sustain a notice seeking to reopen assessment beyond normal period of 4 years, it is necessary for revenue to establish, at least, prima facie that there was failure to disclose fully and truly all material facts necessary for assessment for that assessment year. (AY. 2012-13)
Anand Developers v. ACIT (2020) 425 ITR 261 / 116 taxmnn.com 361 / 194 DTR 73 (Bom.) (HC)

1712 **S. 147 : Reassessment – After the expiry of four years – Reopened on the ground that in another assessee where similar claim with the same housing project – No failure on the part of the assessee to disclose truly and fully all relevant facts – reassessment held to be invalid. [S. 80IB(10)]**
The AO has not linked any material in order to make this observation, he mainly relied on the findings of the AO of another Assessee same conclusion was reversed by the CIT(A) noting that in fact all along there was evidence suggesting that the commencement of construction of the housing project was some time in the year 2002. And the assessment of another assessee was set aside. Hence, there is no part of the to remain undisclosed by the assessee. Reassessment is invalid. (Arising out of 5584 of 2012 dt.15/07/2015)(ITA No.678 of 2016, dt.07/11/2018) (AY. 2004-05)
PCIT v. Vaman Estate (2020) 113 taxmann.com 405 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, due to low tax effect, (SLP No.22927/2019 dt.06/09/2019)(2019) 416 ITR 135(St.)(SC) (2020) 113 taxmann.com 406/269 Taxman 196 (SC)

S. 147 : Reassessment – After the expiry of four years – Housing projects – Completion certificate – No failure to disclose material facts – Reassessment notice is held to be bad in law. [S. 80(IB)(10), 148, Art. 226] 1713

Allowing the petition the Court held that, merely alleging that there is failure to disclose truly and fully all material facts necessary for assessment, would not satisfy the jurisdictional requirement unless the reasons indicate what material facts the Petitioner had failed to disclose fully and truly during the course of the regular assessment. Referred *Bombay Stock Exchange Ltd. v. Dy.CIT(E) (2014) 365 ITR 181 (Bom.) (HC)* wherein the Court observed that " In the present case, admittedly, there are no details given by the Assessing Officer (respondent no.1) as to which fact or material was not disclosed by the petitioner that led to its income escaping assessment. There is merely a bald assertion in the reasons that there was a failure on the part of the petitioner to disclose fully and truly all material facts without giving any details thereof. This being the case, the impugned notice is bad in law and on this ground alone the petitioner is entitled to succeed in this writ petition". (AY. 2012-13)

S. S. Landmarks v. ITO (2020) 185 DTR 149 / 312 CTR 402 / 274 Taxman 331 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Reasons recorded there was no reference to any new tangible material – Financial statement – Reassessment notice is quashed. [S. 44, 148, Art. 226] 1714

Assessee is engaged in business of life insurance, filed its return declaring taxable income in accordance with provisions of S. 44 of the Act. After expiry of four years from end of relevant year, AO sought to initiate reassessment proceedings. Objections to reassessment proceedings were rejected. On writ the Court held that in reasons recorded there was no reference to any new tangible material, but reference was only to financial statement of assessee itself. Accordingly since there was no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings on basis of mere change of opinion was not justified. (AY. 2012-13)

Bajaj Allianz Life Insurance Co. Ltd. v. DCIT (2020) 269 taxman 208 (Bom.)(HC)

Editorial: SLP of revenue dismissed, Dy.CIT v. Bajaj Allianz Life Insurance Co. Ltd (2021) 278 Taxman 104 (SC)

S. 147 : Reassessment – After the expiry of four years – Change of opinion – Interest income on fixed deposit assessed as business income – Re assessment on the ground that it has to be assessed as income from other sources. [S. 56,148, Art. 226] 1715

Assessee, in return of income claimed interest income earned on fixed deposit as part of its business income and AO disallowed same on ground that it did not carry out any business during year and passed assessment order under S. 143(3) on 30-3-2014 and subsequently AO issued reopening notice dated 26-3-2018 on ground that interest income was required to be taxed as income from other sources. On writ the Court held that notice was issued beyond period of four years from end of assessment year 2011-12 and there had been a complete disclosure of all material facts on part of assessee during regular assessment proceedings under S. 143(3), impugned notice was clearly hit by first proviso to section 147 and deserved to be set aside. (AY. 2011-12)

DCIT v. MSEB Holding Co. Ltd. (2019) 102 taxmann.com 288 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, since tax effect is less than Rs 2 Crore. DCIT v. MSEB Holding Co. Ltd. (2020) 269 Taxman 22 (SC)

1716 **S. 147 : Reassessment – After the expiry of four years – In absence of any failure on part of assessee to disclose fully and truly all material facts at time of assessment – Reassessment proceedings is held to be bad in law. [S. 80IA, 148]**

Dismissing the appeal of the revenue the Court held that notice to reopen assessment had been issued beyond four years from end of relevant assessment year and, there was no failure on part of assessee to disclose fully and truly all material facts at time of assessment. Accordingly the Tribunal rightly held that reassessment notice is issued due to change of opinion. Order of Tribunal is affirmed. (ITA No. 1357 of 2016, dt. 11-1-2019)

PCIT v. L&T Ltd. (2020) 113 taxmann.47 / 268 Taxman 391 (Bom.)(HC)

Editorial : SLP of revenue is dismissed ; PCIT v. L&T Ltd. (2020) 268 Taxman 390 (SC)

1717 **S. 147 : Reassessment – After the expiry of four years – Stock in trade – Debit of purchase of traded goods – In the original assessment proceedings profit and loss account was thoroughly scrutinised by the AO – No failure to disclose on part of assessee to produce all material particulars during original assessment proceedings – Notice for reassessment is held to be not valid. [S. 68, 148, Art.226]**

Allowing the petition the Court held that in the original assessment proceedings the AO has examined the profit and loss account thoroughly and thereafter passed the order. As there is no failure to disclose on part of assessee to produce all material particulars during original assessment proceedings-Notice for reassessment is held to be not valid. (AY. 2012-13)

Sutara Ventures (P) Ltd. v. UOI (2020) 268 Taxman 367 (Bom.)(HC)

1718 **S. 147 : Reassessment – After the expiry of four years – Information from DDIT (investigation) – Purchasing and selling of shares – Systematic evasion of taxes by clients by misuse of NMCE platform – Reassessment notice is held to be justified. [S. 4, 143(1), Art.226]**

Dismissing the petition the Court held that as per the information from DDIT (investigation) it was found that the assessee is purchasing and selling of shares in systematic evasion of taxes by clients by misuse of NMCE platform. Accordingly the issue of reassessment notice is held to be justified as the AO has formed a prima facie view that income chargeable to tax has escaped the assessment which was accepted u/s 143(1) of the Act. (AY. 2012-13)

Spicy Sangria Hotels (P.) Ltd. v. ITO (2020) 268 Taxman 360 / (2019) 111 taxmann.com 360 (Bom.)(HC)

1719 **S. 147 : Reassessment – After the expiry of four years – Block assessment – Addition deleted by CIT(A) – Notice to reassess the same is held to be not valid. [S. 132, 148, 158BC, Art. 226]**

In the year 2000, proceedings under S. 132 of the Act were undertaken and a search was conducted at the office and residential premises of the assessees. In pursuance of the search, a block assessment was carried out which resulted in the passing of order dated September 27, 2002 under S. 158BC of the Act. The assessees, appealed

against the order dated September 27, 2002 to the CIT(A), who, by order dated July 13, 2006, set aside the order dated September 27, 2002, thereby deleting the addition. On September 13, 2006, the Department appealed against the order dated July 13, 2006 to the Appellate Tribunal. On October 18, 2006, the Department issued notice invoking the provisions of S. 148 of the Act stating that this very income of Rs. 10.33 crores had escaped assessment and therefore reassessment or reopening of assessment was proposed for the assessment year 2002-03. On a writ petition challenging the notice, the Court held that since there was full disclosure and in fact, the amount had even become the subject matter of the assessment both under S. 158BC and S. 143(3) there could have been no reason to believe that the income chargeable to tax had indeed escaped assessment. The notice of reassessment was not valid. (WP No. 166 of 2007 dt 27-11-2019) (AY. 2002-03)

Audhut Timblo v. ACIT (2020) 420 ITR 62 / 196 DTR 335 (Bom.) (HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts which are necessary for assessment – Order of Tribunal is affirmed. [S.14A, 40(a)(ia), 115JB, 148, 194J] 1720

Dismissing the appeal of the revenue the Court held that, admittedly, there is no details given by AO as to which the fact or material was not disclosed by the assessee which lead to escape assessment. Merely referring a bald assertion that" I have reason to believe that it is a failure on assessee part or not to add back the amount of Rs 58, 94 437 / to the total income u/s 40(a)(ia) of the Act" is not sufficient to frame notice for re-opening concluded assessment beyond four years. Thus the notice (impugned notice u/s 148 is bad in law) and does not qualify a sustainable notice under scrutiny law, hence the legal ground raised by the assssse is allowed and the re-opening of assessment is deleted as in valid. (ITA No. 2365 /Mum/ 2013 dt 30-03-2016, AY. 2005-06) (ITA No 1679 of 2017 dt 23-01-2020).

CIT v. IDBI Ltd. (Bom.)(HC) (UR)

S. 147 : Reassessment – After the expiry of four years – Research and development expenditure – Change of opinion – Reassessment notice in respect of first ground was up held and in respect of second ground is held to be not valid. [S. 133A, 148, Art. 226] 1721

The assessment of the assessee was reopened on two counts, firstly, the diversion of profit by transfer of technology by Sun BVI to Caraco, USA; and secondly, allocation of R&D expenses, whereby the products manufactured at Sun Pharma Industries (SPI) & Sun Pharmaceuticals, Silvassa (SPS) are being developed at the R&D facilities of Sun Pharmaceutical Industries Limited (SPIL) and the expenditure related to such R&D is debited in the books of account of Sun Pharmaceuticals Industries Limited-the petitioner, thereby reducing its profit and correspondingly, inflating the profit of both SPS & SPI to that extent. High Court after taking in to consideration of all the facts held that, notice of re-opening on the first ground reflected in reasons of reopening is sustained whereas the same is not upheld on the second ground. Accordingly relief granted in favour of assessee in respect of the second ground stands confirmed. Assessing Officer is permitted to proceed with the re-assessment proceedings on the first

ground raised in reasons recorded without being in any manner influenced by any of the observations made in this petition. (AY. 2005-06)
Sun Pharmaceutical Industries Ltd. v. Dy.CIT (2020) 117 taxmann.com 115 (Guj.)(HC)
Editorial : SLP of revenue is dismissed. Dy.CIT v. Sun Pharmaceutical Industries Ltd (2020) 272 Taxman 407 (SC)

1722 **S. 147 : Reassessment – After the expiry of four years – Housing project – Completion certificate issued within four years from date of obtaining permission – Re assessment is held to be bad in law. [S. 80IB(10), 148, Art. 226]**
Assessee-company was engaged in the business of real estate development. Assessee floated a residential scheme comprised of several residential plots and an approval was obtained from local authority for construction of an office building for such scheme on 16.3.2005. Thereafter, assessee had obtained approval for construction of such housing project from Godawari Urban Development Authority (GUDA) on 6-2-2008. Assessee completed the project and got building use permission by concerned authority on 31.3.2012. Accordingly, he claimed deduction under section 80IB(10) on housing project which was granted. After four year, a reopening notice was issued against assessee on ground that approval granted by local authority on 16-3-2005, was first approval and, hence, housing project was deemed to be approved on that date, and consequently, since project was completed on 31-3-2012, i.e. beyond period of four years from date of approval, assessee was not entitled to deduction. On writ the Court held that since approval granted on 16-3-2005 by local authority was only for construction of an office building and not for developing and building housing project and approval for a housing project on subject land was granted for first time, only on 6-2-2008 by concerned authority, project being completed on 31-3-2012, was well within period prescribed for completion of project for purpose of availing benefit of deduction under section 80-IB(10).Therefore, impugned reopening notice issued against assessee was unjustified. (AY. 2011-12)
Sheetal Infrastructure (P) Ltd. v. ACIT (2020) 270 Taxman 316 (Guj.)(HC)

1723 **S. 147 : Reassessment – After the expiry of four years – Product development expenditure – Capital or revenue – Reassessment is held to be bad in law. [S. 37(1)]**
Assessee spent certain amount towards product development expenditure which was claimed as revenue expenditure. After four years, Assessing Officer reopened assessment on ground that assessee had shown only a portion of product development expenditure under profit and loss account and, therefore, assessee was entitled to claim income-tax benefit only to that extent and, hence, he disallowed remaining amount. Assessee contended that the amount debited in profit and loss account was relating to previous assessment year, which was 1/3rd of product development expenses for which it was amortizing in relevant year. CIT(A) quashed the reassessment order which was affirmed by the Appellate Tribunal. On appeal by the revenue the Court held that there was no justifiable reason to reopen assessment under after four years, further since product development expenditure incurred by assessee was revenue in nature, there was no error in deduction claimed by assessee though said expenditure was to be amortized over period of three years as per accounting practice adopted by company. (AY. 2007-08)
PCIT v. Vijayeshwari Textiles Ltd. (2020) 275 Taxman 560 / 196 DTR 126 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Royalty payment – Reassessment is not valid. [S. 92CA, 147] 1724

Allowing the petition the Court held that All the details relating to the payment of royalty were supplied by the assessee commencing from the disclosures in the annexures to its return of income. Queries and responses specific to the issue were exchanged between the assessee on the one hand and the Transfer Pricing Officer and the Assessing Officer on the other. The reasons for reassessment were premised upon the classification of the royalty paid by the assessee being capital in nature, as against the claim of its being revenue in nature, by the assessee and nowhere contained an allegation of any failure by the assessee to make a disclosure in this regard. The order rejecting the objections raised by the assessee was quashed. (AY.2013-14)

International Flavours Fragrances India Pvt. Ltd. v. JCIT (2020) 429 ITR 28 / 274 Taxman 134 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to furnish material facts – Reply to Audit to drop the proceedings – Purchase and sale of shares disclosed in the course of original assessment proceedings – Reassessment is held to be not valid. [S. 56(2)(vii)(a), 147] 1725

Allowing the petition the Court held that, the admitted facts were that, the assessee had disclosed all the facts before the Assessing Officer in one form or the other; the assessment was reopened four years after its acceptance sans fresh material emanating subsequently, it was not the case of the Assessing Officer that the assessee had suppressed any income or any material facts ; the assessment was not reopened on the basis of any new material fact which came to light after the passing of the assessment order ; a reply came to be given to the audit objection by the Assessing Officer for dropping the objections raised. The notice of reassessment was not valid. (AY.2012-13)

Madurai Power Corporation Pvt. Ltd. v. Dy. CIT (2020) 428 ITR 117 (AP)(HC)

S. 147 : Reassessment – After the expiry of four years – Earlier proceedings quashed on technical ground – Fresh notice for reopening and rectifying the error is valid. [S. 148, Art. 226] 1726

Dismissing the petition the Court held that, investment in shares and immoveable property were not originally disclosed by the assessee at the time of the original returns. The reassessment made on 31-12-2001 were set aside on technical ground of failure to comply the mandatory requirement of section 143(2) of the Act. The assessment was not on merits. The Court also observed that last date for invoking section 148 for the AY. 2008-09 expired only on 31-03 2015 and for the AY. 2009-10 on 31-3-2016 and since the notice u/s 148 were dated 17-3-2015, they were well within time. The Court held that if there has been a finding given on merits stating that there was no case for escapement assessment then 2nd notice would have been barred. Accordingly the Court held that reopening notices were not only in time but also in accordance with law. (WP No. 29005 & 29006 of 2015 dt 18-12-2019). (AY. 2008-09, 2009-10)

T. Krishnamurthy v. ITO (2020) 116 taxmann.com 476 / 195 DTR 33 / 317 CTR 341 / 272 Taxman 80 (Mad.)(HC)

1727 **S. 147 : Reassessment – After the expiry of four years – Failure to deduct tax at source – No failure to disclose material facts – Change of opinion – Reassessment is held to be not valid. [S. 44AB, 148, 194I]**

Dismissing the appeal of the revenue the Court held that there was no failure on the part of the assessee to truly disclose the relevant materials before the Assessing Authority during the course of original assessment proceedings, though not highlighted in the Audit report, the assessee has shown that this aspect Viz. non deduction of TDS on machine hire charges attracting section 194I was very much discussed by the Assessing Officer during the original assessment proceedings. Accordingly on a mere change of opinion the Assessing Officer could not invoke reassessment proceedings beyond the period of four years after the end of the assessment years. (TCA Nos. 772 to 774 of 2017 dt 11-9 2020) (AY. 2007-08 and 2008-09)

PCIT v. Bharati Constructions (2020) BCAJ-December-P 53 (Mad.) (HC)

PCIT v. URC Construction (P) Ltd. (2020) BCAJ-December-P 53 (Mad.) (HC)

1728 **S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Form of return not requiring specification of persons mentioned in Section – Assessing Officer not examining the clauses – Reassessment notice is held to be not valid. [S. 80IB(10)(e) & (f), 148, Art. 226]**

The assessee submitted its return of income for the assessment year 2012-13 on August 4, 2012 computing the gross total income and claiming deduction under S. 80IB. The assessee filed an audit report under section 44AB of the Act in forms 3CB and 10CCB being the audit report for claiming deduction under section 80-IB of the Act. Thereafter, the case of the assessee was selected for scrutiny assessment. Deduction under section 80-IB(10) was allowed. After four years notice of reassessment was issued on the ground that there was no full and true disclosure of facts while claiming deduction under section 80IB(10). On a writ the Court held that during the course of the original scrutiny proceedings, the Assessing Officer called for various details from the assessee, including details of the purchasers, their names, addresses with permanent account numbers etc., which were duly furnished by the assessee. When the assessee had disclosed all the material facts necessary for his assessment, but the Assessing Officer failed to consider the claim for deduction under section 80IB(10) in the context of clauses (e) and (f) thereof, it could not be said that there was any failure on the part of the assessee to disclose truly and fully all material facts necessary for its assessment. The notice was not valid. (AY.2012-13)

Royal Infrastructure v. Dy. CIT (2020) 425 ITR 491 (Guj.)(HC)

1729 **S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Long term capital gains – Notice held to be not valid. [S. 54, 148 Art. 226]**

Allowing the petition the Court held that it was evident that the assessee had claimed exemption with respect to long-term capital gains under section 54, in his return filed for the assessment year 2009-10. Before the assessment was completed, the assessee was called upon to furnish evidence in support of his claim for deduction under section 54. The case was later selected for scrutiny and a notice was issued under section 143(2). Details were called for and explanations were offered on behalf of the assessee.

Thereafter, an assessment order was passed granting the deduction. There was true and full disclosure of all materials required for assessment by the assessee for claiming deduction. Therefore, on this issue, the respondent could not proceed to pass an order under S. 147 treating the gains from sale of house property in Mumbai as short-term capital gains. The order was not valid.(AY.2009-10)
B. Kasi Viswanathan v. ITO (2020) 425 ITR 538 / 187 DTR 467 / 317 CTR 993 / 274 Taxman 173 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Audit objection – Not accepted by the Assessing Officer – Borrowed satisfaction – No failure to disclose material facts – Notice is held to be bad in law. [S. 148, Art.226] 1730
Allowing the petition the Court held that on a plain reading of the reasons recorded, it was evident that all the facts were already before the Assessing Officer at the time of scrutiny assessment and no fresh material had been relied upon by him for the purpose of reopening the assessment. The reasons for the notice of reassessment revealed that the Audit Department had raised objections in respect of both the issues on which the assessment was sought to be reopened. On both the counts, the Assessing Officer did not accept the objections and gave his explanation for not accepting them. However, the audit department found the reply of the Assessing Officer not tenable. Evidently, therefore, the formation of belief that income chargeable to tax had escaped assessment was not that of the Assessing Officer, but was based upon the borrowed satisfaction of the audit department. The notice of reassessment was not valid. (AY.2012-13)
Kakaria Housing and Infrastructure Ltd. v. Dy. CIT (2020) 425 ITR 103 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Manufacture – Change of opinion – Based on the basis of commission issued – Held to be bad in law and impermissible. [S. 2(29BA), 80IB, 80IB, 131 (1)(d), 148, Central Excise Act, 1944, S. 2(f)] 1731
The assessment of the assessee was completed u/s 143(3) of the Act. After a period of four years the notice under S. 148 of the Act was issued to reopen the assessment. The assessee filed a writ petition against such notice. During the pendency of the writ petition, another notice under section 148 was issued to reopen the assessment for the assessment year 2009-10. The reasons recorded were that the activity carried out by the assessee did not amount to manufacture and hence the claim made by the assessee under S. 80IB(4) was to be disallowed. It was the contention of the assessee that under the Central Excise Act, 1944 the Excise Department had accepted that the activity undertaken by it amounted to manufacture and refunded the amounts payable for the respective financial years. The Deputy Commissioner rejected the objections raised by the assessee to the reopening of the assessments. On writ the Court held that whether the activity undertaken by the assessee amounted to manufacture or not, was deliberated upon before the respective assessment orders were passed. The assessee was specifically asked to explain the process of manufacture for claiming the benefit of deduction under S. 80IB, and the assessee had furnished all the details. It was only thereafter that the assessments were completed for the respective assessment years. The Department had not denied that the assessee had truly and fully disclosed all the materials that were required for completing the assessments. Therefore, a change of opinion based on the

report of the Asst. Commissioner, Jammu under S. 131 could not amount to failure on the part of an assessee to truly and fully disclose information or documents required for the purpose of completing the assessments. The reopening of the assessments to deny the deductions under S. 80IB was without jurisdiction. (AY. 2009-10, 2010-11)
International Flavours and Fragrances India Pvt. Ltd. v. Dy. CIT (LTU) (2020) 425 ITR 450 / 315 CTR 448 / 191 DTR 191 (Mad.) (HC)

1732 **S. 147 : Reassessment – After the expiry of four years – Primary facts disclosed – Assessing Officer not making appropriate calculation – Notice of reassessment issued without jurisdiction – Existence Of Alternate Remedy would not bar issue of writ to quash notice. [S. 14A, 148, Rule 8D, Art. 226]**
Allowing the petition the Court held that the assessee had demonstrated that the conditions precedent to the exercise of jurisdiction under S. 147 did not exist and the Asst. Commissioner had therefore no jurisdiction to issue the notice in respect of the assessment year 2011-12 after the expiry of four years. When the issue touches on the jurisdiction of the authority, the existence of alternative remedy was no ground to deny relief to the assessee. Court also held that there was no failure on the part of the assessee. On the other hand, there appeared to be a failure on the part of the Assessing Officer to make an appropriate determination of the amount of expenditure in terms of section 14A. The other reason cited by the authority was also not sufficient. It was beyond dispute that the census figures for the year 2011 were made available only a few years later. The assessee could not have looked into the future while submitting its return of income. The notice was not valid. (AY.2011-12)
City Union Bank Ltd. v. ACIT (2020) 425 ITR 475 (Mad.)(HC)

1733 **S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Merely because the Assessing Officer did not record such acceptance in the assessment order that would not be a ground to conclude that income had escaped assessment – Reassessment notice is held to be not Valid. [S. 36(1)(iii), 40(a)(ia), 148]**
Allowing the petition the Court held that the reasons recorded with regard to applicability of S. 40(a)(ia) of the Act had already been considered by the Assessing Officer during the course of assessment proceedings. Similarly, details of bonus and remuneration paid to the directors and details with regard to payment of dividend and profits to the directors of the assessee were also furnished during the course of the assessment, and therefore, the question of disallowance in view of S. 36(1)(ii) of the Act would not arise. The details of tax deducted at source were also furnished during the course of assessment proceedings. In such circumstances, when the entire material had been placed by the assessee before the Assessing Officer, and he had accepted the view canvassed by the assessee, merely because he did not record such acceptance in the assessment order that would not be a ground to conclude that income had escaped assessment. The notice of reassessment was not valid.
Asian Tubes Pvt. Ltd. v. Dy. CIT (2020) 425 ITR 613 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment order is held to be not valid. [S.148] 1734

Allowing the appeal of the assessee the Court held that there was no tangible material with the Assessing Officer for the purpose of reopening the assessment except the change of opinion that the deductions could not have been claimed and allowed. The conveyance deed, permission of the appropriate authority to sell the property and other documents were filed by the assessee at the time of original assessment proceedings. Nothing was suppressed. Form 37-I speaks for itself. The Commissioner (Appeals) recorded a finding of fact that there was no failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment. Such finding of fact could not have been disturbed by the Appellate Tribunal without any basis. The notice of reassessment was not valid. (AY.1991-92)

Arun Munshaw HUF v. ITO (2020) 425 ITR 79 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – No new tangible material – Maintaining separate books of account – Notice is held to be bad in law. [S. 80IA, 148] 1735

Allowing the petition the Court held that on the facts, the reopening of the assessment was on a change of opinion. There was nothing on record to indicate that there was failure on the part of the assessee to disclose truly and fully all the material facts. There was no tangible material available for the purpose of issuing the notice under section for reopening the assessment beyond the period of four years and was unsustainable. (AY. 2011-12)

Jivraj Tea Ltd. v. ACIT (2020) 426 ITR 146 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Mutual association – Interest from fixed deposits – A subsequent decision of the Supreme Court reversing the legal position existing at the time of passing of the assessment order could not be called an omission or failure on the part of the assessee to disclose fully and truly the material fact necessary for the relevant assessment – No failure to disclose material facts – Reassessment notice is held to be bad in law. [S. 4, 148] 1736

The AO passed assessment orders accepting the assessee's claim to exemption of interest on fixed deposits. After four years a notice of reassessment was served on the assessee. The recorded reasons by the AO stated that the reopening of assessment of the relevant assessment years was based on a subsequent judgment dated January 14, 2013, of the Supreme Court in the case of *Bangalore club v. CIT(2013) 350 ITR 509 (SC)* holding that income earned by way of interest from corporate members of a club is taxable income and does not come under the ambit of the mutuality principle. On a writ the Court held that the Department could not establish that the income in question which had allegedly escaped assessment was not disclosed during the course of original assessment proceeding or that it was not taken into consideration by the Assessing Officer at the time of passing of the assessment order under section 143(3) or that the proceeding for reassessment under section 147 of the Act was initiated within four years or that the recorded reasons specifically stated that there was any omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment in the relevant assessment year. A subsequent decision of the Supreme Court reversing

the legal position existing at the time of passing of the assessment order could not be called an omission or failure on the part of the assessee to disclose fully and truly the material fact necessary for the relevant assessment. The notice of reassessment was not valid. (AY.2007-08, 2008-09)
Calcutta Club Ltd. v. ITO (2020) 426 ITR 157 / 188 DTR 327 / 315 CTR 89 / 114 taxmann.com 560 (Cal.)(HC)

1737 **S. 147 : Reassessment – After the expiry of four years – No new material – Change of opinion – Deemed income – Notice issued by same Assessing Officer who proposed to drop Audit objections on issue – Issue of notice is held to be not valid. [S. 2(22)(e), 148, 151]**
Dismissing the appeal of the revenue the Court held that the reasons recorded for issue of notice were unsustainable on the facts as well as on law. The assessee had not suppressed any material facts and whatever materials were in its possession, had been submitted by the assessee in response to the notice under S. 148. The ITO had passed the order of assessment and had also drawn the attention of the Deputy Director of Revenue Audit as to such material, especially referring to the amount in question and had prayed for dropping of the audit objections in respect of the assessment year 2007-08. In the light of the materials available, it was obligatory on the part of the Assessing Officer to record reasons for the purpose of believing that income had escaped assessment. The findings recorded by the Tribunal as to non-application of mind on the part of the Assessing Officer to apply his mind independently for the purpose of reopening of the assessment were proper because the very same official, in response to the audit objection, had taken into consideration all the materials placed and requested dropping of the audit objection and therefore, passing of the second order of assessment by him amounted to change of opinion on the very same set of facts. There was no error or infirmity in the reasons assigned by the Tribunal in dismissing the appeal filed by the Department and allowing of the cross-objection filed by the assessee. (AY.2007-08)
PCIT v. SKI Retail Capital Ltd. (2020) 426 ITR 414 / 196 DTR 217 (Mad.)(HC)

1738 **S. 147 : Reassessment – After the expiry of four years – There was no failure to disclose material facts – Mere change of opinion – Notice s held to be not valid. [S.148]**
Allowing the appeal the Court held that during the course of scrutiny assessment, the Assessing Officer had applied his mind to this very aspect and had called for details from the assessee in respect of the amount of Rs. 46,00,000 deposited with the police station and after considering the explanation tendered by the assessee did not make any addition in that regard. Evidently, therefore, the Assessing Officer sought to reopen the assessment on a mere change of opinion and hence, even on this count the assumption of jurisdiction on the part of the Assessing Officer was bad in law. (AY. 2011-12)
R. Kantilal and Co. v. ITO (2020) 424 ITR 92 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Deemed dividend – No obligation to disclose when the assessee was not benefited. [S. 2(22)(e), 148, Art. 226] 1739
Allowing the petition the Court held that,in the absence of any finding having been recorded by the Assessing Officer that any income had accrued in favour of the assessee, there was no obligation cast upon the assessee to disclose such transactions. Under the circumstances, in the absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, the reopening of the assessment beyond a period of four years from the relevant assessment was illegal. The notice issued under section 148 for reopening the assessment under section 147 and all the proceedings pursuant thereto were to be quashed and set aside. (AY.2008-09)
Jayesh T. Kotak v. Dy. CIT (2020) 424 ITR 435 / 273 Taxman 525 / 116 taxmann.com 426 / 195 DTR 277 / 317 CTR 406 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – One year with in four years – Audit objection – Amortisation of programme / movie cost and deduction of tax on foreign remittances – No failure to disclose material facts – Reassessment notice is not valid. [S. 148] 1740
Allowing the petition the court held that the assessee had been categorising and claiming expenditure incurred on programmes/film rights as revenue for several years and this stand had not been found fault with by the Department. Such expenses were also reflected faithfully in its financials that had been circulated specifically in the course of the original assessment proceedings, notwithstanding that they had been filed along with the return of income. The statutory condition imposed for availment of the extended period of limitation had not been satisfied and the proceedings for reassessment for the assessment year 2011-12 were barred by limitation. As regards the assessment year 2013-14, the proceedings had been initiated within four years from the end of the relevant assessment year. The two questions proposed for reassessment, being amortisation of programme/movie cost and deduction of tax on foreign remittances, arose from a perusal of the financials themselves. The audited financials, including the profit and loss accounts and audit report, presented clearly all details in regard to these two issues. Admittedly, and even in terms of the reasons stated, there was no new material that had come to the notice of the authorities and the exercise was undertaken solely on the basis of the materials already supplied by the assessee and available on the records of the Department. Moreover, the proceedings for reassessment had been initiated on the basis of an objection raised by an audit party. Accordingly the notice was not valid. (AY.2011-12, 2013-14)
Asianet Star Communications Pvt. Ltd. v. ACIT (2019) 104 CCH 0550 / (2020) 422 ITR 47 / 191 DTR 152 / 317 CTR 732 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Share premium – No failure to disclose material facts – Reassessment notice on mere surmise that the assessee had received amounts as share premium is held to be not valid. [S. 148] 1741
Allowing the petition the Court held that in the reasons recorded that there was no mention at all of the assessee having not disclosed fully or truly material facts which were necessary for the purpose of computing the income of the assessee. Even on the

merits there was no basis to proceed on the premise that the allocation of shares was at an artificially high premium. Merely because a sizeable sum was received in the nature of share premium during the year under consideration, that would not automatically mean that the same was artificially increased. The duty on the part of the assessee to explain the nature of credits and genuineness and justification of the share premium would arise when called upon during the assessment or a validly reopened assessment. At any rate, the reopening of assessment which was framed after the scrutiny would not be permissible for a fishing or roving inquiry. The notice of reassessment was not valid. (AY. 2011-12)
Hitachi Hi Rel Power Electronics P. Ltd. v. ACIT (2019) 106 CCH 0421 / (2020) 421 ITR 574 (Guj.)(HC)

1742 **S. 147 : Reassessment – After the expiry of four years – Unabsorbed depreciation – No failure to disclose material facts – Reassessment is held to be bad in law. [S. 32, 148, 149]**
That the original assessment was completed under S. 143(3) of the Act. In the course of re-assessment proceedings, the AO disallowed the depreciation and other expenses in respect of running of a boiler and turbine while computing the income under the head 'other sources' on the ground that there were strong indication that neither the boiler nor the turbine were ready for the use up to 31.03.1992. He also held that agreements entered into between the respondent-company and M/s. Mysore Petrochemicals for hiring out the boiler and turbine and the evidence produced in support of the same, were generated with the sole purpose to prove that boiler and turbine have been hired out. Accordingly, AO determined the total income of the assessee at Rs.1,42,36,688/- under the head 'income from other sources. CIT(A) held that the re-assessment done by the AO is liable to be annulled. Tribunal affirmed the order of CIT(A). On appeal the High Court affirmed the order of Tribunal. (AY. 1992-93)
CIT v. I.G. Petrochemicals Ltd. (2020) 185 DTR 225 / 314 CTR 857 (Karn.)(HC)

1743 **S. 147 : Reassessment – After the expiry of four years – Change of opinion – Details were furnished in response to questionnaires – Failure to deduct tax at source – Notice is not valid. [S. 40(a)(ia), 148, 194I, Art.226]**
Allowing the petition the Court held that the recorded reasons except for using the expression "failure on the part of the assessee to disclose fully and truly all material facts", did not specify what was the nature of default or failure on the part of the assessee. The reasons also did not explain or specify what was the rationale connection between the reasons to believe and the material on record. It was evident on a perusal of the scrutiny questionnaires issued by the Assessing Officer and the information furnished in response thereto by the assessee that there had been no failure on the part of the assessee in furnishing the information. On the other hand, there was non-application of mind on such material on the part of the Assessing Officer to make an appropriate determination in accordance with law. The Assessing Officer in paragraph 2 of the recorded reasons quoted that "external development charges is covered by the provisions of section 194 of the Act. The assessee had failed to deduct tax at source on the payments made to the Haryana Urban Development Authority". There was no explanation or rationale for this observation made by the Assessing Officer. It was not clear how the payment of external

development charges being in the nature of statutory fees, could be subject to withholding tax under section 194 of the Act, a provision that was applicable to dividends. The nature of dividend payment was intrinsically different from external development charges and, therefore, the apparent reason for reopening was erroneous, irrational and fallacious. The notice did not state that the external development charges collected by the Haryana Urban Development Authority had not been subjected to tax as income in the hands of the Haryana Urban Development Authority. This also showed non-application of mind. The Revenue in its counter affidavit sought to elaborate on these reasons by contending that the external development charges payment was akin to rent. However, firstly, such an understanding was not borne out from the recorded reasons and, secondly, the Department could not by way of a counter affidavit supplement the recorded reasons by introducing such legal submissions. The source of the power, as sought to be argued, was not discernible. The notice was not valid. (AY. 2012-13 2013-14)

BPTP Ltd. v. CIT (2020) 421 ITR 59 / 312 CTR 514 / 185 DTR 372 / 113 Taxmann.com 587 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. BPTP Ltd. (2021) 277 Taxman 298 (SC)/ PCIT v. BPTP Ltd. (2021) 278 Taxman 105 (SC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Deduction is allowed in the original assessment proceedings – Notice of reassessment is held to be not valid. [S. 80IB(11A), 148, Art. 226] 1744

Allowing the petition the Court held, that the assessee had furnished various particulars as required by the Assessing Officer, in support of the claim to depreciation and allowances of deduction under section 80-IB(11A). The claims had been allowed in the original assessment. Notice after four years on the ground that the deductions were erroneous, constituted a change of opinion. The notice was not valid. (AY. 2010-11)

Dhirendra Hansraj Singh v. ACIT (2020) 421 ITR 176 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Dhirendra Hansraj Singh (2018) 409 ITR 15 (St) (SC).

S. 147 : Reassessment – After the expiry of four years – Failure to deduct tax deducted at source – Management consultancy fees – No omission or failure on assessee's part to disclose all material facts relevant to original assessment proceedings – Notice for reassessment is held to be not valid. [S. 40(a)(ia), 194J, 195] 1745

Allowing the petition the Court held that the reasons for reopening made it clear that what triggered reopening of assessment was order passed by DCIT(IT) holding assessee to be an assessee in default for not deducting TDS from payment made to VRPLC towards management and consultancy fees. Proviso to s. 147 would stood attracted in present case since reopening was after four years and after initial assessment was u/s 143(3). Transaction regarding payment by assessee of management consultancy fees to VRPLC was indeed disclosed by assessee, not only in accounts but also in audit report. Reference was made by AO to TPO after forming an initial opinion about need for such a step-in terms of S. 92B. Without noticing that it was an international transaction, it was unlikely that AO would have made a reference to TPO. Further, TPO himself appeared to have discussed this aspect in his order and this led AO

to again dealing with it in assessment order. Therefore, this was clearly not a case where there was any failure on assessee's part to make a disclosure of all material particulars. There was no omission or failure on assessee's part to disclose all material facts relevant to original assessment proceedings u/s 143(3).Accordingly, in terms of proviso to S. 147, assumption of jurisdiction by AO for reopening assessment was bad in law. (AY. 2010-11)
Vedanta Ltd. v. ACIT (2020) 185 DTR 169 / 312 CTR 105 (Delhi)(HC)

1746 **S. 147 : Reassessment – After the expiry of four years – Financial transaction accepted as genuine during original assessment – Subsequent information from income – tax investigation wing that transaction was with name – Lender – No disclosure of true facts – Notice of reassessment is held to be valid – The Court also directed the assessee to pay cost of Rs. 1 lakhs to be paid to The Delhi High Court Advocates Welfare Trust with in within four weeks of the receipt of this order.[S. 148, Art. 226]**

The assessee challenged the notice issued u/s 148 of the Act. In the Course of hearing the revenue produced the investigation report contained in the notice further states that inquiries were made from those entities, whose gross taxable income for the Financial Year 2011-12 was miniscule despite having substantial turnover and dealings with Moral. Summonses were issued to such entities, namely M/s Brilliant Metals Pvt. Ltd., Progressive Alloys (India) Pvt. Ltd, Unnati Alloys Pvt. Ltd., JBN Impex Private Limited, Forward Minerals & Metals Private Limited, Bafna Metals Put Ltd, Misawa Impex Pvt. Ltd, Durga Enterprises and QNS Metals. However, in most cases, summonses could not be served because these entities were not found to exist at their respective addresses. Brilliant Metals Pvt. Ltd.-though found at the given address, had only one person/ Caretaker. On inquiry, he states that no business activity had ever been undertaken on that premises. Investigation further found that the two Directors of Moral were also the Directors of Forward Minerals & Metals Private Limited and Unnati Alloys Pvt. Ltd. The two entities with whom Moral had the highest money transactions were Unnati Alloys Pvt. Ltd. and Misawa Impex Pvt. Ltd. The amounts credited into the account of Moral, as depicted from the account of Moral, in respect of both these entities were almost equal. Court also observed that the amounts credited into the account of Moral from these two entities were further transferred to other entities on the same day and the accounts of Moral were left with minimal balance. The Investigation Report contained the analysis in respect of the ITR of Moral for the Assessment Year 2012-13. The same has been extracted by the Assessing Officer in his reasons. On analysing the report and recorded reasons the court held that the obligation on the assessee to disclose the material facts or what are called primary facts is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. Whenever an assessee takes or provides accommodation entries, one part of the transaction would appear to be completely transparent; through banking channels, and the recipient of the funds would disclose it in his returns and offer the income to tax-if such receipts constitute income liable to tax. The mere disclosure of a part of the transaction in its records by the assessee is not sufficient to establish the genuineness of the transaction Court held that the

assessee did not deny the fact that it, indeed, had financial transactions with Moral Alloys Pvt. Ltd. Moral Alloys Pvt. Ltd, where under it received substantial amounts of Rs.90.32 crores in the financial year 2011-12. Moral Alloys Pvt. Ltd had been found to be indulging in provision of accommodation entries, and it appeared that it carried out only that business and nothing else. There was nothing to show that while passing the assessment order, the Assessing Officer had examined the aspect of genuineness of the transaction undertaken by the assessee with Moral Alloys Pvt. Ltd Thus, the Assessing Officer had good reason to believe that the amounts received by the assessee from Moral Alloys Pvt. Ltd also partook of the same colour as the other transactions of Moral Alloys Pvt. Ltd undertaken with other entities. The whole business model of Moral Alloys Pvt. Ltd as was evident from the investigation report, was merely to rotate funds by a process of layering through other entities. If the transaction undertaken by Sterlite Industries Private Limited (SIPL) with Moral Alloys Pvt. Ltd. Moral Alloys Pvt. Ltd were indeed not genuine, as reasonably believed by the Assessing Officer, it would not be correct to say that SIPL had disclosed fully and truly all the material facts for its assessment for the relevant assessment year. The notice of reassessment was valid. Court also observed that despite the aforesaid being a gross case and despite the decision of the Supreme Court in *PCIT v. NRA Iron & Steel Pvt. Ltd (2019) 412 ITR 161 (SC) and RDS Project Ltd v. ACIT [2020] 421 ITR 624 (Delhi)(HC)* being brought to the notice of learned counsel for the petitioner, learned counsel for the petitioner continued to press the matter at the expense of judicial time, which could have been better utilised to deal with other pending cases. Accordingly directed the petitioner to pay cost of Rs. 1 lakhs to be paid to The Delhi High Court Advocates Welfare Trust. The costs shall be paid within four weeks of the receipt of this decision. (AY.2012-13)

Vedanta Ltd. v. ACIT (2020) 426 ITR 59 / 185 DTR 249 / 312 CTR 481 / 270 Taxman 277 (Delhi)(HC)

S. 147 : Reassessment – After the expiry of four years – Share capital – At the stage of re-opening, only a reason to believe should exist with regard to escapement of income. Definite conclusion would be drawn after raising queries upon the assessee in the light of S. 68 of the Act – Reopening is held to be justified – Sanction – Not required to provide elaborate reasons while approving the sanction – Succession – No requirement to issue two separate notices in name of amalgamated company as successor-in – interest of amalgamating company and to amalgamating company in its individual capacity. [S. 68, 148, 151, 170, Art. 226] 1747

Dismissing the petition the Court held that, the parent co does not have sufficient funds to invest such huge amounts in Indian subsidiaries. The funds are routed through a web of entities spread across various jurisdictions, mostly in tax havens. The investments so made, are required to be investigated and the credit worthiness of the investing company is in jeopardy, in view of the information received from the investigation wing. This exercise can be undertaken during the re-reassessment proceedings to finally determine if the amounts represent undisclosed income of the assessee which is required to be taxed in its hands. At the stage of re-opening, only a reason to believe should exist with regard to escapement of income. Definite conclusion would be drawn

after raising queries upon the assessee in the light of s. 68 of the Act. Where necessary sanction to issue reopening notice under section 148 was obtained from PCIT as per provision of section 151, PCIT was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons of reopening recorded by AO. Once amalgamating company had merged with assessee amalgamated entity, amalgamating company ceased to exist in its individual capacity, thus, a reopening notice was to be issued only in name of merged entity and there was no requirement to issue two separate notices in name of amalgamated company as successor-in-interest of amalgamating company and to amalgamating company in its individual capacity, as amalgamated company had taken over liabilities of amalgamating company. (AY. 2012-13)

Experion Developers Pvt. Ltd. v. ACIT (2020) 422 ITR 355 / 115 taxmann.com 338 / 187 DTR 129 / 313 CTR 384 (Delhi)(HC)

Experion hospitality Pvt. Ltd. v. ACIT (2020) 422 ITR 355 / 115 taxmann.com 338 / 187 DTR 129 / 313 CTR 384 (Delhi) (HC)

1748 **S. 147 : Reassessment – After the expiry of four years – Charge of income-tax – Service charges – Difference between TDS certificate and amount shown – Reassessment is held to be not valid [S. 4, 143(2), 147, 148]**

Dismissing the appeal of the revenue the Court held that reopening of assessment on account of service charges showed difference between TDS certificate and amount shown, reassessment is held to be not valid. (AY. 2009-10)

CIT v. B. Suresh Kumar (2020) 430 ITR 60 / 120 taxmann.com 404 / 275 Taxman 606 (Mad.)(HC)

1749 **S. 147 : Reassessment – Change of opinion – Operational expenses – No new facts – Reassessment is held to be not valid. [S. 147]**

Dismissing the appeal of the revenue the Court held that that issue was examined by Assessing Officer during original scrutiny assessment and there was no new material available with Assessing Officer. Reassessment proceedings on ground that same were based on mere change of opinion. Order of Tribunal is affirmed. Followed *CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC).* (AY. 2008-09)

PCIT v. Zee Media Corporation Ltd. (2020) 114 taxmann.com 192 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Zee Media Corporation Ltd. (2020) 270 Taxman 180 (SC)

1750 **S. 147 : Reassessment – One-time settlement with banker – Capital or revenue – Considered during original scrutiny assessment proceedings – Change of opinion – Reassessment is bad in law. [S. 4, 148, 260A]**

Assessee was granted relief/waiver towards overdrafts and other facilities pursuant to one-time settlement with bank. Assessing Officer initiated reassessment proceedings against assessee to tax said relief alleging that it was revenue receipt. CIT(A) quashed the reassessment order, which was affirmed by the Tribunal. On appeal by revenue the Court held that during original scrutiny assessment proceedings, Assessing Officer had considered one-time settlement by assessee with its bankers as capital receipt and was

not brought under taxation. Since reopening notice was not based on any fresh tangible material and same being issued on same facts which were considered earlier, it clearly amounted to mere change of opinion and, thus, was without jurisdiction. (AY. 2006-07)
PCIT v. Everlon Synthetics (P) Ltd. (2020) 269 Taxman 215 (Bom.)(HC)

S. 147 : Reassessment – Reasons communicated and reasons raised are different – Recorded reason was supplied after completion of assessment – Reassessment is bad in law. [S. 148] 1751
Dismissing the appeal of the revenue the Court held that once it is established from the record and concurrently held by both Commissioner and the Tribunal that copy of the reasons was given to the Respondent-Assessee in support of the notice for reopening, the view taken that the reopening of assessment was without jurisdiction, cannot be faulted with. Relied Court in case of *CIT v. Videsh Sanchar Nigam Ltd. (2012) 21 taxmann.com 53 (Bom.) (HC)* wherein the Court held that if the reasons for reopening of the assessment, though repeatedly asked, are not supplied and supplied only after completion of assessment, the order of reassessment cannot be upheld. This dicta directly applies to the present case. (AY. 2007-08)
PCIT v. Haxaware Technologies Ltd. (2020) 191 DTR 73 (Bom.)(HC)

S. 147 : Reassessment – Failure to deduct tax at source – No failure to disclose material facts – Reassessment is bad in law. [S. 40(a)(ia), 148, Art. 226] 1752
Allowing the petition the Court held that there was no failure to disclose all material facts, there was scrutiny of the petitioner's expenditure. After raising queries and eliciting response from the petitioner, the Assessing Officer had passed the order of assessment making limited disallowance. On both these grounds i.e. non failure to disclose true and full material facts and change of opinion, the impugned notice must be quashed.(AY. 2011-12)
Nielsen (India) P. Ltd. v. Dy.CIT (2020) 187 DTR 451 (Bom.)(HC)

S. 147 : Reassessment – Failure to furnish reasons recorded by Assessing Officer – Furnishing the recorded reasons when the matter was pending before Appellate Tribunal – Tribunal remanding the matter – Order of Tribunal remanding matter and subsequent assessment and demand notice set aside. [S.148, 254(1)] 1753
Allowing the appeal the Court held that it was not open to the Assessing Officer to refuse to furnish the reasons for issuing notice under section 148. By such refusal, the assessee was deprived of the valuable opportunity of filing objections to the reopening of the assessment under section 147. The approach of the Assessing Officer was contrary to the law laid down by the Supreme Court. On the facts, the furnishing of reasons for reopening of the assessment at the stage when the matter was pending before the Tribunal could not cure the default in the first instance. The remand ordered by the Tribunal and the consequential assessment order and demand notice issued on the basis thereof were set aside. (AY.2004-05)
New Era Shipping Ltd. v. CIT (2020) 196 DTR 137 / (2021) 430 ITR 431 / 318 CTR 400 (Bom.)(HC)

1754 **S. 147 : Reassessment – Carry forward and set off losses – Change in the structure of entity from Trust to LLP – Status of an entity incorporated abroad has to be determined even in India according to the law of the Country where the entity was incorporated – Notice to reassessment was quashed. [S. 74, 148, Art.226]**

The assessee was a sub-fund or series of Abedeen Institutional Comingled Funds, LLC (AICFL) a Delaware (USA) based limited liability Company. The losses were properly declared in the return. Losses were allowed for the assessment years 2011-12 and subsequent years. Revenue issued the notice u/s 148 for denying the carry forward and set off losses u/s 74 due to change in structure of the entity. On writ allowing the petition the Court held that the reasons recorded for reopening of assessment was preciously on the ground of change of status that the claim of the assessee i. e. the assessee was found to be not acceptable which led to be the formation of the belief that income chargeable to tax has escaped assessment. The contention of alternative remedy is rejected by the Court. The Court held that if the Assessing Officer had no jurisdiction to initiate reassessment proceeding, the mere fact that the subsequent orders have been passed would render the challenge to jurisdiction infructuous. If the very basis for reopening assessment does not survive, orders on such re-opening would not survive too. Accordingly the notice u/s 148 was quashed and consequential draft assessment order passed thereafter were also held to be unsustainable. (AY. 2011-12, 2012-13)

Aberdeen Asia Pacific Including Japan Equity Fund v. DCIT(IT) (2020) 191 DTR 1 / 315 CTR 347 (Bom.)(HC)

Aberdeen Emerging Markets Equity Fund v. DCIT(IT) (2020) 191 DTR 1 / 315 CTR 347 (Bom.)(HC)

Aberdeen Asia Pacific Excluding Japan Equity Fund v. DCIT(IT) (2020) 191 DTR 1 / 315 CTR 347 (Bom.)(HC)

1755 **S. 147 : Reassessment – Change of opinion – No new tangible material – Reassessment is held to be bad in law. [S. 148]**

Dismissing the appeal of the revenue the Court held that, the Tribunal correctly came to the conclusion that in the absence of any new tangible material not already on record in the original proceedings, any attempt on the part of the AO to reopen the assessment on this ground would be based on a mere change of opinion. As long as the claim made by the assessee was examined by the AO whether or not the AO raised the correct queries and came to the correct conclusion, in the context of the reopening of the assessment would be of no consequence. No question of law arose. (AY.2008-09)

PCIT v. Zee Media Corporation Ltd. (2020) 423 ITR 304 (Bom.)(HC)

1756 **S. 147 : Reassessment – With in four years – Change of opinion – One-time settlement with banker – Capital receipt – Notice based on audit report – Reassessment is held to be not valid. [S. 4, 148]**

The assessee is engaged in the business of manufacture of Polyester and Texturised / Twisted yarn and management consultancy. In the original assessment proceedings the AO treated the waiver towards overdrafts and other facilities pursuant to one-time settlement with bank is not taxable. AO thereafter initiated reassessment proceedings and taxed the receipt. Tribunal quashed the reassessment proceeding. On appeal by the

revenue the court held that, since reopening notice was not based on any fresh tangible material and same being issued on same facts which were considered earlier, it clearly amounted to mere change of opinion and, thus, was without jurisdiction. Order of Tribunal is affirmed. (AY. 2006-07)
PCIT v. Everlon Synthetics (P.) Ltd. (2020) 424 ITR 232 / 269 Taxman 215 / 113 taxmann.com 442 (Bom.)(HC)

S. 147 : Reassessment – Assessment u/s 143(1) can be reopened on basis of information obtained during course of assessment of earlier assessment year under S. 143(3) of the Act. [S. 143(1), 148, Art.226] 1757
The assessee-construction company filed return where Rs. 5.20 crores was shown as the cost of plot and farm development expenses and Rs. 25 crores as the proportionate land cost. The assessment was completed u/s 143(1) of the Act. The reassessment notice was issued on the basis of earlier assessment which was completed u/s 143(3) of the Act. On writ the court held that the assessment for the subject assessment year was by virtue of intimation under section 143(1). Therefore, the Assessing Officer had no occasion to examine the claim of the assessee. It is on the basis of tangible information now received that the impugned reopening notice has been issued, as is evident from the reasons recorded. Therefore, the reasons do make out a prima facie case that income chargeable to tax for the subject assessment year has escaped assessment. Accordingly the writ petition is dismissed. (AY. 2017-18)
Belazio Construction (P.) Ltd. (2020) 268 Taxman 170 (Bom.)(HC)

S. 147 : Reassessment – Dropping of reassessment proceedings by AO – Absence of challenge held to be justified. [S.148, Art. 226] 1758
The notice issued for reopening of the assessment is dropped by the AO though not challenged by the assessee. On writ the assessee contended that they have not opposed the reassessment proceedings hence the dropping of reassessment notice is not permissible. Dismissing the petition the Court held that reassessment proceedings u/s 147 are for benefit of revenue and, therefore, dropping of reassessment proceedings by AO even in absence of assessee challenging notice under section 147/148, is justified. Followed *K. Sudhakar S. Shanbhag v. ITO (200) 241 ITR 865 (Bom.) (HC)*
Menck GMBH v. ACIT (2020) 268 Taxman 176 (Bom.)(HC)

S. 147 : Reassessment – Change of opinion – Manufacturing business – Loss on sale of shares – Business loss or capital loss – Reassessment was quashed on the ground of change of opinion. [S. 28(i), 45, 148] 1759
Dismissing the appeal of the revenue the Court held that it appears that the reopening was clearly on account of change of opinion by the Assessing Officer and this is something which is not permissible under the scheme of the Act. Accordingly the order of Tribunal is affirmed. Followed Gujarat Power Corpn. Ltd. v. ACIT (2013) 350 ITR 266 (Guj.) (HC). (AY. 2007-08)
PCIT v. Atul Ltd. (2020) 119 taxmann.com 286 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Atul Ltd (2020) 274 Taxman 230 (SC)

1760 **S. 147 : Reassessment – Method of accounting – Estimation of profit – Reassessment is held to be not valid. [S. 145, 148]**

Dismissing the appeal of the revenue the Court held that, Tribunal was justified in deleting the addition by holding that there was no independent material brought on record by Assessing Officer other than those which were already collected by Excise Department and which, were yet to be verified. (AY. 2008-09)

PCIT v. Ganga Glazed Tiles (P.) Ltd. (2020) 117 taxmann.com 107 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Ganga Glazed Tiles (P.) Ltd. (2020) 272 Taxman 13 (SC)

1761 **S. 147 : Reassessment – Business expenditure – Royalty – Reassessment was quashed on the ground that the AO could not have revisited the same issue on the pretext that a binding decision was overlooked. [S. 37(1), 148]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in quashing the reassessment on the ground that the Assessing Officer could not have revisited the same issue on the pretext that a binding decision was overlooked when the claim of expenditure in respect of royalty paid for acquiring technical knowledge was allowed in the scrutiny assessment. Followed *CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC). Xerox Modicorp Ltd. v. Dy. CIT (2013) 350 ITR 308 (Delhi) (HC).* (AY. 2002-03)

PCIT v. Moser Baer India Ltd. (2020) 114 taxmann.com 548 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Moser Baer India Ltd (2020) 270 Taxman 4 (SC)

1762 **S. 147 : Reassessment – Charge of income-tax – Interest accrued – Grants received from State Government – Not liable to be taxed. [S. 4, 144, 148, Art. 226]**

Allowing the writ petitions the Court held that, interest accrued on grants received from State Government is held to be not liable to be taxed. Reassessment proceedings were quashed. Court also observed that the Learned counsel appearing for the petitioners has further agreed that the petitioners would not raise the plea of limitation.

Punjab Police Housing Corporation Ltd. v. PCIT (2020) 116 taxmann.com 402 (P&H) (HC)

1763 **S. 147 : Reassessment – Depreciation – Water supply and drainage – Allowed depreciation at 15% – Issue was subject matter of revision and considering the reply the revision proceedings were dropped – Reassessment is held to be not valid. [S. 32, 148, 263]**

The assessee had claimed depreciation at rate of 15 percent on water supply and drainage which was allowed. The assessment was completed u/s 143 (3) of the Act. Assessing Officer had raised an identical query and thereupon he had accepted assessee's explanation and, claim of excess rate of depreciation was restricted to non-productive assets only. It was also found that for very same reason, Commissioner had issued notice under section 263 but, after considering assessee's reply, said proceedings were dropped. Tribunal quashed the reassessment proceedings. On appeal by revenue the court held that when reasons for reopening of assessment were subject matter of proceedings under section 143(3) or proceedings under section 263, once again, for very same reasons, power under section 147 could not be invoked. (AY. 2008-09)

CIT v. Neyveli Lignite Corporation Ltd. (2020) 273 Taxman 322 / 193 DTR 6 (Mad.)(HC)

S. 147 : Reassessment – Survey – Failure to furnish details of invoices for expenses – Reassessment is held to be valid [S. 37(1), 133A, 148, Art. 226] 1764

During survey it was noticed that assessee had claimed certain expenses during respective assessment years, however, when assessee was called upon to furnish bills and invoices for all expenses claimed, discrepancies with income, loan agreement copies etc., assessee had failed to furnish details despite time granted. The reassessment notice was issued. The assessee filed writ petition and contended that there was no tangible materials that were available for invoking jurisdiction under section 147/148 and non furnishing of information would not ipso facto amount to escapement of income tax. Dismissing the petition the Court held that since assessee had failed to furnish details of invoices for expenses incurred by it even during original scrutiny assessment, impugned reopening was justified.(AY. 2012-13 to 2017-18)

Mohan Ravi v. ITO (2020) 195 DTR 108 / 317 CTR 451 / 268 Taxman 408 (Mad.)(HC)

S. 147 : Reassessment – Audit objection – Income from other sources – Profit worked on basis of contract/sub – Contract income but failed to add interest income shown in books as other income – Reassessment is held to be valid. [S. 56, 148] 1765

Assessing Officer worked out profit on basis of contract and sub-contract income. On account of oversight/mistake, he failed to add interest income shown in books as other income. Subsequently, audit objections were raised by audit party Assessing officer issued notice under section 147 of the Act. Tribunal up held the reassessment order passed by the Assessing Officer. Dismissing the petition the Court held that since in Profit and Loss Account, assessee himself had shown interest on FDRs as 'other income', question of double addition would not arise on reassessment. Reassessment is held to be proper.

Suresh Chand Gupta v. PCIT (2020) 273 Taxman 66 (All.)(HC)

S. 147 : Reassessment – Any hypothesis or contingency that may emerge in future – Protective addition – Reassessment is bad in law. [S. 148, Art. 226] 1766

The assessee filed writ against the reassessment proceedings. Allowing the petition the Court held that reopening of assessment could be made only when Assessing Officer has a reason which is present in his mind when he forms his reason to believe that income has escaped assessment; statute does not contemplate reopening of an assessment under section 148 on a hypothesis or a contingency which may emerge in future. Where though assessment had already been made in hands of association of persons, Assessing Officer sought to reopen assessment to make protective addition in hands of assessees, proceedings under section 148 were wholly without jurisdiction.(AY. 2019-20)

Vinodbhai Jivrajbhai Radbiya v. ITO (2020) 270 Taxman 304 (Guj.)(HC)

S. 147 : Reassessment – Capital gains – Agricultural land – Later the property used for commercial purposes – No new tangible material – Reassessment is held to be bad in law. [S. 2(14), 54F, 148] 1767

Assessee sold a land on 18-1-2011 for sale consideration of certain amount. Assessee filed its return of income contending that said land was agricultural land and, thus, capital gain on its transfer was exempt. Same was accepted and return of assessee was processed under section 143(3). Subsequently, Assessing Officer issued a reopening notice against

assessee on ground that land sold by assessee was situated within limits of city corporation and same could not be treated as an agricultural land. Accordingly, he assessed sale consideration from sale of lands as long-term capital gains. It was noted that Tribunal found that land sold by assessee came within corporation limits by virtue of Government order no. 97, dated 19-7-2011. Allowing the appeal the Tribunal held that when assessee sold such land it was not within city municipal corporation limits. Tribunal further found that assessee had already brought entire details about sale of land during original assessment. Said Government notification was also very much available when original assessment was completed and Assessing Officer had no new tangible material available to clarify its reopening. Reassessment was quashed. Court also held that since new property purchased by assessee was residential property, merely because assessee had put it to use for non-residential purpose to run restaurant in it, that too, much after its purchase, assessee could not be denied exemption under section 54F of the Act. (AY. 2011-12)
CIT v. Ramesh Shroff (2020) 275 Taxman 323 (Karn.)(HC)

1768 **S. 147 : Reassessment – Guideline value – Cannot be the basis for reopening of assessment. [S. 45, 69, 148, Art. 226]**
Assessee purchased a property for a sale consideration of Rs. 1.5 crores. Guideline value of property was Rs. 1.95 crores. Assessing Officer considering reply of assessee regarding difference in actual sale consideration and guideline value completed assessment under section 143(3) of the Act. Reassessment notice was issued which was challenged the Court held that since recitals in sale deed evidenced that property was purchased at Rs. 1.5 crores, guideline value shown in sale deed could not be construed to be an actual sale value, and therefore, consequential decision that assessee had under quoted sale amount in returns, could not be accepted. (AY. 2009-10)
S. Kamarasu v. ITO (2020) 275 Taxman 392 (Mad.)(HC)

1769 **S. 147 : Reassessment – Business loss – Share dealing – Allowed after making thorough scrutiny – Review of assessment is not permissible. [S. 28(i), 148]**
Dismissing the appeal of the revenue the Court held that when details of loss on sale of shares had been clearly disclosed in profit and loss account by assessee, while filing original return of income and assessing authority made a thorough scrutiny after issuing scrutiny notice and thereafter, passed original assessment order, it was clear that original assessment order was passed by Assessing Officer after forming opinion. Therefore, reassessment proceeding under section 147 would clearly amount to reviewing original order of assessment under section 147 under pretext of reassessment, which was not permissible. (AY 2007-08)
PCIT v. Safe Corrugated Containers P. Ltd. (2020) 275 Taxman 53 (Mad.)(HC)

1770 **S. 147 : Reassessment – Reasons communicated – Participated in the proceedings – If relevant germane reasons exist and have been communicated to the assessee that is enough for reassessment proceedings to hold the field – Writ is not maintainable. [S. 148, Art. 226]**
The Assessing officer issued five notices without stating the reasons however six separate intimations, the Assessing Officer informed to assessee reasons for reopening assessment years wherein it was stated that on perusal of ITR filed by assessee during survey u/s 133A, it was noticed that assessee had claimed expenses equivalent to

59.23%, 51.10%, 38.79%, 26.71%, 28.88% & 35.24% in respective assessment years in question. Assessee had failed to furnish details despite sufficient time was granted The asseessee filed the writ petition challenging the notice under section 147/148. Dismissing the petition the Court held that if assessing Officer had reasons to believe that income had escaped assessment, he could issue a notice for passing order u/s 147. Sufficiency of those reasons could not be gone into by High Court if relevant germane reasons exist and have been communicated to assessee that was enough for reassessment proceedings to hold field During scrutiny, assessee was further asked to furnish details of invoices for expenses incurred. However, assessee failed to furnish the same. Therefore, it would be improper to hold that the Assessing Officer had erred in invoking reassessment jurisdiction vested with him under S. 147/148. Further, assessee had himself replied and participated in impugned proceedings. Reasons were also communicated to assessee to which assessee had also replied. Thus, it was not open for assessee to question same to scuttle proceedings initiated under Act. (AY.2012-13 to 2017-18)
Mohan Ravi v. ITO (2020) 195 DTR 113 (Mad.)(HC)

S. 147 : Reassessment – Charitable Trust – Corpus donation – Change of opinion – No new facts – Reassessment is held to be bad in law. [S. 2(15) 11, 12A, 148, Art. 226] 1771
Allowing the petition the Court held that the assessee had placed all the material before the Assessing Officer and where there was a doubt, even that was clarified by the assessee in its letter dated November 8, 1995. If the Assessing Officer, while passing the original assessment order, chose not to give any finding in this regard, that cannot give him or his successor in office a reason to reopen the assessment of the assessee or to contend that because the facts were not considered in the assessment order, a full and true disclosure was not made. Since the facts were before the Assessing Officer at the time of framing the original assessment, and later a different view was taken by him or his successor on the same facts, it clearly amounts to a change of opinion. This cannot form the basis for permitting the Assessing Officer or his successor to reopen the assessment of the assessee. (AY. 2006-07)
N.H. Kapadia Education Trust v. ACIT (2020) 190 DTR 184 (Guj.)(HC)

S. 147 : Reassessment – Developing, operating and maintaining information technology parks – Lease rental – Change of opinion – Reassessment is held to be bad in law. [S. 80IA(iii), 148] 1772
Dismissing the appeal of the revenue the Court held that there was no failure to disclose any material facts and the AO has correctly assessed the lease rental as business income, reopening of assessment is due to change of opinion hence bad in law. (AY. 2003-04, 2005-06)
CIT v. Tidel Park Ltd. (2020) 317 CTR 440 / 195 DTR 191 (Mad.)(HC)

S. 147 : Reassessment – Real estate business – Improvement cost – Change of opinion – Reassessment is held to be bad in law. [S.148] 1773
Dismissing the appeal of the revenue the Court held that the tribunal has rightly held that reassessment is based on change of opinion hence bad in law. No substantial question of law arises. (AY. 2009-10)
PCIT v. K.R. Jayaram (2020) 192 DTR 281 / 316 CTR 560 (Mad.)(HC)

1774 **S. 147 : Reassessment – Failure to disclose material facts – Writ is held to be not maintainable. [S. 148, Art. 226]**

Dismissing the petition the Court held that the issues involved questions which related to accounts and had to be decided by the original authority. Mere filing of the annexure by the assessee in response to the notice during scrutiny assessment by itself might or might not have been sufficient to conclude that there was full and true disclosure by the assessee if the information furnished was neither complete nor true. To ascertain whether it was a mere change of opinion or not, it had to be first established that there was true and full disclosure which could be demonstrated by the assessee only in a proceeding before the Assistant Commissioner and not under article 226 of the Constitution of India as the scope of judicial review was limited and it was not possible to conduct a roving enquiry on facts and accounts. The assessee was to participate in the proceedings before the Assistant Commissioner.(AY.2003-04)

Seshasayee Paper and Boards Ltd. v. ACIT (2020) 429 ITR 107 / 192 DTR 49 / 316 CTR 196 (Mad.)(HC)

1775 **S. 147 : Reassessment – Subsequent information from documents impounded during survey of cash transactions – Reassessment proceedings valid. [S. 133A, 148, Art. 226]**

Dismissing the petition the Court held that in view of the statutory provisions, there were sufficient reasons given by the Assessing Officer, which according to him constituted "reasons to believe" that income which was chargeable to tax had escaped assessment and which had come to the notice of Department at a later stage in the course of scrutiny. The notice and the reassessment proceedings were not barred by limitation as the proceedings drawn by the Assessing Officer were with sufficient material on record showing income, which was otherwise chargeable to tax, had escaped assessment. (AY.2013-14)

Sanjay Agrawal v. PCIT (2020) 429 ITR 233 (Chhattisgarh)(HC)

1776 **S. 147 : Reassessment – Information from investigation wing – HSBC Bank located in Switzerland – Procedural irregularities – Cannot be raised first time before High Court. [S. 143(2), 148, 260A, 292BB]**

Dismissing the appeal the Court held that the facts recorded by the Commissioner (Appeals) in his order made it clear that procedure had been followed. There were proper issuance and service of notices under section 143(2). There was no procedural irregularity and the question of applying section 292BB of the Act would not arise. Procedural irregularity could not be canvassed for the first time before the High Court, as the assessee was never prejudiced earlier, and on the facts there was statutory compliance with the procedure under section 143. The order of reassessment was valid. (AY.2006-07, 2007-08)

Pradeep Dayanand Kothari v. CIT (2020) 429 ITR 14 / (2021) 277 Taxman 260 (Mad.)(HC)

1777 **S. 147 : Reassessment – With in four years – Valuation report – Non – application of mind by Authorities – Orders quashed and set aside. [S. 142A, 143(3), 148, 264, Art. 226]**

Allowing the petition the Court held that the assessee had disclosed full particulars. Despite the assessee having submitted his valuation report dated January 10, 2005 why the request calling for a valuation report was made only on October 19, 2006 and why

the report reached the officer on November 5, 2007 were all questions which were not clear from the record. Without meeting the essential ingredients of application of mind to the various material, necessitating reopening of the assessment was missing. The order passed by the Deputy Commissioner under section 143(3) / 147 as also by the Commissioner was set aside. (AY. 2004-05)
Mukul Kumar Singh v. CIT (2020) 429 ITR 21 / (2021) 199 DTR 357 / 320 ITR 237 (Pat.) (HC)

S. 147 : Reassessment – With in four years – Change of opinion – Speculative transactions – Reassessment is held to be not valid [S. 43(5) 148] 1778
Dismissing the appeal of the revenue the Court held that, on the facts the Assessing Officer was in favour of the assessee. However, he stated that though the assessee seemed to be qualified under clause (a) to section 43(5), since it had not complied with condition "d" it was not entitled to any relief. Reopening, based upon a change of opinion or a review of the decision taken by the Assessing Officer was impermissible. The Tribunal was right in setting aside the order of reassessment. (AY.2009-10)
PCIT v. Shree Laxmi Jewellery Pvt. Ltd. (2020) 428 ITR 379 (Mad.)(HC)

S. 147 : Reassessment – With in four years – Agricultural land – Change of opinion – Reassessment is held to be not valid. [S. 2(14), 148] 1779
Dismissing the appeal of the revenue the Court held that,the assessee during the original assessment proceedings had brought the entire details about the sale of the land in Uthandi village and also noted the fact that the Gazette notification issued by the Government of Tamilnadu was very much available when the original assessment was completed and the Assessing Officer had no new tangible material to justify its reopening. Apart from that, the Tribunal noted that in the case of assessee's spouse, who was also co-owner of the very same property, the property was treated as agricultural land and the assessment was completed under section 143(3) of the Act and the said finding remained undisturbed. This would clearly show that the reopening of the assessment in the instant case was a clear case of "change of opinion" and the Tribunal was justified in quashing the reassessment proceedings.(AY.2011-12)
CIT v. Ramesh Shroff (2020) 428 ITR 499 (Mad.)(HC)

S. 147 : Reassessment – With in four years – Capital gains – Advance received – Addition cannot be made as income from other sources – Addition is held to be not justified – Reassessment was quashed. [S. 2(27(v), 45, 56, 148] 1780
Dismissing the appeal of the revenue the Court held that reassessment is bad in law and as the joint development agreement, power of attorney, the mortgage were all in force at the relevant time. In fact, even on the date when the Assessing Officer completed the assessment under section 147 of the Act by order dated March 25, 2015, the joint development agreement was not rescinded and the power of attorney was not cancelled. Therefore, on the facts, the Assessing Officer could not have held that this was on account of a windfall gain to be brought to tax under the head "Income from other sources". (AY.2007-08)
CIT v. City Lubricants Pvt. Ltd. (2020) 428 ITR 109 / 195 DTR 457 / (2021) 318 CTR 87 (Mad.)(HC)

1781 **S. 147 : Reassessment – Alternative remedy – Reassessment proceedings completed and appeal filed from order of reassessment – Writ is held to be not maintainable. [S. 148, Art. 226]**

Dismissing the petition the Court held that the interference at the notice stage is possible only in exceptional cases. It was open to the assessee to raise all the challenges, both legal and factual, by availing of the statutory remedy. The notice and proceedings under challenge in the writ petition had culminated in a reassessment order passed by the Assessing Officer; which admittedly had been challenged by filing a statutory appeal and was pending consideration. This being the position, it was not a fit case to call for interference at this stage. *Precision Engineering v. ACIT(NO.2) (2020) 427 ITR 258 (Chhattisgarh)* distinguished.

Obiter dicta : The observations made by the single judge in the judgment under challenge would stand confined to consideration of the question whether interference was to be made by the court at the notice stage or not. In other words, the observations made by the single judge as to the scope of the relevant provisions of law would not be a bar to the appellate authority to consider the merits of the appeal including questions of law and of fact. It was open to the assessee to agitate all such aspects, both factual and legal, before the appellate authority and if they were raised, they should be considered untrammelled by the observations made by the single judge in the judgment under challenge.(AY.2012-13)

Suresh Kumar Agarwal v. Dy. CIT (2020) 428 ITR 101 / 317 CTR 1000 / 196 DTR 276 (Chhattisgarh)(HC)

1782 **S. 147 : Reassessment – Notice issued after proper sanction – No return submitted in response to notice – Existence of alternate remedy – Writ to quash the notice is held to be not maintainable [S. 148, 151, Art. 226]**

Dismissing the writ petition the Court held that the notice of reassessment had been issued with the approval of the Commissioner and it was in consonance of section 151 of the Act and without any apparent illegality. After issuance of notice under section 148, the first course was to file the return. Except for filing return, the assessee had taken all other courses such as filing of objections and invoking the writ jurisdiction of the court. Even if an order were passed after reopening pursuant to the notice, the assessee would have a statutory remedy as provided in the Act. The notice of reassessment could not be quashed. (AY.2012-13)

Naval Kishore Khaitan v. PCIT (2020) 428 ITR 62 (AP)(HC)

1783 **S. 147 : Reassessment – With in four years – Change of opinion – Speculative transaction – Business of manufacturing and trading of bullion and jewellery – Review of decision is impermissible – Business loss – Held to be not valid. [S. 43(5), 148]**

Dismissing the appeals of the revenue the Court held that the reopening, based upon a change of opinion or a review of the decision taken by the Assessing Officer was impermissible. The Tribunal was right in setting aside the order of reassessment. (AY.2009-10)

PCIT v. Shree Laxmi Jewellery Pvt. Ltd. (2020) 428 ITR 379 (Mad.)(HC)

S. 147 : Reassessment – With in four years – Capital gains – Advance received for transfer of capital asset – Reassessment is held to be not valid – Joint development agreement – The amount has not accrued – Addition could not be made even on merit. [S. 2(47)(v), 45, 56, 148] 1784

Court held that the reasons for reopening were furnished to the assessee, a reading of which showed that the Assessing Officer proposed to apply section 2(47) of the Act and observed that the assessee had not admitted the income in its return and offered it to tax. The issue pertaining to the amount of advance received by the assessee, namely, Rs. 9 crores was never the subject matter of the reopening proceedings. This was sufficient to hold the assessment order dated March 25, 2015 to be a nullity. Court also held that even on the merits the joint development agreement did not take off and ultimately, in February 2015, the developer addressed the assessee to return the amount of Rs. 9 crores before March 31, 2015. Even at that point of time, the agreement was not cancelled and the power of attorney granted to the developer remained in force. Therefore, by no stretch of imagination, could the sum of Rs. 9 crores in the hands of the assessee be treated to be a windfall gain as it did not accrue to the assessee as a result of circumstances outside its control. Therefore, the finding of the Assessing Officer was incorrect. There was no finding rendered by the Assessing Officer that the sum of Rs. 9. Therefore, on the facts, the Assessing Officer could not have held that this was on account of a windfall gain to be brought to tax under the head Income from other sources. (AY. 2007-08)

CIT v. City Lubricants Pvt. Ltd. (2020) 428 ITR 109 / 195 DTR 457 (Mad.)(HC)

S. 147 : Reassessment – Alternative remedy – Survey – Dismissal of writ petition on ground of availability of alternative statutory remedy – Held to be justified. [S. 133A, 148, Art. 226] 1785

Based on information collected by way of survey under section 133A of the Act the Assessing Officer issued a notice to the assessee under section 148 for reassessment under section 147. The writ petition filed by the assessee against the reassessment proceedings was dismissed by the single judge on the ground that remedy of statutory appeal was available to the assessee. On appeal dismissing the appeal held that the matter involved a fact-finding exercise which could be effectively prosecuted before the competent authority under the statute and could not be a matter for invoking the discretionary jurisdiction of the court under article 226. There was no irregularity, much less any illegality, with regard to the course ordered to be pursued by the single judge. (AY. 2013-14)

Precision Engineering v. ACIT (No. 2) (2020) 427 ITR 258 (Chhattisgarh)(HC)

S. 147 : Reassessment – With in four years – Existence of material – Reassessment notice is held to be valid. [S.148, Art. 226] 1786

Dismissing the petitions the Court held that there existed material to infer that income had escaped assessment. On the issue under consideration were not filed during the course of the assessment proceeding or were not considered during the assessment. Issue of notice is held to be valid.

Precision Engineering v. ACIT (2020) 427 ITR 198 / 196 DTR 371 (Chhattisgarh)(HC)
Aaditya Construction v. PCIT (2020) 427 ITR 198 / 196 DTR 371 (Chhattisgarh)(HC)

1787 **S. 147 : Reassessment – Long-term capital gains – Improvement cost on land – Examined by the Assessing Officer in original assessment proceedings – Notice for reassessment is held to be bad in law. [S. 45, 148]**

Allowing the petition the Court held that it was only after examination of the sale transaction of the land and related issues, that the Assessing Officer had passed the order under S. 143(3) Along with the sale deed, the assessee had also filed a report of the valuer who had estimated the cost of construction of staff room, office, godown, labourers' rooms, compound wall, borewell, etc., at Rs. 5.09 lakhs. The reasons recorded lacked validity and there was lack of application of mind on the part of the Assessing Officer when he had conveyed that the cost of improvement of Rs. 5.09 lakhs was not reflected in the assessee's books of account. The notice issued under S. 148 for reopening the assessment was quashed. (AY. 2012-13)

Niranjan Chimanlal Jani v. Dy.CIT (2020) 425 ITR 162 (Guj.)(HC)

1788 **S. 147 : Reassessment – Officer recording reasons and issuing notice must be the jurisdictional Assessing Officer – Reasons recorded by jurisdictional Assessing Officer – E-assessment Scheme – Notice issued by officer who did not have jurisdiction over assessee – Defect not curable – Notice and consequential proceedings and order invalid. [S. 148, 292B]**

An order 4 was passed u/s 143(1) of the Act. A notice dated March 29, 2018 under section 148 was issued to reopen the assessment. The assessee submitted that the original return filed by him be treated as the return filed in response to the notice under S. 148 and requested the Assessing Officer to supply a copy of the reasons recorded for reopening the assessment.. The assessee participated in the assessment proceedings and raised objections against the initiation of proceedings under S. 147 on the ground that the assumption of jurisdiction on the part of the Assessing Officer by issuance of notice under S. 148 was invalid contending that the notice was issued by the ITO, Ward No. 2(2), whereas the reasons were recorded by the Dy. CIT, Circle 2. The Department contended that issuance of the notice by the ITO was a procedural lapse which had happened on account of the mandate of e-assessment scheme and non-migration of the permanent account number of the assessee in time and that such defect was covered under the provisions of S. 292B and therefore, the notice issued could not be said to be invalid. On writ allowing the petition the Court held that while the reasons for reopening the assessment had been recorded by the jurisdictional Assessing Officer, viz., the Deputy Commissioner, Circle 2, the notice under section 148(1) had been issued by the ITO, Ward 2(2), who had no jurisdiction over the assessee, and hence, such a notice was bad on the count of having been issued by an Officer who had no authority to issue such notice. It was the Officer recording the reasons who had to issue the notice under S. 148(1) whereas the reasons had been recorded by the jurisdictional Assessing Officer and the notice had been issued by an Officer who did not have jurisdiction over the assessee. Accordingly no proceedings could have been taken under S. 147 in pursuance of such invalid notice. The notice under S. 148(1) and all the proceedings taken pursuant thereto could not be sustained. (AY. 2011-12)

Pankajbhai Jaysukhlal Shah v. ACIT (2020) 425 ITR 70 / 185 DTR 306 / 312 CTR 300 (Guj.)(HC)

S. 147 : Reassessment – Amalgamation – Notice issued against transferor – Amalgamating entity ceases to have existence – Notice and subsequent proceedings unsustainable. [S. 148, Art. 226] 1789

Allowing the petition the Court held that,notice issued against transferor company, amalgamating entity ceases to have existence hence the notice and subsequent proceedings unsustainable. Accordingly the notice and all the proceedings taken pursuant thereto, were to be quashed and set aside. (AY. 2012-13)

Gayatri Microns Ltd. v. ACIT (2020) 424 ITR 288 / 114 taxmann.com 318 (Guj.)(HC)

Editorial: SLP of revenue dismissed, due to low tax effect, ACIT v. Gayatri Microns Ltd. (2021) 278 Taxman 274 (SC)

S. 147 : Reassessment – Notice issued in name of dead person – Notice and proceedings invalid. [S. 131(IA), 148, 159, 292A, Art. 226] 1790

Allowing the petition the Court held that the petitioner at the first point of time had objected to the issuance of notice under section 148 in the name of his deceased father (assessee) and had not participated or filed any return pursuant to the notice. Therefore, the legal representatives not having waived the requirement of notice and not having submitted to the jurisdiction of the Assessing Officer pursuant thereto, the provisions of S. 292A would not be attracted and hence the notice had to be treated as invalid. Even prior to the issuance of such notice, the Department was aware about the death of the petitioner's father (assessee) since in response to the summons issued under S. 131(1A) the petitioner had intimated the Department about the death of the assessee. Therefore, the Department could not say that it was not aware of the death of the petitioner's father (assessee) and could have belatedly served the notice under S. 159 upon the legal representatives of the deceased-assessee. The notice dated March 28, 2018 issued in the name of the deceased-assessee by the Assessing Officer under S.148 as well as further proceedings thereto were to be quashed and set aside. (AY.2011-12)

Durlabhai Kanubhai Rajpara v. ITO (2020) 424 ITR 428 (Guj.)(HC)

S. 147 : Reassessment – Share capital – Notice issued based on disallowances made in for subsequent year – No information available for specific assessment year – Notice is held to be invalid. [S. 68, 147(b), 148] 1791

Allowing the appeal the Court held that there was no information available with the Assessing Officer specific to the assessment year. The reasons for reopening the assessment did not make any reference whatsoever to any "information" in the possession of the Assessing Officer that persuaded him to form the belief that income had escaped assessment. The only "information" available with him was the assessment order for the assessment year 1987-88, and no additions were made to the income of the assessee then. If that was the only basis for the reopening it was not permissible. The jurisdictional requirement of S. 147(b) as it stood at the relevant time was not fulfilled. The initiation of reassessment under S. 147 was invalid. The additions made by the AO under S. 68 on account of the additional share capital amount was to be set aside. (AY.1986-87)

Tropex Promotion and Trading Ltd. v. CIT (2020) 423 ITR 510 (Delhi)(HC)

1792 **S. 147 : Reassessment – Capital gains – Joint venture agreement with developer – Handing over possession of property and accepting refundable deposit – Matter Remanded to Assessing Officer. [S. 2(47)(v), 45, 147, 148, Transfer of Property Act, 1882, S. 53A]**

The assessee entered into a joint venture agreement with a developer and received a refundable deposit. Possession and development rights were given in the financial year relevant to the assessment year 2007-08. The AO reopened the assessment on the ground that the joint venture resulted in long-term capital gains to the assessee and was not offered to tax. The CIT(A) considered the fact that the owners had allowed the developer to enter upon the project of the land for the purpose of construction, open the site office and raise any loan for development and construction of the project from any financial institutions. The CIT(A) held that in pursuance of the agreement, possession was given in part performance of the contract, that the liability to capital gains tax arose upon handing over possession and partly allowed the appeal of the assessee. Both the assessee and the Department filed appeals before the Tribunal. The Tribunal held that according to the Explanation under section 147 due to non-disclosure of capital gains by the assessee the income chargeable to tax had escaped assessment. The Tribunal recorded a finding that there was a transfer under S. 2(47)(v) since possession and control of the property already vested with the transferor and that apart the joint development agreement was not cancelled and was still in operation. With regard to the quantification of the capital gains the Tribunal remanded the appeals to the AO for fresh consideration as to the computation of the capital gains. On appeal the Court held that, the reopening of the assessment under S. 147 of the Act depended upon the facts and circumstances of each case and therefore, could not be construed as a substantial question of law. The matter was remanded to the AO to decide the issue as per the ratio in *CIT v. Balbir Singh Maini [2017] 398 ITR 531 (SC) as affirmed in Seshasayee Steels P.Ltd v. ACIT (2020) 421 ITR 46 (SC)* the questions regarding the transfer exigible to tax with reference to S.2(47)(v) of Act read with section 53A of the 1882 Act. (AY.2007-08)

Sumeru Soft P. Ltd. v. ITO (2020) 423 ITR 518 / 195 DTR 207 (Mad.)(HC)

1793 **S. 147 : Reassessment – Book profit – Provision for bad and doubtful debt – Oder of the AO was in accordance with the judgement of the Supreme Court – Subsequent retrospective amendment withdrawing deduction – Notice based on amendment is held to be not valid. [S. 115JA, 115JB, 148]**

Dismissing the appeal of the revenue the court held that, when the AO passed the assessment order provision for bad and doubtful debt was clearly a deductible amount for the purpose of section 115JA of the Act. (*CIT v. HCL Comnet Systems and Services L td. [2008] 305 ITR 409 (SC)*) Parliament amended Explanation 1 to section 115JB by the Finance (No. 2) Act, 2009 ([2009] 314 ITR (St.) 57). The amendment had retrospective effect from April 1, 2001. However, the reassessment notice was issued on March 31, 2008 and on that date, the judgment of the Supreme Court referred above which was delivered on September 23, 2008 was holding the field. The relevant particulars and details on the basis of which the claim for deduction was made by the assessing authority for the assessment year 2003-04 were very much available at the

time of original assessment order passed by the assessing authority on March 10, 2006. The notice of reassessment to withdraw the deduction was not valid. (AY. 2003-04)
CIT v. Saint Gobain Glass India Ltd. (2020) 422 ITR 417 / 193 DTR 399 / 317 CTR 468 / 269 Taxman 610 (Mad.)(HC)

S. 147 : Reassessment – Return submitted – Notice on ground that returns had not been submitted – Loan transactions accepted in original assessment – Notice seeking to assess outstanding liability as income from other sources – Held to be not valid. [S. 56, 148, Art. 226] 1794
Allowing the petition the Court held that issue of notice on ground that returns had not been submitted when the Loan transactions were accepted in original assessment issue of notice seeking to assess outstanding liability as income from other sources is held to be not valid. (AY. 2011-12)
Vanita Sanjeev Anand v. ITO (2020) 422 ITR 1 / 189 DTR 198 / 314 CTR 608 / 271 Taxman 105 (Delhi)(HC)

S. 147 : Reassessment – Audit objection – Depreciation – – Business or commercial rights of similar nature – Notice of reassessment based solely on audit objection is held to be not valid. [S. 32, 148] 1795
The assessee acquired the customer care parts business by a business transfer agreement dated April 26, 2007. The assessee claimed that it was entitled to depreciation on the vendor and dealer network and the details of depreciation were disclosed in the tax audit report annexed with the return of income. Submissions were made on various dates along with written submissions, which were filed before the AO to justify its claim to depreciation on the vendor and dealer network and goodwill. The assessment was completed under S. 143(3) of the Act. Subsequently there was an audit objection raised by the audit party of the Comptroller and Auditor General regarding the claim for depreciation on the dealer and vendor network and goodwill. The AO issued a notice of reassessment. On a writ allowing the petition the Court held that the AO was justified in holding that the vendor and dealer network rights and the goodwill acquired by the assessee pursuant to the business transfer agreement dated April 26, 2007, would qualify for depreciation under section 32 and the assessment was completed considering the claim for depreciation after seeking for clarification from the assessee. The reasons assigned by the AO to reopen the assessment was nothing but a clear case of change of opinion. It was manifestly clear that the AO had issued the reassessment notice on the ground of direction issued by the audit party. The notice was not valid.(AY. 2010-11)
Mobis India Ltd. v. Dy.CIT, LTU-II (2018) 101 CCH 0475 / (2020) 421 ITR 463 (Mad.)(HC)

S. 147 : Reassessment – With in four years – Cash credits – Share premium – Accommodation entries – Subsequent discovery that the transaction was with a name Lender – Notice of reassessment is held to be valid. [S. 68, 148] 1796
The assessee received share application money at a premium from the investor companies were promoted by TG, who had been found to have promoted about 90 such companies. The AO had accepted the claim made by the assessee with regard to the genuineness of the transaction without any scrutiny and accepting the statement of the

assessee as truthful. At that stage, the material information, which the assessee withheld and did not disclose, was that it was dealing with companies promoted by TG, who was engaged in the business of providing accommodation entries. The AO after recording the reasons issued the reassessment notice. The assessee challenged the issue of notice. Dismissing the petition the Court held that since the assessee did not dispute the receipt of monies from SI and NDC towards alleged capital infusion, the belief formed by the Assessing Officer, that taxable income of the assessee had escaped assessment could not, but, be described as reasonable. The notice of reassessment was valid.(AY. 2012-13)
RDS Project Ltd. v. ACIT (2020) 421 ITR 624 / 185 DTR 180 / 312 CTR 345 / 269 Taxman 327 (Delhi)(HC)

1797 **S. 147 : Reassessment – With in four years – Industrial undertaking – Change of opinion – Issue discussed in original assessment proceedings and disallowed portion of the claim – Reassessment is not valid. [S. 80IA, 143(3), 148, 263]**
Dismissing the appeal of the revenue the Court held that if the Department had been aggrieved by the order passed under section 143(3), it could have recourse under section 263 but reopening the assessment under section 147 could not be allowed. The Department had not been able to deny that in the original order under section 143(3) the issue of deduction did arise and after discussing it a particular finding was given. Mere change of opinion could not be considered within the ambit of the phrase "reason to believe".
An Explanation is always subordinate to the main provision (as the name suggests, only to explain). The powers under section 147 of the Income-tax Act, 1961 have been defined without any equivocation. Mere change of opinion could not be considered within the ambit of the phrase "reason to believe". (AY. 1997-98)
PCIT v. Swaraj Engines Ltd. (2020) 421 ITR 594 / 107 CCH 0443 / 190 DTR 385 / 315 CTR 331 (P&H)(HC)

1798 **S. 147 : Reassessment – With in four years – Tax frauds – Reasons to believe have been recorded in meticulous details by the AO – Approval was obtained before issue of notice – Notice of reassessment is held to be valid in law. [S. 148, 151]**
Dismissing the petition the Court held that reasons to believe have been recorded in meticulous details by the AO. Approval was obtained before issue of notice. Objections of the assessee were dealt with on a point to point basis, there is no infirmity in the reassessment proceedings. Accordingly notice of reassessment is held to be valid in law. (AY. 2012-13)
Deepak Gupta v. ACIT (2020) 422 ITR 92 / 186 DTR 250 / 303 CTR 34 / 275 Taxman 338 (All.)(HC)

1799 **S. 147 : Reassessment – With in four years – Capital gains – Valuation – Reassessment is held to be valid – Referring the matter for valuation to the file of the AO is held to be valid. [S. 2(47)(v), 50C, 148]**
Dismissing the appeal of the assessee the Court held that, the reassessment is held to be valid. As regards referring the matter for valuation to the file of the AO is held to be valid. (AY. 2009-10)
Joshna Rajendra (Smt.) v. ITO (2020) 185 DTR 361 (Karn.)(HC)

S. 147 : Reassessment – With in four years – Issue of shares at premium – Mere production before the AO the Account Books, or other evidence, from which material evidence could, with due diligence, have been discovered by the Assessing Officer, would not necessarily amount to disclosure within the meaning of the First Proviso to S. 147 – Court perused the Investigation report which was referred while issuing the notice of reassessment – Notice of reassessment is held to be valid – Writ petition is dismissed – Awarded costs of Rs. 1 lakhs to be paid to The Delhi High Court Advocates Welfare Trust. [S. 68, 143(1), 148] 1800

Dismissing the writ the Court held that,the AO made inquiries with regard to the genuineness of the transactions of investment in share capital with premium in the assessee company. In the independent inquiry, the AO found that the investor companies despite service of notice did not appear; that in respect of some of them their office were found closed; some other entities were found not existing at the given address; in some cases, the premises was found to be owned by some other person. Consequently, notices could not be served in these cases. Even when they responded, the investor companies did not provide justification for applying in equity shares in the assessee company at a premium of Rs.190 per share. Court held that mere production before the AO of the Account Books, or other evidence, from which material evidence could, with due diligence, have been discovered by the AO would not necessarily amount to disclosure within the meaning of the First Proviso to S. 147. Court also looked at the investigation report produced by the revenue. Court also observed that the learned counsel for the petitioner continued to press the matter at the expense of judicial time, which could have been better utilised to deal with other pending cases. Accordingly the Court inclined to subject the petitioner to costs for unjustifiably pressing the petition beyond a point.

Accordingly the petition was dismissed with costs of Rs. 1 lakhs to be paid to The Delhi High Court Advocates Welfare Trust. (AY. 2012-13)

Vendanta Ltd. v. ACIT (2020) 312 CTR 105 / 185 DTR 249 (Delhi)(HC)

S. 147 : Reassessment – With in four years – Commercial production – Every non – disclosure of material facts will not or cannot be a justifiable reason for reopening an assessment – What was required to be considered is that, substance over form – Order of single judge is affirmed. [S. 10B, 148, Art.226] 1801

Assessment was completed u/s.143(3), Single Judge quashed the reassessment notice. On appeal by the revenue, Division Bench of High Court,affirmed the order of single judge. Court held that the learned Single Bench rightly concluded that every non-disclosure of material facts will not or cannot be a justifiable reason for reopening an assessment. Court held that what was required to be considered is that, substance over form. Court held that he learned Single Bench was perfectly right in allowing the writ petition which had been done after thorough examination of the facts and the legal position. In our considered view the revenue has not made out any grounds to interfere with the order passed by the learned Single Bench. (AY. 2010-11) (WP. 2019 dt 24-06-2019)

ITO v. MBI KITS International Rep. by its Partner Sri. D. Chandrasekar (2020) 186 DTR 29 / 315 CTR 709 (Mad.)(HC)

1802 **S. 147 : Reassessment – Audit objection – No new material to show that income had escaped assessment – Notice is not valid. [S. 148, Art. 226]**
Allowing the petition the Court held, that it is well-settled that no reassessment/ reopening can be undertaken on the basis of mere audit objections or query raised by the internal auditors of the Department. The notice did not indicate any independent application of mind by the Assessing Officer. As could be seen from the records, the audit query vis-a-vis the reply of the Assessing Officer made it clear that the Assessing Officer was of the opinion that the transaction in question related to a capital asset and the tax paid on capital gains in respect thereof had been accepted to be correct. This issue was examined and analysed by the Assessing Officer multiple times. The Assessing Officer had no "reason to believe" any escapement of income to assessment. This was a clear case of change of opinion. Hence, assumption of jurisdiction by the Assessing Officer under section 147 could not be sustained. (AY. 2008-09)
P. Hemamalini Maiya v. ACIT (2020) 421 ITR 79 (Karn.)(HC)

1803 **S. 147 : Reassessment – With in four years – Survey – Expenditure Failure to produce documents in the original assessment proceedings – Reassessment notice is held to be valid. [S. 133A, 148, Art. 226]**
Dismissing the petition the Court held that in the course of original assessment proceedings the assessee failed to produce the documents and bills, which was noticed in the course of survey, hence issue of notice of reassessment is held to be valid.(dt. 1-11-2019).Order of single judge is affirmed. (AY. 2012-13 to 2017-18) *Mohan Ravi v. ITO (2020) 317 CTR 456 (Mad.)(HC)* (Single Judge order dt 26-8-2019).
Mohan Ravi v. ITO (2020) 268 Taxman 408 / 195 DTR 108 / 317 CTR 451 (Mad.)(HC)

1804 **S. 147 : Reassessment – Bogus share capital – Parent company – Indian subsidiaries – Information from investigation wing – Credit worthiness of the investing company – Reassessment notice is held to be valid. [S. 68, 148]**
Dismissing the petition the Court held that,the parent co does not have sufficient funds to invest such huge amounts in Indian subsidiaries. The funds are routed through a web of entities spread across various jurisdictions, mostly in tax havens. The investments so made, are required to be investigated and the credit worthiness of the investing company is in jeopardy, in view of the information received from the investigation wing. This exercise can be undertaken during the re-reassessment proceedings to finally determine if the amounts represent undisclosed income of the assessee which is required to be taxed in its hands. At the stage of re-opening, only a reason to believe should exist with regard to escapement of income. Definite conclusion would be drawn after raising queries upon the assessee in the light of s. 68 of the Act. (AY.2012-13)
Experion Development Pvt. Ltd. v. ACIT (2020) 422 ITR 355 / 115 taxmann.com 338 (Delhi)(HC)

S. 147 : Reassessment – Information received from Investigation wing – Accommodation entries – Share capital – Failure to examine in original assessment proceedings – Reassessment notice is held to be valid – The assessee was permitted to raise its objections in the light of the documents provided by the respondent in court within seven days. The Assessing Officer shall decide the objections that may be raised within two weeks. [S. 68, 148, Art. 226] 1805

Dismissing the petition the Court held that, notice for reopening assessment is issued on the basis of information received from investigation wing and in the original assessment proceedings the AO has not examined the genuineness of share capital, hence notice for reassessment is held to be valid. On the facts the assessee had not been given an opportunity to raise objections to the notice. The assessee was permitted to raise its objections in the light of the documents provided by the respondent in court within seven days. The Assessing Officer shall decide the objections that may be raised within two weeks. (AY. 2012-13)

J.M.D. Global (P.) Ltd. v. PCIT (2020) 426 ITR 394 / 187 DTR 265 / 313 CTR 693 / 268 Taxman 198 (Delhi) (HC)

S. 147 : Reassessment – Change of opinion – Business expenditure – Vacancy allowance – Expenditures for maintaining skilled staff for keeping machinery intact, minimum amounts to be paid for retaining electricity connection and so on during such period so as to keep machinery ready for use and assessee also commenced its manufacturing activities in subsequent year – Reassessment is held to be not valid – Vacancy allowance which was not claimed in the original assessment proceedings cannot be claimed in reassessment proceedings. [S. 22, 23, 37(1)] 1806

Assessee-company had not carried on any business for 24 years as manufacturing activities had been closed down. Assessee had claimed several business expenditure such as maintaining skilled staff for keeping machinery intact, minimum amounts to be paid for retaining electricity connection and so on incurred for those years when there was no business. AO allowed the same. Later on, AO issued a reopening notice on ground that since assessee was not carrying on any business for several years, there could be no claim for business expenses. Tribunal allowed the appeal of the assessee. On appeal by the revenue the Court held that since assessee had no intention to close down business and was keeping machinery read for use and after 24 years assessee had also commenced its manufacturing activity, all these expenses incurred by assessee were wholly and exclusively for purpose of business and, thus, same were to be allowed. Reassessment notice is held to be bad in law due to change of opinion. Vacancy allowance which was not claimed in the original assessment proceedings cannot be claimed in reassessment proceedings. (Arising from *Punalur Paper Mills Ltd. v. ITO (2009) 29 SOT 449 (Cochin) (Trib.)*(AY.1996-97 to 2002-03, 2004-05).

CIT v. Punalur Paper Mills Ltd. (2020) 268 Taxman 47 (Ker.) (HC)

S. 147 : Reassessment – Writ challenging the petition should be filed before conclusion of reassessment – Referring to the date of audit report had a live link – Existence of alternative remedy – Writ is held to be not maintainable. [S. 148, Art.226] 1807

Dismissing the petition the Court held that the reassessment order had already been passed. Moreover even on the merits the admitted facts remained that the assessee had

quoted a wrong date, viz., September 29, 2010 as the date of the audit report not only in the original return but also in the revised return and in the return filed in response to the notice issued under section 148. The assessee claimed that it was an inadvertent mistake or clerical mistake. Assuming that it was a mistake, committing the same mistake again and again, prima facie, did not appear inadvertent, when the assessee was fully aware of the fact that the date of audit report was January 12, 2011 and not September 29, 2010, as claimed in the returns filed. The question whether the mistake committed by the assessee in referring to the date of audit report had a live link to whether or not the income had escaped assessment and was to be considered by the next fact finding authority, namely by the Appellate Tribunal and not by the High Court. (AY. 2010-11)
Doosan Bobcat India P. Ltd. v. DCIT (2020) 420 ITR 84 (Mad.)(HC)

1808 **S. 147 : Reassessment – With in four years – Change of opinion – Not based on tangible material – Reassessment is held to be not valid. [S. 80IA, 148, Art. 226]**
Assessment was completed u/s 143(3) of the Act. There after notice for reassessment was issued on the ground that the assessee is not fulfilling the criteria for deduction u/s 80IA of the Act. On writ the Court held that reassessment notice was issued not based on tangible material. The absence of reliable answer given by a Government functionary, being a notice under section 133(6) could be a cause for further enquiry but not tangible material having live link with the formation of belief. The letter did not support the contention of the Revenue. As such no material had been disclosed by the Revenue. All these led to the inevitable conclusion that there had been a change of opinion. The notice issued under section 148 to reopen the assessment under section 147 was set aside and all the proceedings pursuant thereto were quashed. (WP No. 1054 of 2011 dt 4-12-2019). (AY. 2006-07)
Selvel Transit Advertising Pvt. Ltd. v. CIT (2020) 420 ITR 100 / 196 DTR 139 / 317 CTR 679 (Cal.)(HC)

1809 **S. 147 : Reassessment – After the expiry of four years – No failure To Disclose material facts – Reassessment not valid. [S. 148]**
Allowing the appeal of the assessee the Tribunal held that there was no allegation made by the Revenue that income had escaped assessment. There was also no allegation that the assessee had failed to disclose fully and truly all material facts for the assessment in the absence of which no power is vested upon the Assessing Officer to reopen/reassess or recompute income. Therefore, there was no justification for reopening of assessment after expiry of four years from the end of the relevant assessment year. The reopening was bad in law, arbitrary, erroneous since there was no allegation of failure on the part of the assessee in fully and truly disclosing material facts as stipulated by the first proviso to section 147 of the Act. (AY.2011-12)
Arshia Global Tradecom Pvt. Ltd. v. ACIT (2020) 84 ITR 64 (SN) (Kol.)(Trib.)

1810 **S. 147 : Reassessment – After the expiry of four years – No proper reason recorded by the Assessing office – Re assessment is held to be bad in law. [S.148]**
No proper reasons were recorded by the Assessing Officer. Reassessment was quashed. AY. 1989-90 to 1991-92)
Wimco Seedlings Ltd. v. JCIT (2020) 208 TTJ 507 (Delhi)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Accommodation entry – No failure to disclose material facts – Reassessment is held to be bad in law. [S. 148, ITAT R. 27] 1811

The Tribunal held that the Assessing Officer had not mentioned on what account or transactions the assessee had taken the accommodation entry. The Assessing Officer had just narrated the contents as received by him from the Investigation Wing without having all the details and investigation report. The Assessing Officer had not conducted any enquiry in respect of the information from the party who had allegedly made the statement of providing accommodation entries. Nor was there an allegation that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Thus, the reopening of the assessment after four years from the end of the AY. was not permitted. When finally the accommodation entries were found to be on account of sales made by the assessee which formed the primary record as part of the profit and loss account as well as computation of income, in the absence of any allegation by the Assessing Officer, Explanation 1 to section 147 could not be pressed into service. All the sales including the sales in dispute were duly accounted for in the books of account which were audited and subject to scrutiny of the Commercial Taxes Department. Therefore, the assessee could not be held guilty of not furnishing all the information necessary for assessment. The Tribunal also held that the issue of the validity of reopening under rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 was to be decided in favour of the assessee. Since this issue went to the root of the matter and the reassessment having been quashed the only consequence of deciding this issue in favour of the assessee was that the appeal of the Department would fail and the order of the Commissioner (Appeals) was upheld. (AY. 2011-12)

ACIT v. Shiv Vegpro Pvt. Ltd. (2020) 82 ITR 195 / 208 TTJ 355 (Jaipur)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Capital gains – No failure to disclose any material facts – The reason must specify the nature of default or failure on the part of the assessee – Reassessment is not valid. [S. 45, 148] 1812

Tribunal held that the reasons recorded nowhere showed that there was any allegation of failure to disclose any material facts. The very same fact was examined by the Assessing Officer in the first round of reassessment proceedings. Therefore, issue of notice again on the same set of facts amounted to change of opinion. Merely using the expression "Failure on the part of the assessee to disclose fully and truly all material facts" was not enough. The reason must specify the nature of default or failure on the part of the assessee. The reassessment proceedings is held to be illegal and void ab initio. (AY. 2012-13)

Ramotar Singh, HUF v. ITO (2020) 82 ITR 20 (SN) (Delhi)(Trib.)

S. 147 : Reassessment – Reassessment – After the expiry of four years – Before six years – Reasons vague and inconclusive – Reassessment not valid. [S. 148] 1813

Tribunal held that notice under section 148 was issued to the assessee after expiry of four years from the end of the relevant assessment year but before six years. This notice would be within limitation if the Assessing Officer had made out a case that income exceeding rupees one lakh had escaped assessment. No such finding or observation

or reference had been made in the reasons. The Assessing Officer had observed that according to information received from the ITO the assessee carried out transaction in shares and securities with GS. This information was factually incorrect or not cross-verified by the Assessing Officer before recording reasons. The assessee had not carried out its shares or securities transactions with GS. Further, there was no coherence between the information available with the Assessing Officer vis-a-vis the transactions of the assessee, and formation of belief that income had escaped the assessment. These reasons were vague and inconclusive. Therefore, on the basis of such reasoning, the assessment of the assessee could not be reopened. (AY. 2006-07)
Sumer S. Sanghvi v. ACIT (2020) 78 ITR 20 (SMC) (Ahd.)(Trib.)

1814 **S. 147 : Reassessment – After the expiry of four years – Depreciation – Reassessment is held to be not valid. [S. 148]**
Tribunal held that the original assessment in the assessee's case had been completed and the notice was issued after the expiry of four years from the end of the relevant assessment year. The reassessment could have been validly initiated on failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. A note had been appended to the return at the foot of the schedule reading that additional depreciation at 20 per cent had been claimed under section 32, ninth proviso. The assessee did make a disclosure of the claim of additional depreciation. Moreover, the Assessing Officer while finalising the assessment, did take note of this fact, and did not allow travelling expenses incurred for purchase of new plant and machinery and treated such amount as capital expenditure. He not only allowed depreciation but also additional depreciation on such amount Therefore, not only had the assessee made disclosure of the claim of additional depreciation in the original return but the Assessing Officer was conscious of the same fact and had accepted such claim. The case was covered by the first proviso to section 147. Therefore, the initiation of reassessment proceedings was set aside. (AY. 2006-07)
W. B. Engineers International P. Ltd. v. Dy. CIT (2020) 78 ITR 21 (SN) (Pune)(Trib.)

1815 **S. 147 : Reassessment – After the expiry of four years – Cash credits – All material facts were disclosed in the original assessment proceedings – Reassessment is held to be not valid. [S. 68, 148, 194A]**
Tribunal held that the reasons recorded were vague and general in nature. In this case the proviso to section 147 came into play. The assessee had disclosed during the course of the original assessment proceedings the details of all the creditors. The assessee had filed a copy of the notice issued under section 142(1) along with the annexure and replies. He had also filed a copy of the unsecured loan account which contained the account of the lender. The assessee had paid interest on this loan and deducted tax at source. The loan had been repaid within the same year. On these facts, it was wrong on the part of the Assessing Officer to state that the assessee had failed to disclose fully and truly all material facts necessary for assessment. Merely alleging that there was failure to disclose, would not serve the purpose. In this case, a factually wrong allegation had been made that the amount of Rs. 10 lakhs had not been fully and truly disclosed. Reopening of the assessment on such wrong reasons could not be upheld.

Tribunal also held that as the assessee had explained the credit and as the amount had also been repaid along with interest, the addition made under section 68 was not justified.(AY.2011-12)
Bajaj Parivahan P. Ltd. v. ITO (2020) 79 ITR 705 (Kol.)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Freezer security deposits – Lapsed liability taxed in original assessment on proportionate basis over four years from date of receipt – Tribunal finding in earlier year that amount taxable only in year of termination – Reassessment not valid. [S. 148] 1816
Dismissing the appeal of the revenue the Tribunal held that in the original assessment order the taxability of freezer security deposits was considered and addition to the income was made by the AO. The AO had not mentioned or established that the reassessment was proposed due to failure on the part of the assessee to disclose truly and fully all material facts which is a pre-condition when the notice under S. 148 is issued beyond a period of four years. While completing the original assessment, the lapsed liability was taxed on a proportionate basis over four years from the date of receipt, whereas in the reassessment all the lapsed freezer deposits which were outstanding as on March 31, 2006 were taxed on the ground that the liability to repay had ceased. Thus, the reopening was on a change of opinion. Further the Tribunal in the assessee's case for the earlier year held that the amount was taxable only in the year of termination and the assessee had already offered such amount to tax in the return filed by it. The order of the Tribunal had not been reversed by the High Court. Therefore, the freezer security deposit was taxable only on the year of termination of agreement between the assessee and the dealer/distributor. (AY. 2009-10)
ACIT v. Jojo Frozen Foods P. Ltd. (2020) 81 ITR 90 (Cochin) (Trib.)

S. 147 : Reassessment – After the expiry of four years – No new tangible material – AO seeking to correct error in original assessment – Held to be not permissible. [S. 148] 1817
Tribunal held that no new tangible material. AO seeking to correct error in original assessment is held to be not permissible. (AY. 2005-06)
Alcatel Lucent India Ltd. v. ACIT (2020) 77 ITR 694 (Delhi)(Trib.)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – CIT granting two approvals of the same recorded reasons – Reassessment is held to be bad in law – Seized material not containing any incriminating materials – Addition is held to be not justified. [S. 69B, 148, 151] 1818
The Tribunal held that the AO nowhere alleged that the income assessable to tax has escaped assessment due to the failure of the assessee to disclose fully and truly all material facts necessary for his assessment. The reopening of the assessment was after four years from the end of the relevant assessment year. When the AO had not even alleged the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment then, the reopening after four years was not sustainable as it was hit by the proviso to section 147. The CIT had granted approval twice and the first approval bore the date as April 14, 2014 whereas the second set bore the date March 14, 2014. There could not be two approvals of the same reasons recorded by the

AO for issuing the notice under S. 148. The reopening was not valid. As regards seized material not containing any incriminating materials, addition is held to be not justified. (AY.2007-08, 2008-09)
Tarun Goel v. ITO (2020) 77 ITR 133 / 196 DTR 272 / 204 TTJ 464 (Jaipur)(Trib.)
Arun Goel v. ITO (2020) 77 ITR 133 / 196 DTR 272 / 204 TTJ 464 (Jaipur)(Trib.)
Pink City Reality (P.) Ltd. v. ITO (2020) 77 ITR 133 / 196 DTR 272 / 204 TTJ 464 (Jaipur) (Trib.)

1819 **S. 147 : Reassessment – After the expiry of four years – Survey – Difference of labour charges – No failure to disclose material facts – Reassessment is held to be not permissible. [S. 133A, 148]**
Tribunal held that there was a survey and subsequently, assessment was completed on account of difference of labour charges amounting to Rs. 1,59,53,033 and this aspect was duly considered during the course of assessment proceedings. The AO nowhere said that there was a failure on the part of the assessee nor what was the new material came to his notice for reopening beyond the four years. Under these facts and circumstances of the case, if the AO wanted to reopen the assessment beyond the four years, he had to satisfy the conditions laid down by the proviso to S. 147. It is the duty of the AO to establish that there is a failure on the part of the assessee to disclose fully and truly all material facts to complete the assessment. The same aspect of difference of labour payments which had already been considered and it was not permissible to reopen the very same assessment after four years. Thus the notice issued by the AO under S. 148 beyond four years was not valid and therefore reassessment was quashed. (AY. 2010-11)
Reddipalli Srinivas v. ACIT (2020) 77 ITR 59 (SN) (Vishakha)(Trib.)

1820 **S. 147 : Reassessment – Reason to believe – Reassessment proceedings cannot be initiated on basis of a suspicion.[S. 132(4), 148]**
It is held that the reassessment u/s 147 cannot be initiated on mere suspicions of some income having been escaped from assessment. AO acted upon Information received from the investigation wing of the department. It was noted that no independent enquiries were undertaken by the AO. Thus the impugned order was set aside and quashed.(AY. 2011-12 to 2013-14)
Sanjay Singhal (HUF) v. Dy. CIT (2020) 207 TTJ 853 / 194 DTR 209 (Chd.)(Trib.)

1821 **S. 147 : Reassessment – Book profit – No failure to disclose material facts – With in four years – Change of opinion – Reassessment is held to be bad in law. [S. 14A, 115JB, 148]**
In the reassessment proceedings the Assessing Officer made addition to the book profit in terms of statutory provisions of clause (f) of explanation (1) of sub section (2) to section 115JB of the I.T. Act, 1961 as the same remained to be done in the assessment u/s 143 (3) of the Act. On appeal the CIT(A) held that the reassessment was bad in law due to change of opinion. On appeal by the revenue the Tribunal referred binding decisions of Jurisdictional High Court in *IPCA v. Gajanand Meena (2001) 251 ITR 416 (Bom.) (HC) Bhavesh Developers v.. Assessing Officer (2010) 329 ITR 0249 (Bom.) (HC), Sir Warana Sahakari Dudh Utpadak Prakriya Sangh v. ACIT (2005) 199 CTR 24 (Bom.)*

(Bom.)(HC),Bank International Indonesia v. DDIT (IT) ITA No.1083/Mum/2006., Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 570 (Bom.)(HC) Asteroids Trading & Investments (P) Ltd. v DCIT (2009) 223 CTR 144 (Bom.)(HC) Cartini India Ltd. v. Addl. CIT (2009) 314 ITR 275 (Bom.) (HC). Accordingly the appeal of revenue was dismissed. As Regards appeal of assessee in respect of disallowance u/ s.14A of the Act, matter remanded to the file of CIT(A)(AY. 2009-10 to 2011-12)
Dy.CIT v. Jamnalal Sons (P.) Ltd. (2020) 189 DTR 69 / 203 TTJ 1008 (Nag.)(Trib.)
Dy. CIT v. Bachhraj Bhavan (2020) 189 DTR 69 / 203 TTJ 1008 (Nag.)(Trib.)

S. 147 : Reassessment – Cash credits – Information from investigation wing – Merely on the basis of information from investigation wing without any further verification reassessment is bad in law. [S. 68, 148] 1822
Allowing the appeal the Tribunal held that it was duty of AO to verify facts before coming to conclusion that there is escapement of income on account of cash deposited in bank account of assessee. AO even did not verify information received from Investigation Wing and did not even obey directions of Investigation Wing. Mere cash deposited in bank account of assessee per se would not disclose escapement of income. Assessee further explained that there is no unaccounted investment. AO recorded incorrect and wrong reasons for reopening of assessment and did not apply mind to facts of case before recording reasons for reopening of assessment. Therefore order was quashed. (AY. 2006-07, 2007-08)
Arora / Sapra S.N. v. ITO (2020) 187 DTR 121 / 204 TTJ 137 (Delhi)(Trib.)

S. 147 : Reassessment – Not making any additions on grounds initially raised in notice or in reasons recorded – Not entitled to make additions on other grounds – Sanction – Consolidated approval in group case without recording qua each case – Reassessment invalid – Legal ground on jurisdiction can be raised first time before Appellate Tribunal. [S. 2(22)(e), 148(2), 151, 254(1)] 1823
Tribunal held that no additions were made on the grounds taken by the Assessing Officer towards formation of belief and the addition was eventually made under the deeming fiction of section 2(22)(e). No relevant material was referred to by the Assessing Officer for applicability of section 2(22)(e) of the Act at the time of recording the reasons. The applicability of section 2(22)(e) was discovered at a subsequent stage in the course of assessment. Thus, it was not permissible for the Assessing Officer to supplement the reasons and make additions on the contours of section 2(22)(e) of the Act for which no reasons were recorded. The additions made by the Assessing Officer towards deemed income under section 2(22)(e) of the Act, being extraneous to the reasons recorded, had to be struck down on this score. Followed *CIT v. Mohmed Juned Dadani (2013) 355 ITR 172 (Guj.)(HC) Ram Bai v. CIT (1999) 236 ITR 696 (SC) Hindustan Lever Ltd. v. R. B. Wadkar, Asst.CIT (No. 1) (2004) 268 ITR 332 (Bom.) (HC) and East Coast Commercial Co. Ltd. v. ITO (1981) 128 ITR 326 (Cal) (HC).* Tribunal held that the approval memo given by the Joint Commissioner noted the name of the assessee with many other assessees and granted a consolidated approval for action under section 147 of the Act stating "your proposal for reopening the above cases under section 147 of the Act is hereby approved". Any reference to formation of "satisfaction" of the Joint

Commissioner prior to approval, even in brief, was missing. Hence, in the absence of express satisfaction recorded by the Joint Commissioner while granting approval under section 151 of the Act, the consequential action of the Assessing Officer under section 147 could not be upheld. This apart a consolidated approval memo of multiple assessees without recording satisfaction qua each individual case raised serious doubt on the plausibility of implicit satisfaction for each case as contemplated in section 151 of the Act. As regards the legal objection raised by the assessee on the validity of assumption of jurisdiction under section 147 read with section 151 of the Act and consequent additions carried out under section 2(22)(e) of the Act within the framework of the provisions of section 147 of the Act struck to the root of the matter and therefore, could be challenged before the Tribunal even if not raised or not argued before the lower authorities. Accordingly the proceedings under section 147 / 148 of the Act were void ab initio and the additions made under section 2(22)(e) of the Act bad in law. (AY. 2013-14)
Tyrone Patrick Lemos v. ITO (2020) 84 ITR 56 (SN) (Ahd.)(Trib.)

1824 **S. 147 : Reassessment – Accommodation entries – Share capital – Unsecured loan – Borrowed satisfaction – Non application of mind – Reassessment is held to be bad in law. [S. 69, 148]**
Tribunal held that the belief of escapement of income as recorded in the reasons, was clearly not that of the Assessing Officer but a borrowed belief. Since the satisfaction regarding escapement of income as recorded in the reasons was not that of the Assessing Officer but was borrowed satisfaction, the jurisdiction assumed to reopen the case under section 147 of the Act was bad in law. (AY. 2009-10)
Century Fiscal Services Ltd. v. ITO (2020) 84 ITR 174 (Chd.)(Trib.)

1825 **S. 147 : Reassessment – Incorrect assumption of fact – Recording of reason that the assessee has not filed the return – Return was filed before recording of reasons – Reassessment is held to be invalid. [S. 148]**
Allowing the appeal the Tribunal held that the first reason for reopening the assessment was that the assessee had not filed his return of income for the year under consideration. The assessee had filed the return of income on March 31, 2011, i. e., prior to the recording of reasons for reopening the assessment, by the Assessing Officer. Once there was a factually incorrect basis about the formation of belief about escapement of income, such reasons could not be taken to be valid even if the alternate reasons relied upon may be correct. Thus, as the recording of reasons was based on an incorrect assumption of fact, it invalidated the formation of belief envisaged under section 147 / 148 of the Act. As a consequence thereof, the assumption of jurisdiction under section 147/148 of the Act was untenable and liable to be set aside. (AY. 2010-11)
Ashwin S Mehta v. Dy. CIT (2020) 83 ITR 422 (Mum.)(Trib.)

1826 **S. 147 : Reassessment – Incriminating material found during search – Accommodation entries – Reassessment is held to be justified – Failure to prove identity of investor, its creditworthiness and genuineness of transaction – Addition Justified. [S. 68, 148]**
Tribunal held that incriminating material found during search that the lenders are accommodation entries providers hence reassessment is held to be justified. On merit

the assessee failed to prove identity of investor, its creditworthiness and genuineness of transaction accordingly the addition was Justified. (AY. 2006-07)
RMP Holding P. Ltd. v. ITO (2020) 83 ITR 108 / 206 TTJ 1 (UO) (Delhi)(Trib.)

S. 147 : Reassessment – Audit party note is not information – No failure to disclose material facts – Reassessment is not valid – The tax effect below prescribed limit – Appeal of department is dismissed. [S. 148, 253] 1827
Dismissing the appeal, that nowhere in the record was it mentioned that the assessment had been reopened on the basis of an audit objection. If there was application of mind, it should be apparent from the material placed before the Tribunal. The details of purchases were available before the Assessing Officer at the time of the original assessment proceedings under section 143(3) of the Act and no new material had come to the knowledge of the Assessing Officer to take reassessment proceedings. It was merely a change of opinion and the Commissioner (Appeals) had considered the issue in the right perspective. The tax effect less than monetary limits appeal of revenue is dismissed. CBDT Circular No. 17 Of 2019 Dated 8-8-2019, [2019] 416 ITR (St.) 1. (AY. 2009-10)
ITO v. Bhakta Charan Sahoo (2020) 83 ITR 19 (Cuttack)(Trib.)

S. 147 : Reassessment – Non-Resident – No jurisdiction – Transfer of proceedings to competent jurisdiction – No notice was issued by Assessing Officer of competent jurisdiction – Reassessment not valid – Void ab initio. [S. 127, 148] 1828
The assessee was a non-resident Indian. The Income-tax Officer Dasuya had no jurisdiction to initiate reopening of the assessment. However, thereafter he transferred the case to the Additional Director fully convinced that he himself had no jurisdiction to make the assessment in the case of the assessee. No notice under section 148 was issued by the Deputy Commissioner, Chandigarh to the assessee. Since the Income-tax Officer, Dasuya had no jurisdiction to reopen the assessment, any notice issued by him had no legal validity. The Deputy Commissioner, Chandigarh did not issue any notice under section 148 to the assessee. Reassessment is held to be bad in law. Tribunal also held that under the provisions of section 127 the Income-tax Officer, Dasuya himself had no jurisdiction to suo motu transfer the case to the Deputy Commissioner. Rather, the transfer of the case under the provisions of section 127(1) could be ordered by the competent authority prescribed in the provisions. (AY. 2009-10)
Manjit Singh v. Dy.CIT(IT) (2020) 81 ITR 454 / 195 DTR 121 / 207 TTJ 1041 (Chd.)(Trib.)

S. 147 : Reassessment – Unexplained money – Cash deposits in bank account – Reasons for reopening of assessment recorded by concealing order – sheet entries – Reassessment not valid. [S. 69, 148] 1829
Tribunal held that in the order-sheet the Assessing Officer mentioned that he received information against the assessee for cash deposit of Rs. 22,74,500 for which the assessee explained that the cash was deposited from sale of shoes in different towns. The Assessing Officer was satisfied with the explanation of the assessee. Thereafter, there was no noting on any of the order-sheets. The Assessing Officer in the reasons recorded for reopening of the assessment had not mentioned the order-sheet entries.

Thus the Assessing Officer had recorded incorrect facts in the reasons for reopening of the assessment by concealing the order-sheet entries. If the Assessing Officer recorded incorrect facts in the reasons, reopening of the assessment would not be valid. For examining the validity of the reassessment proceedings, the reasons alone had to be considered. When the Assessing Officer records wrong facts in the reasons, the proceedings under section 148 would not be justified. Since the same Assessing Officer had recorded the order-sheet entries prior to reopening of the assessment, he was bound by his facts recorded in the order-sheet. When the Assessing Officer was satisfied that the cash deposit in the bank account pertained to sale proceeds of shoes, the cash deposit per se in the bank account would not disclose escapement of any income from tax. Thus, the Assessing Officer was not justified in reopening the assessment. The reopening of the assessment was wholly unjustified and bad in law and was liable to be quashed. Resultantly, the addition on the merits stood deleted.(AY.2010-11)
Gulshan Harbans Dhingra v. ITO (2020) 80 ITR 21 (SN) (Delhi)(Trib.)

1830 **S. 147 : Reassessment – Liabilities taken over by Government of India – No failure to disclose material facts – Reassessment is held to be not justified. [S. 4, 37(1), 43B, 148]**
Tribunal held that reopening notice was issued against assessee on ground that a sum of certain amount consisting of two items i.e. liabilities taken over by Government of India and certain amount of reduction claimed from cost of borrowings, was not brought to tax, since there was no failure on part of assessee to fully and truly disclose all material facts necessary for assessment during original assessment proceedings and there was no mention of any fresh tangible material coming into possession of Assessing Officer, impugned reopening of assessment was unjustified. (AY. 2003-04)
DCIT v. IFCI Ltd. (2020) 185 ITD 742 (Delhi)(Trib.)

1831 **S. 147 : Reassessment – With in four years – Information from Local Authority stating that building competition certificate was not issued – Reassessment is held to be valid. [S. 80IB(10), 148]**
Tribunal held that only in course of assessment proceedings for immediately succeeding assessment year 2012-13 that Assessing Officer was intimated by local authority-Municipal Corporation that Building Completion Certificate and Occupation Certificate was not issued to assessee till date on account of certain failure on its part as regards complying with building 'Intimation of Disapproval' conditions-Further, since on basis of verifications carried out in course of assessment proceedings for assessment year 2012-13, Assessing Officer had also gathered that built-up area of all 3BHK flats in project was more than prescribed area of 1000 sq. ft. which clearly contravened norms prescribed in section 80-IB(10)(c). Accordingly the reassessment proceeding is held to be valid. (AY. 2011-12)
Harshvardhan Constructions v. ITO (2020) 81 ITR 299 / 183 ITD 497 / 207 TTJ 663 (Mum.)(Trib.)

S. 147 : Reassessment – Not objecting to initiation of reassessment proceedings – Not precluded from challenging validity of reassessment before appellate forums – Reassessment is held to be bad in law. [S. 80IB(10), 148] 1832

Dismissing the appeal the Court held that merely because the assessee did not raise any objection against the reassessment proceedings before the Assessing Officer, that did not mean that the question of validity of reassessment had attained finality and could not be challenged before the appellate forums. The quintessence of the matter was to examine whether or not the reassessment was valid and not whether or not any objection was taken by the assessee before the Assessing Officer. On facts the The Commissioner (Appeals) had recorded that the Assessing Officer in the original assessment proceedings had thoroughly examined the issue of date of commencement of the project. Thus, it was manifest that the reassessment came to be initiated by the Assessing Officer on the basis of no fresh material coming to his possession after the completion of the original assessment, which was, in fact, made only for the verification of claim of the deduction under the computer aided scrutiny selection. Rather it was a case of change of incumbent who reviewed the material existing on record and took a contrary view. Such change of opinion was strictly impermissible. There was no reason to disturb the finding recorded by the Commissioner (Appeals) that the reassessment proceedings were bad in law. (AY. 2009-10)

Dy. CIT v. Manav Realty (2020) 83 ITR 37 (SN) (Pune)(Trib.)

S. 147 : Reassessment – Internal audit objection – Reimbursement of expenses – Failure to deduct tax at source – Reassessment is held to be not valid – 90 days time period permitted under Rule 34(5) for pronouncing order was to be computed by deducting Covid-19 pandemic lockdown period. [S. 40(a)(ia), 148, 195, 255, ITAT R. 34(5)] 1833

Tribunal held that reasons for re-opening did not point out as to how the assessee failed to disclose fully and truly all material facts necessary for his assessment. Tribunal also held that internal audit objection had become prime consideration to believe that an income had escaped assessment resulting into reopening of assessment proceeding and not the decision of AO on merit. Accordingly the reassessment was quashed. Tribunal also held that 90 days time period permitted under Rule 34(5) for pronouncing order was to be computed by deducting Covid-19 pandemic lockdown period. (AY. 2008-09)

Lionbridge Technologies (P.) Ltd. v. ACIT (2020) 184 ITD 61 (Mum.)(Trib.)

S. 147 : Reassessment – Under invoicing – Cash credits – Report of commission – Reassessment proceedings initiated merely on basis of report of a Commission appointed by Central Government that there was under invoicing of exports – Held to be bad in law – Pronouncement of order – Period during which lockdown was in force in country due to COVID 19 pandemic was to be excluded. [S. 68, 148, 255, ITAT R. 35] 1834

Assessment was completed under section 143(3) of the Act. On basis of report given by a commission appointed by Central Government, Assessing officer initiated reassessment proceedings on the ground that there was under invoicing of exports. On appeal the Tribunal held that merely based on report submitted by said Commission appointed by

Central Government. Reassessment is held to be not justified. Tribunal also held that period during which lockdown was in force in the country due to COVID 19 pandemic was to be excluded for purpose of computing time set out for pronouncement of judgment by Tribunal i.e. within 90 days from date of hearing. (AY. 2008-09)
Ashapura Minichem Ltd. v. DCIT (2020) 81 ITR 111 / 184 ITD 278 (Mum.)(Trib.)

1835 **S. 147 : Reassessment – Cash deposit in bank in excess of Rs. 10 lakhs – Salary income lower than the threshold limit – Information available with Assessing Officer vague and without any proper identification and quantification of escaped income – Reassessment is held to be not valid. [S. 148]**
The Tribunal held that, salary income lower than the threshold limit. Information as regards deposit of cash in bank excess of Rs 10 lakhs is vague hence information available with Assessing Officer vague and without any proper identification and quantification of escaped income. Section 147 enables the Assessing Officer to compel the assessee to file return only in the event of escapement of income. Without having cogent reasons for the belief towards escapement, even a person who has not filed the return cannot be forced to file a return by invoking S. 147. Accordingly the reassessment is held to be not valid. (AY.2010-11)
Vipul Virendrakumar Patel v. ITO (2020) 82 ITR 32 (SN) (Ahd.)(Trib.)

1836 **S. 147 : Reassessment – Capital gains – HUF – Individual – No direction was given by the Appellate Tribunal – Reassessment is held to be not valid. [S. 148]**
Allowing the appeal the Tribunal held that the Assessing Officer had totally misinterpreted the directions of the Tribunal and grossly erred in reopening the Assessment. The Tribunal had held given the direction to verify accordingly the reassessment is held to be not valid. (AY.2009-10)
Narayan Singh, HUF v. ITO (2020) 82 ITR 18 (SN) (Delhi)(Trib.)

1837 **S. 147 : Reassessment – Information received in a subsequent assessment year is a valid reason to reopen an assessment for earlier year – Compensation taxable as income from house property. [S. 22, 143(1)]**
Tribunal held that information received in a subsequent assessment year is a valid reason to reopen an assessment for earlier year when the return was processed u/s 143(1) of the Act. Tribunal also held that compensation received by the assessee from National Textile corporation Ltd vide a decree passed by the Court of Small Cause at Bombay on 19 th July 2007 is taxable under the head house property on the basis of rule of consistency. (ITA No. 7584/Mum/ 2019 dt.13-7-2020) (AY. 2010-11)
Rak Construction Project Co. Pvt. Ltd. v. ITO (2020) The Chamber's Journal-September-P. 113 (Mum.)(Trib.)

1838 **S. 147 : Reassessment – Unexplained investment – Date wise statement of withdrawal of cash from bank account and deposit in bank account neither faulted nor doubted – Addition is held to be not justified. [S. 69, 148]**
Tribunal held that the assessee had filed a detailed statement of date-wise withdrawals from his bank accounts during the financial years 2008-09 and 2009-10. According to

the cash statement there was a cash balance of Rs. 15,14,150 as on March 11, 2010, and out of the total cash balance as on that day the assessee had paid cash of Rs. 13 lakhs to the builder. The authorities had doubted the availability of cash on the plea that the cash was withdrawn by the assessee from his bank account in the earlier year and was not available for giving to the builder. Neither the Assessing Officer nor the Commissioner (Appeals) had brought any material on record to suggest that the cash so withdrawn by the assessee was utilised for some other purposes and was not available with him on the date of payment. The correctness of date-wise statement of withdrawal of cash from the bank account and deposit in the bank account was neither faulted nor doubted by any of the authorities. Therefore there was no justification on the part of the Commissioner (Appeals) for accepting only Rs. 6.50 lakhs out of the total addition of Rs. 13 lakhs made by the Assessing Officer. The Assessing Officer was directed to delete the addition made. (AY.2010-11)
Suresh H. Thakkar v. CIT(A) (2020) 78 ITR 73 (SN) (Mum.) (Trib.)

S. 147 : Reassessment – No addition was made as regards reasons recorded – Reassessment is held to be not valid. [S. 54F, 148] 1839
Tribunal held that no addition was made by the Assessing Officer in the reassessment proceedings for the reasons recorded in the notice issued under section 148. If after issuance of notice under section 148 the Assessing Officer accepts the contentions of the assessee and holds that the income which he initially formed a reason to believe had escaped assessment, had as a matter of fact not escaped assessment, it was not open to him independently to assess some other income. The assessment order was illegal since the Assessing Officer had not made any addition on the "reasons to believe" recorded in the notice issued under section 148 and had himself so admitted because the early withdrawal of the amount deposited in the capital gains account before the expiry of the time period provided under section 54F had been offered to tax by the assessee and shown as income for the assessment year 2011-12. (AY.2008-09)
Sarwar Mohd. Khan v. ACIT (2020) 78 ITR 39 (SN) (Indore)(Trib.)

S. 147 : Reassessment – Appeal to Appellate Tribunal – No specific deficiencies in cash and bank books – Generalised adverse comments – Assessing Officer to go through records and to point out specific defects and escapement of income – Matter remanded for limited verification. [S. 148, 254(1)] 1840
Tribunal held that the assessee had tried to explain the sources of cash deposits before the Tribunal through cash and bank books filed before the Tribunal by way of withdrawals from banks, rent, partner remuneration from firm, etc. which needed verification. No specific deficiencies were pointed out by the authorities in the cash and bank books while generalised adverse comments were made by the authorities. There was a need for verification of cash and bank books entries vis-a-vis the cash deposits and co-relation with income declared by the assessee before the Department in the return filed and consequently due taxes paid to the Department on such income claimed to be the sources of deposits. Thus for this limited verification the matter was remanded to the Assessing Officer for both the years. The Assessing Officer was directed to go through the records produced by the assessee and to point out specific defects or

escapement of income leading to culmination of income which had escaped assessment and which needed to be brought to tax in the hands of the assessee instead of making generalised comments. (AY. 2011-12, 2012-13)
K. Gurumurthy v. ITO (2020) 78 ITR 50 (SN) (Chennai)(Trib.)

1841 **S. 147 : Reassessment – Notice under section 143(2) issued on same date as return filed in response to notice – Non-application of mind – Reassessment is held to be not valid. [S. 143(2), 148]**
Tribunal held that on filing the return in pursuance of notice u/s 148 on October 5, 2015, and the notice under section 143(2) was issued on the very same date. Tribunal held that this showed non-application of mind on the part of the Assessing Officer in issuing notice under section 143(2) and thereafter assuming jurisdiction to frame assessment. The notice was not tenable in law and the proceedings needed to be quashed. (AY. 2008-09)
Durga Ferrous P. Ltd. v. ITO (2020) 78 ITR 24 (SN) (Delhi)(Trib.)

1842 **S. 147 : Reassessment – Amalgamation – Information of amalgamation was brought to notice of Assessing Officer – Reassessment proceedings against amalgamating company is held to be void ab initio. [S. 148]**
Tribunal held that the assessee had duly intimated the fact of merger to the Assessing Officer and during penalty proceedings. The assessee had also given the address of the registered office for further correspondence. Despite of these intimations, the Assessing Officer proceeded to frame the assessment in the name of the amalgamating company which was declared void ab initio (AY.2008-09)
Dy. CIT v. Palm Tech India Ltd. (2020) 78 ITR 4 (SN) (Mum.)(Trib.)

1843 **S. 147 : Reassessment – Accommodation entry – Information from Director of Income-Tax – No application of mind or independent inquiry or link between any tangible material – Reassessment not valid. [S. 148]**
Tribunal held that notice under section 148 was issued merely on the basis of the information from the Director of Income-tax that the assessee had received accommodation entry. There was no mention of any application of mind or any independent inquiry or any link between any tangible material and formation of reasons to believe that income chargeable to tax has escaped assessment. In the reasons recorded, the Assessing Officer had made vague remarks that the assessee had income chargeable to tax which had escaped assessment. The Assessing Officer had not even specified what was the amount of alleged income escaping assessment, which showed that the Assessing Officer had merely recorded certain unsubstantiated allegations on the basis of some information received. Therefore the proceedings initiated by invoking the provisions of section 147 were non est in law and without jurisdiction. (AY. 2008-09)
Nigam Computers Pvt. Ltd. v. ITO (2020) 78 ITR 384 (Delhi) (Trib.)

S. 147 : Reassessment – With in four years – Change of opinion – Sale of agricultural land available on record at time of original assessment – Book profit – Agricultural Land – Gains on sale of agricultural land not deductible – Reassessment is held to be not valid. [S. 2(14(iii), 115JB, 148] 1844

Tribunal held that for assumption of jurisdiction, in the reasons recorded, the Assessing Officer had stated that the assessee had failed to fully and truly disclose all material facts necessary for the assessment. What material facts had not been disclosed by the assessee had not been spelt out by the Assessing Officer. The Assessing Officer had himself stated that the assessee had credited capital gains on sale of agricultural land in its profit and loss account and had reduced them while working out the book profits under section 115JB. Therefore, all the primary facts had been duly disclosed by the assessee and it was for the Assessing Officer to draw correct legal inference therefrom. Further, the proviso to section 147 was not applicable in the instant case as the notice under section 148 had been issued within four years from the end of the assessment year 2013-14. Thus the basic requirement for assumption of jurisdiction under section 147 was not satisfied in the instant case and the consequent reassessment proceedings deserved to be set aside. Tribunal also held that the decision of the Tribunal had since been affirmed by the Rajasthan High Court. Undisputedly, there was no change in the facts and circumstances of the case and therefore, the matter was decided in favour of the assessee. Followed *CIT v. Usha International Ltd. (2012) 348 ITR 485 (FB) (Delhi) (HC).* Tribunal also held that gains on sale of agricultural land were not deductible while computing book profits. Relied on *Krish Homes P. Ltd. v. ITO (2020)421 ITR 105 (Raj) (HC) on special leave petition (2020) 420 ITR (St.) 2 (SC).* (AY. 2013-14)

ITO v. Krish Homes Pvt. Ltd. (2020) 78 ITR 101 / 186 DTR 177 / 203 TTJ 909 (Jaipur) (Trib.)

S. 147 : Reassessment – Accommodation entries – Share application and share premium – No failure to disclose any material facts – Assessing Officer not mentioning names of parties from whom receipt of accommodation entry in reasons – Reassessment held to be not valid. [S. 68, 148] 1845

Tribunal held that the original assessment was completed on September 27, 2007. The Assessing Officer on the basis of the facts recorded by the assessee in the books of account came to know that the assessee had received share application money and share premium of Rs. 2,23,50,000. This fact was already available to the Assessing Officer at the time of passing of the original assessment order as the original return was filed on March 31, 2006 and was subjected to scrutiny assessment. The Assessing Officer in the reasons did not record if there was any failure on the part of the assessee to disclose truly and correctly all material facts necessary for assessment. He had not even mentioned the names of the parties from whom the assessee had received accommodation entry in the reasons. Thus, the first proviso to section 147 would apply in favour of the assessee and the Assessing Officer could not take any action against the assessee for reopening the assessment. Thus reopening of the assessment was illegal, bad in law and void ab initio.(AY.2005-06)

Bull Riders Financial Services (P.) Ltd. v. ITO (2020) 78 ITR 688 / 195 DTR 404 / 207 TTJ 573 (Delhi)(Trib.)

1846 **S. 147 : Reassessment – Wrong facts and figures – Non-application of mind – Reassessment is held to be not valid. [S. 68, 148]**
Tribunal held that the reopening of assessment based on wrong facts and figures was bad in law. The reopening was also bad in law as it proved non-application of mind by the Assessing Officer. The assessee had disclosed the sale of shares in its books of account. Once the sale was declared as income by the assessee, the question of treating the amount as a cash credit under section 68 resulted in double addition. Moreover, the gross receipt could not be brought to tax, specifically when the assessee had acquired the shares pursuant to an allotment as evidenced by the letter of allotment, payment details, etc. Thus, the addition was also bad on the merits.(AY.2011-12)
Bhagwant Merchants P. Ltd. v. ITO (2020) 79 ITR 595 (Kol.)(Trib.)

1847 **S. 147 : Reassessment – Client code modification – Income from undisclosed sources – Addition of entire addition as additional income – Reassessment was quashed and on merit addition was deleted. [S. 69A, 148]**
Allowing the appeal the Tribunal held that the Assessing Officer had passed the assessment order which was similarly worded in the preceding assessment year 2009-10 in the assessee's case. In that case though the Tribunal had accepted the Department's theory of misuse of clients code modification facility, it had accepted the assessee's explanation and discarded the Department's theory that profits of the assessee were passed on to the clients. The Tribunal noticed that the Department had not contended that the client code modification facility was often misused by the assessee to pass on losses to the investors, who may have sizable profit arising out of commodity trading against which such losses could be set off. What could be taxed in the hands of the assessee was the income escaping assessment. Even if the Department's theory of the assessee having enabled the clients to claim contrived losses, it had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the present case, the Assessing Officer had added the entire amount of doubtful transactions by way of the assessee's additional income, which was wholly impermissible. The Tribunal deleted the addition on the merits and quashed the reopening of the assessment holding that the addition made by the authorities on account of client codes modification was not justified. The orders of the authorities were set aside and the entire addition was deleted.(AY.2010-11) (Followed *PCIT v. Pat Commodity Services Pvt Ltd (Bom.) (HC) www.itatonline.org)*
Mukesh Chand Garg v. ITO (2020) 81 ITR 22 (SN) (Delhi)(Trib.)

1848 **S. 147 : Reassessment – Reasons for initiation of those proceedings ceased to survive – Other than those in respect of which proceedings initiated will not survive. [S. 148]**
Tribunal held that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated but he was not so justified when the reasons for the initiation of those proceedings cease to survive. Since the Assessing Officer had initiated proceedings under section 147 for escapement of income of Rs. 9,43,897 which was the returned income filed prior to issue of notice under section 148 in the belated return and as well as in the return filed in response to the notice under section 148 and since the Assessing Officer had accepted the returned income and proceeded to make various other additions without issuing fresh

notice under section 147 / 148, the Assessing Officer had exceeded his jurisdiction in reassessing issues other than those in respect of which the proceedings were initiated since reasons for the initiation of those proceedings ceased to survive. The various other additions made by the Assessing Officer were not in accordance with law being without jurisdiction and, therefore, were to be deleted. (AY. 2010-11)
Raj Bala v. ITO (2020) 81 ITR 31 (SN) (Delhi)(Trib.)
Joginder Dahiya v. ITO (2020) 81 ITR 31 (SN) (Delhi)(Trib.)

S. 147 : Reassessment – With in four years – No scrutiny assessment – Non-compete Fee – Claiming a huge exemption of income by making incomplete, untrue and wrong claim – Primary facts not completely, correctly and truly disclosed in return – Reassessment is held to be valid. [S. 143(1), 148] 1849
The Tribunal held that the primary facts were not completely, correctly and truly disclosed by the assessee in the return and there was clearly an attempt to evade taxes. There was a tangible material before the Assessing Officer to reopen the concluded assessment. Thus, the reassessment was valid. Applied *ACIT v. Rajesh Jhaveri Stock Brokers P.Ltd (2007) 291 ITR 500 (SC).* (AY.2001-02)
K. Srikanth v. ACIT (2020) 80 ITR 272 / 195 DTR 17 / 206 TTJ 273 (Chennai)(Trib.)

S. 147 : Reassessment – Charitable Trust – On the basis of same set of facts, which were already available on record – Reassessment is not sustainable – Delay of 212 days in filing of cross objection is condoned. [S. 2(15), 11, 12AA, 148, 253(5)] 1850
The Tribunal held that the Assessing Officer recorded a finding that after discussion and from the data made available during the course of hearing nothing adverse had been found. All the information called for relating to the important activities, and income claimed under section 11 was submitted before the Assessing Officer for verification as were the books of account supported by bills and vouchers. In the reasons recorded there was no mention of adverse facts coming to light in order to reopen the original assessment, nor of any information or fresh evidence in the possession of the Assessing Officer. The assessment was reopened merely on the basis of the same set of facts, which were already available on record. Therefore, the action of the Assessing Officer in reopening of the assessment was wrong and null and void. Delay of 212 days in filing of cross objection is condoned. (AY. 2009-10, 2010-11)
Dy. CIT(E) v. Gandhinagar Urban Development Authority (2020) 81 ITR 51 (SN) / 207 TTJ 17 (UO) (Ahd.)(Trib.)

S. 147 : Reassessment – No return filed prior to issue of notice – Annual Information Return Showing Deposits in Bank Accounts – No Compliance pursuant to notice – Reassessment notice is held to be valid – Unexplained investment – Agricultural income – Gift – Matter remanded to CIT(A) to pass speaking order. [S. 69A, 144, 148] 1851
On appeal the Tribunal held that, as per Annual Information Return Showing Deposits in Bank Accounts, the assessee has not complied with the notice accordingly the reassessment notice is held to be valid. As regards the addition made as unexplained investment regarding deposit of cash in bank accounts from, agricultural income gift etc, the Tribunal remanded the matter to CIT(A) to pass speaking order. (AY.2011-12)
Bhup Singh v. ITO (2020) 81 ITR 44 (SN) (Jaipur)(Trib.)

1852 **S. 147 : Reassessment – Cash deposits – Cash credits – Issue of notice mechanically without application of mind – Assessment is held to be bad in law. [S. 68, 148]**
Allowing the appeal of the assessee the tribunal held that, issue of notice mechanically without application of mind. Reassessment is held to be bad in law. Followed *PCIT v. PMG Polyvingl (I) Ltd (2017) 396 ITR 5 (Delhi) (HC).* (ITA No. 7347 /Delhi/ 2018 dt 11-6-2020)
Omvir Singh v. ITO (2020) BCAJ-July-P 47 (Delhi)(Trib.)

1853 **S. 147 : Reassessment – Sale of property by mischief and forgery – Neither disclosing sale transaction nor offering capital gains – Reassessment held to be justified – Addition is held to be justified. [S. 148]**
Dismissing the appeal of the assessee the Tribunal held that the execution of the sale agreement was not in dispute but the assessee claimed that subsequently the sale agreement was cancelled. When the assessee had neither disclosed the transaction nor offered any capital gains from the transaction the information received by the Assessing Officer based on these documents, to which the assessee was a party, constituted tangible material to form the belief that income assessable to tax had escaped assessment. The reassessment was valid. As regards the cancellation agreement was not found during the course of search and seizure action nor referred to during the course of assessment proceedings. It surfaced for the first time after the assessment order was completed by the Assessing Officer. This clearly showed that this was an afterthought and a manufactured document in support of the claim of non-receipt of sale consideration. The agreement which was found during the course of search was not in dispute and there was no scope for any inference or possibility against non-receipt of sale consideration as the agreement stated in clear terms that the entire sale consideration was received at the time of the agreement and that possession was handed over to the buyer. Accordingly, where the assessee was also a party to the illegal transaction of purchase and sale of the land the stand of the assessee of subsequent cancellation of the agreement did not inspire confidence. The assessee claimed to have purchased this property for a consideration of Rs. 4 lakhs only whereas the plot of land was sold by the assessee for a consideration of Rs. 38.50 lakhs. In the absence of any development during this intervening period of one year from the date of purchase and till the date of sale, the appreciation of value from Rs. 4 lakhs to Rs. 38.50 lakhs indicated the involvement of the parties in mischievous acts. (AY.2012-13)
Suresh Kumar Sharma v. ITO (2020) 81 ITR 1 (Jaipur)(Trib.)

1854 **S. 147 : Reassessment – Search and seizure – Information received from investigation wing – Not independently verified from record – Correct course of action would have been to proceed under section. 153C and not under section 147 – Reassessment was quashed. [S. 132, 148, 153C]**
Allowing the appeal the Tribunal held that the AO had acted on the basis of the information received from the Investigation Wing of the Department and had not independently verified from the record available to him in the form of the return filed by the assessee. So there was only suspicion of some income having escaped assessment which could not by itself be sufficient to sustain the action under S. 147 read with S.

148 of the Act. The reopening in the assessee's case by the Assessing Officer was merely based on the borrowed satisfaction drawn from other cases which was not sufficient for the purposes of sustaining any addition made under S. 147 read with S. 148. If any action was required to be done on the basis of certain documents found from other persons during the course of search the assessment could have been framed under S. 153C but no such action was taken in the assessee's case. Rather the action was taken indirectly under S. 147 read with S. 148 of the Act. If any material was found relating to the assessee during the course of search on third parties the correct course of action would have been to proceed against the assessee under S. 153C and there was no justification for the Assessing Officer to initiate the proceedings under S. 147 read with S. 148. The order of the AO was set aside and quashed.(AY.2011-12 to 2013-14)
Sanjay Singhal (HUF) v. Dy.CIT (2020) 81 ITR 377 (Chd.)(Trib.)

S. 147 : Reassessment – High premium with share application money – No tangible material – Mere information that assessee had received a high premium, cannot be said to be a reason to form belief that income of assessee had escaped assessment – Reassessment notice is held to be bad in law. [S. 68, 143(1)] 1855

Allowing the appeal of the assessee the Tribunal held that reason to believe must have a material bearing on the question of escapement of income. It did not mean a purely subjective satisfaction of the assessing authority, such reason should be held in good faith and could not merely be a pretence. Furthermore, the reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of the Assessing Officer to reopen an assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied did not exist or is not material or relevant to the belief required by the section. (AY. 2010-11)
Indo Global Techno Trade Ltd. v. ITO (2020) 81 ITR 493 / 206 TTJ 756 / 193 DTR 1 (Chd.) (Trib.)

S. 147 : Reassessment – Housing project – Information in subsequent year – Non completion of the project – Assessing Officer need not conclusively prove income chargeable to tax escaped assessment at stage of notice – Reassessment notice is held to be valid – If flat purchaser de facto in exclusive possession of dry Balcony attached with flat, area of dry balcony includible while computing Built – up area of flat – Building Completion Certificate and the Occupation Certificate not issued by the local authority – Not entitle to deduction u/s. 80IB(10) of the Act. [S. 80IB(10), 148] 1856

Tribunal held that information in subsequent year that the assessee has not completed the project with in prescribed period constitute information hence reassessment notice is held to be valid. At the issue of notice the assessing Officer need not conclusively

prove income chargeable to tax escaped assessment at stage of notice. Reassessment notice is held to be valid. Tribunal also held that, if flat purchaser de facto in exclusive possession of dry Balcony attached with flat, area of dry balcony includible while computing Built-up area of flat. However, if such projection was either in the nature of a service projection to be used for servicing the building or carrying out repairs of the building, or a common area shared with the other residential units, the dry balcony would not be included in the "built-up area" of the flat. Tribunal also held that, building Completion Certificate and the Occupation Certificate not issued by the local authority till date hence the assessee is not entitle to deduction u/s. 80IB (10 of the Act. (AY. 2011-12 to 2013-14)

Harshvardhan Constructions v. ITO (2020) 81 ITR 299 (Mum.)(Trib.)

1857 **S. 147 : Reassessment – Capital gains – Agricultural Land – Change of user by Panchayat or land revenue authorities – Not showing positive income – Reassessment notice is held to be not valid. [S. 2(14)(iii), 10(37), 133A, 148]**

Allowing the appeal the Tribunal held that although the Assessing Officer had information coming into his possession that the assessee had sold the property but had not returned or paid the capital gains tax, he was also aware that the necessary enquiries were made in this respect not only by his office but also by the Investigation Wing that too not only during the survey action at the premises of the assessee carried out under section 133A but also thereafter. The assessee duly explained the transaction and explained that the land being agricultural and not falling within the definition of capital asset under S. 2(14) hence was not exigible to capital gains tax. The AO based his reasons for reopening of the assessment on the information received from the Deputy Commissioner which did not support the reasoning given by the AO. When the very reasons on the basis of which the reopening, allegedly, could not form the basis of forming the belief by the AO that the income of the assessee had escaped assessment, the consequential reassessment order formed by the AO under S. 147 was illegal and the order was accordingly quashed. (AY.2008-09)

Blue Coast Infrastructure Development P. Ltd. v. Dy.CIT (2020) 81 ITR 419 / 203 TTJ 327 / 191 DTR 356 (Chd.)(Trib.)

1858 **S. 147 : Reassessment – Under invoicing of export invoices – Reassessment notice entirely based on the M. B. Shah Commission report without application of mind – Held to be not valid – Period during which lockdown was in force in country due to COVID 19 pandemic was to be excluded for purpose of computing time set out for pronouncement of judgment by Tribunal i.e. within 90 days from date of hearing. [S. 148, 255, ITAT R. 34(5)]**

Allowing the appeal of the assessee the Tribunal held that the report of the Commission neither constituted a binding judgment nor a definitive pronouncement. It was impermissible for the Department to act exclusively on the basis of the Commission's report. It must make its own assessment of facts before any action is initiated. There was no material or even suggestion that any income corresponding to the so-called under-invoicing of exports was in fact received by any party or by the assessee through any backdoor method. Accordingly the initiation of reassessment proceeding itself, on

the facts of this case as evidenced by the reasons recorded by the AO was unsustainable in law. Appellate Tribunal also held that period during which lockdown was in force in the country due to COVID 19 pandemic was to be excluded for purpose of computing time set out for pronouncement of judgment by Tribunal i.e. within 90 days from date of hearing. (AY. 2008-09, 2011-12)
Ashapura Minechem Ltd. v. Dy.CIT (2020) 81 ITR 111 / 184 ITR 278 (Mum.)(Trib.)

S. 147 : Reassessment – With in four years – Client code modification – Reassessment notice is held to be bad in law. [S. 68, 69C, 115BBE, 143(1), 148] 1859
Allowing the appeal of the assessee the Tribunal held that client code modification has been carried out by the broker in the case of the assessee. According to the information available in the reasons recorded, client code modification is allowed to the brokers by the stock exchange, within a limited window of time after business hours, for rectification of any mistakes in punching of the client code while carrying out transaction of purchase and sale on behalf of the customers. The Learned Assessing Officer, however has alleged in the reasons recorded that client code modification has been done for shifting of the profit or loss by the assessee. But there is no material to infer that such client code modification has been done with the malafide purpose of shifting of the profit or evasion of the tax. There is no material before the Assessing Officer to form such a belief that income had escaped due to such client code modification and thus there is no live link between the material before the Assessing Officer and inference made. The assessment cannot be reopened validly on the basis of the above reasons recorded in absence of any tangible material to infer that income escaped in the case of the assessee. We, accordingly, quash the reassessment proceedings and set aside the order of the Learned CIT(A) on the issue in dispute. Followed Coronation Agro Industries Ltd. v. DCIT (2017)390 ITR 464(Bom.) (HC)(ITA No. 7878/Del./2019 dt 15-9-2020. (AY. 2010-11)
Stratagem Portfolio (P.) Ltd. v. Dy. CIT (Delhi) (Trib.) www.itatonline.org

S. 147 : Reassessment – Notice – Additional ground – AO can issue the notice u/s. 143(2) only after filing of return of income in response to notice under section 148 of the Act – Prior issue of notice before such return is redundant therefore reassessment cancelled and quashed. [S. 143(2) 148 151 292BB] 1860
In response to the notice under section 148 of the Act the assessee filed the Income Tax Return dt. 21.8.2014. He filed objection on 30.08.2014. The said objections were overruled by the Assessing Officer on 16.12.2014 and final assessment order was passed u/s. 147/148 of the Act on 17.03.2015. The AO has issued notice u/s. 143(2) of the Act on 11.08.2014 whereas the assessee filed return of income in response to the notice u/s. 148 of the Act on 21.08.2014. That notice u/s. 143(2) of the Act is prior to the filing of the return which is illegal and against the provisions of law and is not sustainable in the eyes of law. Tribunal held that reassessment notice under section 143(2) must be issued only and only after filing return of income in response to notice under section 148. Prior issue of notice before such return is redundant therefore reassessment cancelled and quashed.

Following case laws relied
CIT v. Jolly Fantasy World Ltd. (2015) 373 ITR 530 (Guj.)(HC)
CIT v. Lalitkumar Bardia (2017) 84 taxmann.com 213 [2018] 404 ITR 63 (Bom.)(HC)
CIT v. Laxman Das Khandelwal [2019] 417 ITR 325 (SC)
ACIT v. Hotel Blue Moon (2010) 321 ITR 362 (SC)
PCIT v. Paramount Biotech Industries Ltd [2017] 398 ITR 701 (Delhi)
Alpine Electronics Asia Pte. Ltd. v. DGIT (2012) 341 ITR 247 (Delhi) (HC)
CIT v. Delhi Kalyan Samiti (ITA No. 696 to 699/2015 dt 22-3 2016 (Delhi) (HC)
Dolphin Developers Ltd. (IT(SS) No. 311/LKW/2018 dt 29-3-2019) (AY 2008-09) (Luck) (Trib.)
Vikas Strips Ltd. v. DCIT (Delhi)(Trib.); (ITA NO. 447/DEL/2017 dt 10-9-2020) (AY. 2007-08), www.itatonlinbe.org

1861 **S. 147 : Reassessment – Information from investigation wing – Objections not disposed – Material not confronted with the reasons recorded – Reassessment notice was quashed. [S. 148]**
Tribunal quashed the reassessment proceedings on the ground that objections not disposed, material received from the investigation wing not confronted with the reasons recorded. (Followed Fomento Resorts & Hotels Ltd. (TA No.63 of 2007 dt.30.08.2019) (ITA.No.7372/Del./2019 dt 10-9-2020 (AY. 2011-12)
Meena Gupta v. ITO (Delhi)(Trib.) www.itatonline.org
Sheela Aggarwal v. ITO (Delhi)(Trib.) www.itatonline.org
Garima Agarwal v. ITO (Delhi)(Trib.) www.itatonline.org
Shri Narender Kumar v. ITO (Delhi)(Trib.) www.itatonline.org
Shri Hanuman Prasad v. ITO (Delhi)(Trib.) www.itatonline.org
Shri Gaurav Aggarwal v. ITO (Delhi)(Trib.) www.itatonline.org
Shri Sourav Jindal v. ITO (Delhi)(Trib.) www.itatonline.org

1862 **S. 147 : Reassessment – With in four years – Change of opinion – No new tangible material – "freebies" to doctors – Sales promotion expenses – The code of conduct prescribed by the Medical Council is applicable only to medical practitioners/ doctors registered with the MCI and does not apply to pharmaceutical companies & the healthcare sector in any manner – Reassessment is held to be not valid. [S. 37(1), 148]**
Allowing the appeal of the assessee the Tribunal held that the power of reassessment is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power. There is no tangible material in the present case. As per the mandate of law, even where a concluded assessment is sought to be reopened by the A.O within a period of 4 years from the end of the relevant assessment year, it is must that the A.O has fresh material or information with him, that had led to the formation of belief on his part that the income of the assessee chargeable to tax has escaped assessment. Followed *NYK Line (India) Ltd. v. DCIT (No.2) [2012] 346 ITR 361 (Bom.) (HC) and Purity Tech Textile Pvt. Ltd. v. ACIT & Anr. [2010] 325 ITR 459 (Bom.) (HC). (ITA No. 2344 / Mum /2018 / 1212 /Mum/2019, dt. 22-07-2020)* (AY. 2012-13)
Medley Pharmaceuticals Ltd. v. ITO (2020) 118 taxmann.com 44. (Mum.)(Trib.) www.itatonline.org

S. 147 : Reassessment – Non-Resident – information from investigation wing of the income tax department – In return the assessee was shown as resident – Foreign Bank deposits – Reassessment is held to be valid. [S. 6(1), 9(1), 69, 148] 1863

The assessee is an individual. The assessee had filed her income tax return, on 29th July 2006, disclosing an income of Rs 1,70,800 for the relevant previous year, but subsequently the investigation wing of the income tax department, received information that the assessee is having a bank account with HSBC Private Bank (Suisse) SA Geneva. Based on this information the assessment was reopened and a fresh assessment was made. Assessee challenged the reassessment on the ground that the assessee was non-resident for the relevant assessment year hence the department has no jurisdiction to question the alleged deposit in other countries. The Tribunal up held that reassessment on the ground that in the return of income filed by her she has shown as resident. As the prima facie belief of the AO that the assessee was resident is held to be valid. Accordingly the ground of reopening of assessment is up held by the Tribunal. (AY. 2006-07)

Renu T. Tharani (Ms.) v. Dy.CIT(IT) (2020) 184 ITD 565 / 192 DTR 9 / 206 TTJ 521 (Mum.) (Trib.)

S. 147 : Reassessment – With in four years – Failure to deduct tax at source – Merely on the doubt about applicability of tax deducted at source, reassessment is held to be not valid. [S. 40(a)(ia), 148] 1864

Tribunal held that re-opening of assessment was made without any tangible material indicating escapement of income. The AO in the reasons recorded has only raised some doubt regarding the applicability of TDS provisions to the payment. When the Departmental Authorities are not sure about the nature of payment, it is not understood how they can come to a conclusion that TDS provisions are applicable. (AY. 2008-09)

Eagle Burgmann India Pvt. Ltd. v. Dy.CIT (2020) 185 DTR 401 / 203 TTJ 477 (Mum.)(Trib.)

S. 147 : Reassessment – With in four years – Change of opinion – Capital gains on sale of agricultural land – No failure to disclose material facts – Approval granted was without application of mind – Reassessment is held to be bad in law [S. 2(IA), 10(1), 115JB, 148, 151] 1865

Allowing the cross objection of the assessee the Tribunal held that, there was no failure on the part of the assessee to disclose material facts. The reasons recorded stated that income returned u/s. 115JB was accepted on misinterpretation of law which could not be sustained. Tribunal also held that the approval granted was without application of mind. Accordingly the reassessment is held to be bad in law. (AY. 2013-14)

Krish Homes (P.) Ltd. v. ITO (2020) 186 DTR 177 / 78 ITR 101 / 203 TTJ 909 (Jaipur)(Trib.)

S. 147 : Reassessment – Sales promotion expenses – No new information – Reassessment is held to be bad in law. [S. 37(1), 148] 1866

Assessing Officer while framing regular assessment under section 143(3), had consciously formed an opinion that out of sales promotion expenses incurred by assessee pharma company, only those expenses incurred for giving gifts to doctors were liable to be disallowed under section 37(1) as per Indian Medical Council Regulations

and CBDT Circular No. 5/2012, dated 1-8-2012. On appeal the Tribunal held that where reassessment was initiated by Assessing Officer, not on basis of any fresh tangible material or any new information which had came to his notice subsequent to culmination of original assessment proceedings, but on basis of same set of facts as were there before his predecessor at time of framing of regular assessment, same was to be quashed. (AY. 2012-13)
Medley Pharmaceuticals Ltd. v. DCIT (2020) 184 ITD 8 / 207 TTJ 143 (Mum.)(Trib.)

1867 **S. 147 : Reassessment – With in four years – Search and seizure – Alleged cash loans – Parties denying cash loans – Reassessment is held to be nor valid – Correct legal course could have been action u/s. 153C and not reassessment – Addition is deleted. [S. 132, 153A, 153C, 148]**
Tribunal held that the parties have denied the cash loans, not examined the parties, neither original agreement was brought on record neither report of hand writing expert obtained. Reassessment is held to be not valid. Correct course of action could have been action u/s 153C and not reassessment. Accordingly the addition is deleted. (AY.2010-11)
Adarsh Agrawal v. ITO (2020) 77 ITR 52 (SN) (Delhi)(Trib.)

1868 **S. 147 : Reassessment – With in four years – Depreciation at higher rate – Not examining the issue at the time of original assessment – Reassessment is held to be valid. [S. 32, 143(1)]**
Tribunal held that the assessment was completed u/s 143(1) and the AO had not examined the allowability of higher depreciation hence the reassessment is held to be valid. (AY. 2011-12 to 2015-16)
Arihant Constructions v. ACIT (2020) 77 ITR 171 (Vishakha)(Trib.)

1869 **S. 147 : Reassessment – Falsification of accounts – Statement of chairman – Un explained loans – Interest – Reassessment is held to be valid – Order of CIT(A) is affirmed. [S. 2(22)(e), 148]**
Tribunal held that the AO had come to the conclusion that there was escapement of income on the ground that falsification of books of account and also manipulation of accounts for the last several years as well as the statement given by the chairman and material evidence, which were necessary to be considered, were not at all considered by the AO while passing the order under S. 143(3) of the Act. The AO after recording detailed reasons, had reopened the assessment and, therefore, the question of change of opinion did not arise because the AO had not expressed any opinion. Accordingly the reassessment is held to be valid. On facts the CIT(A) had given the directions to the AO with regard to the addition of Rs. 20 crores on account of unexplained loans and advances and with regard to segregation of interest income and assessing it as income from other sources and treating the income from trading in shares as speculation income. (AY. 2005-06)
Elem Investments Pvt. Ltd. v. ACIT (2020) 77 ITR 319 (Hyd.)(Trib.)
Fincity Investments Pvt. Ltd. v. ACIT (2020) 77 ITR 319 (Hyd.)(Trib.)
Highgrace Investments Pvt. Ltd. v. ACIT (2020) 77 ITR 319 (Hyd.)(Trib.)

S. 147 : Reassessment – Reason to be believe – Securities premium account – Merely on the basis of information received by another AO based on appraisal report of A group – Reassessment cannot be made. [S. 148] 1870

Tribunal held that the AO is duty bound to make reasonable enquiry to collect material to form reason to believe income has escaped assessment. Merely on the basis of information received by another AO based on appraisal report of a group reassessment is held to be not valid. Reassessment proceedings is quashed. (AY. 2008-09)

Budhiya Agencies P. Ltd. v. Dy.CIT (2020) 77 ITR 72 (SN) (Kol.) (Trib.)

S. 148 : Reassessment – Recorded reasons not furnished – Reassessment is bad in law. [S. 147] 1871

High Court dismissed the appeal of the revenue wherein the Tribunal set aside the order of the Assessing Officer on the ground that recorded reason was not furnished to the assessee. Followed. *CIT v. Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 (Bom.) (HC).*

CIT v. National Organic Chemical (2020) 115 taxmann.com 244 (Bom.)(HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. National Organic Chemical CIT v. National Organic Chemical (2020) 272 Taxman 530 (SC)

S. 148 : Reassessment – Notice – Issue of notice in the name of dead person – Notice was quashed. [S. 131(IA), 147, 159, 292BB, Art. 226] 1872

Notice was issued in the name of dead person. The petitioner prayed for withdrawal of notice. The Assessing Office by letter/order dated 25.7.2018 however, rejected the objections raised by the petitioner on the ground that the petitioner has never given any intimation regarding the death of Shri Kanubhai Nagjibhai Rajpara to the jurisdictional Assessing Officer and further, it was also stated that notice under section 148 of the Act was served personally on 31.3.2018 at the address of the petitioner as well as by speed post. The petitioner was required to reply to the said notice by filing return. Respondent also stated that Permanent Account Number of late Shri Kanubhai Nagjibhai Rajpara is active and no intimation is given with regard to his death and therefore, notice issued under section 148 of the Act is proper and in accordance with law. On writ the court held that even prior to issuance of notice, department was aware about the death of the petitioner's father since on 13.3.2018 in response to the summons issued under section 131(1A) of the Act, the petitioner had intimated to the department about the death of his father. Therefore, it cannot be said that the respondent was not aware about the death of the father of the petitioner and he could have belatedly issued notice under section 159 of the Act upon the legal representatives of late Shri Kanubhai Nagjibhai Rajpara. Accordingly the proceeding was quashed. (AY. 2011-12)

Durlabhai Kanubhai Rajpara v. ITO (2020) 114 taxman.com 481 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, (2020) 270 Taxman 9 (SC)

S. 148 : Reassessment – Notice – Notice was not issued at last known address of assessee – Participated in reassessment proceedings despite not having been issued or served with notice under section 148 in accordance with law would not constitute a waiver of said jurisdictional requirement – Reassessment is bad in law. [S. 147, 292BB] 1873

Dismissing the appeal of the revenue the Court held notice under section 148 was not issued at correct address because address given in notice was not last known address

of assessee. Tribunal further held that mere fact that assessee had participated in reassessment proceedings despite not having been issued or served with notice under section 148 in accordance with law would not constitute a waiver of said jurisdictional requirement. Order of Tribunal is affirmed. Relied on *CIT v. Chetan Gupta (2016) 382 ITR 613 (SC) R.K. Upadhyaya v. Shanabhai P. Patel (1987) 166 ITR 163 (SC)*(AY. 2001-02) *PCIT v. Atlanta Capital (P.) Ltd. (2020) 119 taxmann.com 292 (Delhi)(HC)*
Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect. PCIT v. Atlanta Capital (P.) Ltd. (2020) 274 Taxman 224 (SC)

1874 **S. 148 : Reassessment – Non-Resident Indian – Notice issued by Madurai Income tax Officer when the assessee is staying in Shimoga Karnataka is held to be bad law and without jurisdiction. [S. 120, 127, 147, Art. 226]**
Assessee was a non-resident Indian. Assessment was completed. Commissioner (IT) issued a reopening notice against assessee at its address at Madurai as PAN address of assessee was in Madurai and, accordingly, transferred the case of assessee to Assessing Officer at Madurai. On writ the Assessee contended that assessee was residing in Shimoga, Karnataka and thus, appropriate officer to assess assessee would be officer at Shimoga and impugned notice issued at Madurai was not valid. It was contended that assessee was staying in Madurai prior to period relating to assessment year 2011-12 and admittedly, no return of income was filed by him during his stay at Madurai as he had not earned any income liable to tax in that period. From assessment year 2010-11 onwards, assessee had shifted to Shimoga, Karnataka, carrying on business there and returns of income were filed from assessment year 2012-13 onwards at Shimoga, till date. These returns of income were processed and intimations were issued wherein address of assessee was stated to be Shimoga. Allowing the petition the Court held that on facts, appropriate officer to assess assessee was officer at Shimoga. Accordingly notice for reopening issued at its address at Madurai was not valid. (AY. 2011-12)
Abdul Azeez Haroon v. Dy.CIT(IT) (2020) 270 Taxman 216 / 194 DTR 306 / 317 CTR 610 (Mad.)(HC)

1875 **S. 148 : Reassessment – Jurisdiction of Assessing Officer – Proceedings initiated under section 148 shall be proceedings at stage of filing of return under section 139 of the Act – Directed the Assessing Officer to take appropriate decision within a period of one month of the receipt of the copy of judgement. [S. 124(2), 147, Art. 226]**
Asessee shifted his residence to Ernakulam from Alappuzha in 2015 while PAN card of Ernakulam was issued on December 2019 Reassessment notice dated 30.12.2019 under section 148 was received by assessee. On 04.01.2020 i.e. within few days, assessee requested Income Tax Officer, Alappuzha for transfer of assessment proceedings to Ernakulam. As no action was taken the assessee filed the Writ petition. Allowing the petition the Court held that ITO should take a call on request under section 124(4) or any other provisions regarding jurisdiction of assessment or reassessment proceedings, by taking into consideration whether claim made by assessee would or would not fall under section 124(2), when original assessment under section 139 had been made or otherwise. Court observed that proceedings initiated under section 148 shall be proceedings at stage of filing of return under section 139 of the Act, however directed

the Assessing Officer to take appropriate decision within a period of one month of the receipt of the copy of judgement. (AY. 2012-13)
Ashick Abraham v. PCIT (2020) 272 Taxman 538 / 191 DTR 282 / 315 CTR 723 (Ker.)(HC)

S. 148 : Reassessment – Notice – Alternative remedy – Writ petition dismissed – Order of Single Judge is affirmed. [S. 147, Art. 226] 1876
Reassessment order passed in case of assessee for assessment year 2009-10 was sought to be challenged before Single Judge on ground of alleged breach of principles of natural justice by assessing authority, namely, non-service of statutory notice under section 148 on assessee and non-grant of adequate opportunity to raise objections to assessee. Single Judge noticed that proceedings had been initiated from month of March 2016 followed by various notices which would indicate that there was no violation of principles of natural justice and that assessee had deliberately avoided to approach concerned authorities and further that assessee had an alternative and efficacious remedy of filing an appeal, and thus, he was of view that exercise of a writ jurisdiction under article 226 was uncalled for. Affirming the decision of single judge the Court held existence of an alternative and efficacious remedy, it would be improper for a writ court to exercise its jurisdiction and, thus, question as to whether notice issued under section 147 is justified or not is a question of fact and as questions of fact cannot be gone into by a writ court, it would necessarily have to be considered by concerned authorities. (AY. 2009-10)
Telekom Malaysia Berhad v. UOI (2020) 273 Taxman 179 / 195 DTR 143 (2021) 320 CTR 347 (Karn.)(HC)

S. 148 : Reassessment – Notice – When alternative remedy of appeal is available under statute, it would not be appropriate and proper for High Court to exercise extraordinary jurisdiction conferred on High Court. [S. 147, Art. 226] 1877
Notices issued under section 148 to assessee had been challenged on ground that assumption of jurisdiction under section 147 by ITO was ab initio void. Court observed that petitioner had approached High Court without availing alternative remedy available under Act. Further, petitioner had not been able to put forth any cogent and satisfactory reason for exercise of extraordinary jurisdiction by High Court under article 226. Court also observed that since notice under section 148 had culminated into an order of assessment which could be assailed before appellate authority, writ petition could not be entertained. (AY. 2010-11)
Kasautii Jewellers v. CIT (2020) 274 Taxman 49 / 195 DTR 389 / 317 CTR 675 (Jharkhand) (HC)

S. 148 : Reassessment – Notice – Non-existing company – Substantive illegality and not procedural violation of nature adverted to in section 292-B, hence, not curable – Notice was quashed. [S. 142(1), 147, 292B, Art. 226] 1878
The petitioner has challenged the notice dated 28-3-2018 issued under section 148 of the Act for the assessment year 2011-12 and the order of overruling the objections dated 29-11-2018 as well as the notice dated 11-12-2018 issued under section 142(1) of the Act on the ground that notice issued under Section 148 of the Act impugned herein, is without jurisdiction as the same was issued on the non-existing company and the same is nothing but change of opinion without any tangible material and moreover,

beyond the period of limitation prescribed under the first proviso to Section 147 of the Act. Allowing the petition the court held that, assessee company was amalgamated with another company and thereby lost its existence, jurisdiction assumed by Assessing Officer to issue notice under section 148 to non-existing company was substantive illegality and not procedural violation of nature adverted to in section 292B and hence not curable. Therefore, notice issued under section 148 to non-existing company was to be quashed and set aside. (AY. 2011-12)
eMudhra Ltd. v. ACIT (2020) 273 Taxman 473 (Karn.)(HC)

1879 **S. 148 : Reassessment – Notice to dead person – Notice to legal heir of deceased Assessment order is held to be invalid. [S. 147, Art. 226]**
Allowing the petition the Court held that as per settled law, notice for reopening of assessment against a dead person is invalid. The fact that the AO was not informed of the death before issue of notice is irrelevant. Consequently, the S. 148 notice is set aside and order of assessment stands annulled. Followed *Alamelu Veerappan v. ITO (2018) 257 Taxman 72 (Mad.) (HC) and Chandreshbhai Jayntibhai Patel v. ITO (2019) 413 ITR 276 (Guj.) (HC)*, followed) (AY. 2007-08)
Rupa Shyamsundar Dhumatkar v. ACIT (2020) 420 ITR 256 / 275 Taxman 453 (Bom.)(HC)

1880 **S. 148 : Reassessment – Notice issued u/s 92CA based on the reassessment notice was challenged as the objection to reassessment notice was not disposed off – Directed to dispose the objection and proceedings u/s 92CA was stayed. [S. 92CA, 148, Art. 226]**
Allowing the petition the Court held that without disposing the objection raised by the petitioner referring the matter to TPO being premature hence the court directed the revenue to dispose the preliminary objection, meantime proceedings under section 92CA was stayed. (AY. 2015-16)
Essilor India P. Ltd v. ACIT (2020) 187 DTR 430 / 315 CTR 199 (Karn.)(HC)

1881 **S. 148 : Reassessment – Notice – Alternative remedy – Notice issued after proper sanction – No return submitted in response to notice – Notice cannot be quashed. [S. 147, 151, Art. 226]**
Dismissing the writ petition the Court held that the notice of reassessment had been issued with the approval of the Commissioner and it was in consonance of section 151 of the Act and without any apparent illegality. After issuance of notice under section 148, the first course was to file the return. Except for filing return, the assessee had taken all other courses such as filing of objections and invoking the writ jurisdiction of the court. Even if an order were passed after reopening pursuant to the notice, the assessee would have a statutory remedy as provided in the Act. The notice of reassessment could not be quashed.(AY.2012-13)
Naval Kishore Khaitan v. PCIT (2020) 428 ITR 62 (AP)(HC)

1882 **S. 148 : Reassessment – Notice in name of dead person – Held to be not valid – Not a defect curable under S. 292B of the Act – Intimation by legal Representative that noticee was dead is not a participation in reassessment proceedings. [S. 147, 292B, Art.226]**
Allowing the petition the Court held that the settled legal principle is that a notice issued in the name of the dead person is unenforceable in law. The language employed

in S. 292 of the Actis categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. The provisions of S. 292B are not applicable and framing of assessment against a non-existing entity or person goes to the root of the matter, which is not a procedural irregularity, but a jurisdictional defect, as there cannot be any assessment against a dead person. Mere intimation by the legal representative that the noticee is dead would not amount to participation in the reassessment proceedings.(R/SA No. 15310 of 2018 dt 27-08-2019)(AY. 2011-12)
Urmilaben Anirudhhasinhji Jadeja v. ITO (2020) 420 ITR 226 / 273 Taxman 481 (Guj.) (HC)

S. 148 : Reassessment – Objections raised and the Assessing Officer has to pass reasoned order – Challenge of notice is held to be not valid. [S. 147, Art. 226] 1883
Notice for reopening assessment was issued on assessee. Assessee had already been furnished with reasons for reopening. The assessee filed writ petitions against the issue of notices. Dismissing the petition the Court held that assessee was bound to raise objections against reasons for reopening and thereafter, Assessing Officer had to pass a reasoned order and such a course of action being yet to be completed, writ petitions could not be filed at instant stage. (AY.1999-2000, 2001-02, 2002-03)
Seshasayee Paper and Boards Ltd. v. Dy.CIT (2020) 269 Taxman 120 (Mad.)(HC)

S. 148 : Reassessment – Service of notice – Notice to an authorised representative – Representative appeared before the Assessing Officer – Alternative remedy – Writ is held to be nor maintainable. [S. 147, 246, 292BB, Art. 226] 1884
Assessee filed writ petition against reassessment order contending that notice under section 148, was not served on him. Dismissing the petition the Court held that notice to an authorized representatives of an assessee is a notice to assessee, when it was found that the authorized representative had appeared on behalf of assessee in view of section 292BB of the Act. In view of alternative remedy available to assessee to file an appeal before Commissioner (Appeals)
Chandrasekaran v. ITO (2020) 275 Taxman 452 (Mad.)(HC)

S. 148 : Reassessment – Notice – Principal Officer – Notice issued in the name of Principal officer was quashed. [S. 2(35(b), 147, Art. 226] 1885
The Assessing Officer issued the notice u/s. 148 of the Act treating the petitioner as Principal Officer of company. Petitioner challenged said notice on the ground that he had acted as a director of company for a short period and disclosed details of acting directors. Allowing the petition the Court held that since effective proceedings would not be possible with petitioner as Principal Officer impugned order treating petitioner as a Principal Officer was set aside. Followed *ITO v. Official Liquidator (1977) 106 ITR 119 (AP) (HC)*. (AY. 2011-12)
Suvendra Kumar Panda v. ITO (2020) 121 taxmann.com 27 / 276 Taxman 171 (Mag.) (Mad.)(HC)

1886 **S. 148 : Reassessment – Notice issued to deceased person is not valid – No legal requirement for legal representatives to report death of assessee to Income – Tax Authorities – Not a curable defect – Existence of alternative remedy is not an absolute bar to issue of writ – Notice and order passed was quashed as without jurisdiction. [S. 147, 149(1)(b), 159 292BB, Art. 226]**

The assessee, MPK, expired on December 21, 2018. A notice dated March 31, 2019 under section 148 was issued in his name. An assessment order was passed in the name of one of his legal representatives on December 27, 2019. On a writ petition to quash the notice and consequential proceedings. Allowing the petition the Court held that the notice dt. March 31, 2019, under S. 148 of the Act was issued to the deceased-assessee after the date of his death, December 21, 2018 and thus inevitably the notice could never have been served upon him. Consequently, the jurisdictional requirement under S. 148 of the Act, of service of notice was not fulfilled. Issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, S. 292B of the Act does not apply. S. 292BB is applicable to an assessee and not to the legal representatives. S. 159 of the Act applies to a situation where proceedings are initiated or are pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee. There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee. An alternative statutory remedy does not operate as a bar to maintainability of a writ petition where the order or notice or proceedings are wholly without jurisdiction. If the Assessing Officer had no jurisdiction to initiate assessment proceedings, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. (Referred *Whirlpool Corporation v. Registrar of Trade Marks [1998] 8 SCC 1, PCIT v. Maruti Suzuki India Ltd (2019) 416 ITR 613 (SC) Sudha Prasad (Smt). v. CCIT (2005) 275 ITR 135 (Jharkhand) (HC)* distinguished. The notice dated March 31, 2019 and all consequential orders and proceedings passed or initiated pursuant thereto including orders dated November 21 and December 27, 2019 were quashed. (AY.2012-13)

Savita Kapila (Legal Heir of late Shri Mohinder Paul Kapila) v. ACIT (2020) 426 ITR 502 / 192 DTR 73 / 273 Taxman 148 / 316 CTR 465 (Delhi)(HC)

1887 **S. 148 : Reassessment – Amalgamation – Revenue not informed about amalgamation – Return filed in name of assessee – Company and refund received in its name – Notice is held to be valid. [S. 147, Art. 226]**

An order of assessment was challenged on the ground that the entity to whom notice was issued and based upon which the order had been passed, did not exist at the time of issuance of notice and passing of the order. Dismissing the petition the court held that, the stand of the petitioner to the effect that proceedings for reassessment ought to have been issued only in the name of OGT was clearly misconceived in so far as the Department had not been put to notice of the factum of amalgamation of OAS with the petitioner OGT till September 14, 2017 and the petitioner had also, by filing a return in the name of OAS and receiving refunds addressed to OAS, furthered the impression that OAS was an existing entity. Thus there was no infirmity in law in so far as the proceedings for reassessment were concerned and they were valid.(AY.2010-11)

Oasys Green Tech Private Ltd. v. ITO (2020) 426 ITR 124 / 194 DTR 96 / 316 CTR 897 / 272 Taxman 147 (Mad.)(HC)

S. 148 : Reassessment – Notice – Reasons not recorded – Notice is held to be not valid. [S. 147] 1888

Dismissing the appeal of the revenue the Court held that,it is incumbent upon the assessing authority to record the reasons on record, while invoking these powers of reassessment and only then issue formal notice under section 148 requiring the assessee to file fresh returns in accordance with law. Notice issued without recording the reasons is held to be bad in law. (AY.1997-98)

Dy.CIT v. Gay Travels P. Ltd. (2020) 424 ITR 376 (Mad.)(HC)

S. 148 : Reassessment – Notice – Pendency of assessment – Issue of notice for reassessment is not permissible. [S. 124(3), 142(1), 143(3), 147] 1889

Dismissing the appeal of the revenue the Court held that,the income could not be said to have escaped assessment under section 147 when the assessment proceedings were pending. If the notice had already been issued under S. 142(1) and the proceedings were pending, a return under S. 148 could not be called for. S. 124(3) which stipulates a bar to any contention about lack of jurisdiction of an Assessing Officer would not save the illegality of the assessment in the assessee's case. Followed *Trustees of H. E. H. The Nizam's Supplemental Family Trust v. CIT [2000] 242 ITR 381 (SC) Nilofer Hameed (Smt.) v. ITO [1999] 235 ITR 161 (Ker.) (HC) a CIT v. Sayed Rafiqur Rahman [1991] 189 ITR 476 (Patna) (HC).* (AY.2011-12)

PCIT v. Govind Gopal Goyal (2020) 423 ITR 106 (Guj.)(HC)

S. 148 : Reassessment – Notice – Validity – Special audit report was a fresh tangible material – Formed reasonable belief for escaped assessment – Reassessment notice is valid. [S. 37(1), 80G, 147] 1890

On examination of special audit report, filed after passing of original assessment, it was found that claim by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust u/s.80G were prima facie bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, reassessment notice on basis of said report was justified. (W P No.2739 of 2017 dt.2/02/2018). (AY. 2010-11)

Multi Commodity Exchange of India Ltd. v. Dy. CIT (2018) 91 taxmann.com 265 / (2020) 423 ITR 445 (Bom.)(HC)

Editorial : SLP of Assessee is dismissed (SLP No.20523 of 2018) (2019) 410 ITR 162(St.)(SC)/(2019) 260 Taxman 243 (SC)

S. 148 : Reassessment – Notice – Valid service of notice is not mere procedural requirement, it is a condition precedent to validity of any assessment or reassessment – If notice issued is shown as invalid, subsequent proceedings shall be illegal – Service by affixture – Reassessment was quashed as the service of notice was not proper as per the law as per Order V, Rule 12, Rule 17, rule 19, Rule 20(1) and Order III, Rule 2 of the Code of Civil Procedure 1908. [S. 147, 149, 282] 1891

Tribunal held that there is neither any material on records nor brought to our notice during the course of hearing to assume for a moment that the duly appointed agent of the Firm was avoiding service and was keeping out of the way for being served

with notice and thus there was reasons to believe that notice upon him could not be served in ordinary course, warranting recourse to service by Affixture. Thus, essential conditions of Rule-17 of Order-V of the Civil Procedure Code are not fulfilled and accordingly the order was quashed. Valid service of notice is not mere procedural requirement, it is a condition precedent to validity of any assessment or reassessment. If notice issued is shown as invalid, subsequent proceedings shall be illegal. Referred *CIT v. Ramendra Nath Ghosh (1971) 82 ITR 888 (SC), Jagannath Prasad v. CIT (1977) 110 ITR 27 (All) (HC) Kunj Behari v. ITO (1983) 139 ITR 73 (P&H) (HC) Suresh Kumar Sheetlani v. ITO (2018) 96 taxmann.com 401 / 257 Taxman 338 (All) (HC), Auram Jewellery Exports (P) Ltd v. ACIT (2017) 88 taxman.com 633 / 54 ITR 1 (Delhi) (Trib.).* (AY. 2009-10)
K.P. Cold Storage v. ITO (2019) 201 TTJ 649 / (2020) 189 DTR 385 (Agra)(Trib.)

1892 **S. 148 : Reassessment – Notice – Recorded reasons – Failure to provide complete details of reasons recorded and not merely few extracts of said reasons – Reassessment is held to be bad in law. [S. 147]**
The assessee filed writ petition challenging validity of reassessment proceedings on ground that the Assessing Officer did not record detailed reasons for reopening of assessment. The reasons supplied to the assessee and reasons brought on record by revenue authorities were altogether different, validity of reassessment proceedings could not be upheld and, thus, said proceedings deserved to be quashed. (AY. 1989-90 to 1991-92)
Wimco Seedlings Ltd. v. JCIT (2020) 82 ITR 235 / 183 ITD 211 (Delhi)(Trib.)

1893 **S. 148 : Reassessment – Notice – Factum of death of assessee intimated to department much prior to issue of notice – Notice issued in name of deceased – Notice not valid. [S. 147]**
Tribunal held that the notice issued by the Assessing Officer was invalid because it was issued in the name of the deceased assessee in spite of the factum of the death of the assessee having been duly intimated to the Department much prior to the issue of notice. The notice in the name of the deceased assessee and the consequent assessment order were invalid and liable to be quashed.(AY.2008-09)
M. H. Mamatha (Smt.) v. ITO (2020) 83 ITR 7 (SN) (Bang.)(Trib.)

1894 **S. 148 : Reassessment – Notice – Assessing Officer not signing notice or mentioning assessment year – Notice is illegal – Reassessment proceedings not valid. [S. 148]**
Tribunal held that the notice of reassessment was unsigned and did not mention any assessment year. Since an unsigned notice had been sent to the assessee, it vitiated the entire reassessment proceedings because it was the jurisdictional notice to initiate proceedings under section 147 of the Income-tax Act, 1961. Since the notice itself was illegal and bad in law, the entire reassessment proceedings were vitiated and the Assessing Officer could not have assumed jurisdiction under section 148 to frame the assessment against the assessee. (AY.2000-01)
Dy. CIT v. Taureg Properties and Security Services Ltd. (2020) 80 ITR 386 (Delhi)(Trib.)

S. 148 : Reassessment – Notice – Validity – Amalgamation of companies – Effect – Amalgamating company ceases to exist – Factum of amalgamation brought to notice of AO – Reassessment proceedings against amalgamating company – Not valid. [S. 147] 1895

On appeal, the Tribunal held that the CIT(A) had given a categorical observation that the reassessment was initiated based on the audit objection. Even, on the date of such audit objection, the erstwhile assessee was not in existence pursuant to the amalgamation. Further, despite various intimations given, during penalty proceedings, the Assessing Officer proceeded to frame the re-assessment in the name of the amalgamating company, which was declared void ab initio by the CIT(A). Given this, the reassessment was liable to be set aside. (AY.2008-09)

DCIT v. Palm Tech India Ltd. (2020) 78 ITR 4 (SN) (Mum.)(Trib.)

S. 148 : Reassessment – Notice – Reply stating that original return filed should be treated as return filed in response to notice u/s 148 – Postal receipt is filed – Neither notice u/s 143(2) is issued nor assessment completed u/s 144 of the Act nor interest charged u/s 234A – Reassessment is held to be not valid. [S. 139, 143(2), 144, 147, 234A] 1896

Tribunal held that the notice under S. 148 was issued on the same date, the objection of the assessee for such reopening was disposed of by the AO passing a speaking order on the same date, the reassessment orders for both the years were passed on the same date and the CIT(A) also had passed the appellate orders for both the years separately on the same date. Therefore, it could not be said that the assessee had filed the reply for treating the earlier return as the return in response to the notice under S. 148 only for the AY. 2010-11 and not for the AY. 2011-12, especially when the postal receipts for both the speed posts were also on the same date. Since the assessee filed the letter stating that the return filed originally may be treated as return filed in response to the notice under S. 148 and since the notice under S. 143(2) was not issued within the statutory period and since the assessment was not completed under S. 144 nor any interest under S. 234A charged which indirectly proved that the assessee, in fact, had filed the letter stating that the return filed originally may be treated as return filed in response to the notice under S. 148. Therefore, the assessment order passed by the AO was not in accordance with law and had to be quashed.(AY.2011-12)

Flovel Energy Pvt. Ltd. v. ACIT (2020) 77 ITR 441 (Delhi)(Trib.)

S. 149 : Reassessment – Time limit for notice – Direction of CIT(A) – Reassessment barred by limitation cannot be reopened – Reassessment was quashed. [S. 143(1), 149(1)(b)] 1897

Assessee individual filed its return of income which was processed under section 143(1). Later on, during assessment proceedings for assessment year 2002-03, Commissioner (Appeals) noted that a sum received by assessee from a firm in the year 1996 was to be admitted to assessee's income as commission received by assessee for assessment year 1997-98. Pursuant to the same, Assessing Officer issued a reopening notice dated 22-12-2005 proposing to reopen assessment for relevant assessment year 1997-98 solely for abovesaid reason assigned by Commissioner (Appeals). Reassessment was affirmed by CIT(A) and also Appellate Tribunal. On appeal it was contended that said reopening

was barred by limitation. Allowing the appeal the Court held that assessment for the assessment year 1997-98 could not be reopened beyond 31-3-2004 in terms of amended provisions of section 149(1)(b) as applicable at relevant time. Accordingly reassessment notice dated 20-10-2005 was unjustified and the same was to be set aside. (AY. 1997-98)
N. Illamathy (Smt.) v. ITO (2020) 275 Taxman 25 / 195 DTR 49 / 317 CTR 543 (Mad.)(HC)

1898 **S. 151 : Reassessment – Sanction for issue of notice – Sanction granted by Chief Commissioner – Chief Commissioner was not specified officer under section 151(2) to grant such sanction – Notice was quashed. [S. 2(28C), 148, 151(2), Art. 226]**
Assessee-company was engaged in manufacture and marketing of fabrics. Assessing Officer issued reassessment notice under section 148 on the ground that income chargeable to tax in respect of share application money for relevant year had escaped assessment and passed reassessment order. One of the ground of challenge was the sanction was given by Chief Commissioner and not joint Commissioner. Allowing the petition the Court held that under section 2(28C) of the Act, a Joint Commissioner also means Additional Commissioner of Income Tax. In the present case, the Assessing Officer submitted a proposal to the Principal Chief Commissioner of Income Tax for reopening the assessment under section 148 on 6 February 2019. It was found that Chief Commissioner had granted sanction to Assessing Officer to issue said notice. Court held that since Chief Commissioner was not officer specified in section 151, therefore, there was breach of requirement of section 151(2) regarding sanction for issuance of notice under section 148 order of reassessment was quashed. (AY. 2014-15)
Miranda Tools (P.) Ltd. v. ITO (2020) 272 Taxman 154 (Bom.)(HC)

1899 **S. 151 : Reassessment – Sanction for issue of notice – Joint Commissioner of Income-tax – Reopening of assessment with the approval of Commissioner is held to be not valid. [S. 147, 148, 151(2)]**
Dismissing the appeal of the revenue, the Court held that, where the Act provides for sanction by the joint Commissioner of Income tax in terms of S.151, then the sanction by the Commissioner of Income tax would not meet the requirement of the Act and reopening notice would be without jurisdiction. Followed *Ghanshyam K. Khabarani v. ACIT (2012) 346 ITR 443 (Bom.) (HC).(ITA No. 371 /Lkw/2016 dt 19-10-2016)* (AY. 2008-09) (ITA No 1035 of 2017 dt 11-11-2019)
PCIT v. Khushbu Industries (2019) BCAJ-January-P. 47 (Bom.)(HC)

1900 **S. 151 : Reassessment – Sanction for issue of notice – Approval granted in mechanical manner and without application of mind – Reopening is not valid. [S. 147, 148]**
Tribunal held that the approval for initiating reassessment proceedings had been granted by the Additional Commissioner mechanically and without application of mind and was not valid because the remarks did not show which material, information, documents and which other aspects he had been gone through and examined for reaching the satisfaction for granting approval. Thereafter, the AO had mechanically issued notice under S. 148 of the Act,. The reopening is held to be bad in law. (AY.2008-09)
APC Air Systems P. Ltd. v. ITO (2020) 77 ITR 21 (SN) (Delhi) (Trib.)

S. 151 : Reassessment – Sanction for issue of notice – Sanction of Joint Commissioner – Sanction obtained from commissioner – Notice not valid. [S. 143(1), 147, 148, 151(2)] 1901
Tribunal held that the order of the Assessing Officer dated March 31, 2015 passed under section 143(3) r.w.s 147 mentioned that the sanction of the Commissioner of Income-tax was obtained for reopening of the assessment. According to section 151(2) as it stood during the period when the reopening was done, the sanction should have been obtained from an officer of the rank of Joint Commissioner. Such approval had not been taken. Since no proper approval was taken in accordance with the provisions of section 151, all proceedings subsequent to that point became a nullity. (AY.2007-08)
Shanker Tradex P. Ltd. v. ITO (2020) 84 ITR 32 (SN) (Delhi)(Trib.)

S. 153 : Assessment – Appellate Tribunal – Order passed to give effect to direction of Appellate Tribunal for limited purposes – No time limit for passing order – Order is not barred by limitation. [S. 153(2A), 153(3), 254(1)] 1902
On appeal by the assesseee the CIT(A) directed deletion of the notional interest in respect of advance made to the Madhya Pradesh State Electricity Board, which was added by the Assessing Officer. The Revenue challenged the order before the Appellate Tribunal. The Tribunal by an order dated July 31, 2006 set aside the findings of the Assessing Officer in so far as it granted the relief with regard to depreciation and notional interest and the matter was remitted to the AO to consider the controversy afresh. After remand, the Assessing Officer passed an order on December 15, 2009. The Assessing Officer disallowed 100 per cent depreciation on pollution control equipment amounting to Rs. 4,93,00,000. The Assessing Officer also taxed the notional income on the amount of loan advanced to the Madhya Pradesh State Electricity Board. The order was the subject matter of challenge before the CIT(A) The CIT(A) held that the original order remanding the assessment was passed only to examine two issues, viz., depreciation and notional interest. It was further held that since there was no order to pass a fresh order of assessment, the order giving effect to the findings of the Tribunal was not barred by limitation under section 153(2A). However the Tribunal held that the order was barred by limitation. On appeal by the revenue the Court held that it was evident that the order of remand had been issued with a view to give effect to the findings of the Tribunal. Neither had the order of assessment been set aside nor had the AO been directed to carry out fresh assessment. In other words, the order passed by the Appellate Tribunal was a remand on a limited issue. Therefore, the provisions of S. 153(3) applied to the facts of the case and the Tribunal therefore, committed an error of law in holding that the order passed by the CIT(A) was passed under section 153(2A). The order was not barred by limitation. (AY. 1996-97)
CIT, LTU v. Astra Zeneca Pharma India Ltd. (2020) 426 ITR 586 / 193 DTR 186 / 272 Taxman 354 (Karn.)(HC)

S. 153 : Assessment – Limitation – Assessment order passed by Assessing Officer pursuant to directions of Dispute Resolution Panel – Not subject to limitation. [S. 143(3), 144C(13)] 1903
The final assessment order passed under section 143(3) of the Income-tax Act, 1961 read with section 144C(13) of the Act would not be covered under the provisions of section 153 of the Act. (AY.2014-15)
Vedanta Ltd. v. ACIT (2020) 84 ITR 84 (Delhi)(Trib.)

1904 **S. 153A : Assessment – Search – No incriminating material was found – Addition is held to be not valid. [S. 132]**
Dismissing the appeal of the revenue the Court held that, since no incriminating documents during course of search were found, impugned addition made by Assessing Officer was not sustainable. (AY. 2005-06 to 2011-12)
PCIT v. Gahoi Dal & Oil Mills (2020) 117 taxmann.com 117 (MP)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Gahoi Dal & Oil Mills (2020) 272 Taxman 521 (SC)

1905 **S. 153A : Assessment – Search – Completed assessment could not be abated unless some incriminating evidence or material was found during search qua additions made by Assessing Officer. [S. 132]**
Dismissing the appeal of the revenue the Court held that completed assessment could not be abated unless some incriminating evidence or material was found during search qua additions made by Assessing Officer. Followed, *CIT v. All Cargo Global Logistics Ltd (2015) 374 ITR 645 (Bom.) (HC), CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom.) (HC)*
PCIT v. Caprihans India Ltd. (2020) 114 taxmann.com 103 (Bom.)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. Caprihans India Ltd. (2020) 269 Taxman 385 (SC)

1906 **S. 153A : Assessment – Search – No fresh material was discovered during search and seizure proceedings – Deletion of addition is held to be justified. [S. 132]**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the addition when no fresh material was discovered during search and seizure proceedings.
PCIT v. Amita Garg (Smt.) (2020) 114 taxmann.com 551 (Delhi)(HC)
Editorial : SLP is granted to the revenue PCIT v. Devi Das Garg (2020) 270 Taxman 17 (SC)

1907 **S. 153A : Assessment – Search – Scope of assessment is limited to assessing only search related income and thereby revenue was denied opportunity of taxing other escaped income that came to notice of Assessing Officer. [S. 132]**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that scope of assessment is limited to assessing only search related income and thereby revenue was denied opportunity of taxing other escaped income that came to notice of Assessing Officer.
PCIT v. Vimal Kumar Rathi (2020) 115 taxmann.com 219 (Bom.)(HC)
Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, PCIT v. Vimal Kumar Rathi (2020) 273 Taxman 274 (SC)

1908 **S. 153A : Assessment – Search – No incriminating material was found – Addition was held to be not justified. [S. 132]**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the addition made by Assessing Officer as the addition was not based on any

incriminating material found during course of search. Followed, *CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi)(HC).* (AY. 2005-06)
PCIT v. Blue Bird Software Pvt. Ltd. (2020) 119 taxmann.com 347 (Delhi)(HC)
Editorial : SLP of revenue is dismissed as withdrawn due to low tax effect, PCIT v. Blue Bird Software Pvt Ltd (2020) 274 Taxman 228 (SC)

S. 153A : Assessment – Search – Bad debt – No incriminating documents – Deletion of addition is held to be justified. 1909
Dismissing the appeal of the revenue the Court held that when there is no incriminating material was found addition cannot be made in respect of write off of bad debt.(AY. 2009-10)
PCIT v. Rameshbhai Jivraj Desai (2020) 275 Taxman 522 (Guj.)(HC)

S. 153A : Assessment – Search – Deletion of addition is held to be justified – No question of law. [S. 260A] 1910
Dismissing the appeal of the revenue the Court held that the issues were fully factual and in the absence of any perversity in the approach of the Tribunal, the orders could not be interfered with. The deletion of the additions was justified. (AY. 2006-07 to 2012-13)
PCIT v. Shiv Sahai and Sons (I.) Ltd. (2020) 428 ITR 363 / (2021) 277 Taxman 50 (Mad.)(HC)

S. 153A : Assessment – Search – Assessment based on seized material – Addition of income as income from undisclosed source is held to be justified. [S. 132, 153C, 292C] 1911
Dismissing the appeal of the assessee the Court held that the authorities had not placed reliance or invoked S. 292C of the Act. Instead, on appreciation of the material keeping in view the entire facts and circumstances, they had concluded that there existed nexus between the assessee and the seized material. Therefore, since the assessee had failed to give any account for the unaccounted investment of Rs. 22,40,000, there was no illegality or perversity in the findings recorded by the Tribunal. Addition is held to be justified. (AY.2013-14)
Rajeev Mujumdar v. CIT (2020) 426 ITR 559 / 196 DTR 10 / 317 CTR 847 / (2021) 277 Taxman 65 (MP)(HC)

S. 153A : Assessment – Search – Warrant of authorization – Application of mind and formation of opinion honest and bona fide belief – Issue of warrant of Authorisation and notice is held to be valid. [S. 132, Art. 226] 1912
Dismissing the petition, that the authority was possessed of information on the basis of which a reasonable belief was founded that the assessee had omitted or failed to produce books of account or other documents and that such person was in possession of any money, bullion, jewellery or other valuable article which represented either wholly or partly income or property which had not been or would not be disclosed. On perusal of the records produced by the Department the Court held that warrant of authorization was issued by application of mind and formation of opinion honest and bona fide belief accordingly the issue of warrant of authorisation and notice is held to be valid. Accordingly there was no illegality or infirmity in the entire process based on which the warrant and the notice under S. 153A issued against the assessee.
Subhash Sharma v. CIT (2020) 423 ITR 47 / 193 DTR 306 / 316 CTR 580 (Chhattisgarh) (HC)

1913 **S. 153A : Assessment – Search – Abated assessment – It is open to both parties, i.e. the assessee and revenue, to make new claims for allowance or disallowance. [S. 132, 139(1)]**

Dismissing the appeal of the revenue the Court held that,once the assessment gets abated, the original return filed u/s 139(1) is replaced by the return filed u/s 153A. It is open to both parties, i.e. the assessee and revenue, to make claims for allowance or disallowance. The assessee is entitled to lodge a new claim for deduction etc. which remained to be claimed in his earlier/ regular return of income (*CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom.)(HC)*, referred). (AY.2008-09)

PCIT v. JSW Steel Ltd. (2020) 422 ITR 71 / 313 CTR 129 / 187 DTR 1 / 270 Taxman 201 (Bom.)(HC)

1914 **S. 153A : Assessment – Search – Third person – Loose sheets pertaining to earlier years were found in third party premises – No inference could be drawn against assessee qua relevant assessment year – Theory of extrapolation – Not applicable on mere theoretical or hypothetical basis – Natural justice – Failure to provide an opportunity of cross examination the witness which the Department relied on – Addition cannot be made – Amalgamation – Assessing Officer framing assessment separately in name of Amalgamated Company, in spite of furnishing information – Order bad in law. [S. 68, 69C, 132]**

Tribunal held that the document was a third party document found in the course of search conducted on a different person and not the assessee and therefore this document did not constitute incriminating material found in the course of search at the premises of the assessee, based on which any addition could be validly made in assessment under section 153A. Therefore the additions and disallowances made by the Assessing Officer on account of on-monies and cash received on sale of flats and car parks in the project was clearly beyond the scope of authority vested under section 153A owing to the absence of any incriminating material or evidence deduced as a result of search conducted at the premises of the assessee in so far as the unabated assessment for the assessment year 2013-14 was concerned. That the third party statements relied upon by the Assessing Officer without even recording their statement and allowing the assessee to cross-examine the parties could not justify the additions under sections 68 and 69C. The statements could not be said to be incriminating material or documents found or collected in the course of search conducted against the assessee and so could not be used against the assessee. Therefore, the third party statements referred to by the Assessing Officer to justify additions without being tested by cross-examination could not be the basis for making addition under sections 68 and 69C both in the case of IQ and the assessee. The seized documents referred to by the Assessing Officer for justifying the various additions in the name of the assessee and IQ which had since merged with the assessee did not constitute incriminating material and therefore no additions were legally permissible for the assessment year 2013-14 for which the assessments did not abate when the search was conducted. That the theory of extrapolation could not be applied on mere theoretical or hypothetical basis in the absence of any incriminating and corroborative evidence or material brought on record by the Assessing Officer to warrant it. That the Assessing Officer's failure to personally

examine the witnesses and his denial to allow the assessee an opportunity to cross-examine the third parties and the Departmental witnesses on whose statements he was relying on was a serious and fundamental error which resulted in the additions as well as the action of the Assessing Officer to point out any material and irrelevant to justify the addition made under sections 68 and 69C in the assessment order untenable and so it could not be sustained. (AY. 2013-14 to 2017-18)
MANI Square Ltd. v. ACIT (2020) 83 ITR 241 (Kol.)(Trib.)

S. 153A : Assessment – Search – Cash credits – Share capital – Share premium – Original assessment was completed – No incriminating materials was found – Addition is held to be not valid. [S. 68, 132] 1915
Assessee was engaged in business of share dealing and interest income. Original assessment was competed u/s. 143(3). Pursuant to search proceedings, notice was issued and assessment was completed by making addition u/s 68 of the Act in respect of share capital. Tribunal held that since no assessment was pending as on date of search and, addition made was without any reference to incriminating documents/papers seized during search, assessment made under section 153A was liable to be set aside. (AY. 2011-12)
DCIT v. Bhavya Merchandise (P.) Ltd. (2020) 185 ITD 891 (Kol.)(Trib.)

S. 153A : Assessment – Search – Unabated assessment – Addition cannot be made unless incriminating materials are found. [S. 69, 132] 1916
Tribunal held that in case of abated assessments, Assessing Officer is free to frame assessment in regular manner and determine correct taxable income for relevant year inter alia including undisclosed income, having regard to provisions of Act; however, in relation to unabated assessments, which were not pending on date of search, there is an embargo on powers of Assessing Officer as Assessing Officer can reassess income only to the extent and with reference to any incriminating material which revenue has unearthed in course of search. (AY. 2011-12)
ACIT v. Majestic Commercial (P.) Ltd. (2020) 185 ITD 818 (Kol.) (Trib.)

S. 153A : Assessment – Search – Share capital – Items already disclosed in original return and balance sheet – In absence of recovery of any incriminating material for making said addition in hands of assessee, said addition was to be deleted. [S. 68] 1917
Assessee-company was engaged in real estate, land trading and trading and development. A search was conducted at premises of assessee. Assessing Officer held that assessee-company had issued share capital but had failed to discharge its onus of proving identity, creditworthiness and genuineness of transaction Therefore, same was considered as unexplained cash credit. CIT(A) up held the addition. On appeal the Tribunal held that since addition had been made by Assessing Officer of items which were already disclosed to Department in original return of income and assessment was already completed on the date of search and no incriminating material was found during course of search so as to make addition, said addition was to be deleted. (AY. 2003-04 to 2006-07)
Alankar Saphire Developers. v. DCIT (2020) 81 ITR 549 / 184 ITD 847 / (2021) 209 TTJ 491 (Delhi)(Trib.)

1918 **S. 153A : Assessment – Search – Several incriminating materials were found during course of search – Assessing Officer can interfere with original assessment while making assessment. [S. 143(1)(a)]**
Tribunal held that where several incriminating materials were found during course of search, Assessing Officer can interfere with assessment originally completed while making assessment under section 153A of the Act. (AY. 2010-11 to 2014-15, 2016-17)
N. Roja. v. ACIT (2020) 184 ITD 329 / 196 DTR 134 / 208 TTJ 603 (Cuttack)(Trib.)

1919 **S. 153A : Assessment – Search – Appellate Tribunal has the power to admit additional legal grounds, which goes to root of the matter – No notice was issued to the assessee – Order was quashed. [S. 143(3), 153C, 254 (1)]**
Tribunal admitted the additional ground raised by the assessee which went to the root of the matter and were legal in nature. No fresh facts required to be investigated on this ground. Hence, they were to be admitted. Tribunal held that income already assessed can be disturbed only when there is some incriminating material which has a capacity of upward assessment. The additions on account of disallowance of additional had been made without any incriminating material found during the course of search. Accordingly the addition was deleted followed *CIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) and CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi) (HC).* Tribunal also held that as no notice under section 153C was issued for the assessment year 2008-09. Instead the assessment for this year was made by issuing notice under section 143(2) of the Act and the assessment was made under section 143(3) of the Act. According to section 153C(1) the date of search in the case of a person other than the person in respect of whom the search was conducted would be postponed to the date of receipt of books of account or necessary documents by the jurisdictional Assessing Officer. Therefore as the satisfaction note was recorded on August 26, 2009, the corresponding six assessment years covered under the provision of section 153C of the Act started from the assessment year 2004-05 to 2009-10. Consequently, the assessment year 2008-09 was covered by the provisions of section 153C of the Act and necessarily the assessment should have been made under section 153C of the Act. Admittedly, no notice under section 153C of the Act had been issued to the assessee for this assessment year. Merely mentioning that order had been passed under section 153A without issuing any notice under section 153C of the Act was not sufficient. Therefore, the assessment order was liable to be quashed.(AY.2006-07, 2008-09)
Dynasty Construction Pvt. Ltd. v. ACIT (2020) 83 ITR 17 (SN) (Delhi)(Trib.)

1920 **S. 153A : Assessment – Search – No incriminating material was found in the course of search – Addition is held to be not valid. [S. 37(1), 132, 143(3)]**
Allowing the appeal of the assesssee the Tribunal held that the disallowance of freight charges is held to be not justified, when no incriminating material was found in the course of search and seizure proceedings. (AY. 2008-09, 2010-11)
Frontier Commercial Co. Ltd. v. Dy.CIT (2020) 82 ITR 25 (SN) (Delhi)(Trib.)

S. 153A : Assessment – Search – No incriminating material found during search – Assessment completed on date of search cannot be disturbed – Assessment not valid. [S. 132] 1921

The Tribunal held that the assessment was completed and no assessment was pending on the date of the search. During the course of search, no incriminating material was found for making the addition, hence assessment is held to be not valid.(AY.2010-11)

Dy.CIT v. Madhyam Housing Pvt. Ltd. (2020) 78 ITR 296 (Delhi)(Trib.)

S. 153A : Assessment – Search – Assessment of third person – Sale Of Property – Commission – Addition made without examining the buyer of property is held to be bad in law. [S. 292C] 1922

Tribunal held that if the documents seized did not show any income earned by the assessee, then the Assessing Officer could not rest on the provision of section 292C without bringing any corroborative material on record. Further, the Assessing Officer did not examine the buyers of the property with respect to the commission paid by them to the assessee. Even the assessee was also not questioned during the course of search with respect to these three letters. There was no income accrued to the assessee based on these three documents, without bringing any corroborative material, it could not have been taxed in the hands of the assessee. (AY. 2010-11)

Summit Mittal and Madhur Mittal v. Dy.CIT (2020) 79 ITR 607 (Delhi)(Trib.)

S. 153A : Assessment – Search – No incriminating material found during search – Statement of third parties cannot be considered as incriminating material – Opportunity to cross – examination not provided. [S. 132(1), 132(4)] 1923

Tribunal held that no incriminating material was found during the course of search and even earlier when the search took place and survey took place no incriminating material was found from the business and residential premises of the assessee. The assessment was framed under section 153A. The addition under section 153A can be made only on the basis of the incriminating material found during the course of search. The Assessing Officer made the addition under section 68 on the basis of material found in the search which took place in the case of third persons, but the name of the assessee was not mentioned on the documents found during the course of the search. The Assessing Officer considered the statement of third parties as incriminating material for the purposes of making the addition in the assessment made under section 153A. However no opportunity to cross-examine those parties was provided to the assessee. Accordingly the additions made by the Assessing Officer under section 153A and sustained by the Commissioner (Appeals) in the absence of any incriminating material having been found during the course of search under section 132(1) in respect of unabated assessment year, i. e., the assessment years 2008-09, 2010-11 and 2012-13 were not justified.(AY.2008-09, 2010-11, 2012-13)

Sanjay Singhal v. Dy.CIT (2020) 80 ITR 117 (Chd.)(Trib.)

Aarti Singhal (Smt.) v. Dy.CIT (2020) 80 ITR 117 (Chd.)(Trib.)

1924 **S. 153A : Assessment – Search – No incriminating documents were found in the course of search – Items already disclosed in original return of income and balance-sheet to revenue department and such assessment have completed prior to date of search and no assessment was abated. [S. 68]**

Allowing the appeal of the assessee the appellate Tribunal held that when no incriminating documents were found in the course of search, items already disclosed in original return of income and balance-sheet to revenue department and such assessment have completed prior to date of search and no assessment was abated. Addition is held to be not justified. (AY.2003-04 to 2006-07)

Alankar Saphire Developers v. Dy.CIT (2020) 81 ITR 549 (Delhi)(Trib.)

1925 **S. 153A : Assessment – Search – No incriminating evidence was found or seized during course of search – Additions/disallowances on basis of a tax evasion petition found much after search was unjustified. [S. 132]**

During search conducted at premises of PKI group of cases with whom assessee was involved in transactions of sale and purchase in ordinary course of business, certain documents were found and seized. A notice under S. 153A was issued against assessee. Subsequently, Assessing Officer completed assessment making various additions/ disallowances to income of assessee Order of the AO was affirmed by the CIT(A). On appeal the appellate Tribunal held that no evidence was stated to be found at search of assessee to suggest existence of any undisclosed income. Revenue had failed to rebut factual assertions of assessee towards non-discovery of incriminating material at time of search-Additions were made by AO solely on basis of some tax evasion petition found at a much later stage post search. Accordingly additions/disallowances made by AO were clearly beyond scope of authority vested under S. 153A owing to absence of any incriminating material or evidence found during search and, thus, same was to be set aside. (AY. 2009-10 to 2015-16)

Rajat Minerals (P.) Ltd. v. DCIT (2020) 181 ITD 368 / 190 DTR 248 / 203 TTJ 955 (Ranchi) (Trib.)

KDS Contractors (P.) Ltd. v. Dy.CIT (2020) 181 ITD 368 / 190 DTR 248 / 203 TTJ 955 (Ranchi)(Trib.)

1926 **S. 153A : Assessment – Search – No incriminating material found – Addition is held to be not justified – Noting and jotting on loose sheet of papers – Addition is held to be not valid. [S. 69C]**

Tribunal held that purchases are recorded in he regular books of account and no incriminating material was found in the course of search. Addition is held to be not valid. Tribunal also held that merely on the basis of noting and jotting on loose sheet of papers, addition is held to be not valid. (AY. 2008-09 to 2014-15)

Param Dairy Ltd. v. ACIT (2020) 77 ITR 567 (Delhi)(Trib.)

S. 153A : Assessment – Search – No incriminating material found – Concluded assessments for year earlier to year of search not permissible – Binding precedent – Pendency of Special leave or dismissal of special leave cannot be ground for not following the Delhi High Court decision. [S. 132] 1927

Dismissing the appeal of the revenue the Court held that t merely because the special leave petition was pending in the Supreme Court that was no ground for not following the decision of the Delhi High Court. Further, the Supreme Court had dismissed the special leave petition of the Department confirming the view that invocation of S. 153A to reopen the concluded assessments for years earlier to the year of search was not justified in the absence of incriminating material being found during the course of search qua each such earlier assessment year.(AY.2008-09)

Dy.CIT v. Aryan Future Trading P. Ltd. (2020) 77 ITR 35 (SN) (Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Search and seizure – Compliance with the requirements of recording of satisfaction is mandatory – If the AO of the searched person and the other person is the same, it is sufficient for the AO to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, the requirement of s. 153C is fulfilled. [S. 132(1), 133A, 158BD] 1928

Court held that; if the AO of the searched person is different from the AO of the other person, the AO of the searched person is required to transmit the satisfaction note & seized documents to the AO of the other person. He is also required to make a note in the file of the searched person that he has done so. However, the same is for administrative convenience and the failure by the AO of the searched person to make a note in the file of the searched person, will not vitiate the proceedings u/s 153C. (ii) If the AO of the searched person and the other person is the same, it is sufficient for the AO to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, the requirement of s. 153C is fulfilled. In such case, there can be one satisfaction note prepared by the AO, as he himself is the AO of the searched person and also the AO of the other person. However, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the AO of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself. Remanding the matter to the Tribunal is held to be justified. (CA No. 2006-2007 of 2020, dt.05.03.2020)

Super Malls Pvt. Ltd. v. PCIT (2020) 423 ITR 281 / 115 taxmann.com 105 / 273 Taxman 556 / 187 DTR 257 / 313 CTR 501 (SC), www.itatonline.org

Editorial : Order in PCIT v. Super Malls Pvt Ltd (2016) 76 taxmann.com 267 (Delhi) (HC) is affirmed.

1929 **S. 153C : Assessment – Income of any other person – Search – Not recording satisfaction – Order is illegal and void ab initio. [S. 132, 143(3)]**
Dismissing the appeal of the revenue the Court held that the Assessing officer of person searched did not record satisfaction that item referred to in section 153C belonged to a person other than person searched, assessment order passed in case of assessee was illegal and void ab initio Order of Tribunal is up held. (AY. 2011-12)
PCIT v. Munisuvrat Corporation (2020) 115 taxmann.com 264 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Munisuvrat Corporation (2020) 272 Taxman 181 (SC)

1930 **S. 153C : Assessment – Income of any other person – Initiation of assessment proceedings beyond period of six years from end of financial year in which satisfaction note was recorded by Assessing Officer is held to be not valid. [S. 132]**
Dismissing the appeal of the revenue the High Court held that the Tribunal is justified in holding that Assessing Officer could not have initiated and passed an assessment order under section 153C for relevant assessment year as same was beyond period of six years from end of financial year in which satisfaction note was recorded by Assessing Officer. Satisfaction for initiation of proceedings under section 153C was recorded by Assessing officer on 02-02-2015. Followed CIT v. RRJ Securities Ltd (2016) 380 ITR 612 (Delhi)(HC). (AY. 2007-08)
PCIT v. Raj Buildworth (P.) Ltd. (2020) 113 taxmann.com 600 (Delhi)(HC)
Editorial : SLP of revenue is dismissed PCIT v. Raj Buildworth (P.) Ltd (2020) 269 Taxman 383 (SC)

1931 **S. 153C : Assessment – Income of any other person – Search – Share capital – Deletion of addition is held to be justified when no incriminating material was found in the course of search action. [S. 68]**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the addition when no incriminating material was found in the course of search proceedings.
PCIT v. Dhananjay International Ltd. (2020) 114 taxmann.com 317 (Bom.)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Dhananjay International Ltd (2020) 270 Taxman 15 (SC)

1932 **S. 153C : Assessment – Income of any other person – Search – Misquoting the section – Participating in assessment proceedings – Assessment proceedings valid. [S. 153A, 292B]**
Dismissing the appeal of the assessee the Court held that a perusal of the notice would establish that though the heading was S. 153A the AO proposed to assess the assessee's income under S.153C of the Act. It was not the case of the assessee that he did not fall within the scope and ambit of the provisions of S. 153C and no prejudice having been alleged during the course of assessment proceedings, notice issued to the assessee and the consequential assessment orders passed could not get invalidated.(AY.2005-06 to 2007-08)
K. M. Nagaraj v. Dy. CIT (2020) 425 ITR 533 / 275 Taxman 346 (Karn.)(HC)

S. 153C : Assessment – Income of any other person – Search – Transfer of shares – Capital gains – Non compete fee – Price for which shares were sold was justified – Deletion of addition is held to be not justified. [S. 132, 143(3), 153A] 1933

Allowing the appeals, the Court held that the the modus adopted by the assessee was a device to avoid tax. There was no material before the Tribunal to arrive at a finding that the price for which the shares were agreed to be sold was a justified reasonable price. As rightly pointed out by the Assessing Officer, there was no compulsion on the assessee or EBL to sell their shares at a low price after initiating the arrangements for handing over EBL and the Assessing Officer had found that nothing had changed since their sale for such low prices till the shares were sold for Rs. 127.35. The Tribunal did not attempt to examine the seized material which was the basis of the assessment proceedings. Papers and documents were recovered from the residence of the assessee and the companies controlled by the assessee. Therefore, the finding of the Tribunal in this regard, was wholly unsubstantiated and without any material and consequently perverse. Court also held that according to the agreement, it was not clear who had represented MDAL as the agreement did not mention the name of the authorised signatory of the company. The photostat copy which was placed before the court contained the signatures of the assessee, two witnesses, a third party and the daughter of the assessee. There was one other signature which did not give any designation or the name of the person, who had signed it. The agreement based on which the assessee was paid a sum of Rs. 10 crores was an unregistered instrument. The Tribunal had brushed aside important facts more particularly, the sequence of events prior to the share transfer and thereafter. The Assessing Officer had rightly considered the entire transaction and concluded that it was a device employed by the assessee to evade tax. The finding of the Assessing Officer, in this regard, was justified, as it was found that the assessee and his family members had sold their shares to MDAL at Rs.14.25 paise per share, when the remaining shares held by EDL were sold by MDAL at a price of Rs. 125.37 paise per share and the assessee had received Rs. 10 crores as non-compete fee which the assessee had claimed was not taxable. The price of the shares which was shown at a much higher price in the hands of ESCL was to benefit the group company which had huge accumulated losses and consequently, the loss could be set off against the capital gains. The benefit which would accrue to the assessee was by lowering and splitting up of the consideration for shares and non-compete fee thereby being a device employed to evade tax.(AY.2002-03)

CIT v. M. P. Purushothaman (2020) 423 ITR 248 / 193 DTR 173 / 316 CTR 429 (Mad.)(HC)

S. 153C : Assessment – Income of any other person – Search – Recording satisfaction note by Assessing Officer that material recovered in search related to assessee is mandatory – Assessment made solely on basis of statement recorded during survey of another company without furnishing copy of statement or allowing it opportunity to cross – examine deponent – Statement recorded during survey – Assessment without jurisdiction. [S. 132, 132A, 153A] 1934

Allowing the appeal of the assessee the Tribunal held that, recording satisfaction note by Assessing Officer that material recovered in search related to assessee is mandatory. Assessment made solely on basis of statement recorded during survey of another

company without furnishing copy of statement or allowing it opportunity to cross-examine deponent. Assessment is held to be without jurisdiction. (AY.2014-15, 2016-17)
I Q City Foundation v. ACIT (2020) 84 ITR 212 / (2021) 186 ITD 555 (Kol.)(Trib.)

1935 **S. 153C : Assessment – Income of any other person – Search – Satisfaction – Additional ground – Date on which satisfaction is recorded by the Assessing Officer for invoking the provisions would be deemed to be the date of receiving documents by the Assessing Officer of other person – Allowed the additional ground and quashed the assessment order. [S. 132, 132A 144]**
In the instant case although the AO of the searched person and other person(Assessee) was the same, satisfaction was recorded by the AO for invoking the provisions of section 153C on 21st December 2020 the said date would be deemed to be the date of receiving documents by the AO. Thus, the year of search would be FY. 2010-11 relevant to AY. 2011-12). Accordingly the Tribunal held that the date of initiation of search or requisition in the case of other person shall be the date of receiving the books of accounts or documents or assets seized or requisitioned by the AO, having jurisdiction over such other person. Accordingly the Tribunal held that since the impugned assessment year forms part of the block assessment years prior to the date of search, the assessment should have been made u/s 153C and not regular assessment as has been by the AO. Therefore the assessment order for the impugned year suffers from legal infirmity and hence is liable to be quashed. Referred *CIT v. Jasjit Singh (ITA No 337 of 2015 dt 2-1-2018 (AY. 2009-10) (Delhi) (HC), EON Auto Industries P. Ltd v. DCIT (ITA No. 3179/ Del /2013 dt 28-11-2017)(AY. 2008-09) (Delhi) (Trib.). (ITA No 5618/Mum/ 2016 dt. 30-9-2020)* (AY. 2010-11)
Diwakar N. Shetty v. DCIT (2020) BCAJ-November-P. 57 (Mum.) (Trib.)

1936 **S. 153C : Assessment – Income of any other person – Search – Assessment initiated without issue of notice is held to be bad in law. [S. 132]**
Allowing the appeal of the assessee the Tribunal held that Assessment initiated without issue of notice is held to be bad in law. (ITA No. 2588/Mum/ 2018 dt 16-6-2020) (AY. 2008-09)
Krez Hotel & Reality Ltd. v. JCIT (2020) BCAJ-July-P. 46 (Mum.)(Trib.)

1937 **S. 153C : Assessment – Income of any other person – Search – Additional ground – The date of receiving the books of account by the Assessing Officer having jurisdiction over such other person, from the Assessing officer of the searched person – Satisfaction by the A.O in the file of the assessee i.e the person other than the searched person, shall be taken as the relevant date for reckoning the period of six assessment years for which assessments could have been framed u/s. 153C. [S. 132]**
Admitting the additional ground of the assessee the Tribunal held that, as per the first proviso to Section 153C(1) the date of initiation of search u/s 132 of the Act for the purpose of an assessment u/s 153C has to be construed as the date of receiving the books of account by the A.O. having jurisdiction over such other person, from the A.O. of the searched person. In case the A.O of the searched person and that of the assessee is the same person, then the date of recording of "satisfaction" by the A.O in the file

of the assessee i.e the person other than the searched person, shall be taken as the relevant date for reckoning the period of six assessment years for which assessments could have been framed u/s 153C. In case, the claim of the assessee that the year under consideration vis. A.Y.2007-2008 falls beyond the scope of six assessment years from the aforementioned date of recording of satisfaction or receiving of documents or assets seized or books of accounts by the A.O of the assessee, as the case may be, then the assessment framed by the A.O shall stand vacated (ITA Nos.83 to 89/Mum/2018 dt 28-5-2019). (AY. 2007-08 to 2013-14)
Paresh K. Shah v. DCIT (Mum.)(Trib.) www.itatonline.org

S. 153C : Assessment – Income of any other person – Search – No incriminating material or document found during the course of search – Deletion of addition is held to be justified. [S. 132, 144] 1938
Dismissing the appeal of the revenue the Court held that No incriminating material or document found during the course of search-Deletion of addition is held to be justified. (AY. 2007-08)
PCIT v. Star PVG Exports (2020) 268 Taxman 357 (Karn.)(HC)

S. 153C : Assessment – Income of any other person – Search – Addition only on basis of Pen Drive seized from third party – Department failing to establish any connection either business or personal of assessee with third party – No efforts to summon third party – No Incriminating material found during search – Addition is not valid. [S. 68, 132] 1939
Affirming the order of the CIT(A) the Tribunal held that addition only on basis of Pen Drive seized from third party. Department failing to establish any connection either business or personal of assessee with third party an no efforts to summon third party. No incriminating material found during search. Accordingly deletion of addition is held to be valid. (AY. 2010-11)
Dy.CIT v. Mahesh Bansal (2020) 77 ITR 205 / 190 DTR 438 / 204 TTJ 773 (Indore)(Trib.)

S. 153C : Assessment – Income of any other person – Search – Six Assessment years to be considered with reference to date of handing over of assets or documents to AO of Assessee – AO initiating proceedings only for AY. 2006-07 to 2011-12, instead of AYs 2008-09 to 2013-14 – Assessment order is not valid. 1940
Tribunal held that the impounded documents had been received by the AO when satisfaction under S. 153C had been recorded. The first proviso to S. 153C provides that six assessment years in respect of which assessment or reassessments could be made under S. 153C would also have to be considered with reference to the date of handing over of the assets or documents to the AO of the assessee. Therefore, the six assessment years under s. 153C in the case of the assessee would be the assessment years 2008-09 to 2013-14. The AO had to pass the assessment order under S. 153C. Further, he had not issued any notice under S. 153C. In the satisfaction note he had initiated the proceedings under S. 153C only for the AY 2006-07 to 2011-12 and not for the AY 2008-09 to 2013-14. Thus the assessment order was illegal and bad in law and could not be sustained in law. Accordingly the additions are deleted. (AY.2012-13)
Bina Fashions N Foods (P.) Ltd. v. Dy.CIT (2020) 77 ITR 68 (SN) (Delhi)(Trib.)

1941 **S. 153D : Assessment – Search – Approval – Information through RTI – Approval not obtained – Order is bad in law. [S. 143(3), 153A]**
Assessing Officer is below Rank of JCIT passed the order. The assessee contended that approval was not obtained. Approval could not be traced from the record which was affirmed by RTI. Allowing the appeal the Tribunal held that as no prior approval under section 153D by JCIT/Addl. CIT before passing impugned assessment order has been obtained, entire assessment order under section 153A is null and void and is liable to be quashed. (AY. 2010-11)
Ajay Sharma v. Dy.CIT (2020) 187 DTR 132 / 204 TTJ 281 (Delhi)(Trib.)

1942 **S. 154 : Rectification of mistake – Refund – Tax deducted at source – Credit was not given – Assessing Authority was to be directed to pass order on rectification application within 3-4 weeks time. [S. 237, Art.226]**
Assessee sought for a direction to process return and consequent Issuance of refund as delay in same had resulted in blocking of working capital of assessee company and had caused grave financial hardship. Assessee submitted that it had filed rectification application under section 154 as due to some apparent problems in TDS amounts, due credit was not given to him and if those technical issues were dealt with, then he would be entitled to secure benefit of those TDS credits and thereby be entitled to a refund of Rs. 3.34 crores. Allowing the petition the Court held that amounts involved in TDS being rectified, he would be legally entitled to securing benefit of claim of TDS credit and taking into account extreme fragility of liquidity issues being faced by assessee, Assessing Authority was to pass order on rectification application within 3-4 weeks. (AY. 2018-19)
Unitac Energy Solutions (I.) (P.) Ltd. v. PCIT (2020) 272 Taxman 464 (Ker.)(HC)

1943 **S. 154 : Rectification of mistake – Alternative remedy is not absolute bar – Dismissal of application in a mechanical manner without even affording an opportunity of hearing – not to be relegated to avail alternative remedy of filing appeal, rather, impugned order was to be set aside and matter was to be remanded back to respondent for fresh disposal. [Art. 226]**
Assessee's rectification application was dismissed in a mechanical manner without even affording an opportunity of hearing to assessee. The assessee filed writ petition, allowing the petition the Court held that in such a situation, assessee was not to be relegated to avail alternative remedy of filing appeal rather, impugned order was to be set aside and matter was to be remanded back to respondent no. 1 for disposal afresh in accordance with law. Matter remanded. (AY. 2018-19)
Ernakulam District Posts Telecom and BSNL Employees Co-op. Society Ltd v. ITO (2020) 273 Taxman 21 (Ker.)(HC)

1944 **S. 154 : Rectification of mistake – Recovery of tax – Prima facie case, financial stringency and balance of convenience – Rejection of application for stay of demand in a cryptic manner is held to be not justified. [S. 220(2), 221]**
Court held that the orders did not comply with the requirements that had been set out for disposal of stay applications. The order did not deal with the aspects of prima

facie case, financial stringency and balance of convenience. The attachment of the bank account was to be lifted forthwith. The assessee was to appear without further notice in this regard and the assessing authority was to reconsider the stay application filed by the assessee in the light of the guidelines set out in circulars and instructions issued by the Central Board of Direct Taxes, as well as the applications under section 154 and pass orders. Till such time, no further recovery proceedings could be initiated. (AY. 2017-18)
Ganapathy Haridaass v. ITO (2020) 428 ITR 505 / 272 Taxman 548 (Mad.)(HC)

S. 154 : Rectification of mistake – Claim requiring investigation – Deduction cannot be granted in rectification proceedings. [S. 139(5)] 1945
Dismissing the appeal the court held that claim of deduction of interest under S. 43B, which was omitted by the assessee-company while filing the original returns could be adjudicated by the Assessing Officer only through a process of investigation. The payment of interest to IDBI was never disclosed by the assessee in the Income-tax returns. Unless the tax returns disclosed interest payments, it was impossible for the Assessing Officer to assist the assessee to rectify the alleged mistake of omission to claim deduction for interest payments under S. 43B. Hence, the omission claimed by the assessee would not fall under the category of a "mistake apparent from the record". The deduction could not be granted under section 154. The objects of S. 139(5) and S. 154 are different. In case of omission, the only remedy available is under S.139(5) by filing revised returns. (AY.2003-04, 2004-05)
Nagaraj and Company Pvt. Ltd. v. ACIT (2020) 425 ITR 412 / 196 DTR 190 / 274 Taxman 38 (Mad.)(HC)

S. 154 : Rectification of mistake – Pending appeal in appellate forum cannot restrict the AO to pass a rectification order. [S.143(3), 250] 1946
Where AO has passed rectification order u/s 154 in case wherein an appeal has already filed against the previous order, such order was to be considered valid, as AO could not be deprived of filing a rectification order merely because assessee has filed an appeal against the original order. (AY.2013-14)
Fiserv India P. Ltd. v. ACIT (2020) 196 DTR 337 / 206 TTJ 669 (SMC) (Delhi)(Trib.)

S. 154 : Rectification of mistake – Review is not possible – Ascertain the correct and true nature of expenses – Rectification is held to be bad in law. [S. 37(1), 143(3)] 1947
Dismissing the appeal of the revenue the Tribunal held that rectification to ascertain true nature of expenses will lead to review of order which is not permissible. (AY. 2014-15)
Dy. CIT v. Haryana Ware housing Corporation (2020) 188 DTR 360 / 204 TTJ 265 (Chd.) (Trib.)

S. 154 : Rectification of mistake – Mistake must be apparent on record – Mere change of opinion not sufficient – Rectification not justified – Payments for purchase of raw material when bank account not active – Genuineness of transaction established – No disallowance warranted. [S. 40A (3), R.6DD] 1948
Tribunal held that the Assessing Officer had not doubted the genuineness of the transaction. Therefore, the proceedings under section 154 of the Act were taken on

a mere change of opinion, which was outside the mandate of the section. A mistake apparent on the record must be an obvious and patent mistake and not something which could be established by a long-drawn process of reasoning on points on which there might conceivably be two opinions. Since the assessee had proved that there was commercial/business expediency in making cash purchases, the mistake could not be obvious and apparent from record. Accordingly disallowance was deleted. (AY. 2014-15)
Unity Industries v. ITO (2020) 84 ITR 44 (SN) (SMC) (Bang.)(Trib.)

1949 **S. 154 : Rectification of mistake – Incorrect set of off of Minimum alternate tax credit – Prima Facie Mistake Apparent From Record – Not A Debatable Issue – Levy of interest is held to be valid. [S. 115JB, 234B]**
Tribunal held that merely because the assessee had disputed the assessment before the higher appellate forum, it did not deprive the Department of the right to rectify the assessment order or the tax demand raised against the assessee provided the action of the Assessing Officer fell within the parameters of section 154. As regards levy of interest the provisions of section 234B in clear terms impose the mandate to collect interest at the rates stipulated therein. There is no discretion available to the Assessing Officer or the assessee not to compute the interest, accordingly the levy of interest is held to be justified. (AY.2013-14).
Fiserv India P. Ltd. v. ACIT (2020)80 ITR 3 (SN) (Delhi)(Trib.)

1950 **S. 154 : Rectification of mistake – Unexplained purchases – Disallowance of 20% – Disallowance of entire purchase by passing a rectification order is held to be not valid. [S. 69C, 143(3)]**
The assessment was completed by the Assessing Officer by making addition of 20 percent on account of unexplained purchases. Subsequently on the basis of information the Assessing Officer passed the rectification order wherein he disallowed entire purchases as unexplained investment. CIT(A) deleted said addition on ground that Assessing Officer failed to accord an opportunity while enhancing assessed income and thus rectification order suffered from infirmity of denial of natural justice. On appeal by the revenue the Tribunal held that only a mistake which is obvious, patent and discernible from record that can be a subject matter of rectification. Accordingly the order of CIT(A) is affirmed. (AY. 2011-12)
DCIT v. Gulshan Chemicals Ltd. (2020) 184 ITD 71 /208 TTJ 1053 / (2021) 197 DTR 274 (Delhi)(Trib.)

1951 **S. 154 : Rectification of mistake – Survey – Surrender of income – Undisclosed investment in stock – Provision of section 115BBE was not invoked in the original assessment proceedings – Charge of maximum rate in rectification proceedings is held to be not valid. [S.69, 143(3) 115BBE]**
In the course of survey proceedings, assessee surrendered certain amount as undisclosed investment in stock. Assessing Officer completed assessment wherein tax was charged at normal slab rate. Subsequently Assessing Officer passed a rectification order under section 154 by holding that section 69 was clearly attracted in assessee's case and, thus, tax was to be charged in accordance with section 115BBE at rate of 30 per cent.

Tribunal held that the Assessing Officer had not invoked provisions of section 69 at first place while passing assessment order under section 143(3), therefore provisions of section 115BBE which were contingent on satisfaction of requirements of section 69, could not be applied by invoking provisions of section154 of the Act. (AY. 2014-15)
ACIT v. Sudesh Kumar Gupta (2020) 184 ITD 651 / 193 DTR 265 / 206 TTJ 1019 (Jaipur) (Trib.)

S. 154 : Rectification of mistake – Development of Special Economic Zone – Lease rent income offered under the head income from house property. [S. 22, 80IAB] 1952
The assessee has offered Lease rent from developed space in SEZ under head Income from house property and deduction under section 80IAB was claimed which was allowed accordingly. The AO passed the rectification order with drawing the deduction on ground that deduction can be claimed only with reference to business income and in absence of any business income from SEZ offered in return, assessee had wrongly claimed deduction under section 8OIAB. Tribunal held that CBDT vide Circular No. 16/2017, dated 25-4-2017 has directed officers to allow eligible deduction to taxpayers in respect of lease rent from let out buildings/developed space in an industrial park/ SEZ and to treat such lease rent as business income. Accordingly benefit of deduction available under section 80-IAB in respect of lease rent from developed space in SEZ could not have been denied to assessee. (AY. 2011-12, 2014-15)
Cessna Garden Developers (P.) Ltd. v. ACIT (2020) 184 ITD 814 (Bang.)(Trib.)

S. 154 : Rectification of mistake – Transfer of land used for agricultural purposes – Whether HUF is entitled to exemption – Debatable – Rectification order is held to be not valid. [S. 54B] 1953
Assessee-HUF claimed deduction under 54B of the Act. The Assessing Officer duly examined the claim in scrutiny assessment proceedings and claim of assessee was allowed while certain expenses were only disallowed. However, later on, Assessing Officer took view that an HUF was not entitled to deduction in relevant assessment year 2012-13 as same had been made available to an HUF by Finance Act, 2012 with effect from 1.4.2013, he, therefore, held that a mistake apparent on record had occurred in assessment order and initiating rectification proceeding disallowed assessee's claim. On appeal the Tribunal held that it was a highly debatable issue whether in pre-amended provisions of section 54B, word 'assessee' meant an individual only or it included an 'HUF' also, since in amended section 54B, as amended by Finance Act, 2012, it had been specifically mentioned that 'assessee being an individual or his parent or an HUF' but no such words were mentioned in section 54B prior to such amendment and wording prior to amendment was 'assessee or a parent of his'. Accordingly issue being highly debatable on which there might conceivably be two opinions, powers under section 154 could not be exercised as issue had already been examined by Assessing Officer in scrutiny assessment proceedings. (AY. 2012-13)
Sandeep Bhargava ('HUF') v. CIT (2020) 83 ITR 217 / 183 ITD 437 (Chd.)(Trib.)

1954 **S. 154 : Rectification of mistake – Mistake apparent from record – Bad and doubtful debts – Assessing Officer giving effect to the order of the Appellate Tribunal and allowing the bad and doubtful debts – Rectification of reassessment order on same issue is not permissible. [S. 36(1)(viia), 148, 254(1)]**

Tribunal held that the Department not having challenged the findings of the Commissioner (Appeals) on the question of jurisdiction holding that the issue was debatable, the order of the Commissioner (Appeals) on the jurisdictional issue became final and the Department's appeal was to be dismissed. Moreover, the issue having already been considered by the Tribunal, it could not be adjudicated while acting under section 154 of the Act.(AY.2007-08)

Dy. CIT(LTU) v. Union Bank of India (2020) 83 ITR 25 (SN) (Mum.)(Trib.)

1955 **S. 154 : Rectification of mistake – Commissioner (Appeals) granting deduction on basis of decision of High Court – Decision subsequently reversed by full bench – Order rectifying and disallowing the interest is held to be justified [S. 80P(2)(a)(i), 250]**

Tribunal held that when the CIT(A) had decided on the basis of a decision of the High Court which was subsequently reversed by the Full Bench, there would be a rectifiable mistake coming within S. 154 of the Act. The Full Bench held that the activities of the assessee had to be examined to determine whether the assessee was a co-operative society or a co-operative bank. Thus the CIT(A) had rightly recalled his earlier order granting deduction under S. 80P(2). However he ought not to have rejected the claim of deduction under S. 80P(2) without examining the activities of the assessee. The issue of deduction under S. 80P(2) was remitted to the AO. The AO shall examine the activities of the assessee and determine whether the activities were in compliance with the activities of a co-operative society functioning under the Kerala Co-operative Societies Act, 1969 and accordingly grant deduction under S. 80P(2) of the Act. Followed *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2019) 414 ITR 67 (FB) (Ker.)(HC)*. (AY.2010-11)

The Chombal Service Co-Operative Bank Ltd. v. ITO (2020) 81 ITR 13 (Cochin)(Trib.)

1956 **S. 154 : Rectification of mistake – Speculation business – Brought forward loss of earlier years were rightly set off against speculative business income for the year – No mistake apparent from record in assessment order. [S. 73]**

Assessee-company was NBFC engaged in business of purchase and sale of shares. In relevant assessment year there was no change in business Assessee claimed set off of losses of earlier two years against profit of relevant assessment year. AO allowed set off of loss in accordance with Explanation to section 73 as per which, business of assessee-company was deemed to be a speculative business. However, thereafter, the AO passed order under S. 154 holding that brought forward losses of earlier years were speculative loss which could not be set off against business income of relevant assessment year. CIT(A) confirmed the order of the AO. On appeal the Appellate Tribunal held that when business of assessee in relevant assessment year remained same as that in earlier two years, brought forward losses had correctly been set off against speculative business income for year under consideration and there was no mistake apparent from record in assessment order. (AY. 2010-11)

Surya Commercials Ltd. v. DCIT (2020) 181 ITD 597 (Luck.)(Trib.)

S. 154 : Rectification of mistake – Limited scrutiny – Fair market value of property – Reference to departmental valuation officer – Not obtaining the approval of competent authority – Rectification proceedings is held to be invalid. [S. 143(1)] 1957

Tribunal held that if the AO had taken up the issue of determining the fair market value of the property as on April 1, 1981 without converting the limited scrutiny into comprehensive scrutiny by taking the prior approval of the competent authority the order passed by him would be a nullity and beyond his jurisdiction. Neither in the assessment order nor in the assessment proceedings sheet had he mentioned any proposal of converting the limited scrutiny to comprehensive scrutiny and consequential approval of the competent authority. The certified copy of the assessment proceedings sheet did not contain any such proposal of the AO for expanding the limited scrutiny to complete scrutiny. Further, the Department had not produced anything to show that the AO had obtained the necessary approval from the competent authority for conversion of the limited scrutiny to comprehensive scrutiny. Accordingly, the issue which was taken up by the AO in the proceedings under S. 154 was illegal and void being beyond his jurisdiction to frame the limited scrutiny assessment. (AY.2014-15)

Gurbachan Kaur (Smt.)(Late) v. Dy. CIT (2020) 77 ITR 474 / 192 DTR 217 / 206 TTJ 203 (Jaipur)(Trib.)

S. 154 : Rectification of mistake – Penalty – failure to file return – Two views possible – Rectification is not permissible. [S. 139(1), 139(4), 271F] 1958

Tribunal held that the CIT(A) took a different view holding that return filed under s. 139(4) would not dilute non-furnishing the return before the end of relevant assessment year as required under S. 139(1). The CIT(A) in the rectification order relied on the Supreme Court decision. The CIT(A) had taken two different views. When two views were possible on the same issue and the issue which needed to be decided after debate and deliberations it was not permitted to make the rectification under S. 154. Under S. 154 the authorities were permitted to rectify the mistake which was apparent from the record and in the instant case, there was no mistake which was apparent from the record and the issue required to be discussed deliberately and various case law considered. Therefore, the order passed by the CIT(A) under S. 154 was bad in law and unsustainable. (AY.2012-13 to 2015-16)

Rajesh Ajjavara v. ITO (TDS) (2020) 77 ITR 14 (SN) (Bang.)(Trib.)

S. 154 : Rectification of mistake – Capital or revenue – Fees paid to Registrar of companies – Not considering the Judgement of supreme Court – Rectification is held to be proper. [S. 37(i)] 1959

Tribunal held, that there was no infirmity in the action of the AO. The proceedings under S. 154 cannot be initiated on debatable issue but if the ultimate answer to the question which is a subject matter of the proceedings under S. 154 can only be one then the proceedings under S. 154 can be initiated and cannot be cancelled on the ground that the issue that was a subject matter of proceeding under S. 154 were debatable involving a long drawn process of reasoning. The Supreme Court decision in *Punjab State Industrial Development Corporation ltd. v. CIT (1997) 225 ITR 792 (SC)* was available when the AO passed the order of assessment, and it could not be said

that there could be different views on the question whether fees paid to the Registrar of Companies on expansion of capital base was capital expenditure or revenue expenditure. (AY. 2014-15)
Sati Exports India Pvt. Ltd. v. Dy.CIT (2020) 77 ITR 65 (SN) (Bang.)(Trib.)

1960 **S. 158BB : Block assessment – Tribunal deleting the addition is held to be not valid – Order of Tribunal not based on facts – Order perverse and gives rise to substantial question of law. [S. 132, 158BH, 260A]**
Allowing the appeal of the revenue the Court held that all that the Tribunal had done was to endorse the stand taken by the Commissioner (Appeals) and none of the grounds raised by the Revenue had been dealt with nor reasons assigned to show why the grounds canvassed by the Revenue were not tenable. The findings of the Tribunal, directly and substantially interfered with the interests of the Revenue and the finding were not based on the evidence brought on record by the Assessing Officer and the order of the Tribunal suffered from material irregularities, without any independent reasons. It had glossed over the relevant facts, which were brought on record by the Assessing Officer and therefore, the orders were perverse. The orders passed by the Tribunal were not valid. Followed *Ajit Kumar (2018) 404 ITR 526 (SC), Santosh Hazari v. Purushottam Tiwari (2001) 251 ITR 84 (SC). (BP 1997-98 to 2002-03, part of 2003-04) PCIT v. Rakesh Sarin (2020) 429 ITR 186 / (2021) 197 DTR 99 / 319 CTR 73 (Mad.)(HC)*

1961 **S. 158BC : Block assessment – Satisfaction – Recorded after competition of assessment – Capital gains – Transfer – A satisfaction note is sine qua non and could be prepared at either of following stages, at the time of or along with the initation of proceedings against the person searched under section 15C of the Act, along with the assessment proceedings under section 158 BC and immediately after the assessment proceedings are completed under section 158BC of the person searched – Order of Tribunal is quashed. [S. 2(47)(v), 45, 132, 158BD]**
Court held that it is evident that satisfaction can even be recorded immediately after completion of the assessment proceedings under Section 158BC. In the instant case, admittedly, the satisfaction has been recorded after completion of the proceedings under Section 158BC. However, the order passed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) has been set aside by the Tribunal merely on the ground that the satisfaction has not been recorded before completion of the assessment proceedings. The aforesaid finding is contrary to law laid down by the Supreme Court in the case of *CIT v. Calcutta Knitwears (2014) 362 ITR 673 (SC)* Therefore, the same cannot be sustained in the eye of law. Court also held that a satisfaction note is sine qua non and could be prepared at either of following stages, at the time of or along with the initiation of proceedings against the person searched under section 15C of the Act, along with the assessment proceedings under section 158 BC and immediately after the assessment proceedings are completed under section 158BC of the person searched. Order of Tribunal is quashed.
CIT v. N. Ramakrishnan (2020) 193 DTR 93 / 316 CTR 461 (Ker.)(HC)

S. 158BC : Block assessment – Undisclosed income – After examining the details the Tribunal deleted the addition on facts – No question of law. [S. 158BB(1), 260A] 1962

Dismissing the appeal of the revenue the Court held that the Appellate Tribunal deleted the addition made by the AO on appreciation of facts, hence no substantial question of law. (AY.1994-95)

PCIT v. Sunil M. Thakkar (2020) 426 ITR 372 / 195 DTR 64 / 317 CTR 262 (Bom.)(HC)

Note : Also digested in Page No. 639, Case No. 1964

S. 158BC : Block assessment – Undisclosed income – Reducing quantum of addition – Held to be justified. [S.158BD] 1963

Court held that the Tribunal had arrived at the finding of fact after considering the material evidence on record that the assessee was entitled to deduction of the contrived losses suffered by it. The Tribunal had rightly considered the fact that in the assessment for the block period only the undisclosed income, which was found from the seized material could be considered for the addition. (BP 1-4-1995 to 27-9-2001)

CIT v. Naman Associates (2020) 427 ITR 91 / 273 Taxman 297 / 196 DTR 147 / 317 CTR 654 (Guj.)(HC)

S. 158BC : Block assessment – Search And Seizure – Undisclosed Income – Deletion of addition based on facts – No perversity or ambiguity – No substantial question of law. [S. 132, 133A, 153C, 158BB, 158BC] 1964

Dismissing the appeal of the revenue the Court held that, the findings returned by the Tribunal in respect of the five deletions made by the AO exhibited due application of mind on the part of the Tribunal and on the basis of the factual evidence on record. There was no perversity or ambiguity, in the findings returned by the Tribunal. The CIT(A) had dealt with the related issues in great detail and his findings had been affirmed by the Tribunal. There was no reason to believe that the findings recorded were incorrect or improper. No question of law.(BP 1-4-1988 to 13-2-1999)

PCIT v. Sunil M. Thakkar (2020) 426 ITR 372 / 195 DTR 64 (Bom.)(HC)

S. 158BC : Block assessment – Undisclosed income – Agricultural income – Seized material and statement – Due date for filing of return was not expired – Deletion of addition – Tribunal bound to give reasons for reversing findings rendered by lower authorities – Deletion of addition is held to be not justified. [S. 69A, 132(4) 158BA, 158BC, 254(1)] 1965

The assessees, husband and wife, were doctors who had professional income from running a hospital and agricultural income. They also ran four financial firms doing the business of money lending. There was search and seizure action. Based on the evidence and statement the Assessing Officer made additions on account of undisclosed income under section 69A of the seized cash. The Commissioner (Appeals) held that the attempts of the assessees to show that most of the undisclosed income was beyond the purview of the block period had not been substantiated by facts. The Tribunal reversed the order of the Commissioner (Appeals) and held that the Department had to consider the block returns and the statements jointly and could not pick and choose evidence but apply them in toto, that the investments made by the family-members in their individual capacity could

not be added in the assessees' hands without making any further enquiry. On appeal the Court held that the findings of the Tribunal had not only gone against the admissions of the persons searched and their statements, but was also contrary to the returns filed by the assessees in pursuance of the notices issued under section 158BC consequent to the search. Considering facts of the case the Court held that Tribunal was wrong in accepting the contention that the undisclosed income did not belong to the assessees in their individual capacity but it could be attributed to the Hindu undivided family of one of the assessees and its findings of fact reversing the findings of the two authorities could not be sustained Court also held that even in affirming the findings of the authorities below, the burden was heavier for the higher appellate authority when it decided to reverse the findings of the authorities below. The findings of the Tribunal were perverse and required interference of the court under section 260A.(BP.1-4-1996 to 4-6-2002)
CIT v. Dr. K. Kannagi (2020) 424 ITR 470 / 194 DTR 145 / 316 CTR 211 (Mad.)(HC)
CIT v. Dr. N. Rajkumar (2020) 424 ITR 470 / 194 DTR 145 / 316 CTR 211 (Mad.)(HC)

1966 **S. 158BC : Block assessment – Search and seizure – The authorities are under an obligation to examine the validity of the search and only thereafter proceed to initiate the block assessment proceedings – Addition made as undisclosed income is held to be bad in law. [S. 132, 132A, 292CC]**
Allowing the appeal the Court held that the assessment order passed for the block period under S. 158BC(c) of the Act in the name of the individual, when the warrant of authorisation was issued in the joint names of the assessee and others was not valid in law. The authorities ought to have examined the validity of the search and only then proceed to initiate block assessment proceedings on the facts and circumstances of the case. From a perusal of the material on record, it was evident that there was no seizure with regard to the assessment years 1988-89 and 1989-90 during the course of the search and seizure operations. However, the AO while computing the undisclosed income had taken into account the income in respect of these years also and thus the order passed by the AO was in violation of S. 158BC(c). The order of block assessment was not valid. (AY. 1991-92 to 1998-99)
Ramnath Santu Angolkar v. Dy.CIT (2019) 106 CCH 0433 / (2020) 422 ITR 508 / 275 Taxman 170 (Karn.)(HC)

1967 **S.158BC : Block assessment – Search cases – Disallowance u/s. 40A(3) cannot be made in the computation of undisclosed income [S.40A(3)]**
Where the block assessment order was passed by the AO. During the search proceedings the AO discovered that several payments were made by assessee in contravention of section 40A(3) and accordingly made additions to the assessee's income. The same had been disallowed, as addition u/s.40A(3) could not be made in the computation of undisclosed income u/s.158BC of the Act. Followed *Dhanvarsha Builders & Development v. DCIT (2006) 105 TTJ 376 (Pune) (Trib.)* (AY. 1997-98 to 2002-03)
Purnachandra Janardhan Rao v. Dy.CIT (2020) 195 DTR 193 / 208 TTJ 273 (Pune)(Trib.)

S. 158BD : Block assessment – Undisclosed income of any other person – Search on partners – Assessment in status of Association of persons Justified – Levy of interest u/s 158BFA(1) is held to be valid. [S. 184, 158BFA(1)] 1968

Dismissing the appeal the Court held that considering the facts of the case assessment in status of Association of persons is held to be valid and also levy of interest under S. 158BFA(1) of the Act.

Sri Venkatesha Bottles v. ACIT (2020) 422 ITR 284 / 107 CCH 0455 / 192 DTR 153 / 316 CTR 204 / 273 Taxman 75 (Karn.)(HC)

S. 158BD : Block assessment – Undisclosed income of any other person – Failure to transmit material – Assessment framed void and quashed. [S. 132, 158BC] 1969

Tribunal held that in the absence of the basic documents evidencing accommodation entries being provided to the assessee, the bank account number or the person from whom the entry was received could be of no assistance to the Assessing Officer of the assessee for assessing the undisclosed income of the assessee. Therefore, specific information was not passed on to the Assessing Officer of the assessee as contended by the Revenue and therefore the contention that passing on of specific information constituted or was equivalent to handing over seized material was to be rejected. The assumption of jurisdiction by the Assessing Officer under section 158BD was not in accordance with law and the assessment framed as a consequence thereof was void and was to be quashed. The other grounds relating to the merits of the case were infructuous and were not adjudicated.(AY. BP 1-4-1989 to 24-6-1999)

Shobha Rani (Smt.) v. ACIT (2020) 83 ITR 194 / 208 TTJ 1156 (Chd.)(Trib.)
Prem Parkash v. ACIT (2020) 83 ITR 194 / 208 TTJ 1156 (Chd.)(Trib.)

S. 158BE : Block assessment – Time limit – Panchanama – Approval was taken – Notice u/s 143 (2) was issued – Search in more than one premises – More than one Panachnama which state that search continued and prohibitory order was issued – Vacation of prohibitory order has to be considered as conclusion of search – Order is not barred by limitation. [S. 132(3), 143 (2), 158BG, Art. 226] 1970

Dismissing the petition the Court held that it can only be construed that, the search operation commences at the second premises of the petitioner on 25.01.2001, continued till 12.06.2001, therefore each time separate panchanamas were drawn and prohibitory orders were issued with the endorsement that, 'search continues". However it has been misquoted by the petitioner that, even though the panchanama, dated 25.01.2001 discloses with an endorsement of the Revenue that, the 'search concluded", subsequent issuance of prohibitory order and on that strength, subsequent searches made till 12.06.2001 was unauthorised. However the fact remains that, in the second premises the search continued and in view of the specific provisions referred to above in Section 132(1)(iib), which, even though came into effect only from 01.06.2002, the continuous search went up to 12.06.2001 can very well said to be authorised and therefore the Revenue cannot be found fault with by compelling them to calculate the limitation within the meaning of Section 158BE(1)(b) from 01.02.2001 by taking into account the panchanama, dated 25.01.2001 as the last panchanama and by not taking the 12.06.2001 panchanama as the last panchanama. Therefore independently, on the basis of Section

132(1)(iib), the Revenue's continuous search operation taken place on various dates from 25.01.2001 till 12.06.2001 can very well be construed as an authorised search operation, therefore the panchanama issued on 12.06.2001 shall be deemed to be the last authorisation within the meaning of Explanation 2 to Section 158BE. Accordingly the Block Assessment Order, dated 30.06.2003 is within the limitation of two years under Section 158BE(1)(b) commencing from 01.07.2001 since the end of the month in which the last of authorisation for search under Section 132 was to be reckoned only as 30.06.2001. Accordingly the order is not barred by limitation. Writ petition was dismissed.

Bharat Mehta (Deceased) Through LR Mehul Mehta (Dr.) v. Dy.CIT (2020) 317 CTR 759 (Mad.)(HC)

1971 **S. 158BE : Block assessment – Time limit – Prohibitory order – Last panchanama – Prohibitory order doesnot extend the limitation – Order of Tribunal is affirmed. [S. 132, 158BC]**

Dismissing the appeal of the revenue the Court held that the first appellate authority had recorded a clear finding of fact that as per panchanama drawn on 15th September, 1998, the search which was carried out in terms of authorization dated 14th September, 1998 was fully executed. After 15th September, 1998 there was no search or seizure. On 13th October, 1998 a prohibitary order was passed under Section 132(3) regarding the computer CPU of the respondent/assessee which was revoked on 14th December, 1998. The first appellate authority had rightly held that passing of prohibitory order and revocation thereof were wholly irrelevant for the purpose of determining limitation under Section 158BE. Tribunal had considered the submission of the Revenue regarding Explanation 2 to Section 158BE but did not accept the same and rightly so. Finding returned by the first appellate authority as affirmed by the Tribunal is a finding of fact and we do not find any element of perversity in such finding of fact. In the absence thereof, no question of law, much less any substantial question of law, can be said to arise therefrom there being concurrent findings of facts by the two lower appellate authorities.

CIT v. Pushupati Granites P. Ltd. (2020) 188 DTR 109 / 316 CTR 663 (Bom.)(HC)

1972 **S. 158BE : Block assessment – Limitation – Time taken to obtain information stored in Electronic records to be taken into account – Search started January 2001 – Access to records stored in computer was not given June 2001 – Block assessment In June 2003 – Not barred by limitation. [S. 132(1(iib), 158BC, Information Technology Act, 2000, S.2]**

Dismissing the appeal of the assessee the Court held that through the searches undertaken by the Revenue from January 2001 till June 2001, the password of the computer of the assessee to have access to the documents loaded or fed in the computer had not been divulged by the assessee and this fact had not been denied by the assessee. If that were so, it could not be said that the Revenue without having access to the electronic documents should have completed the search on the very first day of the search, January 25, 2001 itself. The Revenue's continuous search operation on various dates from January 25, 2001 till June 12, 2001 could very well be construed as

an authorised search operation, and therefore the panchnama issued on June 12, 2001 should be deemed to be the last authorisation within the meaning of Explanation 2 to section 158BE. Therefore, the block assessment order dated June 30, 2003 was within the limitation of two years under section 158BE(1)(b) commencing from July 1, 2001 since the end of the month in which the last of authorisation for search under section 132 was to be reckoned only as June 30, 2001. (BP. 1-4-1990 to 31-3-2000, 1-4-2000 to 24-1-2001)

Dr. Bharat Mehta v. Dy CIT (2020) 423 ITR 568 / 196 DTR 305 (Mad.)(HC)

S. 158BE : Block assessment – Time limit – merely passing the prohibitary order without actual seizure – Deemed seizure – Limitation period not extended – Order is held to be barred by limitation. [S. 132, 132(3)] 1973

A search under section 132 was conducted upon premises of assessee company on 7-11-2000 based on authorisation dated 4-11-2000. Said authorisation was executed on 8-11-2000 when search was completed and panchnama was made-On 10-11-2000 a search was conducted on basis of fresh authorisation dated 10-11-2000. On 4-12-2000, investigation team again conducted search upon assessee under same old authorisation dated 10-11-2000 and passed prohibitory order under section 132(3) and items were inventorised. On 7-11-2001, i.e. almost after a period close to one year, investigation team again visited premises under same old authorisation dated 10-11-2000 for conducting search and prohibitory order passed on 4-12-2000 was converted into deemed seizure under section 132(1)(iii). There was nothing searched on this day except passing of conversion order from section 132(3) to 132(1)(iii). A block assessment order was passed on 28-11-2003 Assessee submitted that revenue could not conduct search after almost one year on basis of an old authorisation dated 10-11-2000 and draw a panchnama concluding search. It contended that limitation under section 158BE should begin from date of last drawn panchnama i.e. 8-11-2000, and, thus, impugned assessment order passed on 28-11-2003 was barred by limitation. According to revenue, limitation would start from 7-11-2001 when order of deemed seizure was passed under section 132(iii) by virtue of Explanation 2 read with section 158BE and, hence, block assessment framed vide order dated 28-11-2003 was within limitation period. Tribunal held that the department could not keep search action in abeyance for a long period of almost one year from date of last authorisation more so when after a period of one year nothing was searched but only prohibitory order passed one year back was converted into deemed seizure, therefore, panchnama dated 7-11-2001 drawn based on authorisation dated 10-11-2000 was bad in law and, therefore, limitation could not be counted from 7-11-2001 but it was ought to be counted from 10-11-2000 or at most from 4-12-2000. Accordingly the assessment order dated 28-11-2003 was barred by limitation. (BP 1-4-1990 to 7-11-2000)

Narang International Hotels (P.) Ltd. v. DCIT (2020) 185 ITD 324 / (2021) 209 TTJ 694 (Mum.)(Trib.)

1974 **S. 158BFA : Block assessment – Penalty – Addition to undisclosed income on estimate basis – Deletion of penalty is held to be justified. [S. 158BC, 158BFA(2), 158BGA(2), 271(1)(c)]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the penalty as the addition to undisclosed income was made on estimate basis. Referred *IT v. Satyendrakumar Dosi (2009) 315 ITR 172 (Raj) (HC), CIT v. Dodsal Limited (2009) 312 ITR 112 (Bom.)(HC).* (BP 1996-1997 to 2001-2002)

CIT v. Bagga Distilleries Hyderabad (P.) Ltd. (2020) 113 taxmann.com 602 (AP&T) (HC)

Editorial : SLP of revenue is dismissed, CIT v. Bagga Distilleries Hyderabad (P.) Ltd. (2020) 270 Taxman 93 (SC)

1975 **S. 161 : Liability of representative assessee – Trustee – Trust – Beneficiaries to share benefit as per their investment – Shares determinable. [S. 4, 5, 164]**

Dismissing the appeal of the revenue the Court held that, even the assessing authority had found that the beneficiaries were to share the benefit according to their investment made or in other words, in proportion to the investment made. Once the benefits are to be shared by the beneficiaries in proportion to the investment made, any person with reasonable prudence would reach the conclusion that the shares are determinable. Once the shares are determinable amongst the beneficiaries, it would meet the requirement of the law, to come out from the applicability of section 164. (AY.2009-10 to 2014-15)

CIT v. TVS Shriram Growth Fund (2020) 429 ITR 440 / 121 Taxman.com 238 / (2021) 197 DTR 99 / 277 Taxman 41 (Mad.)(HC)

1976 **S. 164 : Representative assessees – Charge of tax – Beneficiaries unknown – Only the relevant part of income of the trust to be charged at maximum rate – Appeal dismissed [S. 11, 12, 13(1)(c)]**

The CIT(A) has rightly directed the AO to consider the provision of Section 164(2) which lays down that where relevant income or part of the income is not exempt u/s. 11 due to violation of Section 13(1)(c) or 13(1)(d) of the Act, then in that eventuality tax shall be charged on the relevant income or part of the relevant income at maximum marginal rate and not that entire income of the trust would be charged to tax at maximum marginal rate. Department's appeal is dismissed. (AY. 2013-14, 2014-15, 2015-16)

DCIT v. Central Academy Jodhpur Education Society (2020) 208 TTJ 545 (Jaipur) (Trib.)

1977 **S. 167B : Charge of tax – Shares of members unknown – Association of person (AOP) – Income of its Members exceeded basic exemption limit – Liable to be taxed at maximum marginal rate [Societies Registration Act, 1860]**

Airforce and Naval officers formed Association for management of their farmhouses. Association was registered under Societies Registration Act, 1860. Assessee-association claimed its functioning on concept of mutuality without indulging in any business activity. Assessing Officer, held status of assessee as Association of Persons (AOP) and applied maximum marginal rate of tax after invoking section 167B of the Act. Order of the AO is affirmed by CIT(A).On appeal the it was contended that irrespective of status of assessee held by Assessing Officer as AOP, assessee being registered under

Societies Registration Act, 1860, provisions of section 167B were not applicable and will be excluded from invoking of maximum marginal rate, if income of such AOP is indeterminate which was accepted by the Tribunal . However, in terms of provisions of section 167B(2), if income of any member of AOP (other than share of such Association) is higher than basic exemption limit of relevant year, income of said AOP is chargeable at maximum marginal rate. Accordingly the order of Assessing Officer is affirmed. (AY. 2013-14)

Air Force Navy Farm Owners Welfare Association v. ITO (2020) 183 ITD 611 (Delhi)(Trib.)

S. 179 : Private company – Liability of directors – Notice was silent regarding fact that tax dues could not be recovered from company and, further, there was no whisper of any steps being taken against company for recovery of outstanding amount – Notice against assessee was set aside. [Art. 226] 1978

Assessee was a director in the company Tirupati Proteins Pvt. Ltd. Tirupati Proteins Pvt. Ltd failed to make payment of outstanding tax demand of certain amount. Assessing Officer issued notice under section 179 to assessee treating her as jointly and severally liable for payment of such tax. On writ the Court held that perusal of notice under section 179 revealed the same was totally silent regarding fact that tax dues could not be recovered from company. Further, in show-cause notice, there was no whisper of any steps having been taken against company for recovery of outstanding amount-therefore, notice under section 179 issued by Assessing Officer against assessee was set aside (AY. 2011-12 to 2014-15)

Ashita Nilesh Patel v. ACIT (2020) 270 Taxman 132 (Guj.)(HC)

S. 179 : Private company – Liability of directors – Recovery of tax – Attachment and sale of property – Properties settled on trust for grandchildren – Recovery proceedings Against son – Properties settled on Trust cannot be attached. 1979

The properties were settled for the benefit of grand children. The petitioner was one of the trustees, in the year 1986 joined the assessee-company as a managing director and resigned from the company in the year 1993. In 1990 the Department carried out a survey action in the case of the company. Orders of assessment were passed for the assessment years 1988-89, 1989-90 and 1990-91. The liability of the managing director was quantified. For realisation of the liability, by separate attachment orders, the Tax Recovery Officer attached three properties belonging to the trust on the premise that the three properties belonged to the petitioner in his individual capacity. On a writ the Court held that the properties belonged to the trust which was settled by will by S before initiation of recovery proceedings by the Revenue against the petitioner. The properties did not belong to the petitioner in his individual capacity or his legal heirs or representatives. The trust had been formed in the year 1978 and the will of the mother was made in 1985 much before initiation of recovery proceedings. There was no question of the properties being diverted to the trust to evade payment of due tax. That being the position, the attachment orders were liable to be quashed. (AY. 1988-89, 1989-90, 1990-91)

Rajesh T. Shah v. Tax Recovery Officer (2020) 425 ITR 443 / 191 DTR 66 / 315 CTR 490 / 272 Taxman 457 (Bom.)(HC)

1980 **S. 179 : Private company – Liability of directors – Inability to recover dues from company – Revenue should establish inability to recover due from the Company. [Art. 226]**

On writ the court held that the notice was totally silent as regards the satisfaction of the condition precedent for taking action under section 179, viz., that the tax dues could not be recovered from the company. The notice was not valid.

[However in the peculiar facts and circumstances of the case and more particularly, when it had been indicated before the court by way of any additional affidavit-in-reply as regards the steps taken against the company for the recovery of dues, a chance was to be given to the Department to undertake a fresh exercise under S. 179](AY. 2011-12 to 2014-15)

Sonal Nimish Patel v. ACIT (2020) 422 ITR 275 / 107 CCH 0449 / 191 DTR 388 / 315 CTR 927 / 270 Taxman 141 (Guj.)(HC)

1981 **S. 179 : Private company – Liability of directors – Auction sale of attached property – A going concern by virtue of order of National Company Law Tribunal does not alter situation of default of tax. [Art. 226]**

Dismissing the petition the court held that merely because the assessee was a running concern at the point of time by virtue of the orders passed by the National Company Law Tribunal in the insolvency petition, it would not alter the situation with regard to the recovery of the tax dues under the provisions of the Act. The order passed by the National Company Law Tribunal had been quashed by the Supreme Court. The assessee had defaulted in payment of tax of Rs. 1907.90 lakhs and even if the contention of the assessee was accepted that the assessee had to recover an amount of Rs. 694.60 lakhs, the assessee would not be in a position to make payment of the outstanding tax liability. Therefore, when the order passed under section 179 of the 1961 Act, had attained finality and had been implemented with the auction of the immovable properties, no interference was called for at such belated stage. The grievance of the assessees with regard to the irregularities and illegalities in the auction proceedings conducted by the Department could be contended before the appropriate forum.(AY. 2010-11)

Gauravbhai Hargovindbhai Dave v. Tax Recovery Officer (2020) 422 ITR 134 / 104 CCH 0732 / 188 DTR 128 (Guj.)(HC)

1982 **S. 190 : Collection and recovery – Deduction at source – Advance payment – Reimbursement of expenses – No income arises – Tax not deductible at source – When no composite bills are issued but separate bills are issued towards reimbursement of transportation charges, Circular No. 715 [1995] 215 ITR (St.) 12 is not applicable. [S. 4, 5]**

Court held that, when no composite bills are issued but separate bills are issued towards reimbursement of transportation charges, Circular No. 715 ([1995] 215 ITR (St.) 12) is not applicable. When reimbursement of expenses are made income arises hence tax not deductible at source. Accordingly unless the paid amount has any "income element" in it, there will arise no liability to pay any Income-tax upon such amount. The liability to deduct or collect Income-tax at source is upon "such income" as referred to in section

190(1) of the Income-tax Act, 1961. The expression "such income" would ordinarily relate to any amount which has an "income element" in it and not otherwise.
Zephyr Biomedicals v. JCIT (2020) 428 ITR 398 / 194 DTR 337 / 317 CTR 129 (Bom.)(HC)
Orchid Biomedical Systems v. JCIT (2020) 428 ITR 398 / 194 DTR 337 / 317 CTR 129 (Bom.)(HC)

S. 192 : Deduction at source – Salary – Reimbursement of expenditure incurred by them towards uniform on the basis of self certification by employees – Not liable to deduct tax at source. [S. 10(14)(i), 201(IA)] 1983

Assessee company made payment to its employees towards reimbursement of expenditure incurred by them towards uniform without deducting tax at source for reason that such payment towards uniform allowance was exempt under section 10(14)(i) of the Act. The AO held that the assessee had not deducted TDS merely on basis of self-certification given by concerned employees that they had incurred such expenditure towards uniform without verifying whether such expenditure had actually been incurred by them or not. Accordingly held that the assessee was liable to deduct TDS under section 192 and, accordingly, made it liable for interest under section 201(1A). CIT(A) relying on the CBDT Circular No. 15, dated 8-5-1969 held that the assessee is not liable to deduct tax at source. On appeal by the revenue the Appellate Tribunal affirmed the view of the CIT(A). On appeal by the revenue dismissing the appeal Court held that since liability to pay tax under Act was of individual employee and liability on part of employer was only to deduct tax at source, self-certification on part of employees was sufficient for assessee not to deduct tax under section 192 on payment towards reimbursement of expenditure incurred by employees for uniforms and if Assessing Officer had any doubt about claim made by any individual employee, he could take upon issue during course of assessment proceedings of such individual employee. (AY. 2010-11)
CIT v. Oil and Natural Gas Corporation Ltd. (2020) 192 DTR 433 / 316 CTR 354 / (2021) 277 Taxman 284 (Guj.)(HC)

S. 192 : Deduction at source – Salary – Failure to deposit tax deducted at source – Rectification application – Directed the Assessing Officer to consider the rectification application and pass orders on merits in accordance with law. [S. 143 (3), 154, 199, Art. 226] 1984

During relevant year, assessee received salary from third respondent after making tax deduction at source. Third respondent failed to pay tax so deducted to credit of revenue. Assessing Officer while processing return filed by assessee, raised a demand which was nothing but tax already deducted from assessee's salary by third respondent. Assessee filed writ petition contending that Assessing Officer was not entitled to make such demand as it was for them to recover such tax deducted at source from third respondent. During pendency of proceedings, assessee made repeated request by way of rectification application before Assessing Officer but said application was not disposed of. Court held that it was appropriate to direct Assessing Officer to consider rectification application filed by assessee and pass orders on the same on merits and in accordance with law. Matter remanded. (AY. 2009-10)
PCIT v. Sankaranarayanan Rajshekar (2020) 269 Taxman 105 (Mad.)(HC)

1985 **S. 192 : Deduction at source – Salary – Employee stock ownership plan – Stock option not perquisite – Not taxable – No liability upon assessee to deduct tax at source. [S. 17]**
Tribunal held that the allotment of shares to employees under the employee stock ownership plan could not be treated as perquisite as there was no benefit and the value of the benefit, if any, was unascertainable at the time when the options were exercised. Applied. *CIT v. Infosys Technologies Ltd. (2008) 297 ITR 167 (SC*) (AY. 2012-13, 2013-14)
NXP India Pvt. Ltd. v. Dy.CIT (2020) 82 ITR 467 (Bang.)(Trib.)

1986 **S. 194A : Deduction at source – Interest other than interest on securities – Deposits made by the petitioner societies with the Co – operative Banks, they would be entitled to the benefit of exemption under S.194A(3)(iii)(v) of the Act and, in respect of the deposits made by the petitioner societies with the Treasury, they will not be entitled to the benefit of exemption under S. 194A(3)(iii)(a) of the Act. [S. 44AB, 194A(3)(iii)(v), 194A(3)(iii)(a), Art. 226]**
The petitioners are Primary Agricultural Credit Societies. They are co-operative societies inter alia engaged in carrying on the business of banking and they are therefore entitled to receive the interest amounts earned by them from deposits made with the State Treasuries and the District Co-operative Banks respectively without deduction of tax at source. They contend that in respect of the amounts deposited with the State Treasury, they would be exempted from the requirement of suffering tax deduction at source on an account of the provisions of S. 194A(3)(iii)(a), and in respect of the interest earned from deposits with the District Co-operative Banks, they would be entitled to a similar exemption on account of S. 194A(3)(iii)(v) of the Act. On writ the Court held that,deposits made by the petitioner societies with the Co-operative Banks, they would be entitled to the benefit of exemption under S.194 4A(3)(iii)(v) of the Act and, in respect of the deposits made by the petitioner societies with the Treasury, they will not be entitled to the benefit of exemption under S. 194A(3)(iii)(a) of the Act. (SJ) (WP. No.7795 of 2019 dt 3-12-2019)
Chirayinkeezuh Service Co-Operative Bank Ltd. v. CBDT (2020) 185 DTR 81 / 312 CTR 277 (Ker.)(HC)

1987 **S. 194A : Deduction at source – Interest other than interest on securities – Interest payable to any of individual account holder did not exceed Rs. 2,500 in a Financial year – Not liable to deduct tax at source. [S. 201]**
Tribunal held that interest payable to any of individual account holder did not exceed Rs. 2,500 in a Financial year and was not required to deduct tax at source. Tribunal also held that any sum credited to suspense account or 'interest payable account' would be deemed to be credited for purpose of tax deduction at source and, therefore, if in individual account interest payments exceed Rs. 2500, on crediting of same to different account than account of depositors, TDS liability of deductor cannot be eliminated. (AY.1996-97)
DCIT v. Sahara India Financial Corporation Ltd. (2020) 183 ITD 266 / 194 DTR 153 / 207 TTJ 555 (Delhi)(Trib.)

1988 **S. 194C : Deduction at source – Contractors – Cable operator / MSO / DTH operators – Payment is covered under section 194C and not under section 194J. [S. 194J, 201(1A)]**
Dismissing the appeal of the revenue the Court held that the ITAT is correct in holding that the placement fees/carriage fees paid to cable operators/MSO/DTH operators are

payments for work contract covered u/s 194C and not fees for technical services u/s 194J. Followed *CIT v. UTV Entertainment Television Ltd (2017) 399 ITR 443 (Bom.) (HC). (Zee Entertainment)*(2006-07, 2007-08, 2008-09, 2009-10 and 2010-11)
CIT v. UTV News Ltd. (2020) 117 taxmann.com 137 (Bom.)(HC)
CIT v. Zee Entertainment Enterprises Ltd. (2020) 117 taxmann.com 131 (Bom.)(HC)
CIT v. Zoom Entertainment Network Ltd. (2020) 117 taxmann.com 111 (Bom.)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. UTV News Ltd (2020) 272 Taxman 114 (SC), CIT v. Zee Entertainment Enterprises Ltd (2020) 272 Taxman 116 (SC), CIT v. Zoom Entertainment Network Ltd. (2020) 272 Taxman 101 (SC).

S. 194C : Deduction at source – Contractors – Payment to cable operators for channel fee – Liable to deduct tax at source under section 194C and not under section 194J of the Act. [S. 194J] 1989
Dismissing the appeal of the revenue the Court held that amount paid by assessee to cable operators for channel placement fee was subject to deduction of tax at source under section 194C and not under section 194J. (AY.2010-11)
PCIT v. Star Entertainment Media (P) Ltd. (2020) 269 Taxman 66 (Bom.)(HC)

S. 194C : Deduction at source – Contractors – Contractual work of up – linking and broadcasting programmes – Not technical services – Rightly deducted the tax as per section 194C of the Act – Provisions of Section 194J is not applicable. [S. 9(1)(vii), 194J] 1990
Assessee, a media broadcasting and telecasting company entered into an up-linking service agreement with a company for up-linking and bandwidth services and also entered into another agreement for air time service charges. Assessee deducted tax at source under section 194C while making payment to said companies for services rendered as per agreements. Assessing Officer held that payments were in nature of fees for professional and technical services and therefore, should be covered under section 194J. Tribunal held that since deductees simply carried out a contractual work of up-linking and broadcasting programmes made or produced by assessee in electronic media by permitting assessee to avail benefit of requisite electronic set up against payment of a fee as long as contract subsisted, facilities provided by deductees did not amount to providing 'technical services' and, hence, payments could not be termed as 'fee for technical services'; thus section 194J was not attracted. On appeal by revenue affirming the order of the Appellate Tribunal held that definition of 'work' under section 194C is inclusive and specifically includes broadcasting and telecasting and, therefore, assessee had rightly deducted tax at source under section 194C. (AY. 2010-11)
CIT v. Media World Wide (P.) Ltd. (2020) 275 Taxman 272 (Cal.) (HC)

S. 194C : Deduction at source – Contractors – Advance payment – Liability to deduct tax at source only if there is income – Reimbursement of expenses – No income arises – Tax not deductible at source. [S. 190] 1991
Allowing the petition the Court held that unless the paid amount has any "income element" in it, there will arise no liability to pay any Income-tax upon such amount. Further, in such a situation, there will also arise no liability of any deduction of tax at

source upon such amount. Again, the liability to deduct or collect Income-tax at source is upon "such income" as referred to in section 190(1) of the Income-tax Act, 1961. The expression "such income" would ordinarily relate to any amount which has an "income element" in it and not otherwise. When no composite bills are issued but separate bills are issued towards reimbursement of transportation charges, Circular No. 715 ([1995] 215 ITR (St.) 12) is not applicable.
Zephyr Biomedicals v. JCIT (2020) 428 ITR 398 / 317 CTR 129 / 194 DTR 337 / (2021) 276 Taxman 305 (Bom.)(HC)
Orchid Biomedical Systems v. JCIT (2020) 428 ITR 398 / 317 CTR 129 / 194 DTR 337 / (2021) 276 Taxman 305 (Bom.)(HC)

1992 **S. 194C : Deduction at source – Contractors – Failure to file TDS related documents at the time of filing of return of TDS – Procedural law – Fine can be imposed – Expenses cannot be disallowed – Matter remanded to the AO for readjudication. [S. 40(a)(ia), 194C(6), 194C(7), 254(2), 260A]**
The AO disallowed the expenses on the ground that the assessee has failed to file TDS related documents at the time of filing of return of TDS. Order of the AO is up held by the Tribunal. On appeal High Court held that sub-section (6) of section 194C is the provision which grants benefit to the assessee. This benefit comes with the condition of compliance of sub-section (7) of section 194C, which is the procedure to be followed. Even assuming that the assessee had not furnished the particulars as required under sub-section (7) of section 194C in the prescribed form, the maximum that could be done is to impose a fine of Rs. 200 for every day of such non-compliance. Therefore, this procedural law, as prescribed under sub-section (7) of section 194C cannot takeaway the benefit, which will accrue to the assessee under sub-section (7) of section 194C. For the above reasons, the matter is to be remanded to the AO for a fresh consideration. Followed, *CIT v. Sri Parameswari Spinning Mills (P.) Ltd. (2019) 108 taxmann.com 386 (Mad.) (HC) referred ACIT v. Arihant Trading Co (.) 176 ITD 397 (Jaipur) (Trib.).* (AY. 2012-13)
Dilip Kumar v. ACIT (2020) 269 Taxman 93 / 196 DTR 199/ 317 CTR 901 (Mad.)(HC)

1993 **S. 194C : Deduction at source – Contractors – Contract for sale of goods – Agreement for bulk sale of advertising space – Provision is not applicable.**
Allowing the appeal of the assessee the Court held that the S.194C of the Act, would apply to a contract for work and not to a contract of sale. There is a distinction between the two concepts namely "contract for sale of goods" and "works contract". In determining the question whether a contract constitutes one for work or is a contract of sale, the intention and object of parties has to be borne in mind, which is to be examined in the light of terms of the contract. The main object in a contract of sale is the transfer of property and delivery of possession of the property, whereas the main object in a contract for work is not the transfer of the property, but it is one for work and labour. On facts the assessee had entered into an agreement for bulk sale of advertising space with its holding company on a principal to principal basis by transfer of rights therein. The assessee under the agreement made purchase of advertisement space and exercised control over such space with the right to either sell it to another or retain it for itself. Thus, it was a transfer of advertising space to the assessee who

in turn sold it to others. Therefore, the transaction could not be termed a contract for work, and S.194C was not applicable. (AY. 2007-08)
Times VPL Ltd. v. CIT (2020) 421 ITR 170 / 312 CTR 284 / 185 DTR 139 / 275 Taxman 176 (Karn.)(HC)

S. 194C : Deduction at source – Contractors – Up-linking Service Agreement – Payments made to Multi System Operators on account of channel carriage fees and other payments related to Up-linking charges and down-linking charges, Bandwidth and Air Time charges – Not in the nature of fees for technical services – Levy of penalty is held to be not valid. [S. 9(1)(vii), 194J, 221(1), 271C] 1994
On the basis of survey the AO held that payments made by assessee to Multi System Operators on account of channel carriage fees and other payments related to Up-linking charges and down-linking charges, Bandwidth and Air Time charges were covered by S. 194J since such payments were in nature of fees for professional and technical services and the assessee was held responsible for short deduction and interest thereon and also levied penalty under S. 271C and 221(1) of the Act. CIT(A) deleted the addition, which is up held by the Tribunal. On appeal by the revenue the Court held that, payments made to Multi System Operators on account of channel carriage fees and other payments related to Up-linking charges and down-linking charges, Bandwidth and Air Time charges is not in the nature of fees for technical services. Accordingly the levy of penalty is held to be not valid.
CIT v. Media World Wide Pvt. Ltd. (2020) 185 DTR 329 / 312 CTR 409 (Cal.)(HC)

S. 194C : Deduction at source – Contractors – Hiring of cab from cab owners – Liable to deduct tax at source – Matter remanded to the Assessing Officer to verify whether the recipients have paid the tax. [S. 40(a)(ia)] 1995
Tribunal held that hiring of cab from cab owners the assessee is liable to deduct tax at source, however the matter remanded to the Assessing Officer to verify whether the recipients have paid the tax.
Singonahalli Chikkarevanna Gangadharaiah v. ACIT (2020) 182 ITD 6 / 195 DTR 303 / 208 TTJ 382 (Bang.)(Trib.)

S. 194C : Deduction at source – Contractors – Passenger service fees – Airlines collecting security component and facilitation component from its customers and paid same to airport authority – liable to deduct tax at source as per provision of S.194C. [S.194J, 196, 201(IA)] 1996
Assessee airlines collected passenger service fees comprised of security services charges and facilitation charges from its passengers and paid same to airport authority for providing such services and facilities to its passengers. On security service charges, assessee did not deduct tax at source claiming that payment was actually made by assessee to CISF, a Government agency, for providing security services at airport hence provision of S.196 is applicable. On facility component, assessee deducted tax at rate of 2 per cent. According to AO tax at source was to be deducted on both abovesaid components of passenger service fees under S. 194J of the Act. CIT(A) held that tax at source was to be deducted on both abovesaid components under S. 194C. Tribunal

held that security service fees was not paid by assessee to CISF directly but it was paid to airport authority, therefore, assessee could not take shelter under section 196 and, such payment was covered under section 194C, further, since facility charges collected by assessee were undeniably for service provided by airport operators to passengers of assessee airline, provisions of S. 194C would be applied to said payments. (AY. 2010-11, 2011-12)
Inter Globe Aviation Ltd. v. ACIT (2020) 181 ITD 225 / 194 DTR 81 / 207 TTJ 191 (Delhi) (Trib.)

1997 **S. 194E : Deduction at source – Non-resident – Sport person – Sports association – liable to deduct tax at source – The obligation to deduct tax is not affected by the DTAA. [S. 9(1), 115BBA]**
As the payments to the Non-Resident Sports Associations represented their income which accrued or arose in India u/s 115BBA, the assessee was liable to deduct Tax at Source u/s 194E. The obligation to deduct Tax at Source u/s 194E is not affected by the DTAA. In case the exigibility to tax is disputed by the recipient, the benefit of DTAA can be pleaded and the amount in question will be refunded with interest. But, that by itself, cannot absolve the liability to deduct TDS u/s 194E of the Act.
PILCOM v. CIT (2020) 425 ITR 312 / 188 DTR 1 / 314 CTR 39 116 taxmann.com 394 / 271 Taxman 200 (SC)
Editorial : PILCOM v. CIT (2011) 198 Taxman 555 / 355 ITR 147 / 238 CTR 387 (Cal.) (HC) is affirmed.

1998 **S. 194H : Deduction at source – Commission on reinsurance premium – Not liable to deduct tax at source.**
Dismissing the appeal of the revenue the Court held that as a matter of industrial practice the payment was termed "commission on reinsurance premium received" but in substance it was discount on reinsurance premium received by an insurance company from another insurance company, accordingly not liable to deduct tax at source.
CIT v. Royal Sundaram Alliance Insurance Co. Ltd. (2020) 423 ITR 122 (Mad.)(HC)

1999 **S. 194H : Deduction at source – Commission or brokerage – Fees for professional or technical services – Discount to prepaid cards to distributors – Principal to principal basis – Roaming arrangement with other distributors – Not liable to deduct tax at source under section 194H or under section 194J – Interest is not leviable. [S. 194H, 201(1)]**
Tribunal held that the discount extended to the prepaid distributors was in the nature of margin for such distribution of the right to prepaid services and such discount did not qualify as commission within the meaning of section 194H. Thus, the assessee was not required to deduct tax under section 194H on the prepaid SIM cards and hence, the assessee was not in default in terms of the provisions of section 201(1). With regard to the provisions of section 194J in respect of roaming charges, the assessee was not required to deduct tax under section 194J and consequently the assessee was not to be treated as an assessee in default under section 201(1). The roaming charges were not paid for rendering any managerial, technical or consultancy services and hence, did

not fall under the category of fee for technical services. Therefore, the assessee was not required to deduct tax on such roaming charges under section 194J. Once the assessee was treated as not in default under section 201(1), interest under section 201(1A) was not required to be charged.(AY.2009-10 to 2012-13)
Vodafone Idea Ltd. v. ACIT (TDS) (2020) 184 ITD 204 / 79 ITR 44 (SN) (Cuttack)(Trib.)

S. 194H : Deduction at source – Commission or brokerage – Credit card gateway facility – On line booking of tickets – Not liable to deduct tax at source as charges taken by bank and credit card agencies for providing facilities. 2000
Assessee airline had entered into an agreement with various banks and other entities to avail credit card gateway services under a non-exclusive agreement for online booking of tickets by its passengers using credit cards. The Appellate Tribunal held that the assessee was not required to deduct tax at source on charges taken by bank and credit card agencies for providing such facility to assessee. (AY. 2010-11, 2011-12)
Inter Globe Aviation Ltd. v. ACIT (2020) 181 ITD 225 / 194 DTR 81 / 207 TTJ 191 (Delhi) (Trib.)

S.194H : Deduction at source – Commission or brokerage – Discounts on recharge offered to customers/distributers/ subscribers are not commission – Not liable to deduct tax at source. 2001
Where assessee, engaged in business of providing DTH services, sold set top Box (STB) & hardware and recharge coupon vouchers to distributors at a discounted rate and provided certain discount/bonus or credits to customers/subscribers for taking subscription directly from company's website, discounts so offered could not be considered as commission and, hence, not liable for deduction of tax at source under section 194H. (AY. 2009-10, 2010-11)
Tata Sky Ltd v. ACIT (2020) 195 DTR 177 / 208 TTJ 194 (Mum.)(Trib.)

S. 194I : Deduction at source – Rent – Lump sum paid for getting long lease – Not rent – Tax not deductible at source on such payment. 2002
Allowing the appeal the Court held that lump sum payment made by the assessee for getting a long term lease does not amount to payment of rent and is not adjustable against the annual rent payable by the assessee and therefore, the provisions of section 194I of the Income-tax Act, 1961 will not apply to such circumstances.(AY.2009-10, 2010-11, 2012-13)
Nagarjuna Oil Corporation Ltd. v. ACIT (2020) 429 ITR 562 / (2021) 277 Taxman 457 (Mad.)(HC)

S. 194I : Deduction at source – Rent – Collection of rent on behalf of Government and paid back to government – Tax deducted by Tenants – Entitle to credit. [S. 199] 2003
Assessee entered into an agreement with Ministry of Textile and was collecting rent from tenants of handicraft building owned by Government. Assessing Officer denied credit of TDS on rental income collected by assessee. On appeal the Tribunal held that the assessee was not beneficial owner of property and said property was given by Government to assessee for its use and rent collected by assessee was definitely income and rent paid back to Government was its expenses and, therefore, on rent paid to

assessee by tenants, tax was deductible under section 194I and when assessee paid same to Government, it need not deduct tax at source. Therefore the, Assessing Officer was not justified in denying credit of TDS to assessee. (AY. 2017-18)
Council of Handicrafts Development Corporation v. ITO (2020) 185 ITD 37 / 196 DTR 14 / 208 TTJ 935 (SMC) (Delhi)(Trib.)

2004 **S. 194I : Deduction at source – Rent – State Government – Krishi Upaj Mandi Samiti – Income exempt – Not liable to tax at source. [S. 10(26AAB)]**
Assessee, a State Government undertaking, was mainly engaged in work of storage and maintenance of warehouse for food grains procured by FCI and other local agencies. During relevant year, assessee paid rent to Krishi Upaj Mandi Samiti without deducting tax at source. Assessing Officer, thus, treated assessee as assessee in default. Tribunal held that since payee i.e. Krishi Upaj Mandi Samiti, was a State Government Undertaking and its income was exempt under section 10(26AAB), assessees could not be treated as assessee in default for non-deduction of tax under section 194-I on rent paid. (AY. 2011-12)
M.P. Warehousing & Logistics Corporation v. ACIT (2020) 183 ITD 485 / 195 DTR 89 / 84 ITR 75 / 207 TTJ 743 (Indore)(Trib.)

2005 **S. 194J : Deduction at source – Fees for professional or technical services – Provision of third party administrator services to insured – Service providers have to deduct tax from payments made to Hospitals – Circular No. 8 Of 2009, dated 24-11-2009 (2009) 319 ITR (St.) 22) is not valid to extent it provides for penalty for infraction of Section 194J. [S. 119(1), 271C, 273B, Art. 226]**
On writ the Court held that third party administration services are rendered on medical and health insurance policies issued by insurance companies. The services enable the policy holders, viz., the patients to obtain medical treatment from the hospital without making upfront payments to the hospitals by direct settlement, i.e., cashless scheme and reimbursement of claims of policy holders in accordance with the terms of the insurance. The third party administrator service providers pay to hospitals under the cashless scheme in fulfilment of contractual obligations between the insurance companies and the policy holders on the one hand and insurance companies and third party administrator service providers on the other hand. The third party administrator service providers are required to deduct tax at source on payments made to hospitals under section 194J.
Circular No. 8 of 2009, dated November 24, 2009 (2009) 319 ITR (St.) 22) The Board has by the circular taken the view that payments which are made by third party administrators to hospitals fall within the purview of section 194J. The circular proceeds to postulate that a liability to pay a penalty under section 271C will be attracted for a failure to make a deduction under section 194J. Section 273B of the Act provides that notwithstanding anything contained in the provisions inter alia of section 271C no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the provision if he proves that there was a reasonable cause for the failure. The circular provides that a failure to deduct tax on payments made by third party administrators to hospitals under section 194J will necessarily attract a penalty under section 271C. Besides interfering with the quasi-judicial discretion of the

Assessing Officer or, as the case may be, the appellate authority, the direction which has been issued by the Board would foreclose the defence which is open to the assessee under section 273B. By foreclosing a recourse to the defence statutorily available to the assessee under section 273B, the Board has by issuing such a direction acted in violation of the restraints imposed upon it by the provisions of sub-section (1) of section 119. To that extent, therefore the circular that was issued by the Board would have to be set aside.(AY.2004-05 to 2009-10)
TTK Healthcare TPA Pvt. Ltd. (No. 1) v. Dy CIT(TDS) (2020) 195 DTR 209 / 317 CTR 684 / (2021) 430 ITR 134 (Karn.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Roaming charges – Not for rendering any managerial technical or consultancy services – Not liable to deduct tax at source. 2006
Assessee entered into roaming arrangements with other telecom operators according to which, they could enjoy service facility outside territory. Assessing Officer held that the assessee is liable to deduct tax at source under section 194J in respect of roaming charges. Tribunal held that service in respect of roaming charges were standard automated services and required no human interaction or skill hence the assessee was not required to deduct tax at source. (AY. 2009-10 to 2012-13)
Vodafone Idea Ltd. v. ACIT (2020) 184 ITD 204 / 79 ITR 44 (SN) (Cuttack)(Trib.)

S. 194J : Deduction at source – Fees for professional or technical services – Distribution of film – Minimum Guarantee Royalty (MGR) – Copy right – Royalty – Right of exhibition of cinematographic films – Not copy rights hence do not fall under term Royalty – Not liable to tax deduction at source – No disallowance can be made. [S. 40(a)(ia)] 2007
Assessee, a film distributor, had paid an amount as Minimum Guarantee Royalty (MGR) for purchase of theatrical distribution rights. AO held that assessee had purchased copyright and said payment would fall within definition of Royalty and failure to deduct TDS as per section 194J would entail disallowance under section 40(a)(ia) of the Act. CIT(A) deleted the disallowance. On appeal by revenue the Tribunal held that copyrights are always with producer and distributor is only given right to exhibition of cinematographic films and, hence, such transactions do not attract provisions of tax deduction at source. (AY. 2011-12)
ITO v. Yashovardhan Tyagi (2020) 184 ITD 461 (Delhi)(Trib.)

S. 194J : Deduction at source – Fees for professional or technical services – Toll Free Telephone charges – Liable to deduct tax at source. [S. 9(1)(vii)] 2008
Assessee is Engaged in business of providing third party administration (TPA) services to Insurance companies which has made payment towards toll free telecom charges for toll free Telephone number provided by telecom operators whereby charges for calls made by consumers to toll-Free number were borne by assessee. The AO held that payment made by assessee for such services amounted to royalty under Section 9(1)(vi) and liable to deduct TDS. (2011-12 To 2014-15)
Vidal Health Insurance TPA (P.) Ltd. v. JCIT (2020) 182 ITD 30 (Bang.)(Trib.)

2009 **S. 194LA : Deduction at source – Agricultural land – Compensation on acquisition of certain immoveable property – From report of Halqa Patwari it was evident that land of assessee acquired by Government was 'Gairmumkin' in nature, and same was not agricultural land, compensation received by assessee in pursuance of land acquisition proceedings was subject to TDS. [S. 2(14)(iii), 10(37), 45, 119, 237, Art. 226]**
Petitioner received a compensation on account of acquisition of land out of which TDS at rate of 20 per cent was deducted as per provisions of S. 194LA of the Act. Assessee claimed that amount received was not taxable since land acquired was agricultural land. AO rejected claim of assessee. The assessee mobed application u/s 119(2) (b) of the Act, which was rejected. On writ the Court held that from report of Halqa Patwari it was evident that acquired land was 'Gairmumkin' in nature, and same was not agricultural land. Department had relied on said report and assessee had not been able to furnish any documentary evidence to contradict aforesaid report. Therefore, land in question would be categorized as a capital asset and assessee could not have claimed benefit of exemption to 'agricultural land'. Accordingly the compensation received by assessee in pursuance of land acquisition proceedings was subject to TDS (AY. 2011-12, 2012-13)
Gurudwara Sahib Patti Dhaliwal v. CCIT (2020) 186 DTR 113 / 114 taxmann.com 505 / 314 CTR 260 / 270 Taxman 151 (Delhi)(HC)

2010 **S. 194N : Payment of certain amounts in cash – Enquiry prior to commencement of relevant assessment year – Principle of natural justice is violated – No adequate opportunity to respond to notice – Notice is held to be not valid – Existence of alternate remedy is not an absolute bar on issue of writ. [S. 201(1), 201(IA), Art. 226]**
Allowing the petition the Court held that the noticees were given hardly a few days' time to appear and respond. Therefore the process adopted by the respondents could not be said to be fair compliance with the principles of natural justice. The writ petitions were maintainable. However, the Department need not wait till the time limit for the assessees to file their returns for the assessment year to get over. It was open to the Department to initiate action against the deductors, who had failed to act in accordance with the requirements under section 194N of the Act, as they were also deemed assessees. But when the enquiry was conducted, it was open to the noticees, who were to be treated as assessees in default to place materials before the Assessing Officer to show that the amounts received by the recipients did not represent income at their hands. The proceedings and orders were not valid.(AY.2020-21)
Tirunelveli District Central Co-Operative Bank Ltd. v. Jt. CIT (TDS) (2020) 428 ITR 249 / 275 Taxman 60 / (2021) 202 DTR 61 / 321 DTR 86 (Mad.)(HC)

2011 **S. 195 : Deduction at source – Non-resident – Income deemed to accrue or arise in India – Fees for technical services – Prospecting for business but not establishing any business – Liable to deduct tax at source – DTAA-India-United Kingdom. [S. 9(1)(vii)(b), 264, Art. 13(5), Art. 226]**
The assessee entered into an agreement with a company in the United Kingdom and got an insurance product development on payment of £ 2000 per month for the service to be rendered abroad and utilised by the assessee abroad. The agreement entered into was, inter alia, for services of evaluation, development of risk management and insurance products for the renewable energy sector for its various overseas ventures, exploring the

London market for types and scope of insurance available for serious complex fraud, and providing facilitation and overseas services as part of the United Kingdom retainers' responsibilities mainly to ensure that the assessee and the international brokers used, provided and capitalised on the relationship for mutual business development. The assessee applied to the AO for permission to make payments to the non-resident company without deduction of tax at source under S. 195 of the Act. The AO ordered deduction of tax at source from the payments at 20 per cent. under the Double Taxation Avoidance Agreement between India and the United Kingdom ([1982] 133 ITR (St.) 34). The DIT (IT) rejected the revision petition filed. On writ dismissing the petition, that the payments made by the assessee to the United Kingdom company were not towards fees payable in respect of services utilised in a business or profession carried out by the assessee outside India as no such business had been established at the time of such payment. The assessee was merely prospecting for such business and therefore engaged the services of the United Kingdom company as a consultant. As the assessee had not established any business, the payment would not come within the purview of the exception provided in S. 9(1)(vii)(b) of the Act. According to the Double Taxation Avoidance Agreement with the United Kingdom payments of fees towards technical services could also be taxed in the Contracting State in which they arose according to the law of that State. The expression "fees for technical services" had been defined in article 13 paragraph (4) of the Agreement to mean payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including the provision of services offered technical or other personnel). The exception to the definition of "fees for technical services" in paragraph (4) had been specified in paragraph (5) of article 13 of the Agreement and none of the exceptions provided in paragraph (5) were attracted. Accordingly the rejection of revision application is up held. (W.P.No.845 of 2012 dt 19-5 2020 (SJ)

Shriram Capital Ltd. (No. 2) v. DIT (IT) (2020) 425 ITR 628 / 315 CTR 310 / 190 DTR 126 / (2021) 277 Taxman 367 (Mad.)(HC)

S. 195 : Deduction at source – Non-resident – Income deemed to accrue or arise in India – Payments made for expert services of Non – Consultancy services – Managerial Service – Liable to deduct tax at source – DTAA-India-Indonesia. [S. 9(1)(vii)(b), 264, Art. 12(3)(b), 14, 15, Art. 226] 2012

The assessee engaged the services of a law firm in Indonesia to acquire an insurance business in Indonesia. The services provided by the Indonesian law firm to the assessee were assistance in connection with the,share purchase agreement, notarial share transfer deed, obtaining all the necessary regulatory approvals,power of attorneys,public announcements, forms in respect of share transfers and, amended articles of association of the target company etc. The assessee filed an application under S. 195, before the ITO, for exemption from deducting tax on the payment to be made to the Indonesian law firm for the services rendered by it. The request of the assessee was rejected. The assessee filed a revision petition under S. 264 before the Director (IT). The Director (IT) held that the services of the foreign company were not rendered for the purpose of the business activities of the assessee abroad and had no nexus with the generation of income abroad by the assessee, and that since the assessee did not have any business activities in Indonesia and that there was no immediate possibility for the assessee to earn any income from outside India the place of utilisation of services was wholly

in India only. He further held that it was also possible for the assessee to abandon the proposed acquisition of the insurance company in Indonesia, and that in such a situation, the payments made were not for the purpose to earn any income from outside India even on a future date. He rejected the revision petition on the grounds that in both these possible circumstances, the services were deemed to have been rendered in India, in terms of S. 9(1)(vii)(b). On writ dismissing the petition the court held that the Indonesian firm had provided "consultancy service" to the assessee and therefore did not fall within the exception provided in S. 9(1)(vii)(b) or outside Explanation 2 to the section. From the scope of work undertaken, it was evident that the Indonesian law firm had provided consultancy services. If the service utilised by the assessee abroad were for a pre-existing business in Indonesia, the assessee could have legitimately stated that the service provided was utilised for a business or profession carried out outside India or for the purpose of making or earning any income from any source from outside India. There was no source of income existing in Indonesia. There was a mere proposal for acquiring the insurance business privately or the Indonesian insurance policy. The services of the foreign law firm were sought for a range of services which were approved consultancy services. The nature of work to be undertaken by the Indonesian firm was not purely work carried out by the law firms. These services were provided by any person holding expertise in the relevant field. Thus, if the services provided by the Indonesian law firm were managerial, technical or consultancy services or provision of technical or other personnel, the assessee would be liable to deduct tax at source under section 195. Court also observed that during the period in dispute, the Double Taxation Avoidance Agreement as notified by Notification No. G. S. R. 77(E), dated February 4, 1988 ([1988] 171 ITR (St.) 27), was in force. However, Notification No. S.O. 1144(E) [No. 17/2016 (F. No. 503/4/2005-FTD-II)], dated March 16, 2016 ([2016] 6 ITR-OL (St.) 48) notifying the Agreement signed on July 27, 2012 was not relevant. It was open to the assessee to file an application before the ITO in respect of the issue on the question whether the assessee was entitled to the benefit of any clause in that Double Taxation Avoidance Agreement as notified in Notification No. G. S. R. 77(E), dated February 4, 1988. [W.P.No.4965 of 2011 and M.P. No. 1 of 2011 dt.13-5 2020 (SJ)]. (AY.2010-11)

Shriram Capital Ltd (No. 1) v. DIT(IT) (2020) 425 ITR 207 / 315 CTR 295 / 115 taxmann.com 388 / 190 DTR 111 (Mad.)(HC)

2013 **S. 195 : Deduction at source – Non-resident – Other sums – Income Deemed to accrue or arise in India Purchasing spare parts through Indian subsidiary – Business connection is established – Liable to deduct tax at source. [S. 9(1)(i)]**

Tribunal held that the role of the Indian company could not be ignored at any stage. Since the beginning when the assessee looked for suppliers of spare parts, the Indian company was very much in the scene of the transaction of purchase. Since the non-resident supplier had carried out the transaction of sale of goods to the assessee through its subsidiary company the business connection was established and therefore section 9 (1)(i) came into operation and thus the transaction needed to satisfy the requirement of section 195.(AY. 2015-16, 2016-17)

Sanghvi Foods P. Ltd. v. ITO (IT & TP) (2020) 82 ITR 362 / 193 DTR 318 / 206 TTJ 81 (Indore)(Trib.)

S. 195 : Deduction at source – Non-resident – Fees for technical services – Consulting services – Commission for procuring orders from customers – No permanent establishment or business connection in India – Not liable to deduct tax at source. [S. 9(1)(vii), 201(1), 201(IA)] 2014

Tribunal held that the non-resident company did not have any permanent establishment or any business connection in India and hence its income could be deemed to have accrued or arisen in India only if the payments were of the nature provided under section 9 of the Act. The Tribunal also held that section 9(1)(vii) provides for accrual of income only for the "fees for technical services" which includes specialised services like managerial, technical and consultancy. But the non-resident had not rendered any technical or managerial services to the assessee but was merely a project work procurement agent. The payments were only towards charges for procurement or orders and reimbursement of expenses and were not in the nature of "fees for technical services" and thus did not fall in the ambit of section 9 of the Act. Accordingly the payments for procurement of orders were not subject to deduction of tax at source under section 195 of the Act and the demand for default and interest levied under section 201(1A) of the Act were liable to be deleted. Relied on DR. Reddy laboratories ltd., IN RE (2016) 387 ITR 337 (AAR) (AY.2015-16, 2016-17)

Snap Computer Systems Pvt. Ltd. v. ITO (IT) (2020) 83 ITR 28 (SN) (Indore)(Trib.)

S. 195 : Deduction at source – Non-resident – Taxability in India – Payment to international celebrity appearance at Dubai – Target audience in India, potential customers in India, intended benefits in India – Business connection – Liable to deduct tax at source – DTAA-India-USA. [S. 5(2), 9(1)(i), 115BBA, 201, Art.12, 23(3)] 2015

The assessee paid US $ 4,40,000 in respect of a celebrity appearance at Dubai without withholding any tax from the remittance. The Assessing Officer held that the payment made to the celebrity was taxable in India particularly as royalty under section 9(1)(vi) of the Income-tax Act, 1961. He examined the provisions of article 12 of the Double Taxation Avoidance Agreement between India and the U. S. A. and held that the provisions thereof did not come to the rescue of the assessee. The Commissioner (Appeals) not only confirmed the action of the Assessing Officer but held that the whole purpose of organising an India centric event at Dubai was to avoid attraction of the clause regarding income accruing or arising in India and referred to the provisions of section 9(1)(i). He confirmed the withholding demand under section 201 read with section 195. On appeal the Tribunal affirming the oder of the CIT(A) held that, the target audience in India, potential customers in India, intended benefits in India therefore business connection is established hence the assessee is liable to deduct tax at source (AY.2015-16)

Volkswagen Finance P. Ltd. v. ITO (2020) 79 ITR 447 / 184 ITD 872 / 190 DTR 1 / 205 TTJ 648 (Mum.)(Trib.)

2016 **S. 195 : Deduction at source – Non-resident – The payment by an Indian company to a foreign celebrity (Nicholas Cage) for an appearance by him in Dubai, UAE, in a product launch event for promoting the business of the assessee in India, is taxable as arising from a "business connection" and also under Article 23(1) of India-USA tax treaty – Liable to deduct tax at source – DTAA-India-USA. [S. 5(2)(b), 9(1), 115BBA, 201, Art. 23(1)]**

Dismissing the appeal of the assessee the Tribunal held that, the payment by an Indian company to a foreign celebrity (Nicholas Cage) for an appearance by him in Dubai, UAE, in a product launch event for promoting the business of the assessee in India, is taxable as arising from a "business connection" and also under Article 23(1) of Inda-USA tax treaty. Accordingly the assessee had the liability to withhold taxes from payment made for appearance made by the celebrity at Dubai A8L launch event, and the CIT(A) was justified in upholding impugned demands raised under section 201 r.w.s 195 of the Income Tax Act,1961. (ITA No. 2195/Mum/2017, Dt. 19/3/2020) (AY. 2015-16)

Volkswagen Finance Pvt. Ltd. v. ITO (2020) 115 taxmann.com 386 (Mum.)(Trib.); 2020 SCC OnLine ITAT 132; www.itatonline.org

2017 **S. 197 : Deduction at source – Certificate for lower rate – Order of rejection application was quashed – An ordinance made by the President is not an executive act – Power to promulgate ordinance is legislative in nature – Directed the Assessing officer to decide the application on merit within period of six weeks. [Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, 3, S. 119, Art. 226]**

On 26.02.2020, petitioner filed an application in Form No.13 requesting respondent to issue a certificate for non-deduction of tax under S. 197 of the Act on interest income received from Lakhani Builders Private Limited ignoring the said Ordinance, Central Board of Direct Taxes (CBDT) issued an order dated 03.04.2020 under section 119 of the Act as per which in the case of pending applications for lower or nil rate of deduction of TDS under sections 195 and 197 of the Act or applications filed by buyers / licensees / lessees under section 206C(9) of the Act, the applicant shall intimate vide email the concerned assessing officer about pendency of such application for the financial year 2019-2020 whereafter the assessing officer shall dispose off the application by 27.04.2020 and communicate the decision to the applicant regarding issuance / rejection of certificate vide email. Following such order dated 03.04.2020, respondent No.2 issued a notice dated 10.04.2020 calling upon the petitioner to submit certain additional details. It is stated that petitioner could not reply to the said notice as the second phase of lockdown was in place and his movements were restricted. This was also because the details sought for were kept in the office of the petitioner which is separate from his residence. When the petitioner logged in to the TDS Reconciliation Analysis and Correction Enabling System (TRACES) on 30.07.2020, he found that the status of his application was shown as 'rejected. Aggrieved by the order the petition filed writ petition before High Court. Allowing the petition the Honourable High Court quashed the order of rejection passed in the case of the appellant where ignoring the provisions of *Section 3 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020' * whereby the time limits prescribed in the Income Tax Act 1961, falling within the period from 20.03.2020 to 29.06.2020 stood extended. The court noted

that *It is well settled that an ordinance made by the President is not an executive act. Power to promulgate ordinance is legislative in nature*. An ordinance issued by the President is as much a law as an Act passed by the Parliament. President's power of legislation by an ordinance is co-extensive with the power of Parliament to make legislation. The Court thus rejected Department's argument that the said ordinance did not extend the date for compliance of any application seeking information in response to the application u/s 197. The order of rejection was set aside and directed the Assessing Officer to decide the application on merit within period of six weeks. (AY. 2020-21)
Vijaykumar Satramdas Lakhani v. CBDT (2020) 195 DTR 121 / 317 CTR 249 / (2021) 276 Taxman 470 (Bom.)(HC)

S. 197 : Deduction at source – Certificate for lower rate – Application for lower tax deduction is allowed, subject to certain conditions. [S. 194-C, 194-H, 197, 201(1), 201(1A), 264, Art.226] 2018

High Court allowed the Petitioner's application dated 14th August, 2019 is restored to the Assessing Officer for fresh consideration and passing of the order on the same, after following the principle of natural justice, within a period of two weeks from the date this order is uploaded on the High Court web site. In the meantime, the Petitioner's client/customers would continue to deduct tax in terms of the Certificate issued on 4th June, 2019 (which was set aside on 29th July, 2019 by this Court in Writ Petition No.1719 of 2019) will be the rate which will apply. However, it is made clear that if, the Income Tax Officer comes to the conclusion that the Petitioner is liable to pay tax under S. 201 & 201(1A) of the Act in respect of the show cause notice dated 24th May, 2019 for the AY. 2017-18, 2018-19 and 2019-20, consequent to the order passed today in Writ Petition No.2575 of 2019. In the above eventuality, the Respondent No.2 herein would be entitled to cancel/substitute the Certificates issued under Section 197 of the Act within two weeks of this order being uploaded on the website of this Court (AY.2017-18, 2018-19, 2019-20)
TLG India (P) Ltd. v. Dy.CIT (2019) 184 DTR 349 / (2020) 421 ITR 418 / 312 CTR 199 / 269 Taxman 295 (Bom.)(HC)

S. 197 : Deduction at source – Certificate for lower rate – Payment to non-resident – Assessee proposing certificate for deduction at lower rate and department issuing certificate in those terms – Assessee cannot challenge certificate and seek deduction at nil rate. [S. 195, Art.226] 2019

The assessee filed an application under S. 197 for the assessment year 2019-20, requesting issuance of certificate directing the Corporation to make payments without deduction of tax. The application was processed and queries were raised by the respondent to which the assessee filed its replies. After providing a hearing to the assessee and on consideration of its submissions, the respondents granted the certificate dated June 26, 2019, in the prescribed format, to the Corporation for deduction at the rate of 4 per cent of the gross receipts. On a writ petition against the certificate dismissing the petition, that the question whether the assessee constituted a permanent establishment could not be undertaken in the enquiry having regard to the time frame permissible under law for deciding the application under section 197 of the Act. The

assessee had submitted that since it was facing financial hardship as the first quarter of financial year 2019-20 had come to an end and it was yet to have the lower withholding tax certificate, the assessee (without prejudice to its legal position), was willing to offer a concession to have the certificate at the tax rate of 4 per cent plus applicable surcharge and cess in line with the recently concluded assessment proceedings for assessment year 2016-17 in the assessee's own case. Although the declaration was qualified, since the assessee requested the respondent for permission to deduct the tax at the rate of 4 per cent plus applicable surcharge and cess for the entire contractual revenues, the Revenue was justified in accepting this and the assessee could not be permitted to resile therefrom, once the Department had accepted the assessee's proposal. The certificate was valid. (AY. 2007-08 to 2015-16)

National Petroleum Construction Company v. DCIT (2020) 421 ITR 24 / 312 CTR 217 / 185 DTR 57 / 271 Taxman 150 (Delhi)(HC)

2020 **S. 199 : Deduction at source – Credit for tax deducted – Issue of manual 26A – Assessee was directed to approach department by making application enclosing Form 16A and department would consider claim of assessee. [Form 16A, 26A, Art. 226]**

Assessee had made some term deposits with bank under Capital Gain Accounts for three years. After expiry of term, assessee had withdrawn deposit, however, for interest accrued out of such deposit, assessee had to pay income tax and that same was deducted by bank. However, bank, instead of generating form 26A, issued Manual Form 16A to assessee as details of TDS towards tax paid for interest amount and thus, records before department did not reflect payment of tax for interest amount. Assessee filed petition has sought for TDS certificate in prescribed form. Court held that since bank had given Manual Form 16A to assessee, he was to directed to approach department by making appropriate application by enclosing Form 16A and department would consider claim of assessee.

Subramania Siva v. ITO (2020) 272 Taxman 455 (Mad.)(HC)

2021 **S. 199 : Deduction at source – Credit for tax deducted – Salary – Rectification application is not disposed off – AO is directed to consider the application and pass orders on merits and in accordance with law. [S. 143(3), 154, 192]**

During relevant year, assessee received salary after making tax deduction at source. The deductor failed to pay tax so deducted to credit of revenue. AO while processing return filed by assessee, raised a demand which was nothing but tax already deducted from assessee's salary by the deductor. Assessee filed the petition contending that AO was not entitled to make such demand as it was for them to recover such tax deducted at source from third respondent-During pendency of proceedings, assessee made repeated request by way of rectification application before AO but said application was not disposed of. Court held that it was appropriate to direct AO to consider rectification application filed by assessee and pass orders on same on merits and in accordance with law. (AY. 2009-10)

Sankaranarayanan Rajshekar v. DCIT (2020) 269 Taxman 105 (Mad.)(HC)

S. 199 : Deduction at source – Credit for tax deducted – Percentage completion method – Offering income as and when accrued – Principle of consistency – Deferred income not liable to tax – Assessing Officer directed to restrict credit of tax deduction at source corresponding to income offered by assessee. [S. 145, R. 37BBA(3)] 2022

Tribunal held that the Commissioner (Appeals) had followed the relevant provisions of section 199 of the Income-tax Act, 1961 read with rule 37BA(3) of the Income-tax Rules, 1962 which specify that credit of the tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income was assessable. Therefore the Assessing Officer was directed to restrict the credit of tax deduction at source corresponding to the income offered by the assessee. (AY.2012-13)

ITO v. Orient Craft Fashion Institute of Technology (P.) Ltd. (2020) 78 ITR 10 (SN) (Delhi) (Trib.)

S. 199 : Deduction at source – Credit for tax deducted – Allowed in the year of deduction – Related revenue was booked in subsequent years. [S. 145, 199(3)] 2023

Tribunal held that the TDS credit is to be granted irrespective of the fact that TDS credit is to be granted irrespective of the fact that related revenue is booked in subsequent financial years. Followed *HCL comnet Syatems and Services Ltd v. DCIT (ITA No. 3221/ Del/ 2017 dt.31-12-2019) (ITA No. 1113/ Del/ 2017 dt 4-9-2020.* (AY. 2012-13)

HCL Comet Ltd. v. DCIT (2020) BCAJ-October-P. 38 (Delhi) (Trib.)

S. 199 : Deduction at source – Credit for tax deducted – Deducutor has deducted the tax at source though failed to deposit the tax with the Govt dedcutee cannot be made to suffer – Credit for the tax deducted at source has to be allowed in the hands of the deductee irrespective of whether the same has been deposited by the deductor to the credit of the Central Government or not. [S. 205] 2024

Tribunal held that, in a case where the deductor has deducted tax at source but has not deposited the tax with the Govt, the assessee cannot be made to suffer. U/s 205, the assessee/ deductee cannot be called upon to pay the tax. Credit for the tax deducted at source has to be allowed in the hands of the deductee irrespective of whether the same has been deposited by the deductor to the credit of the Central Government or not. Followed *Yashpal Sahani v. Rekha Hajarnavis, [2007] 165 taxman 144 (Bom.) (HC) Sumit Devendra Rajani v. ACIT Assistant Commissioner of Income-tax [2014] 49 taxmann.com 31 (Guj.) (HC) Pushkar Prabhat Chandra Jain v. Union of India [2019] 103 taxmann.com 106 (Bom.) (HC) (ITA No.5708/Del/2019, Dt. 23/12/2019).* (AY. 2015-16)

Aricent Technologies Holdings Ltd. v. ACIT (Delhi)(Trib.) www.itatonline.org

S. 201 : Deduction at source – Failure to deduct or pay – Covid-19 – Notices withdrawn – Proceedings dropped. [S. 201(1)(IA), Art. 226] 2025

Court held that the Revenue had submitted on advance instructions that it will withdraw the orders passed in respect of the petitioner and all consequent orders and shall afford an opportunity to the petitioner to reply to the Show cause notices. It was held that immediately after the lockdown is withdrawn by the Government, a period of two weeks reckoned therefrom is granted to the petitioner to reply to the Notices to the show cause issued by the respondent. Immediately after receiving replies to the

Notices to show cause, the respondent shall be at liberty to take further steps in both the matters, in accordance with law. (AY. 2013-14)
BT India P. Ltd. v. ITO (2020) 188 DTR 58 / 315 CTR 341 (Delhi)(HC)

2026 **S. 201 : Deduction at source – Failure to deduct or pay – Short deduction – Limitation – No time limit prescribed – Within reasonable Time – Proceedings initiated after four years – Barred by limitation. [S. 201(IA)]**
Court held that for the assessment years 1998-99 to 2005-06, the proceedings under section 201(1) and (1A) of the Income-tax Act, 1961 had been initiated after a period of four years. Therefore, they could not be held to have been initiated within a reasonable time and consequently, the proceedings could not be sustained in the eye of law. Followed *State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd. [2007] 11 SCC 363* has held that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed. (AY.1998-99 to 2005-06)
DIT(IT) v. Executive Engineer (2020) 428 ITR 294 / 194 DTR 364 (Karn.)(HC)
Bangalore Water Supply and Sewerage Board v. ITO(IT) (2020) 428 ITR 294 / 194 DTR 364 (Karn.)(HC)

2027 **S. 201 : Deduction at source – Failure to deduct or pay – Short deduction – Limitation – Proceedings must be initiated within reasonable time – Proceedings initiated after four years – Barred by Limitation. [S. 201(1), 201(IA)]**
Court held that for the assessment years 1998-99 to 2005-06, the proceedings under section 201(1) and (1A) of the Income-tax Act, 1961 had been initiated after a period of four years. Accordingly held to be barred by limitation. Followed Therefore, they could not be held to have been initiated within a reasonable time and consequently, the proceedings could not be sustained in the eye of law. In *State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd. (2007) 11 SCC 363* has held that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed. (AY.1998-99 to 2005-06)
DIT(IT) v. Executive Engineer Bangalore Water Supply and Sewerage Board (2020) 428 ITR 294 / 194 DTR 364 (Karn.)(HC)

2028 **S. 201 : Deduction at source – Failure to deduct or pay – Levy of compensatory interest – Order treating assessee as in default mandatory. [S. 201(1), 201(IA)]**
Court held that the Tribunal was right in holding that an order under section 201(1) was mandatory for levying of compensatory interest under section 201(1A) for the delay in remittance of the tax deducted at source and deleting the interest. (AY.1995-96)
CIT(LTU) v. Asea Brown Boveri Ltd. (2020) 427 ITR 166 / 192 DTR 376 / 272 Taxman 224 (Karn.)(HC)

2029 **S. 201 : Deduction at source – Failure to deduct or pay – Liability of firm is liability of its partners – Partnership has no separate existence from its partners – A demand raised on the managing partner does not in any way mean that the claim against the other partners has been given up – Liability of partners is joint and several. [S. 191, 194A]**
Firm accepted loans in the form of deposits and paid interest on such borrowings but did not deduct tax under S. 194A on the interest paid. The AO treated the assessees as

assessees-in-default under S. 201. The assessees challenged the assessment orders before the appellate authority, but the appeals were dismissed and further appeals before the Tribunal were also dismissed. Dismissing the appeal the Court held that
The burden to prove that the payee had paid the tax, which the assessee as deductor had failed to deduct was placed on the latter, by production of a certificate from the accountant. The assessees had not furnished any certificate from the accountant as required by the statute. Having not complied with the conditions laid down in S. 201 the assessees were not entitled to contend that they should not be treated as assessees-in-default under the section. J*agran Prakashan Ltd. v. Dy.CIT (TDS) (2012) 345 ITR 288 (All) (HC)* distinguished. Court also held that the assessees' contention that the authorities could not have fixed the liability on the assessee and its partners and thereafter issued the demand only against the managing director. The action of the authorities was not illegal or inappropriate. The liability of a firm is the liability of its partners. A demand raised on the managing partner could never be visualised as a wrong fixation of liability. It was only a demand made on the person who was managing the affairs of the firm, for and on behalf of all its partners. Such a demand did not in any way amount to a conclusion that the claim against the other partners had been given up, since the liability of the partners was joint and several. There was no perversity in the findings of the Tribunal It is settled law that a partnership has no separate existence from its partners. A demand raised on the managing partner does not in any way mean that the claim against the other partners has been given up, since the liability of the partners is joint and several. (AY.2013-14 to 2016-17)
Popular Dealers, Popular Traders and Popular Printers v. ITO(TDS) (2020) 426 ITR 450 / (2021) 277 Taxman 279 (Ker.)(HC)

S. 201 : Deduction at source – Failure to deduct or pay – Interest – Joint deposit holders – Not furnishing actual tax liability or details – Calculation of tax deduction at source liability in respect of 162 Cases justified. [S. 194A, 201(1), 201(IA) Form No.15G, 15H] 2030
Tribunal held that the assessee neither furnished the actual liability nor furnished the details. It could not bring any mistake of calculation of tax liability under section and 201(1A). Therefore, there was no mistake in the tax calculation. The Commissioner (Appeals) had correctly calculated the tax deduction at source liability in respect of 162 cases. (AY.2010-11)
Tamilnad Mercantile Bank Ltd. v. Dy.CIT (TDS) (2020) 78 ITR 61 (SN) (Vishhaka)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Calculation of levy of interest – Interest to be calculated from the date on which tax should have been deducted to the date on which the payee should have filed its return. [S. 201(1), 201(IA)] 2031
The Tribunal held that for failure to pay the tax deducted at source to Government Account, interest to be calculated from date on which tax should have been deducted to date on which payee should have filed its return Circular No 5 of 2010 dt 3-6-2010 (AY.2004-05 to 2007-08)
Agreenco Fibre Foam (P.) Ltd. v. ITO(TDS) (2020) 78 ITR 358 (Cochin)(Trib.)

2032 **S. 201 : Deduction at source – Failure to deduct or pay – Failure to deduct tax from interest paid on loan – Whether recipient filed its return and declared interest amount in its income and paid due taxes – Assessee to prove before AO – Issue restored to AO to prove this contention. [S. 194A, 201(IA)]**

On appeal, the Tribunal held that, the assessee contended that given an opportunity, it would substantiate before the Assessing Officer that the recipient had filed its return and declared the interest amount in its income and paid due taxes thereon as per the provisions of S. 201(1A) of the Act. Considering the totality of the facts of the case and in the interest of justice, the issue was restored to the Assessing Officer with a direction to grant one opportunity to the Assessee to substantiate this contention and decide the issue keeping in mind the provisions of S. 201(1A) of the Act. (AY.2010-11)

Barnala Steel Industries Ltd. v. JCIT (2020) 78 ITR 29 (SN) (Delhi)(Trib.)

2033 **S. 201 : Deduction at source – Failure to deduct or pay – Interest – Remittance of TDS was made online on prescribed date, credit to Government's account was instant – No interest could be levied for delay in remitting TDS to credit of Government even if online portal showed a delayed date. [S. 201(IA)]**

Assessee-company remitted tax in Online Tax Accounting System(OLTAS) on 7th day of next month which was prescribed date for remittance of tax deducted at source. In OLTAS date of remittance was shown as 8th/9th of succeeding month. AO and CIT(A) held that t was only payment as shown in OLTAS that was to be considered and therefore, assessee was liable to pay interest under S. 201(1)(1A) for having made payment after prescribed date. Tribunal held that in case of *P.L. Haulwel Trailers Ltd. v. Dy. CIT (2006) 100 ITD 485 (Chennai) (Trib.)* the Tribunal held that date of presentation of cheques before authorised banker for payment of advance tax should be taken as date of payment. Accordingly the Tribunal held that credit to Government's account was instant as payment was made online, therefore, date of payment to Government was to be regarded as date of payment of tax. As the payment of tax being within prescribed date, levy of interest under S. 201(1A) of the Act is held to be not justified. (AY. 2009-10 to 2012-13)

Moody's Analytics Knowledge Services (India) (P.) Ltd. v. ITO (TDS) (2020) 180 ITD 804 / 192 DTR 100 / 206 TTJ 646 (Bang.)(Trib.)

2034 **S. 206AA : Requirement to furnish Permanent Account Number – Double taxation avoidance agreement – Rate of tax deductible will be 10 % instead 20%. [S. 90, 195]**

Tribunal held that provision of section 206AA has to be read down to mean that where deductee, i.e., overseas resident business concern, conducts its operation from a territory, whose Government has entered into a Double Taxation Avoidance Agreement with India, rate of taxation would be as dictated by provisions of treaty, i.e., 10 per cent instead of 20 per cent as prescribed in section 206AA. Of the Act. (AY. 2017-18 to 2009-10)

DCIT(IT) v. Edgeverse Systems Ltd. (2020) 185 ITD 735 (Bang.)(Trib.)

S. 206AA : Requirement to furnish Permanent Account Number (PAN) – Provision for deduction at higher rate where recipient fails to provide PAN – Provision cannot override beneficial provisions of DTAAs – Assessee not liable to deduct tax at higher rates in spite of failure by non-resident to furnish PAN. [S. 90(2)] 2035

On appeal, the Tribunal held that the non obstante clause contained in the machinery provision of S. 206AA of the Act has to be assigned restrictive meaning and cannot be read so as to override beneficial provisions of DTAAs, which override even the charging provisions of the Act by virtue of S. 90(2) of the Act. Therefore, an assessee cannot be held liable to deduct tax at higher rates prescribed in S. 206AA of the Act for payments made to non-residents having taxable income in India in spite of their failure to furnish PAN. (AY.2010-11)

ACIT v. Wipro Ltd. (2020) 78 ITR 70 (SN) (Bang.)(Trib.)

S. 206C : Collection at source – Trading – Alcoholic liquor – Forest produce – Scrap – Levy of interest – Merely because the form No 27 filed by the assessee was incomplete levy of interest is not justified. [S. 201(IA), 206(7)] 2036

Tribunal held that the assessee had furnished the copies of the Income Tax return filed by the buyers and provided the copies of Form No. 27C received from the buyers but the said form were found to be incomplete. However nowhere it was stated by the A.O that the assessee was required to collect the taxes. Therefore the interest levied by the Assessing Officer u/s 206(7) of the Act on the basis that the copies of the Form No. 27 furnished by the assessee were incomplete was not justified. Accordingly the levy of interest was deleted. (AY. 2013-14, 2014-15)

Rajasthan State Mines & Minerals Ltd. v. ACIT (2020) 187 DTR 217 / 207 TTJ 764 (Jodhpur)(Trib.)

S. 206C : Collection at source – Scrap – Purchase of scrap material from railways which was subjected to TCS, resale of same material by assessee would not partake a different character and he would be held – in default for non collection of tax at time of resale. [S. 206C(6A), 206C(7)] 2037

Assessee accepted that goods purchased by it from railway was scrap and it also paid TCS on said purchase Tribunal held that resale of same material by assessee would not partake a different character and he would be held-in default for non collection of tax at time of resale in terms of section 206C(6A)/(7). (AY. 2017-18)

Pramod Kumar Jain v. ITO (2020) 183 ITD 442 / 206 TTJ 25 (UO) (Jaipur)(Trib.)

S. 206C : Collection at source – Survey – Buyers manufacturing beedis from tendu leaves sold by assessee – Liability only to extent of tax collection at source on such Sales and not on whole sale amount – Matter remanded for verification – Interest with effect from 1-7-2012 Liable to pay interest from date on which tax collectible to date of furnishing of return by respective buyers excluding period prior to 1-7-2012. [S. 206C(7) form, 27BA, 27C] 2038

Tribunal held that liability of the assessee is only to extent of tax collection at source on such Sales and not on whole sale amount. Matter remanded for verification. As regards levy of interest with effect from 1-7-2012 Liable to pay interest from date on which tax

collectible to date of furnishing of return by respective buyers excluding period prior to 1-7-2012. (AY.2013-14 to 2015-16)
EID Mohammad Nizamuddin v. ITO (TDS) (2020) 81 ITR 127 (Jaipur)(Trib.)

2039 **S. 206C : Collection at source – Trader in scrap – Waste – Not in the business of manufacturing – Not liable to deduct tax collection at source.**
Tribunal held that sale of scrap, which included unburned transformer coils from various distribution companies of UPPCL. The Assessee was not in the business of manufacturing and the scrap sold by it did not result from the manufacture or mechanical working of materials. The Assessee was not liable to collect tax at source. (AY. 2014-15 to 2016-17)
Lala Bharat Lal and sons v. ITO(TDS) (2020) 78 ITR 451 / 187 DTR 193 / 183 ITD 172 / 204 TTJ 393 (Luck.)(Trib.)

2040 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Pendency of appeal – Direction to deposit 15 % of tax in dispute – Held to be proper. [Art. 226]**
The petitioner has challenged an order dated 07.09.2016 passed by the Principal Commissioner of Income Tax, Surat. Under such order, the State authority has imposed a condition on the petitioner depositing 15% of the outstanding demand, upon which, remaining demand would stand stayed. Such condition had to be fulfilled within seven days from the date of the receipt of the letter. High Court held that petitioner's request for complete stay is concerned, the same cannot be granted. Pursuant to search operations, assessments were carried out, which has resulted into substantial tax demands. Merely because the petitioner has filed appeals against such order of assessment by itself, would not permit us to grant blanket stay. Whether such demand pending appeal should be stayed, must be dependent upon facts of each case. Additional time for depositing the tax was granted.
Karmvir Builders v. PCIT (2020) 113 taxmann.com 138 (Guj.)(HC)
Editorial : SLP of assessee is dismissed, Karmvir Builders v. PCIT (2020) 269 Taxman 45 (SC)

2041 **S. 220 : Collection and recovery – Not following the direction of Court and suppressing the facts – Petitioner mislead High Court at preliminary hearing of petition which led to passing interim order – Petition dismissed with costs quantified at Rs. 5 lakhs to be paid to Delhi High Court Advocates' Welfare Trust. [S. 220(6), 250, Art. 226]**
Assessee had returned income of Rs. 210.25 crores on which a tax liability of Rs. 69.84 crores was computed. On writ, it had requested for stay of demand of tax under section 220 contending that prepaid taxes lying with revenue were much more than 20 per cent of disputed demand payable. Vide interim order, revenue had been restrained from taking any coercive action against assessee for recovery of demand on condition that assessee would not seek any adjournment of hearing of appeal pending before Commissioner (Appeals) and this interim order would merge in order that Commissioner (Appeals) may pass. However, assessee sought adjournments before Commissioner (Appeals) on two occasions and, thus, disobeyed direction of High Court. Further, it was found that assessee itself computed book profit at Rs. 1127.45 crores and on that basis, it would be liable to pay tax of Rs. 224.71 crores and this was minimum tax liability of assessee, and thus,

there was gross suppression and misstatement by assessee, which led to a false projection of outstanding liability/refund due from/to assessee. Dismissing the petition the Court held that since, petitioner mislead High Court at preliminary hearing of petition which led to passing interim order this writ petition was to be dismissed with costs quantified at Rs. 5 lakhs to be paid to Delhi High Court Advocates' Welfare Trust.
Indus Towers Ltd. v. ACIT (2020) 273 Taxman 563 / 190 DTR 370 / 315 CTR 201 (Delhi)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Loan – Stay was granted subject to 20 percent payment of tax in dispute. [S. 68, 220(6), Art. 226] 2042

Assessing Officer had made unexplained cash credit addition under section 68 and raised demand on assessee. Stay was granted to assessee, subject to payment of 20 per cent of demand in view of CBDT's Office Memorandum dated 2-12-1993. Assessee submitted that existence of a prima facie case, financial stringency faced by an assessee and balance of convenience in matter constitute trinity and are indispensable consideration for adjudicating stay applications. However instant matter was not a case of mechanical reliance on circulars/office memorandums. It was a case where identity of loan depositors, capacity of creditors to advance loans and genuineness of transaction were in serious dispute. Though it was open to statutory authorities to grant relief to deposit an amount lesser than 20 per cent, in instant case, a prima facie case was not made out and such a relief was not warranted. Circulars and Notifications CBDT's Office Memorandum dated 2-12-1993 as modified by Office Memorandum (OM) dated 29-2-2016 and 31-7-2017. (AY. 2017-18)
Jindal ITF Ltd. v. UOI (2020) 273 Taxman 39 (Delhi)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Attachment of bank account is to be limited to 20 percent of demand. [S. 220(6), Art. 226] 2043

Filing an appeal, assessee challenged assessment order and demand raised on application for stay of demand, Assessing Officer ordered that there would be stay of 80 per cent disputed demand till disposal of appeal subject to payment of 20 per cent demand. Thereafter, assessee approached Principal Commissioner seeking stay on direction of Assessing Officer in view of fact that there had been attachment of bank account of assessee. On writ the Court held that attachment already resorted to would be limited to 20 per cent and Principal Commissioner would dispose of representation of assessee within a week; otherwise attachment would automatically stand vacated.
Monarch v. ITO (2020) 273 Taxman 63 (Karn.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay application – Directed to dispose stay application expeditiously and until said application is disposed of the Assessing Officer should not insist upon compliance of the recovery notice. [S. 220(6), Art. 226] 2044

Assessing Officer issued a notice dated 12-2-2020 to assessee's bank requiring it to remit an amount of Rs. 33.42 lakhs as dues towards payment of income tax by assessee. Earlier Assessing Officer vide communication dated 15-1-2020 addressed to assessee had made it clear that recovery of entire amount could be stayed pending disposal of appeal provided

assessee pays 20 per cent of demanded amount, which came to Rs. 13.37 lakhs. Assessee filed writ petition stating that before issuing of impugned notice dated 12-2-2020 it vide application dated 22-1-2020, which was in fact an application seeking for stay on recovery of entire demanded amount, had pointed out to Assessing Officer that it was to get refund of Rs. 23.66 lakhs from department and, therefore, amount of Rs. 13.37 lakhs might be adjusted from out of refund due to it. Said application was yet to be decided by Assessing Officer and in these circumstances there was no justification for issuance of notice dated 12-2-2020. Allowing the petition the Court directed the Assessing Officer to dispose of assessee's application dated 22-1-2020 expeditiously and until said application was disposed of, Assessing Officer would not insist upon compliance with notice dated 12-2-2020.
Pirna Urban Co-op. Credit Society Ltd. v. ITO (2020) 271 Taxman 32 (Bom.)(HC)

2045 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Pendency of Appeal before CIT(A) – Directed to deposit Rs 2 lakhs and stay was granted till disposal of appeal. [S. 220(6), 246A]**
Assessing Officer passed assessment order under section 143(3) on assessee and levied huge tax. Assessee filed an appeal before CIT(A). The Assessing Officer directed assessee to pay a sum equivalent to 20 per cent of levied tax for entertaining appeal and stay petition under section 220(6). Assessee filed writ petition seeking relief and stated that he should be permitted to deposit 10 per cent of demand instead of 20 per cent, as directed in impugned order. High Court set aside order passed by the Assessing Officer directing assessee to pay 20 per cent of disputed demanded amount and directed to remit a sum of Rs. 2 lakhs and on such deposit, order challenged before Appellate Authority stood stayed till disposal of appeal. (AY. 2017-18)
Suresh Anuradha v. CIT (2020) 270 Taxman 124 (Mad.)(HC)

2046 **S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Pendency of appeal before CIT(A) – Assessing Officer is directed to pass the order as per the guidelines issued by the Central Board of Direct Taxes. [S. 154, 220(2), 221]**
Court held, that the order did not comply with the requirements that had been set out for disposal of stay applications. The order did not deal with the aspects of prima facie case, financial stringency and balance of convenience. The attachment of the bank account was to be lifted forthwith. The assessee was to appear without further notice in this regard and the assessing authority was to reconsider the stay application filed by the assessee in the light of the guidelines set out in circulars and instructions issued by the Central Board of Direct Taxes, as well as the applications under section 154 and pass orders. Till such time, no further recovery proceedings could be initiated. (AY. 2017-18)
Ganapathy Haridaass v. ITO (2020) 428 ITR 505 / 272 Taxman 548 (Mad.)(HC)

2047 **S. 220 : Collection and recovery – Assessee deemed in default – Waiver of interests – Default in filing return – Deferment of advance tax – Genuine hardship – Rejection of application for waiver of interests is held to be not valid. [S. 220(2A), 234A, 234B, 234C]**
The petitioner in respect of the tax due for the AYs. 1996-97 and 1997-98, had applied for the waiver under S. 220(2A) of the Act For the Assessment Year 1996-97, the demand was Rs.10,34,719/-and for the Assessment Year 1997-98, the demand was Rs.3,79,120/-

towards the interest payable under S. 234A, 234B and 234C of the Act. The waiver application was rejected by the revenue Authorities. On writ the petitioner contended that all three conditions prescribed under sub-S. (2A) of S. 220 of the Act ie first the assessee must have genuine hardship, the second condition is that the non-payment was due to circumstances beyond the control of the assessee and the third condition is that the Revenue must have the satisfaction that the assessee has cooperated in an enquiry relating to the assessment or any proceeding for the recovery of any amount due from him. The petitioner relied on *B. M. Malani v. CIT (2008) 306 ITR 196 (SC) Benara Valves Ltd. v. CCE (2009) 20VST 297 (SC)*. Allowing the petition the Court held that according to the petitioner the undue hardship faced by the assessee was that, there had been no business for four years consecutively, with the result, the assessee did not have any source to make the payment as demanded under S. 234A, 234B and 234C. Based on the balance-sheet of the assessee, the Assessing Officer found that the assessee had a building worth Rs. 18 lakhs and machinery worth Rs. 45 lakhs. From the finding, it was clear that, apart from these immovable properties of building and machinery, which were the basic properties to run the industry or business of the assessee, no other source had been found out by the Revenue. The AO being a quasi-judicial authority, while exercising the power of discretion vested in him under S. 220(2A) of the Act, had not acted judiciously with cogent and plausible reasons with supporting materials. Hence the order was not sustainable. Accordingly the matter is remitted back to the respondent for re-consideration. While making such re-consideration, it is open to the respondent to seek for further materials/documents from the assessee and once such demand is made to the assessee for producing additional documents in support of his case to prove the genuine hardship as claimed by them, the assessee shall immediately produce those documents and cooperate with the Revenue for concluding the decision to be taken. The aforesaid exercise as directed above, shall be undertaken by the Revenue within a period of 3 months from the date of receipt of copy of this order.(AY.1996-97, 1997-98)
TCV Engineering Ltd. v. ACIT (2020) 426 ITR 516 / 269 Taxman 410 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Strictures – Tax recovery – Stay – Gross suppression and misstatement, which led to a false projection of the outstanding liability due from the petitioner – Sought adjournment before CIT(A) without seeking modification of earlier order – Cost of Rs 5 lakh imposed – Petition is dismissed. [S. 220(6), Art.226] 2048

Dismissing the petition the Court held that, petitioner invoking the discretionary extraordinary writ jurisdiction of the Court is expected to approach with clean hands. Instead, there is gross suppression and misstatement, which led to a false projection of the outstanding liability due from the petitioner. Also, the Petitioner ought not to have sought adjournment before the CIT(A) on the ground that the earlier year is pending without seeking modification of the Court's order. Writ Petition dismissed with costs of Rs. 5 lakh. (WP No 10289/2019 dt-4-03-2020) (AY. 2011-12)
Indus Tower Ltd. v. ACIT (Delhi)(HC), www.itatonline.org
Editorial : The Supreme Court has stayed recovery of the demand,Indus Tower Ltd. v. ACIT (SLP No 9011/2020 dt 6-03-2020) (SC)

2049 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Stay was granted subject to depositing 15% of outstanding demand.**
During pendency of appeal, on writ, stay was granted subject to depositing 15% of outstanding demand.
Karmvir Builders v. PCIT (2020) 113 taxmann.com 138 / 269 Taxman 46 (Guj.)(HC)
Editorial : SLP of assessee is dismissed Karmvir Builders. v. PCIT (2020) 269 Taxman 45 (SC)

2050 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Existence of prima facie case, financial stringency and balance of convenience – Duty of PCIT and responsibility of assessee – Status quo to be maintained till disposal of stay petitions by PCIT. [S. 220(3), 220(6), Art.226]**
On writ the Court held that the orders passed by the PCIT rejecting the stay petitions were passed mechanically and without application of mind. The stay petitions filed by the assessee were equally mechanical and relied upon the circulars issued without reference to the existence of the three aspects of a prima facie case, financial stringency and balance of convenience. The assessee was to appear with the stay petitions covering the three aspects before the PCIT who would pass appropriate orders after hearing the assessee. Till the disposal of the stay petitions, status quo, was to be maintained with regard to the recovery. (AY.2010-11 to 2013-14) (SJ)
Jayanthi Seeman v. CIT (2020) 421 ITR 320 (Mad.)(HC)

2051 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Society – Cash credits – Denial of exemption – Direction to pay only one percent of tax demanded as against 50% of disputed tax in dispute. [S. 68, 80P]**
Assessee is a co-operative society registered under Kerala Co-operative Societies Act and classified as a Primary Agricultural Credit Society. It filed return claiming deduction under S. 80P of the Act. The AO disallowed deduction under S. 80(P)(2)(a) (i) and further made additions to income declared by assessee under S. 68 of the Act. In a stay application preferred by assessee before first appellate authority, a conditional stay was granted subject to assessee paying 20 per cent of tax amount attributable to additions to income made under S. 68 of the Act. Against said order, assessee approached PCIT by invoking provisions of S. 220(6) of the Act. PCIT directed the assessee to pay 50 per cent of demand on account of deduction under S. 80P in addition to demand on addition made under S. 68 of the Act. On writ the court held that in view of decision in *Mavilayi Service Co-operative Bank Ltd. v. CIT [2019] (2) KHC 287* impugned petition was to be disposed of with a direction to pay only one per cent of tax demanded on addition made in assessment order under S.68 of the Act.
Navaikulam Service Co-operative Bank Ltd. v. DCIT (2020) 268 Taxman 418 (Ker.)(HC)

2052 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – The AO has directed the assessee to pay 20% of tax demanded – Appellate authority started the hearing – Writ is not entertained. [Art. 226]**
During pendency of appellate proceedings, assessee filed an application for stay of tax demand. Assessee was directed to pay 20 per cent of amount demanded as a condition

for granting interim stay. Against said order writ petition is filed. Court held that in view of fact that appellate authority had already proceeded to hear appeal and reserved matter for order, no interference with impugned order granting stay subject to payment of 20 per cent of tax demanded was required. (AY. 2011-12 to 2015-2016)
Victoria Technical Institute v. ITO (2020) 268 Taxman 420 (Mad.)(HC)

S. 221 : Collection and recovery – Penalty – Tax in default – Failure to deposit tax deducted – Survey – Financial stringency not relevant – Levy of penalty justified. [S. 201(1), 201(IA)] 2053

In the course of survey on 25-7-2013 at business premises of the assessee it was noticed that the assessee had collected the tax and retained with it. Proceedings under S. 201(1A) were initiated and the assessee was declared an assessee in default under S. 201 of the Act. The assessee remitted the amount with interest. Thereafter penalty proceedings were initiated by notice under S. 221. In the penalty proceedings, the assessee admitted that it was an assessee in default. Penalty was levied and confirmed by the CIT(A). The Tribunal reduced the penalty. On further appeal the assessee submitted that the assessee had failed to remit the amount deducted to the account of the Central Government due to financial crisis. Dismissing the appeal the Court held that a clear finding had been recorded by the Tribunal that the financial stringency pleaded by the assessee was not proved. Even otherwise, financial stringency would not justify the failure to remit tax deducted at source to the Government, inasmuch as, it would amount to utilisation of money payable to the appropriate Government. The Tribunal had directed the AO to restrict the levy of penalty to a sum of Rs. 20,55,573 in substitution to Rs. 77,95,155 levied by the AO. This finding would not call for interference particularly when the assessee had been declared as an assessee in default under S. 201(1) and the order had not been challenged by the assessee.(AY.2013-14)
KBR Infratech Ltd. v. ACIT (2020) 425 ITR 268 / 185 DTR 209 / 312 CTR 385 / 269 Taxman 605 (Karn.)(HC)

S. 221 : Collection and recovery – Penalty – Tax in default – Delay in remitting the Tax deducted at source – Survey – Financial stringency not proved – Levy of penalty is held to be justified. [S. 133A, 201] 2054

Dismissing the appeal of the assessee the Court held that, from the order of Tribunal that the finding recorded by the tribunal to arrive at a conclusion is based on sound appreciation of material available before it. In fact, a clear finding has been recorded by the Tribunal that question of financial stringency pleaded by assessee was not proved. Even otherwise, it has been held that financial stringency would not justify the non-remittance of TDS to the Government, in as much as, it would amount to utilization of money payable to the appropriate government. As such, by extending its benevolence, Tribunal has directed the AO to restrict the levy of penalty to a sum of Rs.20,55,573/-in substitution to Rs.77,95,155/-levied by AO. This finding would not call for interference by us particularly when assessee having been declared as an assessee in default under S. 201 (1) of the Act by order dated 30.07.2013 and said order having not been challenged by the assessee. (AY. 2013-14)
KBR Infratch Ltd v. ACIT (2020) 185 DTR 209 / 312 CTR 385 (Karn.)(HC)

2055 **S. 223 : Collection and recovery – Tax Recovery Officer – Charge over property – Attachment of property under Schedule II – Unless there is preference given to the Crown debt by a statute, the dues of a secured creditor have preference over Crown debts – As a charge over the property was created much prior to the notice issued by the TRO under Rule 2 of Schedule II to the Act and the sale of the property was pursuant to the order passed by the DRT, the sale is valid-Tax Recovery Officer restrained from enforcing attachment order. [S. 222]**

The Appellant filed the Writ Petition in the High Court of Judicature at Bombay seeking a restraint order against the Tax Recovery Officer for enforcing the attachment made under the Income Tax Act, 1961. for recovery of the dues. The Writ Petition was dismissed by the High court, aggrieved by which the Appeal has been filed. A recovery certificate in terms of the order passed by the DRT was issued and recovery proceedings were initiated against BPIL. The Recovery Officer, DRT III attached the property on 29.11.2002. A public auction was held on 28.09.2004. The DRT was informed that there were no bidders except the Appellant. The offer made by the Appellant to purchase the property for an amount of Rs.23,00,000/-was accepted. On 14.01.2005, a certificate of sale was issued in favour of the Appellant. The possession of the disputed property was handed over to the Appellant on 25.01.2005.. The Maharashtra Industrial Development Corporation informed that it received a letter dated 23.03.2006 from the Tax Recovery Officer stating that the property in dispute was attached by Respondent No.4 on 17.06.2003. The Appellant requested the Regional Officer, MIDC by a letter dated 10.04.2006 to transfer the property in dispute in its favour in light of the Sale Certificate issued by DRT on 25.01.2005. As the MIDC [failed to transfer the plot in the name of the Appellant, the Appellant filed a Writ Petition before the High Court seeking a direction for issuance of 'No Objection' in respect of the plot and to restrain Respondent from enforcing the attachment of the said plot, which was performed on 11.02.2003. The question posed before the High Court is whether the Appellant who bona fide purchased the property in auction sale as per the order of the DRT is entitled to have the property transferred in its name in spite of the attachment of the said property by the Income Tax Department. Relying upon Rule 16 of Schedule II to the Act, the High Court came to the conclusion that there can be no transfer of a property which is the subject matter of a notice. The High Court was also of the view that after an order of attachment is made under Rule 16(2), no transfer or delivery of the property or any interest in the property can be made, contrary to such attachment. The High Court held that notice under Rule 2 of Schedule II to the Act was issued on 11.02.2003, and the property in dispute was attached under Rule 48 on 17.06.2003, whereas the sale in favour of the Appellant took place on 09.12.2004 and the sale certificate was issued on 14.01.2005. Therefore, the transfer of the property made subsequent to the issuance of the notice under Rule 2 and the attachment under Rule 48, is void. The submission made on behalf of the Appellant that the sale in favour of the Appellant was at the behest of the DRT and not the defaulter i.e., BPIL was not accepted by the High Court. In view of the above findings, the High Court dismissed the Writ Petition. Apex Court held that the High Court failed to take into account the fact that the sale of the property was pursuant to the order passed by the DRT with regard to the property over which a charge was already created prior to the issuance of notice on 11.02.2003. As the charge over the property was created much prior to the issuance of notice under Rule 2 of Schedule II to the Act by

Respondent the judgment of the High Court is set aside and the Appeal is allowed. The MIDC is directed to issue a 'No Objection" certificate to the Appellant and the tax recovery officer is restrained from enforcing the attachment order dated 17.06.2003.
Connectwell Industries Pvt. Ltd. v. UOI (2020) 424 ITR 18 / 187 DTR 393 / 313 CTR 601 / 272 Taxman 1 (SC)

S. 225 : Collection and recovery – Stay of demand – Attachment – Once the demand of 20 % of tax in dispute is paid the attachment order passed u/s 226 (3)was unjustified and was set aside. [S. 220, 226 (3), Art. 226] 2056
An assessment order was passed raising the demand. The assesssee filed a petition for stay of demand before Assistant Commissioner who allowed stay petition on payment of 20 per cent of tax demand. High Court permitted assessee to pay 20 per cent of demand in five instalments. However, an order of attachment was passed by Principal Commissioner in terms of section 226(3) so as to insist assessee to pay such 20 per cent of tax demand. Thereafter, impugned order was modified holding that impugned attachment would be lifted on pursuant to payment of first instalment of 20 per cent of tax demand On writ the Court held that attachment order passed so as to insist assessee to pay an installment of 20 per cent tax demand would result in denial of benefit originally conferred upon assessee of allowing stay of demand on payment of 20 per cent of tax, therefore, impugned order of attachment was unjustified and same was to be set aside. (AY. 2012-13, 2013-14, 2015-16 to 2017-18)
Dhanalakshmi Srinivasan Chit Funds (P.) Ltd. v. PCIT (2020) 274 Taxman 45 (Mad.)(HC)

S. 225 : Collection and recovery – Stay of proceedings – Pendency of first appeal – Bank account cannot be attached without giving a reasonable opportunity of hearing-Attachment of bank account was set aside – Assessing Officer must objectively decide the application for stay considering that an appeal lies against his order – The matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.-Directed to hear the stay application within six weeks from the date of the order. [S. 226, 250, Art. 226] 2057
When the application for stay was pending Bank account was attached and recovered the tax. The assessee filed writ petition before High Court. Allowing the petition the Court held that in exercising the power of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship of the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order: the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue. Accordingly, the impugned order dated 31.01. 2020is hereby set aside and quashed. Further, the attachment of the bank account of the Petitioner being Account No. 4251570000839 in HDFC Bank, Chembur, Mumbai, is also set aside. Subsequent order dated 03.03. 2020 passed by Respondent No. 2 would also stand set aside and quashed. The matter is remanded back to Respondent No. 1 for a fresh consideration of the stay application of the Petitioner dated 22.01.2020 in accordance with law, keeping in mind the discussion made above.

The stay application be decided within a period of six weeks from today. Relied *UTI Mutual Fund v. ITO (2012)345 ITR 71 (Bom.)(HC) KEC International Limited v. BR Balakrishnan (2001) 251 ITR 158 (Bom.)(HC).* (AY. 2012-2013)
Mansukhlal Amritlal Modi v. ITO (2020) 195 DTR 255 / 318 CTR 320 (Bom.)(HC)

2058 **S. 225 : Collection and recovery – Stay of proceedings – Pendency of rectification application – Demands raised when application for rectification pending before jurisdictional Assessing Officer – Demand stayed till the disposal of rectification application. [S. 143(1), 154, Art. 226]**
Upon receipt of the order under S. 143(1) of the tax the assessee filed rectification application for set off brought forward losses. The Department raised demands for the assessment years 2012-13 and 2013-14. The assessee submitted that according to the information downloaded from the Department's website the rectification application was forwarded to the jurisdictional Assessing Officer but no action had been taken. On a writ the Court held that the records revealed the pendency of the rectification application which stood transferred to the jurisdictional Assessing Officer. The grievance of the assessee could be vindicated by issuing directions to the Department to take a call on the rectification application and to decide it within a period of 45 days. Till then, the demands raised were to be kept in abeyance. The assessee would be at liberty to assail the outcome of the decision of the rectification petition if he so chose. (AY.2012-13, 2013-14)
Paiva Manufacturing Co. v. ITO (2020) 425 ITR 640 / 274 Taxman 158 (Ker.)(HC)

2059 **S. 225 : Collection and recovery – Stay of proceedings – Pendency of appeal – Recovery of penalty is stayed till the disposal of the appeal. [S. 271(1)(c), Art. 226]**
On writ the Court held that as the appeal is pending, recovery of penalty is stayed till the disposal of appeal. (AY. 2011-12)
Sasken Technologies Ltd. v. JCIT (2020) 185 DTR 54 / 313 CTR 725 (Karn.)(HC)

2060 **S. 226 : Collection and recovery – Modes of recovery – Stay – Matter remanded.**
Court held that the assessing authority had evidently not considered the aspects of existence of a prima facie case, financial stringency and balance of convenience as had to be done prior to a proper adjudication of a petition for stay. The rejection of the application for stay of demand was not justified. Matter remanded. (AY. 2017-18)
Chetan Kothari v. PCIT (2020) 427 ITR 136 / (2021) 277 Taxman 189 (Mad.)(HC)

2061 **S. 226 : Collection and recovery – Stay – Penalty demand – Collected more than 20% of penalty in dispute – Revenue is directed to refund the excess of 20% collected by the revenue. [Art. 226]**
Allowing the petition the Court directed the revenue to refund the excess of 20% of the penalty collected by the revenue within four weeks. (AY. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11)
Tata Tele Services Ltd. v. PCT (2020) 196 DTR 145 / 317 CTR 841 (Delhi)(HC)

S. 226 : Collection and recovery – Modes of recovery – Stay of demand – Pendency of rectification application – No coercive steps to be taken till the rectification application is disposed off. [S. 80P, 154, 225, 250, Art.226] 2062

The assessee moved rectification application before the CIT(A) and claimed that the assessee is eligible deduction u/s. 80P of the Act. Meanwhile the coercive steps are initiated to recover the disputed tax amount from the society. The assessee filed the writ before the High Court. High Court directed the CIT(A) to hear the rectification application without much delay and CIT(A) must pass the order with in a period of 4 to 6 weeks from the date of production of certified copy of the judgment. The court also further directed that until such orders are passed, coercive steps for enforcement, shall be kept in abeyance by officers concerned. (WP No. 601 of 2020 dt 22-1-2020). (AY. 2015-16)

Manambur Serices Co-Co-Operative Bank Ltd v. ITO (2020) The Chamber's Journal-March-P. 116 (Ker.)(HC)

S. 226 : Collection and recovery – Recovery – Stay – Interim order – Appeal – Right of appeal a statutory – Appeal not maintainable from interim order of Single Judge. [S. 119, 127, 225, Chhattisgarh High Court (Appeal To Division Bench) Act, 2006, S. 2(1), Art. 226]. 2063

Validity of the interim order dated 05.09.2019 passed by the learned Single Judge in WPT No.118 of 2019 is put to challenge in this appeal. By virtue of the said order, the I.A. No.1 of 2019 filed by the Appellant to grant interim stay of recovery of the tax assessed under the relevant provisions of the Income Tax Act, 1961 came to be rejected. It is contended that the said order is not in conformity with the mandate of the Circulars issued by the Central Board of Direct Taxes (CBDT) at different points of time, as to the course to be pursued in granting stay of recovery proceedings by the authorities of the Department. Dismissing the appeal the Court held that the right of appeal being a statutory one, it could be preferred only in terms of the statute. The proviso to S. 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 clearly shows that no appeal is maintainable against an interim order passed by a single judge. Unless the order finally adjudicates the lis, it cannot be treated as an order from which appeal lies. (Single Judge order *Amolak Singh Bhatia v. PCIT (2020) 193 DTR 397 / 316 CTR 693 (Chhattisgarh)(HC)*(Dt. 5-9-2019))(AY.2001-02 to 2007-08) (dt.19-12-2019) *Amolak Singh Bhatia v. PCIT (2020) 426 ITR 193 / 269 Taxman 388 / 193 DTR 385 / 316 CTR 680 (Chhattisgarh)(HC)*

S. 226 : Collection and recovery – Modes of recovery – Garnishee proceedings – Recovery effected on same day and garnishee proceedings initiated within two days of amount becoming due – Guide lines – Order of single judge modified. [S. 80P(4), 226(3) (iii)] 2064

The assessee filed writ against the garnishee proceedings u/s 226(3)(iii) of the Act. The single judge disposed of it directing the appellate authority to consider and pass orders on appeal within three months. On appeal the Court held that the Assessing Officer had to conduct an enquiry into the factual situation with respect to the activities of the society, in order to satisfy himself as to the conclusions arrived at and also as to whether or not the benefits under section 80P could be extended. Court also held that the recovery from the bank had been done in a manner depriving the interest of the

assessee and without following the guidelines which ought to have been followed in the matter of garnishee attachment and recovery. The recovery was effected on the same day when the notice was issued to the garnishee, that too within 2 days of the amount having become due. Mere forwarding of a copy of the notice, after effecting recovery, would not in any way serve the object underlying the legislative intent in introducing clause (iii) of section 226(3), especially because the Department ought to have considered the pendency of the appeal. However, since the amount had already been collected against the existing demand, release of the amount was not directed, unless the assessee furnished bank guarantee for the entire amount.

Andoorkonam Service Co-Operative Bank Ltd. v. ITO (2020) 424 ITR 283 / 194 DTR 140 / 317 CTR 111 (Ker.)(HC)

Editorial : Order of single judge is modified.

2065 **S. 226 : Collection and recovery – Stay – Appeal pending before Commissioner (Appeals) – Request to keep the demand in abeyance – Assessing Officer refusing and directing to pay 20 Per Cent. of demand – Held to be not proper – Commissioner (Appeals) was directed to hear the appeal expeditiously. [S. 246A]**

Court held that if the demand was under dispute and subject to the appellate proceedings, then, the right of appeal vested in the assessee by virtue of the statute would be rendered illusory and nugatory by the communication from the Assessing Officer. If the amount as directed by the communication was not brought in, the assessee might not have an opportunity to even argue his appeal on the merits or the appeal might become infructuous, if the demand was enforced and executed during its pendency. In that event, the right to seek protection against collection and recovery pending appeal by making an application for stay would also be defeated and frustrated. Such was not the mandate of law. Once it was an appealable order and the appeal had been filed and it was pending, the assessee should have been given either an opportunity to seek a stay during the pendency of the appeal, which power was conferred admittedly on the Commissioner or the Assessing Officer should have kept the demand in abeyance as prayed for by the assessee.

The court directed that the appellate authority should conclude the hearing of the appeals as expeditiously as possible, that during the pendency of the appeals before the Commissioner (Appeals), the attachment, if any, of the assessee's bank account should be lifted and that the assessee should not be called upon to make payment of any sum, much less to the extent of 20 per cent under the assessment order or confirmed demand. (AY.2015-16)

Bhupendra Murji Shah v. Dy.CIT (2020) 423 ITR 300 (Bom.)(HC)

2066 **S. 226 : Collection and recovery – Stay – Pendency of appeal – High pitched assessment – Notional rent – Prima facie case for grant of stay. [S. 12A, Art. 226]**

On writ the Court held that a prima facie case had been made out by the assessee since the associate companies were its tenants from the date when the assessee obtained exemption from payment of Income-tax under section 12A(a) of the Act from the year 1973 onwards. The Department had raised the issue only for the assessment year 2016-17 even though income tax returns were filed by the assessee disclosing the tenancy, right from the date when it was granted exemption from payment of Income-tax under

section 12A(a). The Assessing Officer ought to have considered all these aspects and should have granted stay of the order. The order was not valid. (AY. 2016-17)
TVS Charities v. ITO(E) (2019) 104 CCH 0738 / (2020) 422 ITR 548 / 192 DTR 67 / 315 CTR 914 (Mad.)(HC)

S. 226 : Collection and recovery – Appeal Against assessment pending before Tribunal – High Court will not interfere – Department was directed to release the buses solely for use in college activities – Tribunal is directed to take up the stay petition and appeal for hearing and disposal forthwith. [S. 12AA, 153A, Art. 226] 2067
The assessee filed the writ against the recovery when the appeal was pending before the Appellate Tribunal. The Court held that the sequence and events revealed that the assessee had rightly approached the appellate authorities challenging the cancellation of registration under section 12AA as well as the orders of assessment dated March 28, 2013. The litigation was now pending before the Appellate Tribunal, the final fact finding authority. There was no avenue to interfere with the orders of assessment at this juncture, also because the orders of assessment stood telescoped into appellate orders passed by the Commissioner (Appeals) and by the Tribunal. The second limb of the prayer in the writ petitions was to direct the Tax Recovery Officer not to take coercive action till the disposal of the writ petitions. The interests of justice would be served if the Tribunal took up the stay petitions for hearing and disposal forthwith. As regards the attachment of the movables, the buses were used to facilitate the movement of students between their homes and the college. Students should not be made to suffer on account of the conflict inter se the assessee and the Department. Thus, while the attachment dated February 7, 2019 would continue, the Department was directed to release the buses to the assessee solely for use in college activities. (AY. 2010-11, 2011-12)
Prathyusha Educational Trust v. Tax Recovery Officer (2019) 104 CCH 0736 / (2020) 422 ITR 291 (Mad.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Pendency of appeal before CIT(A) – CIT(A) is directed to hear the appeal with on four weeks from the date of the receipt of an authenticated copy of the order – Stay proceedings were stayed. [S. 179, 226(3)] 2068
The AO disallowed the expenses u/s. 60, 63 of the Act and raised the demand on the assessee. The appeal is pending before the CIT(A). The AO issued garnishee notices to the Directors u/s 179 of the Act. When the appeal was pending the revenue issued notice u/s 179 of the Act to the Directors. On writ the High Court directed the CIT(A) hear the appeal with on four weeks from the date of the receipt of an authenticated copy of the order. Stay proceedings were stayed. *UTI Mutual Fund v ITO (2012) 345 ITR 71 (Bom.) (HC) WPNo. 228 of 2020 dt 24-01-2020)*
Teleperformance BPO Holdings Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)

S. 234A : Interest – Default in furnishing return of income – Waiver of interest – Legal and financial disability for a long period due to subsistence of winding up order, no interest would be payable under sections 234A, 234B and 234C for aforesaid period. [S. 119(2)(a), 234B, 234C, Art. 226] 2069
Assessee-company became financially too weak to defend itself even during proceedings of winding up. In reassessment order, tax liability was determined and interest under

sections 234A and 234B was levied on assessee. In meantime, assessee-company was sought to be wound up by its creditors, and on 18-6-2001 order of winding up was passed by High Court. Subsequently, another order was passed on 27-10-2006 for reconstruction and revival of assessee's operations; thus, assessee-company was under a legal disability during period between 18-6-2001 and 27-10-2006. Assessee, during aforesaid period, was under control of Court and official liquidator. The waiver petition for waiver of interest was dismissed by the CBDT. On writ interest under sections 234A, 234B and 234C was to be waived for period between 18-6-2001 and 27-10-2006 i.e., during subsistence of winding up order. (AY. 1995-96 to 1997-98)
TVL Sanmac Motor Finance Ltd. v. CCIT (2020) 271 Taxman 51 (Mad.)(HC)

2070 **S. 234A : Interest – Default in furnishing return of income – Assessment consequent on order of remand – Interest payable. [S. 2(8), 143(3), 144]**
The word assessment as defined under section 2(8) of the Act has a comprehensive meaning and includes all steps and proceedings taken for determination of tax payable and for imposing liability on the assessee. It includes reassessment as well. Therefore, even after the matter is remitted, and an order of assessment is passed, it is referable to section 143 or section 144. Explanation 3 only protects the assessee from levy of interest and confines it when the original order of assessment is passed and not when the modified order of assessment is passed. Even though in a proceeding for remand, the original order of assessment gets effaced, and a fresh order of assessment is passed, or is passed under section 143(3) of the Act in view of the decision of the Supreme Court in Modi Industries, the expression regular assessment has to be deemed to have been completed on the date when the first order of assessment has been passed and not when the modified order of assessment has been passed. Interest is chargeable up to the date of first assessment order passed by the Assessing Officer. (AY. 1992-93)
Mahesh Investments v. ACIT (2020) 429 ITR 284 / 196 DTR 284 / (2021) 277 Taxman 161 (Karn.)(HC)

2071 **S. 234A : Interest – Default in furnishing return of income – Waiver of interest – Power of CBDT – Incapacitated for making any payment due to wound up – Entitle to partial relief. [S. 119, 234B, 234C]**
Waiver application of the petitioner for waiver of interest was rejected on the ground that the case of the company did not fall within any of the circumstances specified in the Central Board of Direct taxes Notification dt. 26-06-2006 being reference No. F.No. 400/29/2002-IT(B), and further the company had sufficient liquidity to pay the advance tax and income tax therefore it cannot be stated that the Company encountered any hardship to pay the tax or file the returns on time. On writ the Court held that, though the assessee was not specifically covered any of the situation contemplated in the notification, the assessee entitle for a partial relief dehors the notification, as the assessee was legally Incapacitated for making any payment due to wound up. (WP No. 12500 of 2010 dt 10-2-2020) (AY. 1995-96, 1996-97)
Tvl. Sanmac Motor Finance Ltd. v. CCIT (2020) 16 taxmann.com 437 / 271 Taxman 51 (Mad.)(HC)

S. 234A : Interest – Default in furnishing return of income – Waiver of interest – Delay in filing of return was due to impounding of documents in the course of survey. [S. 234B, 234C, Art. 226] 2072

Assessee moved application for waiver of interests levied u/s 234A, 234B and 234C of the Act. Petition for waiver of interests was rejected. On writ the Court held that the delay caused in filing the return if to be attributed to the impounding of the documents during survey proceedings, the interest under S.234A of the Act for the default committed in filing the return of income would be waived of, but not the interest leviable under S. 234B and 234C, the default in payment of advance tax and for deferment of advance tax. (AY. 2009-10, 2010-11)

Shankarlal Jain v. CCIT (2020) 185 DTR 220 / 312 CTR 296 / 273 Taxman 477 (Karn.)(HC)

S. 234A : Interest – Default in furnishing return of income – Advance tax – Interest is chargeable is with reference to returned income and not assessed income. [S. 234B] 2073

Tribunal held hat interest under S. 234A and 234B was chargeable with reference to the returned income and not the assessed income. (AY.2014-15)

Bajrang Lal Naredi v. ITO (2020) 77 ITR 91 (SN) / 203 TTJ 925 / 187 DTR 49 (Ranchi)(Trib.)

S. 234A : Interest – Default in furnishing return of income – Search and Seizure – Levy of interest mandatory – No waiver of interest. [S. 153A, 234B, 234C] 2074

The assessee filed a return beyond the time stipulated in the notice issued by the AO. Even for the assessment year 2015-16, the return was filed belatedly pursuant to the notice issued under S. 153A while no return of income was earlier filed by assessee for the assessment year 2015-16 under S. 139(1). The AO computed interest as provided under S. 234A which was confirmed by the CIT(A) On appeal the Tribunal held that the provisions of S. 234A and 234B are consequential in nature and mandatory. Where the assessee had made disclosure only after detection in the search there was no voluntary disclosure and hence the assessee could not claim the benefit of waiver of interest under S. 234A, 234B and 234C. The AO was directed to look into the grievance of the assessee as to error in computation of interest under S. 234A and 234B and pass orders in accordance with law. (AY. 2009-10 to 2015-16)

J. Sunder v. ACIT (2020) 77 ITR 1 (SN) (Chennai)(Trib.)

S. 234B : Interest – Advance tax – Non-Resident – It was obligation of payer to deduct entire tax at source and, assessee was not liable to pay any advance tax and, thus, interest cannot be charged. 2075

Dismissing the appeal of the revenue the Court held that issue with regard to the chargeability of interest under Section 234B of the Income-Tax Act, 1961 in the case of non-resident is covered against the revenue by *DIT (IT) v. Jacabs Civil Incorporated (2011) 330 ITR 578 (Delhi) (HC) and DIT (IT) v. GE Packaged Power Inc (2015) 373 ITR 65 (Delhi) (HC).*

CIT(IT) v. Andritz AG (2020) 113 taxmann.com 407 (Delhi)(HC)

Editorial : SLP is granted to the revenue, CIT (IT) v. Andritz AG (2020) 269 Taxman 205 (SC)

2076 **S. 234B : Interest – Advance tax – Waiver of interest – Bonafide belief based on the basis of judgements of Tribunal or High Courts at the time of filing of return – Matter remanded to CBDT to consider if the assessee is able to show existence of any s judgment of Tribunal/High Court though not necessarily of jurisdictional Tribunal/High Court, no interest was to levied upon assessee. [S. 80HHC, 119, Art. 226]**

Assessee, an exporter of leather products, had assumed that it was entitled to claim deduction under section 80HHC and, therefore, had failed to pay advance tax on its export turnover. However, later on, assessee had paid required advance tax but after a delay. Assessment was processed and an assessment order was passed. Since there was delay in payment of advance tax, assessee was called to pay interest under section 234B of the Act. The assessee filed waiver petition before the CBDT which was rejected. The assessee filed writ petition before High Court against the rejection order and contended that it entertained bona fide view that it was entitled to claim benefit of deduction under section 80HHC on basis of fact that between assessment years 1992-93 and 1994-95, there were several decisions of original and appellate authorities wherein it was concluded that an exporter was not required to pay income tax on export turnover. Allowing the petition the Court held that if indeed there were decisions of Tribunals and/or of High Court though not necessarily of jurisdictional Tribunal/High Court, assessee could be stated to have entertained a bona fide view to not to pay tax on such turnover, however, since assessee had not shown any decision of Tribunal or High Court at time of filing return, assessee could not be entitled to waiver Therefore, matter was to remanded back to Tribunal and if assessee was able to show existence of any such judgment of Tribunal/High Court though not necessarily of jurisdictional Tribunal/High Court, no interest was to be levied upon assessee. (AY.1992-93 to 1994-95, 2002-03, 2004-05)

E. K. Hajee Mohamed Meera Sahib & Sons v. CCIT (2020) 274 Taxman 432 (Mad.)(HC)

2077 **S. 234B : Interest – Advance tax – Non-Resident – Levy of interest is not liable. [S. 195]**

Dismissing the appeal of the revenue the Court held that if payer, who was required to make payments to non-resident, had deducted tax at source, question of payment of advance tax by payee would not arise and, therefore, it would not be permissible for revenue to charge interest under section 234B. (AY. 2005-06, 2006-07)

DIT(IT) v. Texas Instruments Incorporated (2020) 275 Taxman 614 (Kern.)(HC)

2078 **S. 234B : Interest – Advance tax – Book profit – No liability to pay advance tax on book profits as per the ruling of High Court – Subsequent over-ruling of High Court decision by Supreme Court – Interest not Chargeable. [S. 115JB, 234C]**

The Assessing Officer computed the assessee's book profit under S. 115JB of the Act and charged interest thereon under S. 234B and 234C of the Act. The CIT(A) deleted the interest by following the judgement in *Kwality Biscuits Ltd. v. CIT [2000] /243 ITR 519 (Karn.) (HC)* Appellate Tribunal referred the decision in *Jt. CIT v. Rolta India Ltd. [2011) 330 ITR 470 (SC)* wherein the Court held that where MAT companies defaulted in payment of advance tax in respect of tax payable under S. 115JB of the Act it was liable to pay interest under S. 234B and 234C of the Act. However, according to the Appellate Tribunal, the judgment of the Supreme Court in Rolta India Ltd. (supra) was delivered subsequently which would not discredit the bona fide reason entertained by the assessee in not depositing the advance tax on MAT in view of the prevailing

judgment of the Karnataka High Court in Kwality Biscuits Ltd. (supra) which was then holding the field. Accordingly the Appellate Tribunal held that there was no reason to interfere with the finding of the first appellate authority, albeit on a different ground. On appeal by the revenue the Court held that in *Star India (P.) Ltd. v. CCE [2006] 280 ITR 321 (SC),* considered the question of payment of interest in default of payment of the tax in the context of service tax it was held that liability to pay interest would only arise on default and is really in the nature of a quasi punishment which is followed in *CIT v. JSW Energy Ltd. [2015] 379 ITR 36 (Bom.)(HC).* Accordingly the High Court up held the order of the Appellate Tribunal by observing that when there was no liability to pay advance tax on book profits as per the ruling of High Court and subsequent over-ruling of High Court decision by Supreme Court, interest not Chargeable. (AY.2004-05, 2005-06)
PCIT v. Mangalore Refinery and Petrochemicals Ltd. (2020) 426 ITR 266 / 272 Taxman 441 / 191 DTR 47 / 316 CTR 842 (Bom.)(HC)

S. 234B : Interest – Advance tax – Paying four instalments of advance tax prior to search and seizure – Communication sent to adjust advance tax against cash seized during search – Date of communication to be taken as date of payment of advance tax. [S. 132B, 234C] 2079

The assessee agreed to disclose Rs. 50 lakhs and stock of Rs. 1.40 crores as additional income for the assessment year 2007-08 and sent a communication dated March 15, 2007, in which a request was made to treat Rs. 50 lakhs out of the cash seized as advance tax payable by the assessee for the assessment year 2007-08. The AO has not allowed the interest on cash seized. The CIT(A) held that the assessee was entitled to relief in respect of the interest from the date of filing of the return till the date of the order of assessment and partly allowed the appeal. The Tribunal dismissed the appeal filed by the assessee. On appeal the court held that the date of payment of tax by the assessee was March 15, 2007, i.e., the date on which the request was made by the assessee to adjust the cash seized against the advance tax payable towards the tax for the assessment year 2007-08. The assessee had offered a sum of Rs. 50 lakhs on March 15, 2007 towards the advance tax payable for the assessment year 2007-08. According to the statement of income prior to the seizure of cash, the assessee had also paid advance tax in four instalments. However, the Department did not adjust these amounts even though the cash was available with it. The date of payment of tax shall be taken as March 15, 2007, i. e., the date on which the request was made by the assessee to adjust the cash seized against the advance tax payable for the assessment year 2007-08. (AY. 2007-08)
Marble Centre International P. Ltd. v. ACIT (2020) 425 ITR 654 / 192 DTR 337 / 316 CTR 1 / 272 Taxman 248 (Karn.)(HC)
RPG Marble Pvt. Ltd. v. ACIT (2020) 425 ITR 654 / 192 DTR 337 / 316 CTR 1 / 272 Taxman 248 (Karn.)(HC)

S. 234B : Interest – Advance tax – Non-resident – Deduction of tax at source – It was obligation of payer to deduct entire tax at source and, assessee was not liable to pay any advance tax – Interest cannot be charged. 2080

Dismissing the appeal of the revenue the Court held that in case of assessee, a non-resident company, which executed projects in India, it was obligation of payer to deduct

entire tax at source and assessee was not liable to pay any advance tax and, accordingly, interest under S. 234B could not be charged from it.
CIT(IT) v. Andritz AG. (2020) 113 taxmann.com 407 / 269 Taxman 206 (Delhi)(HC)
Editorial : SLP is granted to the revenue; CIT(IT) v. Andritz AG. (2020) 269 taxman 205 (SC)

2081 **S. 234B : Interest – Advance tax – Incremental income pursuant to Advanced Pricing Agreement – Liable to pay interest.**
Tribunal held that the assessee was liable to pay interest under section 234B on the incremental income pursuant to the advanced pricing agreement. (AY. 2013-14)
IBM India Pvt. Ltd. v. ACIT (2020) 83 ITR 24 (Bang.)(Trib.)

2082 **S. 234B : Interest – Advance tax – Failure by payer to deduct tax at source – Interest cannot be imposed.**
Tribunal held that that on failure by the payer to deduct the tax at source, no interest could be imposed on the assessee under section 234B of the Act. (AY.2004-05, 2008-09 to 2010-11)
General Motors Overseas Corporation v. ACIT(IT) (2020) 80 ITR 478 / 207 TTJ 404 (Mum.) (Trib.)

2083 **S. 234B : Interest – Advance tax – Book profit – Retrospective amendment to provision of S. 115JB – Not liable to pay interest. [S. 115JB]**
Tribunal held that liability for interest under S. 234B had arisen only on account of a retrospective amendment to provision of S. 115JB with effect from assessment year 2001-02, assessee would not have anticipated retrospective amendment at time of making payments for advance tax, but to estimate liability to pay advance tax on basis of existing provisions. Accordingly the liability of interest is deleted. (AY. 2006-07)
ACIT v. JSW Steel Ltd. (2020) 180 ITD 505 (Mum.)(Trib.)

2084 **S. 234C : Interest – Deferment of advance tax – Mere filing of review petition before Supreme Court could not be ground for not paying advance tax. [S. 119]**
An order and waived the interest on advance tax prior to June 15, 2013 but held that the assessee was liable to pay interest for failure to pay the advance tax prior to September 15, 2013 and accordingly, fixed the interest liability. The assessee filed a writ petition which the single judge dismissed. On appeal dismissing the appeal, that though the amount of advance tax was released to the assessee on October 3, 2013, it had accrued to it on July 15, 2013 when the Supreme Court dismissed the appeal of the bank. The Supreme Court had directed its Registry to release the amount in favour of the assessee on August 5, 2013. According to the order of the Central Board of Direct Taxes dated June 26, 2006 in such a situation, the assessee would be obliged to pay the advance tax and on the accrual of the income which had accrued on July 15, 2013. In the absence of any interim order, mere filing of a review petition before the Supreme Court was no ground for non-payment of advance tax.
Canbank Financial Services Ltd. v. Chief CIT (2020) 423 ITR 113 / 194 DTR 118 / 317 CTR 834 (Karn.)(HC)

S. 234C : Interest – Deferment of advance tax – Tax deductible at source – Income which is subject to such deduction and is taken into account in computing total income of assessee. 2085

Tribunal held that as per 'Explanation' to section 234C, for purpose of computing interest liability, tax due on returned income has to be reduced by any tax deductible at source in accordance with provisions of Chapter XVII on any income which is subject to such deduction and is taken into account in computing total income of assessee. (AY. 2013-14)

Goldman Sachs Investments (Mauritius) Ltd. v. DCIT (2020) 194 DTR 329 / 207 TTJ 913 (2021) 187 ITD 184 / (Mum.) (Trib.)

S. 234C : Interest – Deferment of advance tax – Tax deductible at source – Income which is subject to such deduction and is taken into account in computing total income of assessee. 2086

Tribunal held that as per 'Explanation' to section 234C, for purpose of computing interest liability, tax due on returned income has to be reduced by any tax deductible at source in accordance with provisions of Chapter XVII on any income which is subject to such deduction and is taken into account in computing total income of assessee. (AY. 2013-14)

Goldman Sachs Investments (Mauritius) Ltd. v. DCIT (2020) 194 DTR 329 / 207 TTJ 913 (2021) 187 ITD 184/ (Mum.)(Trib.)

S. 234D : Interest on excess refund – Deduction of tax at source – Refund granted for earlier period was adjusted against outstanding demand of relevant year – No interest is leviable. [S. 234B] 2087

Allowing the appeal of the assessee the Tribunal held that where amount of refund granted to assessee for earlier period was adjusted against outstanding demand for relevant year, no interest was leviable under S. 234D of the Act. (AY. 2007-08)

Bank of Tokyo-Mitsubishi UFJ Ltd. v. DCIT (2020) 180 ITD 300 (Delhi)(Trib.)

S. 234E : Fee – Default in furnishing the statements – Deduction of tax at source – Fee of Rs 200 for every day – Constitutional validity – Compensatory levy for extra burden on Income – Tax Department – Provision is valid. [S. 271H, Art. 14, 226] 2088

Dismissing the petition the Court held that S. 234E is not a penalty. Penalty is levied under section 271H and is not automatic. Penalty is levied only when tax deducted at source along with interest fee is not deposited and the statement is not filed within one year. If these two conditions are satisfied, then penalty is not leviable. On the other hand, S. 234E of the Act is only a late fee at the rate of Rs. 200 per day. S. 234E of the Act is purely compensatory and is a special benefit to the advantage of the assessee as well for belatedly filing the tax deducted at source statement. S. 234E is meant to ensure that the assessee files the statement in time, so that the Department can clear the returns of the persons connected with the assessee, i.e., from whom tax has been deducted at source, without any delay and accurately. S. 234E is valid.

Qatalys Software Technologies Pvt. Ltd. v. UOI (2020) 424 ITR 143 / 192 DTR 341 / 316 CTR 5 / 272 Taxman 119 (Mad.)(HC)

QSource Global Consulting (P) Ltd. v. UOI (2020) 424 ITR 143 / 192 DTR 341 / 316 CTR 5 / 272 Taxman 119 (Mad.)(HC)

Jean Park (India)(P.) Ltd. v. ITO (2020) 424 ITR 143 / 192 DTR 341 / 316 CTR 5 / 272 Taxman 119 (Mad.)(HC)

2089 **S. 234E : Fee – Default in furnishing the statements – Returns prior to 1-6-2015, no fee for period of default can be levied. [S. 200A]**
Tribunal held that no fee for period of default can be levied under section 234E in terms of section 200A for defaults in filing TDS/TCS statements/returns where defaults are prior to 1-6-2015. (AY. 2015-16)
Additional DIGP v. DCIT (2020) 185 ITD 525 (Delhi)(Trib.)

2090 **S. 234E : Fee – Default in furnishing the statements – Deduction of tax at source – Delay in filing return – Amendment is prospective. [S. 200A(1)(c)]**
Tribunal held that prior to the amendment to section 200A with effect from June 1, 2015, the Assessing Officer was not given the power to levy for late fee while processing the statement or return of tax deduction at source. The assessee delivered the statement and return of tax deduction at source and the Assessing Officer had issued intimation much prior to the amendment. Therefore, the adjustments made by the Assessing Officer while issuing intimation under section 200A(1) of the Act, without any enabling provision was sustainable. In the absence of any continuous delay, even after June 1, 2015 the adjustment made by the Assessing Officer was not justified. [The assessee did not press the appeals against the levy of late fee under section 234E pertaining to the delay after the amendment to the provision of section 200A(1) with effect from June 1, 2015. (AY.2013-14 to 2015-16)
Elchico Hotels and Restaurants P. Ltd. v. Dy. CIT (CPC)(TDS) (2020) 84 ITR 52 (SN) (All.) (Trib.)

2091 **S. 234E : Fee – Default in furnishing the statements – Order pertaining period prior to 1-6-2015 Matter remanded to the file of CIT(A). [S. 200A, 250]**
Assessee was engaged in business of property development and systems integration. It had filed TDS return under section 200(3) on 23-5-2013. The AO passed order under section 200A levying late fees under section 234E. CIT(A) also affirmed the order of the AO. On appeal before the Tribunal the assessee contended that late fee was not applicable as order under section 200A pertained to period prior to 1-6-2015 and also there existed a reasonable cause. Tribunal remanded the matter to the file of the CIT(A). (AY. 2013-14 to 2015-16)
3S Technologies & Automation (P.) Ltd. v. ACIT (2020) 184 ITD 895 (Bang.)(Trib.)

2092 **S. 234E : Fee – Default in furnishing the statements – Delay in submitting the return – Levy of late fee is mandatory. [S. 200(3)]**
Assessee made various payments in respect of carrying out those programs and deducted TDS on those payments. However, there was delay in submitting TDS statements as required under section 200(3) for each quarter. The assessee contended that due to paucity of staff and technical knowledge, there was delay in submitting quarterly TDS statements. The AO levied the late fee which was affirmed by the CIT(A) On appeal the Tribunal held that levy of late fee under section 234E is mandatory in nature and AO has no discretion to take its own decision but he has to make adjustment on account of levy of late fee as provided under section 234E in

case there is a delay in submitting TDS statement. Accordingly the order of the AO is affirmed. (AY. 2016-17, 2017-18)
Block Development Officer v. ACIT (2020) 183 ITD 334 / 193 DTR 249 / 206 TTJ 862 (Jaipur)(Trib.)

S. 234E : Fee – Default in furnishing the statements – Provision Prospective – No demand could be made for Assessment Years for periods prior to 1-6-2015. [S. 200A(1)(c)] 2093
The Tribunal held that the provisions of section 200A(l)(c), (d) and (f) of the Income-tax Act, 1961 came into force with effect from June 1, 2015 and hence, there was no authority or competence or jurisdiction on the part of the Department to compute and determine the fee under section 234E in respect of an assessment year relevant to an earlier period or returns prior to June 1, 2015. When no express authority was conferred by the statute under section 200A prior to June 1, 2015 for computation of any fee under section 234E nor its determination, the demand or the intimation for the previous period or previous year prior to June 1, 2015 could not have been made. Accordingly, that in the light of the effective date of amendment, i.e., June 1, 2015 the Assessing Officer was directed to delete the fee levied under section 234E for the assessment years 2013-14 and 2014-15. (AY.2013-14, 2014-15)
AVV Enterprises P. Ltd. v. Dy. CIT (2020) 78 ITR 60 (SN) (Delhi)(Trib.)

S. 234E : Fee – Default in furnishing the statements – No power in authority either to compute and collect any fee – Demand prior to 1-6-2015 – Not sustainable. [S. 200A] 2094
Tribunal held that when the statute confers no express power under section 200A before June 1, 2015 on the authority either to compute or collect any fee under section 234E, the demand for the period before June 1, 2015 could not be sustained. Further, Circular No. 19 of 2015 dt 10-12-2015 (2015) 379 ITR 107 (st) clearly emphasised that the amendments would take effect only from June 1, 2015. In the instant case, the assessment year being 2013-14, there could not be any levy of fees under section 234E. (AY.2013-14)
Travel Trails India P. Ltd. v. ACIT, TDS (2020) 79 ITR 37(SN) (Cochin)(Trib.)

S. 234E : Fee – Default in furnishing the statements – Deduction of tax at source – Amendment enabling levy of late fee for default in furnishing statement brought in with effect from 1-6-2015 – Prospective in nature – Levy of late fees while processing statement of tax deducted at source before amendment – Not sustainable. [S. 200A] 2095
Tribunal held that demand in respect of levy of fees under section 234E was brought into effect from June 1, 2015. The fee under section 234E was levied in the statements processed under section 200A before June 1, 2015. The Commissioner (Appeals) erred in confirming the levy of late fees under section 234E by the Assessing Officer. (AY.2013-14, 2014-15)
Oswal Computers and Amp Consultants Pvt. Ltd. v. ITO (TDS) (2020) 79 ITR 426 (Indore) (Trib.)
Keshav Industries Pvt. Ltd. v. ITO (TDS) (2020) 79 ITR 426 (Indore)(Trib.)
Padmavati Retail India Pvt. Ltd. v. ITO (TDS) (2020) 79 ITR 426 (Indore)(Trib.)

2096 **S. 234E : Fee – Default in furnishing the statements – Provision prospective – No demand could be made for AYs prior to 1-6-2015. [S. 200A(1)(c)]**
On appeal, the Tribunal held that the provisions of S. 200A(l)(c), (d) and (f) of the Act came into force with effect from June 1, 2015 and hence when no express authority was conferred by the statute under S. 200A of the Act prior to June 1, 2015 for computation of any fee under S. 234E of the Act nor its determination, the demand or the intimation for the previous period or previous year prior to June 1, 2015 could not have been made. Accordingly, in the light of the effective date of amendment, i.e., June 1, 2015, the Assessing Officer was directed to delete the fee levied under S. 234E of the Act for the AYs 2013-14 and 2014-15. (AY.2013-14, 2014-15)
AVV Enterprises P. Ltd. v. DCIT (2020) 78 ITR 60 (SN) (Delhi)(Trib.)

2097 **S. 234F : Fee for default in furnishing return of income – Delay in filing return – Levying fee – Provision is held to be valid. [Art. 14, 226]**
Dismissing the petition the Court held that, a provision can be held unconstitutional only when the Legislature was incompetent to bring out the legislation or it offends some provision of the Constitution or when it is manifestly arbitrary. Parliament is competent to pass legislation on taxes on income under entry 82 of List I of the Seventh Schedule to the Constitution. Section 234F of the Income-tax Act, 1961 is not violative of any of the other provisions of the Act or the Constitution of India. The classification of all such defaulters as one class is a reasonable classification and does not offend article 14 of the Constitution of India.
K. Nirai Mathi Azhagan v. UOI (2020) 423 ITR 339 / 192 DTR 359 / 316 CTR 23 (Mad.) (HC)

2098 **S. 237 : Refunds – Verification of tax deducted at source – Technical glitches and enable TRACES portal – Income-tax Authorities are directed to decide the assessee's request within four weeks. [S. 200A, Art. 226]**
Assessee filed writ petition seeking direction to Income-tax Authorities to remove technical glitches and enable TRACES portal so that it could file refund application for excess TDS amount deposited. Assessee was to be directed to follow established procedure prescribed by department and the Income-tax Authorities are directed to decide the assessee's request within four weeks thereafter.
Clean Wind Power Kurnool (P.) Ltd. v. Dy.CIT (2020) 274 Taxman 408 / 191 DTR 125 / 315 CTR 345 (Delhi)(HC)

2099 **S. 237 : Refunds – Delay in processing refund – Duties of tax Authorities – Directed to process return of income as expeditiously as possible and pay refund to assessee if any due. [S. 143(1), Art. 226]**
Assessee filed a loss return of income and sought refund of excess amount paid as tax in view of tax deduction at source done by assessee's customers. Since return of income was not processed despite various letters, assessee filed writ petition seeking directions to Assessing Officer to process return and refund amount due to assessee. Allowing the petition the Court held that since there was no reason forthcoming from revenue as to why delay occurred in processing refund claim of assessee and undue hardship

was being suffered by assessee only because tax authorities were not discharging their duties, tax authorities were to be directed to process return of income as expeditiously as possible and pay refund to assessee if any due. (AY.2018-19)
Aegis Customer Support Services (P) Ltd. v. ITO (2020) 271 Taxman 198 (Bom.)(HC)

S. 237 : Refunds – Tax deducted at source – Return filed under Section 139(4) – Delay of 335 days – Condonation of delay – Reasonable cause – Genuine hardship – Directions for processing of application for refund. [S. 119(2)(b), 139(4), 239, Art. 226] 2100
The assessee submitted an application under section 119(2)(b) before the Commissioner stating that on the grounds of his old age and on account of the illness of his wife he was not able to send the acknowledgment to the Central Processing Centre within the stipulated time and also filed form-26AS which reflected the tax deducted at source. The Principal Commissioner rejected the assessee's application for condonation of delay in sending the acknowledgment to the Central Processing Centre stating that no reasonable cause had been shown by the assessee for the delay in sending ITR V to the Central Processing Centre. On a writ petition allowing the petition, that reasonable cause for the delay was explained in the application submitted by the assessee. It was a case of genuine hardship to the assessee and the discretion should have been exercised in favour of the assessee. There was certainly a delay and the assessee was aged about 78 years, his wife was critically ill and was hospitalised for more than two months and he was running for the treatment of his wife. A discretion had been provided to the Principal Commissioner to condone the delay in such cases by the Central Board of Direct Taxes in the Circular dated June 9, 2015 [2015] 374 ITR (St.) 25). The Principal Director was directed to process the refund as claimed by the assessee condoning the delay. (AY.2015-16)
Laddulal Sharma v. PCIT (2020) 428 ITR 219 / 316 CTR 84 / 192 DTR 212 (MP)(HC)

S. 237 : Refunds – Interest on delayed refund becomes part of principal amount and also includes interest on delayed refund – Direction of the Tribunal to pay compensation in form of simple interest on amount due is held to be proper. [S. 243, 244A, 254(2)] 2101
On appeal the Tribunal directed the Department to pay compensation in the form of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to, on the delayed payment of excess tax paid. The Department filed a miscellaneous application before the Tribunal, which was dismissed as being misconceived and not maintainable and on the ground that there was no error apparent on the record. On appeal by the Department contending that there was no provision under section 244A for payment of interest on delayed refund and that the interest was rejected on the ground that the delay to issue refund was attributable to the assessee. Dismissing the appeal of the revenue the Court held that the interest on the delayed refund was part of the principal amount and the delayed interest included the interest for not refunding the principal amount. The net of interest partook the character of "amount due" under section 244A. The Tribunal was right in directing the Department to pay compensation in the form of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to under section 244A on the

delayed refund up to the date of issue of refund. *CIT v. H. E. G. LTD. [2010] 324 ITR 331 (SC)* followed. (AY.1996-97 to 1999-2000)
PCIT v. Solan District Truck Operators Transport Co-Operative Society (2020) 428 ITR 264 / 274 Taxman 397 (HP)(HC)

2102 **S. 237 : Refunds – Delay in refund of excess of tax deducted at source – Interest on delayed refund becomes part of principal amount and also includes interest on delayed refund – Department was directed to pay compensation in form of simple interest on amount due. [S. 243, 244A(2)]**
Dismissing the appeal of the revenue the Court held that, the interest on the delayed refund was part of the principal amount and the delayed interest included the interest for not refunding the principal amount. The net of interest partook of the character of "amount due" under section 244A. The Tribunal was right in directing the Department to pay compensation in the form of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to under section 244A on the delayed refund up to the date of issue of refund. Followed *CIT v. H. E. G. LTD. [2010] 324 ITR 331 (SC).* (AY. 1996-97 to 1999-2000)
PCIT v. Ambuja Darla Kashlog Mangoo Transport Co-Operative Society (2020) 428 ITR 94 / 269 Taxman 618 / 317 CTR 363 / 195 DTR 99 (HP)(HC)

2103 **S. 237 : Refunds – Tax deducted at source – Delay due to genuine hardship – Delay was condoned directions for processing of application for refund is issued. [S. 119(2)(b), 139(4), Art.226]**
Allowing the petition, that reasonable cause for the delay was explained in the application submitted by the assessee. It was a case of genuine hardship to the assessee and the discretion should have been exercised in favour of the assessee. The assessee did mention in his application about the illness of his wife, about hospitalisation of his wife and in all fairness, the delay should have been condoned. The tax deducted at source which the assessee claimed, was in respect of tax deducted at source by the State of Madhya Pradesh as the assessee was a Government advocate. The assessee's application for condonation of delay under section 119(2)(b) for claiming refund in respect of the assessment year 2015-16 was to be allowed. It was not a case of evasion of tax or that the assessee did not file return under section 139(4) but only that the acknowledgment was not forwarded to the Central Processing Centre within the prescribed time. There was certainly a delay and the assessee was aged about 78 years, his wife was critically ill and was hospitalised for more than two months and he was running for the treatment of his wife. A discretion had been provided to the Principal Commissioner to condone the delay in such cases by the Central Board of Direct Taxes in the Circular dated June 9, 2015 ([2015] 374 ITR (St.) 25). The Principal Director was directed to process the refund as claimed by the assessee condoning the delay. (AY.2015-16)
Laddulal Sharma v. PCIT (2020) 428 ITR 219 / 192 DTR 212 / 316 CTR 84 (MP)(HC)

S. 237 : Refunds – Application for refund of excess amount paid is rejected – Remedy of revision application is maintainable – Writ is not maintainable. [S. 197, 246A, 264, Art. 226] 2104
The assessee filed petition against order passed by AO rejecting its application seeking refund of excess amount paid as tax in relevant assessment year. The revenue raised objection to maintainability of petition itself. Court held that,if one contrasts S. 264 with S. 246A which provides for appeal, it would be noticed that unlike S. 246A which specifies sections from which an appeal would lie,S. 264 provides for revision from 'any order' under the Act. This is another indication that the Commissioner has very wide powers to correct any order passed by an officer subordinate to him. Accordingly the petition is dismissed. (AY. 2005-06)
Aditya Marine Ltd. v. DCIT (2020) 268 Taxman 230 (Bom.)(HC)

S. 237 : Refund – Order of refund attaining finality – Department cannot adjust admitted refund against future dues yet to be adjudicated – Entitle to refund – Department Withholding refund of Assessment Year 2014-15 – Provisions not attracted to refund of assessment Year 2014-15 or any Assessment year prior to Assessment Year 2017-18. [S. 143(1), 144C, 154, 241A, 245 Art. 226] 2105
The assessee filed rectification applications under S. 154 for rectification of certain mistakes. Since no refund was granted the assessee filed a writ petition before the High Court. On the writ petition being dismissed, the assessee filed an appeal before the Supreme Court. The Supreme Court directed the Department to refund the quantified amount in respect of the assessment year 2014-15 and to conclude the proceedings initiated pursuant to the notice under section 143(2) in respect of the assessment years 2016-17 and 2017-18 and dismissed the appeal. Thereafter the Department issued an intimation under S. 245 proposing to set off the outstanding tax dues according to their records for the assessment years 2000-01, 2004-05, 2005-06, 2006-07, 2007-08, 2012-13 and 2018-19 against the refund for the assessment year 2014-15. The assessee objected to the intimation. Thereafter the Department passed an order under S. 154 read with S. 143(3) wherein the net amount refundable to the assessee was determined after deducting the demands due for the various assessment years at Rs. 833 crores. The assessee sought for the refund in compliance with the order of the Supreme Court from the Pr.Commissioner but did not receive any refund. By a common order dated May 28, 2020 all the applications for rectification filed by it under section 154 were disposed of. On a writ allowing the petition the Court held that the Department cannot adjust admitted refund against future dues yet to be adjudicated, the assessee is entitle to refund. Court also held that the department cannot withhold the refund of Assessment Year 2014-15 as the provisions not attracted to refund of assessment Year 2014-15 or any assessment year prior to assessment Year 2017-18. Accordingly the Department was directed to refund the sum to the assessee.(AY.2014-15)
Vodafone Idea Ltd v. ACIT (2020) 425 ITR 691 / 272 Taxman 335 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Vodafone Idea Ltd (2020) 272 Taxman 406 (SC)

2106 **S. 241 : Refund – Power to with hold refund in certain cases – Rectification application – Respondents were to be directed to dispose of petitioner's rectification application within six weeks by way of reasoned order and respondent was also to pay petitioner's refund within three weeks thereafter. [S. 143(3), 154(8), 244A, Art. 226]**
Petitioner filed petition seeking refund determined vide assessment order dated 29-11-2019 under section 143(3) along with remaining interest from 30-11-2019 till date of issuance of refund and to decide petitioner's rectification application dated 19-11-2019 and grant consequential refund along with interest under section 244A from 1-7-2017 till date of issuance of refund. Petitioner contended that refund due to it had been withheld for without any reason and/or explanation Petitioner further submitted that under section 241A, Assessing Officer could pass an order withholding grant of refund (after satisfying all parameters laid down under section 241A) only during pendency of scrutiny assessment and not once an order under section 143 (3) had been passed and scrutiny assessment had concluded and also submitted that under section 154(8), statutory period to dispose of a rectification application is six months from end of month in which application was received, which already stood expired on 30-6-2020-He also relied upon circular No.14/2001 dated 9-11-2001 and CBDT Instruction No. 01/2016, dated 15-2-2016 wherein it is stated that time-limit of six months is to be strictly followed by Assessing Officer while disposing applications filed by assessee/deductor/collector under section 154. High Court directed to dispose of petitioner's rectification application within six weeks by way of reasoned order and respondent was also to pay petitioner's refund within three weeks thereafter. (AY. 2007-08)
L.S. Cable and system Ltd. v. UOI (2020) 274 Taxman 4 (Delhi)(HC)

2107 **S. 241A : Refund – Withholding of refund in certain cases – Review petition of the assessee is dismissed. [S. 143(1), 143(ID), 143(2)]**
Court in their order held that in respect of assessment years ending on 31-3-2017 or before, if a notice is issued under section 143(2), it shall not be necessary to process refund under section 143(1) and requirement to process return shall stand overridden and in such cases, no separate intimation is required to be given to assessee that processing of return in terms of section 143(1) would stand deferred; issuance of notice under sub-section (2) itself is sufficient indication. It was also held that section 143(1D) does not contemplate either issuance of any such intimation or further application of mind that processing must be kept in abeyance and, therefore, it would not be proper to read into said provision requirement to send a separate intimation. However, insofar as returns filed in respect of assessment year commencing on or after 1-4-2017, a different regime has been contemplated by Parliament and section 241A requires a separate recording of satisfaction on part of Assessing Officer that having regard to fact that a notice has been issued under section 143(2), grant of refund is likely to adversely affect revenue; where after, with previous approval of Principal Commissioner or Commissioner and for reasons to be recorded in writing, refund can be withheld Dismissing the review petition the Court held that there was no error apparent on record to justify inference in review jurisdiction. (RP No 1435 of 2020 in CA NO 2377 of 2020 order dt 21-7-2020 (AY. 2014-15 to 2017-18)
Vodafone Idea Ltd. v. ACIT (2020) 275 Taxman 591 / 192 DTR 87 / 315 CTR 624 (SC)

S. 241A : Refund – Withholding of refund in certain cases – Satisfaction to be recorded by the AO – The withholding of refund requires the previous approval of the PCIT with reasons to be recorded in writing – When assessment pursuant to notice under section 143(2) was pending and likelihood of substantial demands upon assessee after completion of scrutiny could not be ruled out, refund claim could not be allowed – When no action is initiated the Court directed the revenue to grant the refunds within four weeks. [S. 143(1), 143(2), 245] 2108

Till AY 2016-17, if a scrutiny notice u/s 143(2) is issued, the return is not required to be processed u/s 143(1) for grant of refund to the assessee. From AY 2017-18 & onwards, a different regime is prescribed by Parliament. S. 241A requires separate recording of satisfaction on part of the AO that having regard to the issue of notice u/s 143(2), the grant of refund is likely to adversely affect the revenue. The withholding of refund requires the previous approval of the PCIT with reasons to be recorded in writing. When assessment pursuant to notice under section 143(2) was pending and likelihood of substantial demands upon assessee after completion of scrutiny could not be ruled out, refund claim could not be allowed. Court observed that since the requisite action is not even initiated court directed that the amount of Rs.733 Crores shall be refunded to the appellant within four weeks from today subject to any proceedings that the Revenue may deem appropriate to initiate in accordance with law. Court also directed the respondents to conclude the proceedings initiated pursuant to notice under sub-section (2) of Section 143 of the Act in respect of AY 2016-17 and 2017-18 as early as possible. (AY. 2014-15, to 2017-18) (CA No.2377 of 2020 Arising out of SLP(Civil) No.1169 of 2019, Dt. 29/4/2020)

Vodafone Idea Ltd. (Earlier Known as Vodafone Mobile Services Ltd.) v. ACIT (2020) 424 ITR 664 / 189 DTR 26 / 315 CTR 1 / 273 Taxman 91 / 116 taxmann.com 393 (SC)

Editorial : Vodafone Mobile Services Ltd v. ACIT (2018) 100 taxmann.com 310 / (2019) 260 Taxman 417 (Delhi) (HC) is affirmed.

S. 241A : Refund – Withholding of refund in certain cases – Orders set aside and authorities directed to reconsider whether refund amount or part thereof liable to be withheld. [S. 143(1), 264, Art. 226] 2109

On writ the court set aside the order passed under section 264, the reasons given by the Assessing Officer for withholding of the refund and the approval given by the Principal Commissioner under section 241A. The court granted six weeks' time to the Department to reconsider whether the amount found due to be refunded, or any part thereof was liable to be withheld under section 241A failing which without awaiting any further orders, the Department should transmit the amount of refund along with interest to the assessee. The reasons recorded for withholding of refund under section 241A would only amount to a tentative view and would not come in the way of the Assessing Officer to make the assessment under section 143(3).(AY.2018-19)

Louis Dreyfus Company India Pvt. Ltd. v. PCIT (2020) 429 ITR 346 (Delhi)(HC)

2110 **S. 241A : Refund – Withholding of refund in certain cases – Limited scrutiny. [S. 143 (1), 143 (2), Art. 226]**
Allowing the petition the Court held that withholding of refund under section 241A, pursuant to notice under section 143(2), without recording justifiable reasons, was not in consonance with legislative intent and mandate of aforesaid provision, hence, had to be set aside. (AY. 2018-19)
Cooner Institute of Health Care & Research Centre (P.) Ltd. v. ITO (2020) 273 Taxman 216 / 193 DTR 1 / 315 CTR 900 (Delhi)(HC)

2111 **S. 241A : Refund – Withholding of refund in certain cases – Mere pendency of the proceedings under S. 143(2) in itself is not enough to withhold the refund. [S. 143(1), 143(2), Art.226]**
Allowing the petition the Court held that, here was no allegation that the tax was not being paid or that there was any irregularity in filing the returns. From the order and the record, it was evident that there was no reason recorded for coming to the conclusion that grant of refund was likely to adversely affect the Revenue. Mere pendency of the proceedings under S. 143(2) in itself is not enough to withhold the refund. The order was unsustainable.(AY.2017-18, 2018-19)
Huawei Telecommunications (India) Company Pvt. Ltd. v. UOI (2020) 426 ITR 572 / 195 DTR 233 / 317 CTR 571 (P&H)(HC)

2112 **S. 241A : Refund – Withholding of refund in certain cases – AO must apply his mind before withholding refund – Mere issue of notice for scrutiny assessment for a later assessment year cannot be aground for withholding refund. [S. 143(ID), 143(2)]**
Allowing the petition the Court held that AO must apply his mind before withholding refund. Mere issue of notice for scrutiny assessment for a later assessment year cannot be aground for withholding refund (WP No 7003 of 2019 dt 14-10 2019) (AY. 2017-18, 2018-19)
Maple Logistics P. Ltd. v. CIT (2020) 420 ITR 258 (Delhi)(HC)

2113 **S. 244A : Refund – Interest on refunds – Unauthorized retention of money by the Department – The Department is directed to pay interest as prescribed.**
Allowing the petition the Court held that, the interest on refund is compensation for unauthorized retention of money by the Department. When the collection is illegal & amount is refunded, it should carry interest in the matter of course. There is no reason to deny payment of interest to the deductor who had deducted tax at source and deposited the same with the Treasury. The Department is directed to pay interest as prescribed u/s 244A at the earliest (*UOI v. Tata Chemicals Ltd (2014) 363 ITR 658 (SC)* followed) (CA 3826 of 2012, dt. 12.12.2019)
Universal Cable Ltd. v. CIT (2020) 420 ITR 111 / 312 CTR 1 / 185 DTR 33 / 270 Taxman 170 (SC)
Editorial : Order in Universal Cable Ltd. v. CIT (2009) 26 DTR 98/ (2011) 237 CTR 157 (MP) (HC) is set aside.

S. 244A : Refund – Interest on refunds – Self assessment tax – Entitle to interest on refund. [S. 156, 244(1)(b)] 2114

Dismissing the appeal of the revenue the Court held that the Tribunal was correct in law, in holding that interest u/s 244A is to be allowed on the self assessment tax refunded to the assessee.

PCIT v. Bank of India (2020) 114 taxmann.com 188 (Bom.)(HC)

Editorial : SLP is granted to the revenue, PCIT v. Bank of India (2019) 418 ITR 17 (St.) / (2020) 270 Taxman 89 (SC)

Note : Also digested at Page No. 697, Case No. 2122.

S. 244A : Refund – Interest on refunds – Tax deducted by employer – Appellate Authorities have held that tax was not liable to be deducted – Entitle refund with interest. [S. 244A(1)(a)] 2115

Petitioner was allotted shares by his employer. Tax was deducted by employer. Appellate Authorities have held that the tax was not liable to be deducted. The assessee filed revised return and requested for refund of tax amount together with interest. Assessing Officer refunded only tax amount paid by petitioner's employer without any interest. On writ the Court held that there was no discussion as to why interest under section 244A was not payable to petitioner. Court also held that since sub-clause (1)(a) to section 244A permits interest on delayed payment of refund, therefore, petitioner was justified in asking for interest on delayed refund of tax that was paid by his employer, which was held to be not payable by employer and once there was a refund and if there was a delay, interest was payable and there was no basis for denying interest on such delayed refund of amount. (AY. 1999-2000)

P.R. Ganapathy v. CIT (2020) 275 Taxman 279 (Mad.)(HC)

S. 244A : Refund – Interest on refunds – Revenue liable to pay interest on shortfall. [S. 237, 243, 244] 2116

Dismissing the appeal of the revenue the Court held that, when an order of refund is issued, it should include the interest payable on the amount which is refunded. If the refund does not include the interest due payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest. If the interest has to be computed after April 1, 1989, it has to be computed in accordance with section 244A of the Act only and the assessee is entitled to interest in terms of section 244A of the Act only. (AY. 1987-88)

CIT v. Syndicate Bank (2020) 428 ITR 372 / (2021) 276 Taxman 200 (Karn.)(HC)

S. 244A : Refund – Interest on refunds – Interest is payable on delayed payment on refunds. [S. 237] 2117

Dismissing the appeal of the revenue the Court held that interest on delayed refund becomes part of the principal and the delayed interest includes the interest for not refunding the principal. Accordingly, it also includes the interest on the delayed refund. Followed *CIT v. HEG LTD. [2010] 324 ITR 331 (SC)*, (AY.1999-2000)

PCIT v. Solan District Truck Operators Transport Co-Op. Society (2020) 428 ITR 33 / (2021) 276 Taxman 250 (HP)(HC)

2118 **S. 244A : Refund – Interest on refunds – Revenue is liable to pay interest on shortfall. [S. 214, 243]**
Dismissing the appeal of the revenue the Court held that when an order of refund is issued, it should include the interest payable on the amount which is refunded. If the refund does not include the interest due payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest. If the interest has to be computed after April 1, 1989, it has to be computed in accordance with section 244A of the Act only and the assessee is entitled to interest in terms of section 244A of the Act only. Followed, *CIT v. HEG LTD. [2010] 324 ITR 331 (SC)* (AY.1987-88)
CIT v. Syndicate Bank (2020) 428 ITR 372 (Karn.)(HC)

2119 **S. 244A : Refund – Interest on refunds – Delay in paying refund – Interest payable for such delay.**
Dismissing the appeal of the revenue the Court held that; interest on delayed refund becomes part of the principal and the delayed interest includes the interest for not refunding the principal. Accordingly, it also includes the interest on the delayed refund. Followed *CIT v. HEG LTD. [2010] 324 ITR 331 (SC)* (AY.1999-2000)
PCIT v. Solan District Truck Operators Transport Co-Op. Society (2020) 428 ITR 33 (HP)(HC)

2120 **S. 244A : Refund – Interest on refunds – Direction to pay simple interest on amount due – Held to be proper. [S. 237, 243, 244A(2), 254(1)]**
Dismissing the appeal of the revenue the Court held that that the interest on the delayed refund was part of the principal amount and the delayed interest included the interest for not refunding the principal amount. The net of interest partook the character of "amount due" under section 244A. The Tribunal was right in directing the Department to pay compensation in the form of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to under section 244A on the delayed refund up to the date of issue of refund. Referred *CIT v. H. E. G. LTD. [2010] 324 ITR 331 (SC)* (AY.1996-97 to 1999-2000)
PCIT v. Solan District Truck Operators Transport Co-Operative Society (2020) 428 ITR 264 / 274 Taxman 397 (HP)(HC)

2121 **S. 244A : Refund – Interest on refunds – Delay in refund of excess of tax deducted at source – Department to pay compensation in form of simple interest on amount due. [S. 237, 243]**
Dismissing the appeal the Court held that the interest on the delayed refund was part of the principal amount and the delayed interest included the interest for not refunding the principal amount. The net of interest partook of the character of "amount due" under section 244A. The Tribunal was right in directing the Department to pay compensation in the form of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to under section 244A on the delayed refund up to the date of issue of refund. Followed CIT v. H. E. G. LTD. (2010) 324 ITR 331 (SC) (AY.1996-97 to 1999-2000)
PCIT v. Ambuja Darla Kashlog Mangoo Transport Co-Operative Society (2020) 428 ITR 94 / 195 DTR 99 / 317 CTR 363 / 269 Taxman 618 (HP)(HC)

S. 244A : Refund – Interest on refunds – held to be allowable to the Assessee on the self – assessment tax refunded. (S. 244(1)(b)) 2122

Interest u/s. 244A is allowable on the self-assessment tax refunded to the assessee. (Arising out of ITA No. 2284/M/2013 dt.29/01/2016)(ITA NO.1589 of 2016, dt.05/02/2019) (AY 2001-02)

PCIT v. Bank of India (Bom.)(HC) (UR)

Editorial : SLP granted to the revenue. (CA No. 7426 of 2019 13/09/2019)(2019) 418 ITR 17(St.)(SC)

S. 244A : Refund – Interest on refunds – Retention of impounded cash – Delay of more than three years after finalisation of assessment in refunding amount seized – Entitled to interest from date of order passed by Assessing Officer till date of payment – Right to property – Retention of impounded cash without any authority of Law is violation of Article 300A of Constitution. [S. 132B(4), 153A, 263, Art. 300A] 2123

Allowing the petition the Court held that the assessee was entitled to interest under section 244A for the period from January 22, 2014 till the date of payment. The contention of the Department that the amount was relinquished under section 132A and hence interest only according to the provision under section 132B(4) could be granted, was not tenable. Section 132B(4) provides for interest to be paid after 120 days of the date of last authorisation till the date of completion of assessment under section 153A or Chapter XIV-B. This provision could not be read in isolation in the facts of the assessee's case where in spite of completion of the assessment on January 21, 2014, the amount was not refunded till July 4, 2017. The assessee was entitled to interest under section 244A(1)(b) from the date of the assessment order passed by the Assessing Officer till the date of payment of the seized amount.

Court also held that to deprive the assessee of his property without authority of law violated article 300A of the Constitution of India. In the absence of any legal backing non-refund of the seized amount to the assessee, the assessee was entitled to interest even under the general law. (AY.2012-13)

Jiwan Kumar v. PCIT (2020) 424 ITR 296 / 194 DTR 20 / 316 CTR 767 (P&H)(HC)

S. 244A : Refund – Interest on refunds – Entitle to interest on excess self assessment tax from date of payments till refund. [S. 14OA, 244(1)(b)] 2124

Dismissing the appeal of the revenue the Court held that the assessee is entitled to interest on excess self assessment tax from date of payment till refund. Followed *PCIT v. Bank of India (ITA No. 742 of 2016 dt 10-12 2018).*

PCIT v. Bank of India (2019) 112 Taxmann.com 327 / (2020) 268 Taxman 318 (Bom.)(HC)

Editorial : SLP is granted to the revenue PCIT v. Bank of India (2020) 268 Taxman 318 (SC)

S. 244A : Refund – Interest on refunds – No delay attributable to assessee – Interest on self – assessment tax – paid – Allowable from date of payment of self – assessment tax till date of grant of refund. [S. 244(1)(a)] 2125

Tribunal held that the refund granted on September 6, 2013 was to be first appropriated or adjusted against such correct amount of interest and the shortfall of refund was to be

regarded as shortfall of tax and that shortfall was to then be considered for the purpose of computing further interest payable to the assessee under section 244A of the Act till the date of grant of such refund. Tribunal also held that no delay could be attributable on the part of the assessee in this regard. The assessee was entitled to interest on self-assessment tax from the date of payment of self-assessment tax till the date of actual payment of refund.(AY. 2007-08, 2008-09)

Grasim Industries Ltd. v. Dy. CIT (2020) 84 ITR 15 (SN.) / (2021) 186 ITD 675 (Mum.) (Trib.)

2126 **S. 244A : Refund – Interest on refunds – Prior to 1-6-2016 – Self assessment tax – Tax deduction at source – Entitle to interest. [S. 156, 254(1)]**

The assessee filed its return of income and claimed refund in respect of previous year ended 31-3-1999. The Assessing Officer did not allow interest under section 244A(1)(a) on the amount of Rs. 14.59 crores as the refund was less than 10 per cent of the tax determined under section 254 read with section 143(3).CIT(A) confirmed the order of the AO. Tribunal held as under; keeping in view the entire facts and circumstances of the case, the provisions of the Act as at 1989 and 2016, judgments of the various High Courts and Apex it is held as under:

(i) Where refund of any amount becomes due denotes refund arising out of advance tax under section 207, TCS under section 206, TDS under section 195, all credits under section 199, Taxes paid as specified under section 156 and self-assessment tax

(ii) Before 1-6-2016, no interest would be paid if the amount of refund is less than 10 per cent of the taxes determined in case the refund is out of the taxes paid other than self assessment tax.

(iii) Before 1-6-2016, in the case of refund arising out of self-assessment tax, interest would be calculated on the entire self-assessment tax refunded from the date of payment of S.A. tax.

(iv) After 1-6-2016, no interest would be paid if the amount of refund is less than 10 per cent of the taxes determined whether it is under section 140, under section 156, under section 195, under section 199, under section 206 and under section 207.

(iv) Where refund of 'any amount' [244A(1)] due connotes the refund of taxes paid by the assessee.

(v) Where refund of 'any amount' [244A(1)] is due, the assessee is entitled to simple interest. The simple interest would be calculated at the prescribed percentage after determining the refund due and paid along with the principle.

(vii) Even, 'a single day' should be considered as a part of the month for the purpose of computation of interest.

Accordingly the Tribunal directed the Assessing Officer to pay interest on the refund eligible in accordance with the proviso to section 244A(1)(a) with regard to the advance tax paid. With regard to the self-assessment tax paid, it is hereby held that the assessee is eligible for interest on the total amount of refund in accordance with provision of section 244A(1)(b) as the bar contained in proviso to clause (a) to section 244A(1) is not applicable to the instant cases (AY. 1999-2000, 1994-95).

Maruti Suzuki India Ltd. v. CIT (2020) 185 ITD 109 / 194 DTR 177 / 207 TTJ 641 (Delhi) (Trib.)

S. 244A : Refund – Interest on refunds – Assessable under head income from other sources – Taxable in which right to such refund had been recognised or date on which it was actually received. 2127

Tribunal held that interest received on income tax refund assessable under head income from other sources was to be taxed in year in which right to such refund had been recognized by an order or date on which it was actually received. (AY. 2006-07, 2007-08)

R. Pratap v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
R. Prakash v. CIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
Ramesh Chandran Nair v. ACIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin) (Trib.)
T.C. Usha v. ACIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin)(Trib.)
Vijaylaxmi Cashew Co. v. ACIT (2020) 183 ITD 750 / 195 DTR 217 / 208 TTJ 24 (Cochin) (Trib.)

S. 244A : Refund – Interest on refunds – Intimation – Assessable in year granted – If interest adjusted with prior tax liability of earlier years and paid to Government account – No need of separate intimation. 2128

Tribunal held that interest on refund whenever it is granted, is assessable in that year itself and if it is adjusted with any prior tax liability of earlier years and such interest is in turn paid to the Government account that also is payment of interest to the assessee. In such case, there is no need for any intimation separately.(AY.2014-15)

Fis Solutions (India) P. Ltd. v. Dy. CIT (2020) 79 ITR 656 (Pune) (Trib.)

S. 245 : Refund – Set off of refunds against tax remaining payable – Stay of recovery – As long as stay against recovery order issued by competent Appellate authority, Tribunal or Court is in operation, it would not be open for department to enforce recoveries through aid of section 245 – Department cannot straightway be permitted to provisionally attach refund amount for current year on ground that in final assessment, demands are likely to be confirmed in case deposits already made for current year by assessee are sufficient. [S. 281B, Art. 226] 2129

The petitioner has challenged the action of the respondents, i.e., the authorities of the Income Tax department of not releasing petitioner's refund of a sum of Rs.207 crores (rounded off) arising out of an intimation under section 143 (1) of the Income Tax Act, 1961 ('the Act' for short) dated 26.10.2018 in relation to the petitioner's return for AY. 2016-2017. Allowing the petition the Court held that as long as stay against recoveries issued by competent Appellate authority, Tribunal or Court is in operation, it will not be open for department to enforce recoveries through aid of section 245. Court also held that department cannot straightway be permitted to provisionally attach refund amount for current year on ground that in final assessment, demands are likely to be confirmed in case deposits already made for current year by assessee are sufficient. (WP No. 2036 of 2019 dt. 3-9-2019). (AY. 2016-17)

Vodafone Idea Ltd. v. DCIT (2020) 274 Taxman 233 (Bom.)(HC)

2130 **S. 245C : Settlement Commission – Second application – No bar for filing second application [S. 245D(1), 245K(2), Art. 226]**

Allowing the Writ petition the Court held that there is no bar for filing of a second application before Settlement Commission, when the earlier application was not allowed to proceed u/s 245D(1) of the Act. Section 245K(2) of the Act prohibits a subsequent application, only when the assessee had earlier made an application u/s 245C is allowed to proceed u/s 245D(1) of the Act. (WP Nos 34040& 34041 dt 29-10-2020)

CIT v. Adhiparasakhi Charitable Medical Educational Cultural Trust (2020) 121 taxmann. com 24/ (2021) 277 Taxman 333 (Mad) (HC)

2131 **S. 245C : Settlement Commission – Powers of Settlement Commission – Application cannot be rejected on an issue for a prima facie decision at the sub – section (2C) stage – The rejection of the application for settlement of case was not justified. [S. 245D(2C), 245D(4), Art. 226]**

Dismissing the appeal of the revenue the Court held that the in order to decide whether a contract was a composite contract or separate contracts, a deeper probe into the factual scenario as well as the legal position was required. If such was the fact situation in the case on hand, the application of the assessee could not have been declared invalid on account of failure to fully and truly disclose its income. Thus, what was required to be done by the Commission was to allow the application to be proceeded with under section 245D(2C) and take up the matter for consideration under section 245D(4) and take a decision after adjudicating the claim The issues which were requested to be settled by the assessee before the Commission, qua, the report of the Commissioner could not obviously be an issue for a prima facie decision at the sub-section (2C) stage. The rejection of the application for settlement of case was not justified.(AY.2015-16 to 2018-19)

Dy. CIT(IT) v. Hitachi Power Europe Gmbh (2020) 428 ITR 208 / 316 CTR 777 / 194 DTR 33 (Mad.)(HC)

2132 **S. 245C : Settlement Commission – Settlement of cases – Jurisdiction of High Court – Territorial Jurisdiction of Madras High Court – Order of Bench of Settlement Commission at Chennai – Petition not maintainable – Place where cause of action arises – Doctrine of Forum Conveniens. [S. 132, 260A, Art. 226, 227]**

Dismissing the petition the Court held that the merits of the case were not gone into by the court since the assessee and the assessing authorities were at Bangalore. Merely because the order in question had been passed by the Chennai Bench of the Settlement Commission, the cause of action did not arise within the territorial jurisdiction of the Madras High Court, when the events leading to the filing of the proceedings before the Chennai Bench of the Settlement Commission and the parties to such proceedings were outside the territorial jurisdiction of the court. Hence it would not be appropriate for the court to entertain the writ petition. Relied on the decision of Supreme Court in Kusum Ingots & Alloys Ltd v.UOI (2004) 168 ELT 3 (SC) and high Court observed that one of the questions considered by the Supreme Court was regarding Forum Convenience and it was pointed out that even if a small part of cause of action arises within territorial jurisdiction of the High Court, the same by itself may not be considered to be

determinative factor compelling the High Court to decide the matter on merits and in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by the doctrine of Forum Conveniens. Accordingly the writ petition was dismissed leaving it open to the assessee Company to approach the High Court of Karnataka for appropriate relief. Appeal against the single judge is dismissed by Division Bench. (AY.1995-96, 1996-97)

Mulberry Silks Limited v. ITST (2020) 428 ITR 136 / (2021) 277 Taxman 361 / 201 DTR 49 / 320 CTR 604 (Mad.) (HC)

Editorial: Order of single Judge is affirmed Mulberry Silks Ltd v. ITST (2020) 426 ITR 444 / 117 Taxmann.com 62/ (2021) 201 DTR 56 / 320 CTR 611 (Mad.) (HC)

S. 245C : Settlement Commission – Settlement of cases – Powers – Settlement Commission cannot consider merits of case at the stage of admission. [S. 245D(2C)] 2133

Dismissing the appeal of the revenue against the single judge order in *Hitachi Power Europe Gmbh v. ITSC (2020) 423 ITR 472 / 194 DTR 444/ 316 CTR 787 /(Mad.)(HC)* held that there were four issues which the assessee wanted settled by the Commission, and, the first among the four issues was with regard to the income earned from offshore supply of goods. The Commission was largely guided by the report of the Commissioner, who reported that the composite contract for offshore and onshore services were artificially bifurcated. The Settlement Commission held that the contention of the assessee that it was separate and that this was done by the NTPC was held to be not fully true. In other words, the Settlement Commission had accepted the fact that the contracts were bifurcated by the NTPC, the entity which invited the tender, but the Commission stated that the bifurcation done by the NTPC was only for financial reasons. The question was whether such a finding could lead to an application being declared as invalid under section 245D(2C) on the ground that the assessee had failed to make full and true disclosure of income. This issue could not have been decided without an adjudication. In order to decide whether a contract was a composite contract or separate contracts, a deeper probe into the factual scenario as well as the legal position was required. If such was the fact situation in the case on hand, the application of the assessee could not have been declared invalid on account of failure to fully and truly disclose its income. Thus, what was required to be done by the Commission was to allow the application to be proceeded with under section 245D(2C) and take up the matter for consideration under section 245D(4) and take a decision after adjudicating the claim The issues which were requested to be settled by the assessee before the Commission, qua, the report of the Commissioner could not obviously be an issue for a prima facie decision at the sub-section (2C) stage. The rejection of the application for settlement of case was not justified.(AY.2015-16 to 2018-19)

Dy. CIT(IT) v. Hitachi Power Europe Gmbh and Ors. (2020) 428 ITR 208 / 194 DTR 33 / 316 CTR 777 (Mad.)(HC)

Editorial : Single judge order in Hitachi Power Europe Gmbh v. ITSC (2020) 423 ITR 472 / 194 DTR 44/ 316 CTR 787 (Mad.)(HC), affirmed.

2134 **S. 245C : Settlement Commission – Settlement of cases – Jurisdiction of High Court – Territorial Jurisdiction of Madras High Court – Order of Bench of Settlement Commission at Chennai – Petition not maintainable – Place where cause of action arises – Doctrine of Forum Conveniens. [S. 132, 260A, Art. 226, 227]**

Dismissing the petition the Court held that the merits of the case were not gone into by the court since the assessee and the assessing authorities were at Bangalore. Merely because the order in question had been passed by the Chennai Bench of the Settlement Commission, the cause of action did not arise within the territorial jurisdiction of the Madras High Court, when the events leading to the filing of the proceedings before the Chennai Bench of the Settlement Commission and the parties to such proceedings were outside the territorial jurisdiction of the court. Hence it would not be appropriate for the court to entertain the writ petition. Relied on the decision of Supreme Court in *Kusum Ingots & Alloys Ltd v. UOI (2004) 168 ELT 3 (SC)* and high Court observed that one of the questions considered by the Supreme Court was regarding Forum Convenience and it was pointed out that even if a small part of cause of action arises within territorial jurisdiction of the High Court, the same by itself may not be considered to be determinative factor compelling the High Court to decide the matter on merits and in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by the doctrine of Forum Conveniens. Accordingly the writ petition was dismissed leaving it open to the assessee Company to approach the High Court of Karnataka for appropriate relief. (AY. 1995-96, 1996-97)

Mulberry Silks Ltd. v. ITST (2020) 426 ITR 444 / 117 Taxman 62 / 274 Taxman 320 / (2021) 201 DTR 56 (Mad.) (HC)

Editorial : Order of single judge is affirmed, Mulberry Silks Limited v. ITST (2020) 428 ITR 136 (Mad.) (HC)

2135 **S. 245C : Settlement Commission – Settlement of cases – Powers – Settlement Commission cannot consider merits of case at the stage of admission. [S. 245D(2C)]**

Returns of income had been filed by the assessee in respect of assessment years 2015-16, 2016-17, 2017-18 and 2018-19 offering to tax the income from onshore supply and services only. While assessment proceedings were pending the assessee applied for settlement of the case. The Settlement Commission held that the contract was composite and indivisible and hence the applicant, i.e., the assessee, had failed to make a full and true disclosure of income. On a writ petition against the order the Court held that the assessee had just applied for settlement of the case. The Commission however, in considering the "validity" or otherwise of the application proceeded to delve into the merits of the matter even at that stage. The order of the Settlement Commission was beyond the scope of S. 245D(2C) having been passed on the merits of the issue raised. (AY.2015-16 to 2018-19)

Hitachi Power Europe Gmbh v. ITSC (2020) 423 ITR 472 (Mad.)(HC)

Editorial : Appeal of revenue is dismissed, Dy. CIT (IT) v. Hitachi Power Europe Gmbh and Ors. (2020) 428 ITR 208 (Mad.) (HC)

S. 245C : Settlement Commission – Settlement of cases – Double taxation – Matter remanded to settlement Commission for reconsideration. [S. 143(2), 245D, Art. 226] 2136

Assessee filed settlement application admitting certain undisclosed income earned as commission from accommodation transaction. Petition was dismissed and notice u/s 143(2) is issued on the assessee. Assessee filed writ petition and contended that in the case of Mr Parasmal Jain where in same issue is admitted by the Settlement Commission. Allowing the petition the Court held that since transactions pertaining to undisclosed income of assessee were also subject matter of settlement application in case of Mr Parasmal Jain there was a possibility that such a subsequent consideration by Settlement Commission could be deemed as double taxation. Since order passed in settlement application Mr Parasmal Jain had become final, issue in case of assessee should be revisited in light of order passed in matter of Mr Parasmal Jain. Accordingly the matter remanded to the settlement Commission. (WP No. 23638 dt 9-08 2019) (AY.2008-09) (WP No. 23633 of 2009 dt 9-08-2019) (SJ)

Kesaria Marketing (P.) Ltd. v. ITSC (2020) 268 Taxman 25 (Mad.) (HC)

Umed Investments & Marketing Co. (P.) Ltd. (2020) 268 Taxman 22 (Mad.) (HC)

S. 245D : Settlement Commission – No power of review – Order of Settlement Commission is set aside and directed to decide the issue in accordance with law. [S. 154, 234A, 234B, 234C, 245D(4), 254E, 245F, 245I, Art. 226] 2137

A search was conducted at premises of assessee. Firm and one of partners declared additional income. Thereafter, assessee filed settlement application under section 245E. Settlement Commission, after evaluating records, passed order, granting waiver of interest under section 234A to 234C. Revenue filed miscellaneous petition stating that Settlement Commission had no power to reduce or waive interest statutorily payable under sections 234A, 234B and 234C. Subsequently, Settlement Commission rectified said order by reversing order of waiver of interest and held that interest under section 234B would be charged up to date of order under section 245D(4). Single Judge allowed writ and set aside impugned order passed by the Settlement Commission. On writ appeal the Court held that in case of *CIT v. Anjum M.H. Ghaswala (2001) 252 ITR 1 (SC)* held that Settlement Commission cannot re-open its concluded proceedings by invoking section 154 so as to levy interest under section 234B in view of section 245-I and that terminal point for levy of interest under section 234B would be up to date of order under section 245D(1) and not up to date of order of settlement under section 245D(4). Decision of Supreme Court was not available when Settlement Commission passed order rectifying its earlier order. Accordingly on facts, matter was to be remanded back to Settlement Commission to decide issue relating to waiver of interest payable by assessee afresh keeping in view law laid down by Supreme Court. (AY. 1988-89 to 1992-93)

CIT v. M.A. Jacob & Company (2020) 275 Taxman 529 / 194 DTR 81 (2021) 320 CTR 209 (Mad.)(HC)

S. 245D : Settlement Commission – Application – Rejection application only on the ground that short payment of tax is held to be not justified – Interest of justice the matter remanded to Settlement commission to decide on merits. [S.245C, Art. 226] 2138

Settlement Commission had rejected application of assessee for assessment years 2011-12 to 2017-18 as 'invalid', on ground that there was short payment of tax, for

assessment years 2013-14, 2015-16 and 2016-17. The assessee filed writ petition, allowing the petition the Court held that there was shortfall as on date of application before Commission, but there no shortfall as on date, i.e., 21-1-2020. Further, there were computational differences that could well be reason for remittances falling short of required amounts and differences were quite insignificant in context of entirety of payment made by assessee. Accordingly in interests of justice, assessee's case should be considered on merits by settlement. Matter remanded (AY 2013-14, 2015-16, 2016-17)
Krishna Venkata Ramanna Shetty v. ITSC (2020) 274 Taxman 253 (Mad.)(HC)

2139 **S. 245D : Settlement Commission – Application for rectification of mistake was pending but no orders had been passed – Settlement Commission was directed to pass an order within four weeks from the receipt of the order – Writ is held to be premature. [Art. 226]**
Search conducted in case of assessee-petitioner led to seizure of unaccounted cash and fixed deposits. Petitioner opted to settle their income tax dispute before Settlement Commission. Settlement Commission had directed that seized cash would be adjusted against additional tax payable by them. Settlement Commission also directed Assessing Officer to adjust seized amount towards interest payable by assessee. However the Assessing Officer has not properly calculated the tax payable. The assessee filed rectification application before Settlement Commission m which was pending. Mean while the assessee filed writ petition and contended that if amounts were adjusted, then, interest computed would not have been payable by them and that it had approached Settlement Commission for rectification of mistake but no orders had been passed in those applications. Settlement Commission was directed to dispose the application within four weeks from the receipt of the order. Writ petition is held to be premature Matter remanded. (AY.1999-2000)
G. Subramaniam v. ITSC (2020) 274 Taxman 437 (Mad.)(HC)

2140 **S. 245D : Settlement Commission – Limitation Application filed by the assessee is barred by limitation – Writ petition dismissed. [S. 245D(4), 245D(6B), Art. 226]**
Dismissing the petition the Court held that application under Section 245D(6B) was filed by Assessee on 30.06.2017 which was barred by limitation as provided under sub-section (6B) thereof. Even if argument advanced by Assessee that limitation of six months for entertaining application under Section 245D(6B) would start running from date order was served on Assessee, is considered, there is nothing to show as to on which date in month of December, 2016 order was served upon Assessee. Assessee has only stated that order dated 28.11.2016 was served upon him in month of December, 2016 and has not demonstrated that order dated 28.11.2016 was served upon him on or after 30th December, 2016 so as to claim that application filed by Assessee on 30th June, 2017 was within limitation.
Jay kumar Singh v. PCIT (2020) 187 DTR 283 / 313 CTR 609 315 CTR 199 (Karn.)(HC)

S. 245D : Settlement Commission – Failure of revenue to communicate exparte order of stay – Order passed by the Settlement Commission admitting the petition directed to pass final order with in – Writ petition of revenue was dismissed. [S.245AB, 245C, 245D(2C) Art. 226] 2141

Court held that only after the statutory amendment in 2015, restriction have been imposed. However, such restriction cannot be retrospectively made applicable to the application filed in 2012. The fate of the application is to be decided in the light of the provision as it stood in 2012. Subsequently, though the Explanation to Section 245A of the Act was amended, it cannot be made applicable retrospectively therefore of the view that the 1st respondent Settlement Commission has therefore correctly entertained the application of the 2nd respondent. If the application was disposed then and there, there was no scope for confusion based on the plain reading of the provision. Accordingly directed the Settlement Commission to pass appropriate order on merits and bring a closure to the application filed by the 2nd respondent under Chapter XIX-A of the Income Tax Act, 1961, within a period of six months from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed. (AY. 2008-09,2010-11,2011-12 & 2012-13)

CIT v. ITSC (2020) 188 DTR 244 / 316 CTR 796 (Mad.)(HC)

S. 245D : Settlement Commission – Offer of small portion of disputed amount voluntarily – Justified in accepting the offer. [S. 245D(4), Art. 226] 2142

Dismissing the petition of the revenue the Court held that the Settlement Commission accepted the offer. When compared to the disclosure made by the assessee to the tune of Rs. 11,33,02,651 in the application filed before the Settlement Commission the grievance made by the Department with regard to the amount of Rs. 2,04,88,560, was marginal. Accordingly, when the assessee had agreed for addition of Rs.1,02,44,280 to put quietus to the issue and to settle the matter, the Settlement Commission had accepted the assessee's offer. This was justified. The order under section 245D was valid.(AY.2010-11)

PCIT v. Akshat Shah (2020) 193 DTR 77 / 316 CTR 817 / (2021) 430 (Guj.)(HC)

S. 245D : Settlement Commission – Principles of natural Justice – Search and seizure – Block assessment. [S. 132, 158BC, 158BD, Art. 226] 2143

Allowing the petition the Court held that since some parts of the order were non-speaking, there was violation of the principles of natural justice. The writ petition was maintainable. The Settlement Commission had overlooked the evidence produced before it. The Settlement Commission was directed to consider the issue of tax liability of SWCL at different stages commencing from the initial renunciation of rights to the ultimate transfer of shares by SWFSL in RRITCPL to MBL. The Settlement Commission had to also consider the tax liability of the assessee with regard to purchases of gift items from A, commission sales promotion through S, and payments made to T, in accordance with law.

PCIT v. Income-Tax Settlement Commission (I.T. And W.T.) (2020) 429 ITR 143 (Cal.)(HC)

2144 **S. 245D : Settlement Commission – Amendment in law – Payment of additional tax on additional amount disclosed within time prescribed – Settlement Commission has jurisdiction to proceed with application – Failure to consider report filed by department – Matter remanded to Settlement Commission for disposal afresh. [S. 245C(1), 245D(2A), 245D(4), ITSC (Procedure) Rules, 1997, R. 9, Art.226]**

On a writ petition filed by the revenue against the order of Settlement Commission the Court held that the Settlement Commission had the jurisdiction to proceed with the application filed by the assessee under section 245C. The assessee had filed the application before the Settlement Commission on July 11, 2005. It had admitted to pay an additional amount of tax of Rs. 5,23,800 for the assessment years 1998-99 and 1999-2000. Since no order of admission was passed prior to June 1, 2007, in terms of sub-section (2A) of section 245D as substituted by the Finance Act, 2007 the application would be deemed to have been admitted if the assessee had paid the additional amount of tax on the additional amount admitted in the application before July 31, 2007. The assessee had made payment of additional amount of tax before July 31, 2007. Therefore to that extent there was no infirmity in the procedure adopted by the Settlement Commission in proceeding further with the application filed by the assessee under section 245C. As regards several discrepancies in the manner in which the case had been allowed to be settled by the Settlement Commission. The calculations had been accepted without any deliberations by the Settlement Commission and this did not inspire confidence. There were several disputed questions of fact which had been glossed over by the Settlement Commission. The order passed by the Settlement Commission was quashed and the issue was remanded to it to pass a fresh order after considering the objections of the Department filed under rule 9 of the Rules. Matter remanded. (WP No. 17347 of 2008 and M.P. No. 1 of 2008 dt 19-5-2020). (AY.1998-99, 1999-2000)

CIT v. ITSC (2020) 425 ITR 568 / 192 DTR 217 / 273 Taxman 264 / (2021) 320 CTR 223 (Mad.)(HC)

2145 **S. 245D : Settlement Commission – Writ – Territorial jurisdiction of High Court – Assessment and appeal in Karnataka – Order of Settlement Commission in Chennai – Madras High Court had no jurisdiction to hear writ petition. [Central Excise Act, 1944, S. 35G, 35H, 36(b), Art. 226.]**

Dismissing the writ appeal, that the appellant was an assessee on the file of the Dy. CIT, Bangalore. The appellate authority, before whom the assessee filed the appeal was the CIT, Bangalore. Therefore, the single judge was justified in rejecting the writ petition on the ground that due to lack of territorial jurisdiction, the order passed by the Settlement Commission in Chennai did not call for interference, by the Madras High Court. The doctrine of dominus litis or doctrine of situs of the Appellate Tribunal do not go together. A dominus litis indicates that the suitor has more than one option, whereas the situs of an Appellate Tribunal refers to only one High Court wherein the appeal can be preferred. If the cause of action doctrine is given effect to, invariably more than one High Court may have jurisdiction, which is not contemplated. (WP.No. 717 of 2020 dt 14-9-2020) (DB)

Mulberry Silks Ltd. v. Settlement Commission (IT and Wt) (2020) 428 ITR 136 (Mad.)(HC)

S. 245D : Settlement Commission – Full and true disclosure – Income offered in application – Additional income offered during proceedings in order to avoid controversy – No new source of income – Acceptance of offer and passing of order by Settlement Commission is held to be justified. [S. 133A, 245C, 245D(4), ITSC (P) Rules, 1997. R.9, Art. 226] 2146

The assessee was carrying on the business of purchase and sale of land and trading in textile items of art silk clothes. During the course of survey operation, various loose documents were found and impounded by the Department. While assessment proceedings were pending the assessee filed a settlement application under S. 245(1) before the Settlement Commission offering additional income for the assessment years 2012-13 to 2016-17. The assessee filed its statement of facts before the Commission, preparing a statement of sources and application of unaccounted income to demonstrate that investment, application and rotation of unaccounted funds was covered by the overall source of unaccounted funds generated and offered to tax. The assessee disclosed additional income during the course of hearing under S. 245D(4) aggregating to Rs. 12 crores for the five years from the assessment years 2012-13 to 2016-17. The Commission accepted the disclosures made by the assessee after considering the detailed item-wise explanation submitted by the assessee and accordingly the case of the assessee was settled on the terms and conditions stated in the order. On a writ petition challenging the order dismissing the petition the Court held that that the disclosure made during the course of the proceedings before the Commission was not a new disclosure. The Settlement Commission was right in considering the revised offer made by the assessee during the course of the proceedings in the spirit of settlement. On a perusal of the order passed by the Commission, it was apparent that the application submitted by the assessee had been dealt with in accordance with the provisions of S. 245C and 245D of the Act. The Commission had observed the procedure while exercising powers under S. 245D(4) by examining thoroughly the report submitted by the Department under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997. The Commission had also provided proper opportunity of hearing to the respective parties and therefore the amount which had been determined by the Commission was just and proper.(AY.2012-13 to 2016-17)

PCIT v. Shankarlal Nebhumal Uttamchandani (2020) 425 ITR 235 / 313 CTR 184 / 270 Taxmann 41 / 186 DTR 169 (Guj.)(HC)

Editorial: SLP filed by the revenue, notice issued, returnable on 12-3-2021, in the meanwhile, the effect and operation of the order presently under challenge shall remain stayed, PCIT v. Shankarlal Nebhumal Uttamchan (2021) 279 Taxman 326 (SC)

S. 245D : Settlement Commission – Additional offer in addition to accepted liability – Cannot be termed as non-disclosure of full and true facts in application u/s 245C of the Act – Writ of revenue is dismissed. [S. 245C, 245D(4), 245D(6), 245D(7), Art. 226] 2147

Dismissing the petition of the revenue, the Court held that additional offer in addition to accepted liability, cannot be termed as non-disclosure of full and true facts in application u/s 245C of the Act. Court also observed that proceedings before the Settlement Commission are in the nature of settlement between the parties and are not strictly speaking adjudicatory proceedings. Order of settlement commission is affirmed.

Referred *Ajmera Housing Corporation v. CIT (2010) 326 ITR 642 (SC), PCIT v. Shree Nilkanth Developers (2017) 8 ITR-OL. 32 (Guj.) (HC).* (AY. 2004-05)
PCIT v. Shreyansh Corporation (2020) 421 ITR 153 / 268 Taxman 334 (Guj.)(HC)
Editorial : SLP of revenue is dismissed on ground of delay as there had been delay of 214 days in filing Special Leave Petitions without any satisfactory explanation in support of prayer for condonation. PCIT v. Shreyansh Corporation (2021) 277 Taxman 403 (SC)

2148 **S. 245D : Settlement Commission – Settlement of cases – Jurisdiction – Black Money Act – Undisclosed income of Non – Resident Indians – Change in the Black Money Act only from assessment year 2006-17 – Pending reassessment proceedings order of Settlement Commission for assessment years 2004-05 to 2015-16 is held to be valid – Writ petition of the revenue is dismissed. [S. 148, 153A, 245A, 245C, 245D(4), Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015, 2(9), 3, 4(3), Art.226]**

A search and seizure operation came to be carried out at the residential and business premises of the Banco Products (India) Ltd group of companies of which the assessees were directors. Pursuant to the search, notices under section 148 and section 153A of the Income-tax Act, 1961 were issued to the three assessees for the assessment years 2005-06 to 2013-14, 2004-05 to 2015-16 and 2004-05 to 2015-16 respectively. In response thereto, the assessees filed Income-tax returns disclosing undisclosed foreign income and assets. Thereafter they filed separate applications under section 245C of the 1961 Act before the Settlement Commission disclosing additional undisclosed foreign income and assets. The Settlement Commission passed an order on January 30, 2019 settling the cases and granting reliefs. On February 18, 2019, the Assessing Officer passed orders giving effect to the order of the Settlement Commission and determined the additional tax payable, and issued notices of demand under section 156 of the 1961 Act on the same day. Each of the assessees paid the additional tax payable. On writ petition filed by the Department on May 30, 2019 challenging the orders passed by the Settlement Commission as without jurisdiction since the Settlement Commission had no jurisdiction to pass an order under the 1961 Act in relation to undisclosed foreign income and assets covered under the 2015 Act ; dismissing the petition court held that, it was an admitted position that the residential status of two of the assessees was non-resident for the assessment year 2016-17 and for the third for the assessment year 2014-15 onwards. Thus, when the 2015 Act came into force, the assessees were not residents. It could not be said that the assessees fell within the ambit of the expression "assessee" as defined under clause (2) of section 2 of the 2015 Act as it stood prior to its amendment by the Finance (No. 2) Act of 2019. The expression "assessee" was amended on August 1, 2019, albeit with retrospective effect from July 1, 2015, and as on the date when the Settlement Commission passed the order, namely, January 30, 2019, the assessees were not "assessees" within the meaning of such expression as contemplated under section 2(2) of the 2015 Act and were, therefore, not covered by the provisions of that Act. The search proceedings were conducted after the 2015 Act came into force and consequently, the notices under sections 148 and 153A of the 1961 Act were also issued after the 2015 Act came into force. The fact that these notices under sections

148 and 153A of the 1961 Act were issued in respect of undisclosed foreign income or assets could be substantiated on a perusal of the reasons recorded for reopening the assessment for the assessment year 2000-01. The Revenue authorities were well aware of the fact that the provisions of the 2015 Act covered undisclosed foreign income only from the assessment year 2016-17 onwards and, therefore, categorically submitted to the jurisdiction of the Settlement Commission and requested it to proceed further pursuant to the applications made by the assessees under section 245C of the Income-tax Act, 1961. It was only for this reason that notices under the 2015 Act were issued only for the assessment years 2017-18 and 2018-19. The Assessing Officer had issued notices under section 148 and section 153A of the 1961 Act for different assessment years. Therefore, proceedings for assessment or reassessment as contemplated under clauses (i) and (iiia) of the Explanation to clause (b) of section 245A had commenced and were pending before the Assessing Officer when the applications under section 245C of the 1961 Act came to be made. Therefore, the requirements of the provisions of section 245C of the 1961 Act were duly satisfied when the applications thereunder came to be made by the assessees. Upon receipt of the applications made under section 245C of the 1961 Act, the Settlement Commission proceeded further in accordance with the provisions of section 245D of the 1961 Act. At the stage when it was brought to its notice that notices under section 10 of the 2015 Act had been issued to the assessees, the Settlement Commission gave ample opportunity to the Revenue to decide what course of action it wanted to adopt, and it was the Revenue which categorically invited an order from the Settlement Commission in respect of the undisclosed foreign income and assets disclosed before it. The record of the case showed that the requirements of section 245D of the 1961 Act had been duly satisfied prior to the passing of the order under section 245D(4). The proceedings before the Settlement Commission were taken in connection with notices issued under sections 148 and 153A of the 1961 Act, and it was therefore, that the Settlement Commission had the jurisdiction to decide the applications under section 245C of that Act, which related to the proceedings in respect of those notices. If it was the case of the Revenue that the undisclosed foreign income and assets of the assessees were covered by the provisions of the 2015 Act, the notices under sections 148 and 153A of the 1961 Act, which mainly related to undisclosed foreign income, ought to have been withdrawn and proceedings ought to have been initiated under the relevant provisions of the 2015 Act. The Settlement Commission had the jurisdiction to decide the applications under section 245C. Court also held that the Settlement Commission, after considering the material on record, had given a finding of fact to the effect that there was a full and true disclosure made by the assessees and that there was no wilful attempt to conceal material facts. If for the reason that issues which pertained to past periods could not be reconciled due to lack of further evidence, the assessees, with a view to bring about a settlement, agreed to pay a higher amount as proposed by the Revenue, it certainly could not be termed a revision of the original disclosure made under section 245C of the 1961 Act, inasmuch as, there was no further disclosure but an acceptance of additional liability based on the disclosure already made before the Settlement Commission. Another aspect of the matter was that it was an admitted position that prior to the presentation of the writ petition, the order of the Settlement Commission came to be fully implemented. This was not mentioned

in the writ petition. Therefore there was suppression of material facts. The order passed by the Settlement Commission was valid. (R/SCA No. 9883 of 2019 dt 22-10-2019) (AY. 2004-05 to 2015-16)
CIT v. ITSC (2020) 420 ITR 149 / 268 Taxman 234 / 187 DTR 40 / 313 CTR 283 (Guj.)(HC)
Editorial : Notice issued and accepted by respondents, in order to facilitate the Court in doing so, counsel shall file notes of their written submissions at least two weeks before the next date of listing, PCIT v. Income Tax Settlement Commission (2020) 275 Taxman 100 (SC)

2149 **S. 245I : Settlement Commission – Order – Conclusive-Income declared was more than 100 times of returned income – Petition was accepted-Writ petition was filed by the revenue for reopening of the order passed – Dismissing the petition the Court held that as a policy matter, Revenue is not to prolong litigations but bring finality, particularly when amount of Revenue involved is not more than two crores. [S. 245D(4), Art.226]**
Revenue filed writ petition against the order of Settlement commission only on account of a single observation made in the order, "It is not practicable for the Commission to examine the records and investigate the cases for proper settlement'. The Settlement Commission itself records report from the Commission was called and responded to, being part of the record and the amount disclosed by the assessees is not small. In the instant case, the assesses had come forward disclosing an additional income of Rs.97,79,272/-, which was almost 100 times more than what stood initially declared in the returns filed. Dismissing the petition the Court held the order was passed in the presence of the Revenue and none objected to the same. And the amount deposited in terms thereof was accepted without any protest or demur. All this is for the Settlement Commission to examine if the need so arises. As a policy matter, Revenue is not to prolong litigations but bring finality, particularly when the amount of Revenue involved is not more than two crores. The Court also held that Writ jurisdiction is an equitable and discretionary remedy which must be exercised keeping in mind the facts in each individual case, and the advancement of justice. Petition stands disposed of. (WP no 10663 of 2009 dt 6-10-2020)(AY. 2000-01 to 2006-07)
CIT v. ITSC (2020) 195 DTR 41 / 317 CTR 579 (Pat.)(HC)

2150 **S. 245R : Advance rulings – Mere issue of notice under section 143 (2) is not an bar for approaching the AAR – Writ petition of revenue is dismissed. [S. 143(2), 245R(2)]**
Writ petition was filed by the revenue challenging order passed by Authority for Advance Rulings on ground that it is in violation of jurisdictional bar under proviso to Section 245R(2) that only CIT(A) has jurisdiction to deal with case and AAR has no jurisdiction to deal with same. Dismissing the petition the Court held that two Division *Benches Hyosung Corporation v. AAR (2016) 382 ITR 371 (Delhi) (HC) Sage Publication Ltd. v. Dy.CIT (IT) (2016) 387 ITR 437 (Delhi) (HC)* have held that a question cannot be said to be pending under Clause (i) of proviso to Section 245R(2) upon issuance of a mere notice under Section 143(2) especially when it has been issued in a standard pre-printed format and questions raised before authority for advance ruling do not appear to be forming subject matter of said notice-This is also more so when notice fails to satisfy particulars of claim of loss, exemption, deduction, allowance or relief as

mandated by Section 143(2)(i). AAR has followed above-decisions and held notice under section 143(2) merely asks applicant to produce any evidence on which it may like to rely in support of its return. It does not even remotely disclose any application of mind to return filed by applicant. For this reason, AAR has held that that question cannot be said to be pending to attract bar under clause (i) of proviso to Section 245R(2). Accordingly there is no infirmity in approach adopted by AAR.
CIT v. Authority for Advance Ruling (2020) 275 Taxman 391 / 194 DTR 1 / 316 CTR 673 (Delhi)(HC)

S. 245R : Advance rulings – Application – Applying for nil tax withholding certificate – No proceeding pending – No bar on application – Matter examined in proceedings under section 195 or under Section 197 – Applications maintainable – Capital gains – Transfer of shares – Mauritius Company of shares in Singapore company to Luxembourg Company – Singapore Company Holding Shares In Subsidiaries In India – Application is maintainable – Tax Avoidance – See – through Entities to avail of benefits of Double Taxation Avoidance agreement between India and Mauritius – No strategic Foreign Direct investment in India – Arrangement a preordained transaction created for Tax Avoidance purpose – Application not maintainable DTAA-India-Mauritius. [S. 195, 197, Art.] 2151

AAR held that t he proceedings under section 197 of the Act were concluded on August 17, 2018, when the certificates were issued by the Officer. The amount subject to tax deduction at source was credited or paid on August 17, 2018, which was prior to the filing of the applications. Even if the certificate under section 197 was modified or varied by the Officer, it could not have been given effect after the transaction was closed on August 17, 2018 and such variation would have no impact. Once the transaction was closed there could be no pending proceeding under section 197 of the Act. the application under section 197 of the Act had already been decided, before the filing of the applications before the Authority. AAR held that the provisions of the Act do not provide a bar on an applicant approaching this Authority after the matter has been examined in the proceeding under section 195 or under section 197 of the Act. The bar is only in respect of pending proceedings and as there was no pending proceeding on the date of filing of the applications, the applications were not barred. AAR also held that That the working of the capital gains would involve the correct working of the total sales consideration which in turn depended on the value assigned to each share in the Singapore company. The question raised by the applicants in the application was whether the gains arising from the sale of shares in the Singapore company was chargeable to tax in India under the Act read with the Double Taxation Avoidance Agreement between India and Mauritius. The issue of valuation of shares in the Singapore company or computation of capital gains arising on transfer of the shares was not at all involved in the question raised by the applicants. The exercise of valuation of shares (if at all necessary) and the computation of capital gains would have to be undertaken by the Assessing Officer only when the issue of taxability of capital gains on sale of shares was decided in favour of the Department. No determination of the fair market value of any property (shares) in question was raised in the application. The application was not barred by clause (ii) of the proviso to section 245R(2) of the Act. AAR held that the objective of the Double Taxation Avoidance Agreement between India

and Mauritius was to allow exemption of capital gains on transfer of shares in Indian companies only and any such exemption on transfer of shares in a company not resident in India, was never intended by the legislator. Accordingly See-through Entities to avail of benefits of Double Taxation Avoidance agreement between India and Mauritius and no strategic Foreign Direct investment in India. Arrangement a preordained transaction created for Tax Avoidance purpose hence the application not maintainable. (AY. 2019-20)
Tiger Global International Ii Holdings, Mauritius, In Re (2020) 429 ITR 288 / 116 taxmann.com 878 / 189 DTR 90 / 315 CTR 160 (AAR)

2152 **S. 246 : Appeal – Deputy Commissioner (Appeals) – Appealable orders – Order passed by AO giving effect to directions of Tribunal, is an appealable order before CIT(A). [S. 246A, 254(1)]**
Assessee filed an appeal before CIT(A) against order passed by AO u/s 143(3), read with S. 254 of the Act giving effect to Tribunal's order. CIT(A) rejected the appeal on ground that same was not maintainable. On appeal the Tribunal following the order in *Caltex Oil Refining (India) Ltd. v. CIT (1994) 202 ITR 375 (Bom.) (HC)* held that order of CIT(A) that order giving effect to directions of Tribunal was not appealable before him was unsustainable in law. Matter remanded to CIT(A) to decide on merit (AY. 2003-04 to 2009-10)
Narendra Solvex (P.) Ltd. v. ACIT (2020) 180 ITD 64 (Mum.)(Trib.)

2153 **S. 246A : Appeal – Commissioner (Appeals) – Stay – Rejection of stay application blindly following the office memorandum was set aside – Directed to decide the stay application on merit. [S. 226, 250, Art. 226]**
Assessee filed its returns for relevant years declaring certain taxable income. Assessment order was passed making certain additions. Assessee filed an appeal under section 246A along with an application seeking stay of demand. Stay application was disposed of with a direction to assessee to deposit 20 per cent of demanded amount. Hence, petition was filed Court held that the order was passed by blindly following Office Memorandum (F.No. 404 /72 /93-ITCC] dt 31-7 2017 and even no opportunity of hearing was given to assessee. Accordingly the order was set aside and, matter was to be remanded back to Commissioner (Appeals) to consider stay application afresh after affording an opportunity of hearing to assessee. Circular No. 6, dated 29-02-2016 and office memorandum [F. No. 404/72/93-ITCC], dated 31-7-2017 (AY. 2017-18, 2018-19)
Equity Intelligence India (P.) Ltd. v. Dy. CIT (2020) 272 Taxman 332 / 192 DTR 41 / 315 CTR 846 (Ker.)(HC)

2154 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Single Judge refusing request for passing over and dismissing petition on merits – Order of Single judge is set aside – CIT(A) is directed to disposal of appeal on merits expeditiously. [S. 115JC, Art. 226]**
Three writ petitions were filed with regard to the invocation of section 115JC of the Income-tax Act, 1961. When the petitions came up for admission, the assessee sought time to enable it to get a copy of the rejection of the rectification application as well as a copy of the appeal filed against the main assessment order from the chartered accountant but

the judge declined the request and proceeded to pass orders on the merits. A statutory appeal filed by the assessee was pending before the Commissioner (Appeals). On appeal seeking setting aside the portion of such order with a direction to the Commissioner (Appeals) to decide the appeal expeditiously if the papers were otherwise in order, Court held that in the light of the averments made and the fact that a statutory appeal had been filed before the Commissioner (Appeals) the findings given in paragraphs 15 to 32 of the order of the single judge were set aside with a further direction to the Commissioner (Appeals) to entertain the appeal, if the papers were otherwise in order and give a disposal in accordance with law as expeditiously as possible.
S. Gurushankar v. CIT(A) v. (2020) 427 ITR 187 / (2021) 319 CTR 408 (Mad.)(HC)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Dismissal of appeal – CIT(A) is directed to decide the appeal on merits. [S. 234E, 250] 2155
Tribunal held that when the demand mentioned in the Default Summary is correct and further the demand raised u/s 234E is machine computed demand, the CIT(A) should have proceeded to dispose of the appeals by taking cognizance of the default summary furnished by the assessee along with the return of income. Tribunal also held that the assessee has explained the back ground in filing appeals before the Ld CIT(A). Accordingly, the delay, if any, occurred from the date of intimation to the date of downloading of "Default Summary" deserves to be condoned. Accordingly the matter remanded to the file of CIT(A) to decide the issue on merit in accordance with law. (AY. 2013-14, 2014-15)
Total Transport Systems Ltd. v. ITO (2020) 187 DTR 53 / 203 TTJ 385 (Bang.)(Trib.)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Dismissal of appeal – CIT(A) is directed to decide the appeal on merits. [S. 234E, 250] 2156
Tribunal held that when the demand mentioned in the Default Summary is correct and further the demand raised u/s 234E is machine computed demand, the CIT(A) should have proceeded to dispose of the appeals by taking cognizance of the default summary furnished by the assessee along with the return of income. Tribunal also held that the assessee has explained the back ground in filing appeals before the Ld CIT(A). Accordingly, the delay, if any, occurred from the date of intimation to the date of downloading of "Default Summary" deserves to be condoned. Accordingly the matter remanded to the file of CIT(A) to decide the issue on merit in accordance with law. (AY. 2013-14, 2014-15)
Total Transport Systems Ltd. v. ITO (2020) 187 DTR 53 / 203 TTJ 385 (Bang.)(Trib.)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Revision – When appeal was pending revision application was filed – Revision is held to be not valid – Cost of Rs 40000 was imposed upon assessee – CIT(A) is directed to decide the matter on merits. [S. 249, 264] 2157
The assessee preferred an appeal to the Commissioner (Appeals) against the assessment order within the time specified under the provisions of section 249. The assessee subsequently without withdrawing the appeal filed before the Commissioner (Appeals) filed a revision application under section 264 to the Commissioner within

the time specified under section 264. The Commissioner under section 264 dismissed the application. Subsequently, the Commissioner (Appeals) dismissed the appeal filed by the assessee as not maintainable without adjudicating the issue raised before him on the merits. On appeal the Tribunal held that the conditions specified under clause (c) of section 264 were applicable. Clause (c) restricts the power of the Commissioner to revise the order if any appeal has been preferred before the Commissioner (Appeals). Undisputedly, in the present case the appeal had already been preferred to the Commissioner (Appeals). Thus the order passed by the Commissioner under section 264 was against the provisions of law. The finding of the Commissioner (Appeals) was set aside and he was directed to admit the appeal filed by the assessee and decide the issue afresh in accordance with the provisions of law on the merits. The assessee shall co-operate during the appellate proceedings before the Commissioner (Appeals) and file the necessary supporting documents in support of its contention. The assessee was directed to deposit a sum of Rs. 40,000 to the Income-tax office before the commencement of the proceedings before the Commissioner (Appeals) for its negligent approach. *CIT v. Eurasia Publishing House (P) Ltd. (1998) 232 ITR 381 (Delhi) (HC)* distinguished. (AY.2005-06)
Digjam Ltd. v. ACIT (2020) 79 ITR 263 / 193 DTR 237 / 206 TTJ 734 (Rajkot)(Trib.)

2158 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Order giving effect to order of High Court not containing decision on any issue or computation of income – Not appealable – Period from which interest has to be calculated on outstanding demand – Appealable order. [S. 80HHC, 80IB, 154, 220(2), 234D, 244A, 246]**
The assesee succeeded an appeal before the Appellate Tribunal, after the order of the Tribunal granting the relief to the assessee, the Assessing Officer granted refund along with the interest. To give effect to the judgment of the High Court, the Assessing Officer passed an order raising a demand along with the interest under S. 244A, 220(2) and 234D of the Act. The CIT(A) did not go into the merits of the issue raised by the assessee holding that the order was not appealable. On appeal the Tribunal held that so far as the recomputation of the total income of the assessee pursuant to the judgment of the High Court was concerned, the AO had not passed any order or decided any issue but had simply computed the total income as determined while passing the original assessment order. Therefore, to that extent the order of the Assessing Officer could not be regarded as a decision of the Assessing Officer which could be challenged in the appeal until and unless some calculation mistake or typographical mistake occurred which could be rectified under S. 154. However whether the interest under S. 220(2) would be reckoned from the original demand arising from the assessment order or from the date of the order giving effect to the judgment of the High Court. This aspect required application of mind and a decision had to be taken whether the interest under S. 220(2) was to be levied for the period reckoning from the original demand till the recomputation of Income-tax as per the outcome of the finality of the dispute. Once the Assessing Officer took such a decision regarding the reckoning of the period from which the interest has to be calculated on the outstanding demand the order of the Assessing Officer could certainly be challenged by filing appeal before the CIT(A) under S. 246 of the Act. (Circular No. 334, dt. 3-4-1982 (1982) 135 ITR 10 (St). (AY.2002-03 to 2004-05)
ABC Exports v. ACIT (2020) 81 ITR 99 (Trib.)(Jaipur)

S. 249 : Appeal – Commissioner (Appeals) – Payment of admitted tax – Unless and until, assessee has paid income tax due on income returned by him, no appeal under Chapter XX will be admitted. [S. 249(4)(b)] 2159

The assessee has not paid the admitted self assessment taxes. Appeal was dismissed by the CIT(A), which was affirmed by the Appellate Tribunal. On appeal the Court held that unless and until, assessee has paid income tax due on income returned by him, no appeal under Chapter XX will be admitted and statute does not give any discretion to appellate authority to entertain an appeal or to extend time for paying self assessment tax, except in respect of cases falling under section 249(4)(b) in terms of proviso under said section. Order of Tribunal is affirmed.](AY 2012-13)

Pesco Beam Environmental Solutions (P.) Ltd. v. DCIT (2020) 275 Taxman 211 (Mad.)(HC)

S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – Condonation of delay of four months – Pendency of rectification application – Matter remanded to the file of the CIT(A). [S. 154, 250, Art. 226] 2160

Assessee filed an appeal against assessment order along with an application for condonation of delay of four months. Reason given for delay in filing appeal was that assessee had filed a rectification application with Assessing Officer for interest calculation under section 234A/234B/234C. CIT(A) dismissed the application for condonation without recording any satisfactory reason. On writ allowing the petition court remanded the matter to the file of the CIT(A) to decide the matter after considering the materials on record within six days of receipt of certified copy of the order.

Reena Agarwal v. UOI (2020) 275 Taxman 596 (Gauhati)(HC)

S. 250 : Appeal – Commissioner (Appeals) – Stay – Commissioner (Appeals) was directed to decide appeal and stay application without asking for deposit of 20 per cent of tax demand. [S. 226(6), 249, Art. 226] 2161

Assessee filed an appeal before Commissioner (Appeals) along with a stay application. On writ the Court directed the Commissioner (Appeals) to decide appeal on merits without asking for 20 per cent of demanded amount. (AY. 2017-18)

Aranattukara Oriental Service Co-op. Bank Ltd. v. CIT (2020) 273 Taxman 165 (Ker.)(HC)

S. 250 : Appeal – Commissioner (Appeals) – Dismissal of appeal on the ground of defective appeal – Rejection of stay application – Directed to file additional memorandum of appeal and stay application. [S. 220(6), 271B, Art. 226] 2162

Assessing Officer passed an order under section 271B against assessee-Assessee aggrieved by said order filed appeal and stay petition before Commissioner (Appeals). Commissioner (Appeals) dismissed appeal stating that appeal was defective and defects were not cured. Assessee filed writ petition against dismissal of appeal. Allowing the petition the Court directed the assessee to file additional memorandum of grounds of appeal as well as stay petition before Commissioner (Appeals), who would treat those additional grounds as part and continuation of appeal and stay application already filed and pass order on stay application without much delay. (AY. 2015-16)

Chirayinkeezhu Service Co-op Bank Ltd. v. ITO (2020) 271 Taxman 72 (Ker.)(HC)

2163 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Rectification of defects – Power to grant stay – Dismissing the statutory appeal on grounds of limitation would result in failure of justice – Directed the CIT(A) to decide on merit. [S. 251, Art. 226]**
The CIT(A) summarily dismissed the appeal stating that the defects were not rectified. The stay application was also rejected. The assessee challenged the order of the CIT(A) by filing writ petition. High Court set aside the order of CIT(A) and remitted that the appeal and stay application filed by the assessee to the CIT(A) for consideration and decision afresh on merit, within six weeks from the date of filing of additional grounds of appeal. Till the orders were passed on stay application coercive steps for enforcing the impugned orders were directed to be kept in abeyance. (WP No 3419 of 2019 (L) dt 7-1-2020) (AY. 2011-12, & 2015-16)
Vattiyoorkavu Service Co-Op Bank Ltd. v. ITO (2020) 115 taxmann.com 68 / 270 Taxman 274 (Ker.)(HC)

2164 **S. 250 : Appeal – Commissioner (Appeals) – Powers – Remand – order passed on the basis of remand report in which the Assessing Officer has accepted the contention of the assessee – Order of Appellate Tribunal is affirmed. [S. 250(4)]**
In an appeal filed by the assessee, the CIT(A) remanded the matter to the AO. In the remand report, the AO himself after going through the material produced by the assessee submitted that the assessee's argument with regard to the addition of long-term capital gains to the tune of Rs. 2,94,600 was acceptable. The assessee's submission with regard to addition as "income from other sources" to the tune of Rs. 84,61,055 was accepted. The AO stated that the argument of the assessee with regard to the addition of income from other sources namely, foreign tour to the tune of Rs. 1,12,475 may also be accepted. The CIT(A) assed his order based on this report which was upheld by the Appellate Tribunal. On appeal by the revenue dismissing the appeal the Court held that the remand report was the basis of the CIT(A) passing the order, which had been affirmed by the Tribunal. Accordingly no substantial question of law. (AY.2004-05)
CIT v. D. M. Purnesh (2020) 426 ITR 169 (Karn.)(HC)

2165 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Penalty – Search initiated on or after 1st June, 2007 – Penalty order confirmed by the CIT(A) merely on ground that written submissions filed against said order did not bear signature of assessee – Order was set aside to the file of CIT(A). [S. 271AAA]**
In appellate proceedings, Commissioner (Appeals) held that the assessee had filed written submissions against penalty order without his signature accordingly confirmed penalty order. On appeal the Tribunal held that Commissioner (Appeals) had dismissed assessee's appeal merely for want of prosecution even when written submission was on record which was not bearing signature of assessee and was very cryptic and did not discuss about material already available on record before him. Accordingly the matter remanded to the file of CIT(A) to decide the matter after giving a reasonable opportunity to the assessee. (AY. 2012-13)
Keshavlal Devkaranbhai Patel v. ACIT (2020) 184 ITD 131 (Rajkot)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Ex parte dismissal of appeal – Matter remanded to CIT(A) to re adjudicate the appeal on merit. [S. 80P(2)(a)(i)] 2166

On appeal, Commissioner (Appeals) summarily dismissed matter ex parte by observing that order of Assessing Officer was to be confirmed as appellant has neither attended nor filed any adjournment letter or filed any clarification even before Commissioner (Appeals) on date of hearing. Tribunal remitted the appeal to file of Commissioner (Appeals) for re adjudication. (AY. 2015-16)

Children Aid Society Employees Co-operative Credit Society Ltd. v. ITO (2020) 183 ITD 616 (Mum.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Duties – Coterminous powers with the Assessing Officer – Remand report – No steps taken by Assessing Officer to verify the facts – Commissioner (Appeals) is duty bound to verify the documents filed by the assessee – Matter remanded to Commissioner (Appeals). 2167

Allowing the appeal the Tribunal held that that there was no application of mind by the Assessing Officer in the remand proceedings. When the assessee filed bills, vouchers and evidence in support of the expenditure claimed before the Assessing Officer during the second remand proceedings, no steps were taken by the Assessing Officer to verify them for considering the claim of the assessee in accordance with law. The Commissioner (Appeals) did not admit evidence filed by the assessee on the ground that the assessee failed to show that proper opportunity to adduce evidence was not granted to the assessee. The action of the Assessing Officer was contrary to the remand notice wherein the Commissioner (Appeals) directed the Assessing Officer to give one more opportunity to the assessee and verify all details before sending the report. The Commissioner (Appeals) was duty bound to verify documents and evidence filed by the assessee himself, when the Assessing Officer failed to carry out his directions in accordance with law. The Commissioner (Appeals) has coterminous powers with the Assessing Officer. Under such circumstances, the Commissioner (Appeals) was to verify the documents and evidence filed by the assessee in support of its claim to deduction of expenditure and pass a detailed order on the merits, in accordance with law after granting proper opportunity of being heard to the assessee.(AY.2010-11)

Hitech Comprint Pvt. Ltd. v. Dy.CIT (2020) 83 ITR 57 (SN) (Bang.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Duties – Capital gains – Commissioner (Appeals) not considering the documents produced before him – Matter remanded to Assessing Officer. [S.254(1)] 2168

Tribunal held that the Commissioner has not considered the documents which were produced before him. The matter was to be remanded to the Assessing Officer for reconsideration of the issue in the light of these documents. If these documents were found to be genuine and it was found that the assessee had no right whatsoever in the property and they are not the owners of the property, there could not be any liability of capital gains in the hands of the assessees from the sale of such property. (AY.2008-09)

Dhanagiri (Alias) Sulegi Mallesh (Late) v. ITO (2020) 83 ITR 33 (SN) (Hyd.)(Trib.)
Vittgal Sulegi v. ITO (2020) 83 ITR 33 (SN) (Hyd.)(Trib.)

2169 **S. 250 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Should have been admitted. [S. 147, 148, 250(6)]**

Tribunal held that when additional evidence was necessary and crucial for disposal of the appeals, it should have been admitted. The Commissioner (Appeals) being the first appellate authority should have seen the documents in order to do justice between the parties. Accordingly the additional evidence was admitted and the CIT(A) was directed to decide the appeal by giving a reasonable opportunity of being heard to the assessee and the Assessing Officer. (AY.2011-12)

Kuldeep v. ITO (2020) 82 ITR 35 (SN)(Delhi)(Trib.)

2170 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Ex-parte order – Bogus purchases – If assessee fails to defend case Commissioner (Appeals) to adjudicate appeal on basis of material on record. [S. 250(6), 254(1)]**

Tribunal held that the Assessee had remained negligent in attending the Appellate proceedings despite being provided with various opportunities of being heard. However, keeping in view the principle of natural justice and keeping in mind the facts and circumstances, another opportunity was granted to the assessee failing which The Commissioner (Appeals) shall be at liberty to adjudicate the appeal on the basis of material on record.(AY.2009-10)

Khimchand Okchand Bhansali v. ITO (2020) 82 ITR 34 (SN) (Mum.)(Trib.)

2171 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Ex-parte order – Mandatory procedure to formulate points in dispute and thereafter record reasons on such points – Failure to appear on appointed day, CIT(A) cannot dismiss the appeal in Limine – He ought to have decided on merits. [S. 131, 250(6)]**

CIT(A) dismissed the appeal in limine on the ground that the assessee did not comply with the summons issued to him and did not appear before him. On appeal the Tribunal held that as per S. 250 (6) of the Act, The Commissioner (Appeals) was required to formulate points in dispute, and thereafter record reasons on such points. Even while passing ex parte order he ought to have decided the appeal on the merits instead of dismissing it in Limine for want of prosecution. Tribunal also held that the CIT(A) failed to adhere to the mandatory procedure contemplated in section 250(6) of the Act Hence the order was not sustainable and was set aside with direction for fresh adjudication. (AY.2014-15)

Ashokkumar Kalubhai Nakrani v. ITO (2020) 82 ITR 7 (SN) (Surat)(Trib.)

2172 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Dismissal of appeal merely on technical ground that written submission field by the assessee did not bear the signature of assessee is held to be not justified – Matter remanded to the file of CIT(A) to decide the issue on merit. [S. 250(6), 271AAA]**

The Tribunal held that the order of CIT(A) was very cryptic and did not adjudicate the issue on merits. The CIT(A) ought to have adjourned the matter directing the assessee to file a signed written submissions. Accordingly the appeal of the assessee was allowed and the appeal is restored to the file of CIT(A) for fresh adjudication. (ITA No. 124 / RJT/ 2017 dt. 28-7-2020) (AY. 2012-13)

Keshalal Devakranbhai Patel v. ACIT (2020) 118 taxmann.com 223 (Rajkot)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Delay of eight years – Misleading facts – Refusal to condone the delay is held to be justified. [S. 249, 254(1)] 2173

Tribunal held that there was a huge time gap between the different steps taken by the assessee and the delay during those periods had not been explained properly. The assessee mentioned in the return that the long-term capital gain was exempt. However, the same was not properly carried forward to the summary page of the return resulting in denial of exemption. The assessee had not properly handled the matter, resulting in delay in filing the appeal before the Commissioner (Appeals). Accordingly, the Commissioner (Appeals) was justified in refusing to condone the delay and dismissing the appeal on account of misleading the facts and not properly explain the delay in filing of appeal. (AY. 2007-08)

Prakash Ramachandra Prabhu v. ITO (2020) 79 ITR 27 (SN) (Bang.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Procedure – Assessment – Service of notice – Assessee expired before service of notice – Service of notice upon dead person – No jurisdiction to pass assessment order on legal heir – Appeal filed manually – Order of CIT(A) set aside and directed to decide on merit. [S. 142(1), 143(3), 148, 159, Rule, 12, 45] 2174

Tribunal held that before service of notice under section 142(1) the assessee had already expired. His legal heirs did not file the return for the assessment year. Therefore, the right course for the Assessing Officer was to find out the legal heirs and more particularly, the legal heir who had inherited the assets and liabilities of the deceased assessee because the legal heir was liable to pay taxes of the deceased only equivalent to the property inherited from the deceased. If the assessment order was finalised but the legal heir later on comes forward and states that she had not inherited any property from the deceased assessee the demand could not be recovered. Other legal heirs if any would take an objection that they had not been served any notice under section 142(1) or under section 148, etc. Therefore, the procedure followed by the Assessing Officer was patently illegal. Service of notice upon a dead person under section 142(1) would not authorise him to assume jurisdiction to pass an assessment order on the legal heirs also. The right course for him was to explore jurisdiction for issuing a notice on the legal heirs of the deceased assessee. This aspect could have been examined by the Commissioner (Appeals). Had she gone through the written submissions to the effect that the assessee died his appeal could have been allowed to be filed manually as provided in rules 45 and 12. The Commissioner (Appeals) ought to have entertained the appeal, and should have decided it on the merits. The order of the Commissioner (Appeals) was set aside and the issue was restored to the Commissioner (Appeals) for readjudication. The observations explaining the position contemplated in section 159 for assessing the legal heirs would not impair or injure the case of the Assessing Officer or cause any prejudice to the defence/explanation of the assessee or other legal heirs in future. (AY. 2017-18)

Keshavlal Somnath Panchal (Late) v. ITO (2020) 79 ITR 15 (SN) (Ahd.)(Trib.)

2175 **S. 250 : Appeal – Commissioner (Appeals) – Challenging entire Additions – Commissioner (Appeals) Considering only two out of seven items – Matter remanded to Commissioner (Appeals) to decide afresh. [S. 57, 251, 254(1)]**

Tribunal held that the entire addition of Rs. 19,58,909 made by the Assessing Officer was challenged by the assessee before the Commissioner (Appeals). The Commissioner (Appeals) had considered only 2 out of 7 items of expenditure listed by the Assessing Officer in the order of assessment. He did not consider the submissions with regard to the remaining items of expenditure. The entire issue of disallowance had to be considered afresh by the Commissioner (Appeals), after taking a holistic view of the basis of the disallowances made by the Assessing Officer and the claim of assessee that the expenses were incurred for the purpose of earning interest income. Accordingly the order of Commissioner (Appeals) was set aside and the Commissioner Appeals) was directed to decide the issue of disallowance of expenses afresh in accordance with the law. (AY.2016-17)

Regunathan Venkata Rajendran v. ACIT (2020) 81 ITR 71 (SN) (Bang.)(Trib.)

2176 **S. 250 : Appeal – Commissioner (Appeals) – Not mentioning of service of notice – Order was passed without giving an opportunity – Order set a-side to decide on merit. [S. 251, 254(1)]**

Tribunal held that the Commissioner (Appeals) in his order did not mention if any notice had been served upon the assessee for hearing of the appeal. The appellate order had been passed without giving reasonable, sufficient opportunity of being heard to the assessee. Further the contention of the assessee that in penalty proceedings the receipts shown were below the prescribed limit which required adjudication on the facts on the merits. In this view of the matter, his order was set aside and the matter was restored to him with a direction to redecide the appeal of assessee in accordance with law, by giving reasonable, sufficient opportunity of being heard to the assessee. (AY.2014-15)

Maharishi Dayanand Educational Society v. ITO(E) (2020) 81 ITR 86 (SN) (Delhi)(Trib.)

2177 **S. 250 : Appeal – Commissioner (Appeals) – Duties – Ex-parte – Required to dispose of the appeal of the assessee by an order in writing stating the points for determination, the decision thereon and the reasons for the decision – Directed to dispose the appeal on merits in accordance with law. [S. 68, 143(3), 148].**

Commissioner (Appeals) dismissed the appeal ex parte. On appeal the Appellate Tribunal held that the Commissioner (Appeals) Required to dispose of the appeal of the assessee by an order in writing stating the points for determination, the decision thereon and the reasons for the decision-Directed to dispose the appeal on merits in accordance with law (AY.2013-14)

A. J. Mill Store Agency Pvt. Ltd. v. ITO (2020) 81 ITR 64 (SN) (Kol.)(Trib.)

2178 **S. 250 : Appeal – Commissioner (Appeals) – Procedure – Additional evidence – Remand – Evidence collected during appellate proceedings – Opportunity was not given to the AO – Matter set aside to the file of AO. [S. 246A, R.46A]**

Allowing the appeal of the revenue the Tribunal held that CIT(A) having collected materials and evidences during the appellate proceedings and the said materials were

not shared with the AO and no opportunity was given to AO to examine these materials and evidences and the rebut the same, the order of CIT(A) is set aside and the issue restored to the AO. (AY. 2013-2014)
ACIT v. Par Excellence Leasing & Financial Services (P) Ltd. (2020) 186 DTR 129 / 203 TTJ 743 (Delhi)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Sales commission – Statement of facts before CIT(A) – CIT(A) is bound to adjudicate the Deduction at source – issue on merits. [S. 9(1)(vii), 40(a)(i), 195, 250(6)] 2179
Assessee filed Statement of facts before CIT(A). CIT(A) is bound to adjudicate issue on merits. Dismissal of appeal at threshold on ground that no written submissions filed by assessee is held to be not justified. CIT(A) is directed to decide the issue afresh on merits. (AY.2011-12)
Classic Linens International P. Ltd. v. Dy. CIT (2020) 77 ITR 1 (Chennai)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Duties – CIT(A) to state point in dispute – Record reasons – Pass speaking order – Matter remanded to decide on merits. 2180
Tribunal held that sub-S. (6) of S. 250 mandates the CIT(A) to state the point in dispute and thereafter record reasons in support of his conclusion. The finding given by him indicated that the order was not in consonance with the mandate given in the Act. He had not made any analysis of the submissions filed by the assessee or the point raised by him during the assessment proceedings. Therefore, the order was not sustainable. The issue was remitted to adjudicate on the merits. Once the quantum proceedings were set aside, then the very basis to compute penalty was extinguished. The CIT(A) shall adjudicate the issue with regard to the levy of penalty after adjudication of the quantum appeal. (AY. 2011-12)
Jitendra Narsinhbhai Talpada v. ITO (2020) 77 ITR 47 (SN) (Ahd.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Appeal fled manually – Dismissal of appeal in limine – Delay in filing appeal electronically (online filing) was condoned – Directed the CIT (A) to decide on merit [S.250, 254(1)] 2181
Where the appeal had already been filed in paper form, but the e-filing had not been done by the assessee, the same was held to be only a technical consideration. The delay in filing the appeal in electronic mode was condoned, as the appeal was filed manually within time. CIT (A) was directed to hear the appeal on merit after affording adequate opportunity of being heard to the assessee. (AY.2013-14)
Kandalaa v. ITO (2020) 192 DTR 83 / 206 TTJ 1014 (Bang)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Duties Cross examination of witness – Order of High Court set aside and matter remanded to the Office of CIT(A) to give an opportunity of cross examination of witness and decide according to law – Demand and attachment stayed until the matter decided by the CIT(A). [S. 220] 2182
The Assessing Officer relied on the statements without giving an opportunity of cross examination. Allowing the appeal the Court set aside the order of High Court dt 18-9 2007 and also order dated 29-6-2001 and 23-8-2000 passed by the Appellate Tribunal.

Court stated that entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim in remanded appeal. Accordingly the demand and attachment notice would not be given effect until Commissioner (Appeals) decided matter afresh.
I.C.D.S. Ltd. v. CIT (2020) 273 Taxman 12 / 194 DTR 18 / 316 CTR 678 (SC)

2183 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Inadvertently omitted to make claim for deduction under section 10B – All necessary facts were already on record – CIT (A or Appellate Tribunal ought to have entertained claim – Unlike an ordinary appeal, basic purpose of a tax appeal is to ascertain correct tax liability of assessee in accordance with law – Matter remanded. [10B, 250, 254(1)]**
Assessee filed its income tax return for relevant year, however, inadvertently omitted to make claim for deduction under section 10B in respect of two 100 per cent Export Oriented Undertakings (EOUs), which according to him were eligible for deduction under section 10B. Assessee, during assessment proceedings, filed letters claiming for deduction under section 10B in respect of aforesaid units, however, Assessing Officer refused to consider this claim for deduction, on ground that such claim was not raised by filing revised returns. Commissioner (Appeals) as well as Tribunal upheld order made by Assessing Officer. On appeal the Court held that Appellate Authorities may confirm, reduce, enhance or annul assessment or remand case to Assessing Officer, because, unlike an ordinary appeal, basic purpose of a tax appeal is to ascertain correct tax liability of assessee in accordance with law. Therefore Commissioner (Appeals) in exercise of his plenary/co-terminus powers, as well as Tribunal, ought to have entertained claim for deduction under section 10B as all necessary facts were already on record. Appellate Authorities could not have refused to consider assessee's claim for deduction on ground that such claim was not made in original returns or revised returns filed before Assessing Officer. Followed *CIT v. Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bom.) (HC)* Referred Circular No 14 (XL-35 of 1955 dt 11-4-1955. (AY.2005-06)
Sesa Goa Ltd. v. ACIT (2020) 430 ITR 114 / 272 Taxman 543 (Bom.)(HC)

2184 **S. 251 : Appeal – Commissioner (Appeals) – Duties – Appellate Tribunal – General principles – Appellate authorities must consider facts and pass speaking orders – The Principal Chief CIT shall ensure that in all cases, the Department is represented before the first appellate authority and the Tribunal not only to defend the cases of the Department, but also to assist in the decision making process – Matter remanded to the Commissioner (Appeals). [S. 254(1)]**
Allowing the appeal of the revenue the, Court held that the law laid down in various decisions cannot be applied in the abstract, but needs to be applied to the facts and circumstances of the case. Therefore, the cardinal principle is that law is applied to each and every case after considering the facts. The parties to the proceedings are entitled to know why the authority or the Tribunal or the court does not agree with their submissions. Thus, an order without reasons is arbitrary and unreasonable and would amount to violation of the principles of natural justice. Court also held observed that on a reading of the order passed by the Commissioner (Appeals), it could be seen that the order of the Assessing Officer was not referred to in the preamble portion of the order

except for the grounds raised by the assessee. There was no discussion as to the finding rendered by the Assessing Officer after examining the nature of transaction. All that the Commissioner (Appeals) did was to note down the facts, and refer to two decisions. No reasons were given as to how those two decisions would apply to the assessee's case. Further without discussing about the transaction and without rendering any findings why, in the opinion of the Commissioner (Appeals), the Assessing Officer was wrong, the Commissioner (Appeals) allowed the appeal. To say the least, the manner in which the appeal was allowed by the Commissioner (Appeals) was erroneous. The Tribunal also did not consider the matter in the proper perspective. Its order upholding the decision of the Commissioner (Appeals) was not supported by reasons. Both the orders were invalid. Matter remanded to the Commissioner (Appeals). (AY.2010-11)

Obiter dicta : In the appeal before the Commissioner (Appeals) none appeared for the Department. The Principal Chief CIT shall ensure that in all cases, the Department is represented before the first appellate authority and the Tribunal not only to defend the cases of the Department, but also to assist in the decision making process.

PCIT v. S. Yogarathnam (2020) 193 DTR 369 / 317 CTR 116 / 273 Taxman 513 / (2021) 430 ITR 82 (Mad.)(HC)

251 : Appeal – Commissioner (Appeals) – Powers – Powers of Appellate Authorities – Appellate Authorities can consider claim not raised before Assessing Officer Education cess is held to be deductible. [S. 40(a)(ii), 254(1)] 2185

Court held that though the claim to deduction of education cess and higher and secondary education cess was not raised in the original return or by filing a revised return, the assessee had addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the Appellate Tribunal, before whom such deduction was specifically claimed, was duty bound to consider such claim. Followed *CIT v. Orient (Goa) P Ltd [2010] 325 ITR 554 (Bom.) (HC)* (AY.2008-09, 2009-10)

Sesa Goa Ltd. v. JCIT (2020)423 ITR 426 / 117 taxmmann.com 96 / 193 DTR 41 / 316 CTR 446 (Bom.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Claim for allowability of lease rent which was neither made in the return nor before the Assessing Officer – Cannot be raised first time before Commissioner (Appeals) without any evidences. [S. 37(1), 246A] 2186

Dismissing the appeal the Court held that the first appellate authority had specifically found that the claim was not decipherable even from the accounts, since the profit and loss account did not show the expenditure towards the leased equipment. For not having raised the claim, the explanation was that under the Companies Act, the depreciation on both assets and owned by the assessee and leased assets could be claimed, while under the Income-tax Act, depreciation claim was permissible only on assets owned by the assessee. However, the assessee was quite conscious of the fact that there could be no depreciation claimed on leased assets under the Act since no such claim was made in the returns filed. Hence, the claim not having been raised could not be said to be a bona fide omission. The depreciation having not been specifically claimed in respect of

leased assets, the assessee was entitled to claim business expenditure, of the lease rent, which it had not claimed in the return. There was no such expenditure shown in the profit and loss account. The rejection of the claim was justified.
FCI Technologies Services Ltd. v. ACIT (2020) 423 ITR 368 (Ker.)(HC)

2187 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional grounds – Power of the Appellate authorities is co-terminus with the power of the assessing authorities – Order of Tribunal holding that CIT(A) has no jurisdiction to admit addition grounds is set aside – Directed the CIT(A) to decide on merit considering the additional ground. [S. 254(1)]**
Allowing the appeal of the assessee the Court held that the Tribunal was not justified in holding that CIT(A) ought not to have admitted the additional grounds raised before the CIT(A). Accordingly the order of Tribunal is set aside and directed the CIT(A) to decide the appeal on merits considering the additional grounds. Power of the Appellate authorities is co-terminous with the power of the assessing authorities. (Distinguished Addl *CIT v. Gurjargravures P. Ltd [1978] 111 ITR 1 (SC) followed, Jute Corporation of India v. CIT [1991] 187 ITR 688 (SC) CIT. Kanpur coal syndicate [1964] 53 ITR 225 (SC). (ITA No.67 of 2014 dt 5-2 2020)* (AY. 2009-10)
Siva Equipment Pvt. Ltd. v. ACIT (2020) 423 ITR 20 / 187 DTR 249 / 313 CTR 787 / 274 Taxman 420 (Bom.)(HC)

2188 **S. 251 : Appeal – Commissioner (Appeals) – Powers – CIT(A) has the power to decide stay petition – He should not direct the assessee to file stay petition before AO. [S. 220(6), Art. 226]**
Assessee filed petition before CIT(A) for stay of demand in assessment order. CIT(A) directed assessee to file stay applications before AO under S. 220 of the Act. On writ the Court held that discretion and power is independently available to CIT(A) to decide stay petitions. Since he disposed of stay applications by an order that was merely in nature of an advice, he failed to exercise discretion and jurisdiction vested with him.) Accordingly the matter remanded to CIT(A) to decide the stay petition on merits. Followed *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2019) (2) KLT 597 (FB) (Ker.) (HC)*
Kallettumkara Service Co-operative Bank Ltd. v. ITO (2020) 268 Taxman 10 (Ker.)(HC)

2189 **S. 251 : Appeal – Commissioner (Appeals) – Duties – Non-speaking and cryptic order – Directed to pass reasoned and speaking order. [S. 254(1)]**
Tribunal held, that it is a settled position of law that a quasi-judicial authority should pass a speaking and reasoned order but in the present case, neither the Transfer Pricing Officer nor the Commissioner (Appeals) had passed a speaking and reasoned order in the light of the direction of the Tribunal in the first round. Hence the order of the Commissioner (Appeals) was liable to be set aside and the matter remanded to the Assessing Officer/Transfer Pricing Officer for a fresh decision by way of a speaking and reasoned order on all the issues in accordance with the directions of the Tribunal in the earlier round of litigation. (AY.2009-10)
Dell International Services India Pvt. Ltd. v. JCIT (LTU) (2020) 84 ITR 2 (SN) (Bang.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Duties – Dismissal of appeal after eight years of filing of an appeal for not mentioning the date of receipt of the order is not mentioned in Form No 35 – CIT(A) ought to have issued defect memo and should have decided the appeal on merits after considering material on record – Matter remanded. [S. 250] 2190

Tribunal held that the very object of mentioning the date of receipt of the assessment order was to compute the period of limitation. The appeal was filed within the period of limitation. Therefore, there was no justification for dismissing the appeal on a technicality on the ground that the date of receipt of the assessment order was not mentioned in form 35. Moreover, the appeal was admittedly filed on January 28, 2011. The appeal was pending for the last eight years. After keeping the matter for the last eight years, dismissing the appeal on the ground that the date of receipt of the assessment order was not filled in form 35 was not correct. The Commissioner (Appeals) ought to have disposed of the appeal on the merits after considering the grounds of appeal and other material on record. Since such an exercise was not done, the matter was to be reconsidered by the Commissioner (Appeals) with the direction to dispose of the appeals on the merits after giving a reasonable opportunity to the assessee in accordance with law. (AY. 2005-06, 2008-09)

Gates Unitta India P. Ltd. v. ACIT (2020) 83 ITR 462 (Chennai) (Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Power of enhancement – Short term capital gains – No power to assess new source of income. [S. 45] 2191

The Tribunal held that the Commissioner (Appeals) ought to have asked the assessee to explain the source of investment and if he was not satisfied with the explanation, he should have issued notice of enhancement. However, he could not assess under a new source of income. Since the Assessing Officer had no opportunity to examine the evidence, the matter was remanded to the file of the Commissioner (Appeals). The Commissioner (Appeals) was directed to examine the evidence relating to the source of investment and after his satisfaction, proceed further. (AY. 2009-10)

Dharam Bir Singh v. ITO (2020) 82 ITR 176 (Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Ex Parte – Should have called for assessment records and thereafter should have passed the order – Matter remanded for disposal afresh. 2192

Tribunal held that the CIT(A) should have called for assessment records and thereafter should have passed the order. The ex parte order passed by the CIT(A) dismissing the appeal was set a-side and matter remanded for disposal afresh.(AY.2013-14)

AP Garments P. Ltd. v. Dy.CIT (2020) 80 ITR 42 (SN) (Kol.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Cash credits – No opportunity was given to the AO – Rule 46A is violated. [S. 68, R. 46A] 2193

Assessee produced certain additional evidences/enclosures on basis of which he deleted impugned additions made as cash credits. Tribunal held that CIT(A) had admitted additional evidences without complying to rule 46A, hence, impugned order of deleting additions on basis of such additional documents by CIT(A) was held to be unjustified. (AY. 2009-10)

ACIT v. Kandoi Transport Ltd. (2020) 185 ITD 358 (Cuttack) (Trib.)

2194 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Amendment by Finance Act, 2001 – Commissioner (Appeals) cannot restore matter to Assessing Officer for verification and fresh decision – He must take decision one way or other – Appellate Tribunal – Additional ground raised by the assessee was admitted – Matter remanded to the Assessing Officer. [S. 132(4A), 250, 254(1)]**

Tribunal held that section 251(1), after amendment by the Finance Act, 2001, does not empower the Commissioner (Appeals) to restore the matter to the Assessing Officer for verification and a fresh decision. He can call for a remand report from the Assessing Officer, but the decision has to be taken by him this way or that way. As the Commissioner (Appeals) had restored the matter to the Assessing Officer without taking any positive decision, his order was vitiated. Additional ground raised by the appellant is admitted and the matter remanded to the Assessing Officer. Followed *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC).* (AY.2005-06)

Ulhas Vasantrao Bagul v. Dy. CIT (2020) 83 ITR 49 (SN) (Pune)(Trib.)

2195 **S. 251 : Appeal – Commissioner (Appeals) – Penalty imposed for non appearance – CIT(A) is directed to decide on merits. [S. 144, 147]**

Tribunal held that the assessee should not for his non-appearance suffer addition of the income which was not sustainable under the Act. Accordingly the order of the Commissioner (Appeals) was set aside for fresh adjudication as per the provision of law to the Assessing Officer. However, the assessee was to be penalised for non-appearance before the authorities. Accordingly penalty of Rs. 5,000 was imposed upon the assessee to be deposited before the commencement of his proceedings before the Assessing Officer. The assessee was directed to co-operate in the proceedings before the Assessing Officer and furnish all the requisite documents in advance before him. (AY. 2012-13)

Tariqrashid M. Munshi v. ITO (2020) 78 ITR 622 (Ahd.)(Trib.)

2196 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Remand by Tribunal – Inspector of Income – Tax not competent to issue enhancement notice – Order enhancing income not sustainable. [S. 69C, 251(2)]**

The Tribunal observed that the notice issued by the Inspector of Income-tax with the approval of the Commissioner (Appeals) showed the pre-determined mind of the Inspector and non-application of mind of the authorities and even the Inspector of Income-tax was not competent to issue such notice. Even otherwise, the Assessing Officer had examined all the issues with supporting evidence filed by the assessee which was a matter of record. The Commissioner (Appeals) did not bother to examine the materials which were already on record as certified by the assessee. The order was passed by the Commissioner (Appeals) in contravention of the directions of the Tribunal. Therefore, the enhancement notice was not sustainable in the eyes of law and resultantly the enhancement made by the Commissioner (Appeals) was not tenable. (AY.2012-13)

Green Valley Infracity P. Ltd. v. ITO (2020) 80 ITR 388 / 193 DTR 201 / 207 TTJ 339 (SMC) (Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Enhancement – CIT(A) cannot enhance a new source of income to tax which was not considered by assessee. [S. 68, 147, 251(2), 263] 2197

Assessee-company had amalgamated with a company by way of acquisition/purchase. Assessee made payment of certain amount towards repayment of loans and liabilities of acquired/amalgamated company. Return filed by assessee was accepted and an assessment order was passed. CIT(A) invoked provisions of S. 251(2) on ground that amount used for repayment of loans and liabilities of acquired company was unexplained creditors in books of account and brought same to tax under S. 68. Tribunal held that the AO did not examine allowability of sum paid to settle loans and liabilities of acquired company, in fact, AO has accepted said payment. Accordingly if CIT(A) was of opinion that AO ought to have verified genuineness of repayment of loans/advances of acquired company by assessee, option available were under S. 147 or under S. 263, but, CIT(A) could not have embarked on bringing a new source of income to tax which was not considered by assessee. Accordingly the addition made by CIT(A) is held to be unjustified. (AY. 2014-15)

Mylan Laboratories Ltd. v. DCIT (2020) 180 ITD 558 / 187 DTR 259 / 204 TTJ 426 (Hyd.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – CIT(A) can not dismiss appeal against penalty merely stating that in quantum proceedings additions has been confirmed; in penalty appeal, he has to mention point for determination again and reasons for levy – Matter remanded. [S. 271(1)(c)] 2198

CIT(A) dismissed assessee's appeal against imposition of penalty merely on ground that in quantum proceedings, additions had been confirmed. On appeal the Tribunal held that quantum proceedings and penalty proceedings are independent and distinct in nature; therefore, CIT(A) while deciding penalty appeal of assessee has to mention point for determination again as also reasons for levying penalty appeal was to be restored to re-decide same by giving reasons for decision in appellate order. (AY. 2009-10)

NIIT Ltd. v. DCIT (2020) 180 ITD 141 (Delhi)(Trib.)

S. 253 : Appellate Tribunal – Monetary limits – Gift from husband – On merit and also on the basis of circular of the Board, the appeal of revenue was dismissed. [S. 69] 2199

Tribunal held that the husband of the assessee was a regular Income-tax assessee having permanent account number and for the assessment year 2014-15, he had filed a return declaring an income of Rs. 2,78,66,138. Therefore, the genuineness of gift received from her husband was not in doubt. Since the amount had been remitted from the husband's bank account, the assessee had established the identity and creditworthiness of the donor. In view of the quantum addition deleted by the Commissioner (Appeals) the Departmental appeal was covered by Circular No. 17 of 2019 dated August 8, 2019 (2019 416 ITR (St.) 106 and was not maintainable. (AY. 2014-15)

ITO v. Sudhansubala Rout (2020) 83 ITR 15 (SN) (Cuttack)(Trib.)

2200 **S. 253 : Appellate Tribunal – Vivad Se Vishwas Scheme – Appeal Dismissed As Withdrawn. [Direct Tax Vivad Se Vishwas Act, 2020]**
Tribunal held that the assessee's appeal as withdrawn, that as the assessee had opted for settlement of dispute under the Vivad Se Vishwas Act, 2020, no purpose would be served by keeping the appeal pending. (AY.2012-13)
Chitradurga District Co-Op. Central Bank Ltd. v. Dy.CIT (2020) 83 ITR 81 (SN) (Bang.)(Trib.)

2201 **S. 253 : Appellate Tribunal – Cross objection – Ground can be raised for the first time which was not taken even in an appeal before CIT(A). [S. 14A, 254(1) R. 8D, Form 36A, Code of Civil Procedure, 1908, Order 9, Rule, 3]**
The revenue preferred an appeal contending that CIT(A) erred in restricting the disallowance u/s 14A to Rs. 22, 82 187 being the amount suo motu disallowed by the assessee. The Assessee filed a cross objection contending that the CIT(A) ought to have restricted the disallowance to the exempt income of Rs 44,250 instead observing that the disallowance should be restricted to Rs.22,82, 187 being suo motu disallowance done by the assessee. Tribunal held that ground can be raised for the first tine which was not taken in appeal before CIT(A). (Referred *CIT v. Delight Enterprises (ITA No. 110 /2009 dt.26-2-2009(Bom.) (HC) www.itatonline.org Tata Industries Ltd v. ITO (2016) 181 TTJ 600 (Mum.) (Trib.), Goetzge (India) Ltd v. CIT (2006 284 ITR 323 (SC), CIT v. V.MR.P. Firm (1965) 56 ITR 67 (SC) Shelly products (2003) 129 taxman 271 (SC) CBDT Circular No 14 (XL-35 of 1953 dt 11-4-1955)* (ITA No. 497/Mum/2019 and cross objection dt 5-10-2020) (AY. 2013-14)
ITO v. Centrum Capital limited (2020) BCAJ-November-P. 55 (Mum.) (Trib.)

2202 **S. 253 : Appellate Tribunal – Maintainability of appeal – Corporate debtor against whom moratorium order passed – Institution of suit against Corporate debtor prohibited – Provisions of the IBC Code over any other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 of the IBC Code – Appeal by department against assessee is not maintainable [S. 268A, Insolvency And Bankruptcy Code, 2016, S. 14, 238, ITAT, Rules 26]**
Before the Tribunal the revenue contended that appeals of the revenue cannot be dismissed in view of the provisions of section 14 of IBC 2016 with respect to the moratorium period. It was submitted that the provisions of section 14 (1)(a) suggest that the word 'proceedings' does not include income tax proceedings and can continue during the period of moratorium. She further referred to the provisions of rule 26 of ITAT Rules, 1963 and stated that if income tax proceedings fall within the ambit of section 14 it will create an anomalous and paradoxical situation. Therefore,the revenue contended that the meaning, which is attached to the word 'proceedings', is the proceedings related to suits and not all kinds of proceedings. Therefore, according to revenue the income tax proceedings can continue during the moratorium period also. It was argued that the coordinate bench is prohibited u/s 14 of the code to give any direction regarding tax recovery proceedings in relation to the company however, the appeal shall continue. Revenue has referred to rule 26 of The Appellate Tribunal Rules 1963 to provide that proceedings before ITAT can continue even after insolvency. The Tribunal held that, the provisions of section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits the institution of all suits or continuation of pending suits or

proceedings against the corporate debtor including the execution of any judgment or decree or order in any court of law, tribunal, arbitration panel or other authority during the moratorium period. The period of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process. Accordingly the Appellate Tribunal held that the appeal filed by the Department was an institution of suit against the corporate debtor, which was prohibited under section 14. Further, by the recent amendment to the 2016 Code any resolution plan or liquidation order as decided by the competent authority would be binding on all the stakeholders including the Central Government, any State Government or local authority to whom a debt in respect of the payment of the dues may be owed. This will prevent State authorities, regulatory bodies including the Direct and Indirect Tax Departments from questioning the resolution plan or liquidation order as well as jurisdiction of tribunals with regard to the 2016 Code. Thus after the recent amendment also there was no reason to continue with these appeals. Apparently, the provisions of section 14 of The Insolvency And Bankruptcy Code, 2016 provides that all these suits or continuation of pending suits or proceedings against the corporate debtor including any judgement or decree or order in any court of law, tribunal, arbitration panel or other authority cannot be passed during the moratorium period. The period of moratorium shall have the effect from the date of such order till the completion of the corporate insolvency resolution process. Tribunal held that in the present case, the appeal filed by the revenue is an institution of suit against the corporate debtor, which is prohibited under section 14 of the act. No excepts u/s 14(2) of the IBC 2016 was shown to us. As held by the honourable Supreme Court in case of *Alchemist Asset Reconstruction Co. Ltd v. Hotel Godavan Pvt Ltd [88 taxmann. com 202*] it has been held that even arbitration proceedings cannot be initiated after imposition of the moratorium u/s 14(1)(a) has come into effect and it is not nice in law and could not have been allowed to continue. Further Honourable Apex Court in the case of *PCIT v. Monnet Ispat and Energy Ltd. [SLP (c) No: 6487 of 2018, dated 10-8-2018]* has upheld overriding nature and supremacy of the provisions of the IBC Code over any other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 of the IBC Code. In view of this the appeals filed by the revenue cannot be continued to be allowed during the course of moratorium period. Tribunal also held that Circular No. 17 of 2019 dated August 8, 2019 (2019)416 ITR 106 (St) will apply to all pending appeals. Therefore the appeal was not maintainable in the instant case as the tax effect was less than Rs. 50 lakhs. (AY.1995 to 2002)

Shamken Multifab Ltd. v. Dy. CIT (2020) 78 ITR 214 / 190 DTR 77 / 180 ITD 756 / 205 TTJ 696 (Delhi) (Trib.)

Dy. CIT v. Arhum Syntex (P) Ltd. (2020) 78 ITR 214 / 190 DTR 77 / 180 ITD 756 / 205 TTJ 696 (Delhi)(Trib.)

Dy.CIT v. Shamken Cotsyn Ltd. (2020)78 ITR 214 / 190 DTR 77 / 180 ITD 756 / 205 TTJ 696 (Delhi) (Trib.)

Dy.CIT v. Shamken Spinner Ltd. (2020) 78 ITR 214 / 190 DTR 77 / 180 ITD 756 / 205 TTJ 696 (Delhi)(Trib.)

2203 **S. 253 : Appellate Tribunal – Assessee expired after filing of appeal – Legal heirs were not brought on record – Authorised representative appeared before the CIT(A) on behalf of deceased – Appeal is not maintainable – Legal heirs has to file Form No 35 before CIT(A)bringing the legal heirs on record after intimating death of the assessee to the CIT(A) – Matter remanded to the file of CIT(A) to decide the matter in accordance with law. [S. 250, Form, 35, 36]**

Tribunal held that the authorised representative for the assessee appearing before the Commissioner (Appeals) had intimated that the assessee had expired on October 10, 2016. After filing of the appeal before the Commissioner (Appeals) the assessee had expired and on the day of passing of the first appellate order the assessee was no more alive. Counsel for the assessee could not intimate why amended form 35 was not filed before the Commissioner (Appeals) intimating the death of the assessee. The legal heirs of the assessee were not brought on record even before the Commissioner (Appeals). The authorised representative continuously appeared for the deceased assessee before the Commissioner (Appeals) even after his death. The course was wholly impermissible and invalid under the law. Counsel could not appear for a dead person before the Commissioner (Appeals). Since revised form 35 was not filed before the Commissioner (Appeals) bringing the legal heirs of the assessee on record, the Commissioner (Appeals) under this mistaken belief passed the first appellate order in the name of the dead person without bringing the legal heir on record. Thus, the order of the Commissioner (Appeals) was entirely a nullity and void in law. Since the order passed by the Commissioner (Appeals) in the name of the dead person was a nullity and void in law, the appeal therefrom was not maintainable and was liable to be dismissed. However, the order of the Commissioner (Appeals) was set aside and the matter in issue was restored to the Commissioner (Appeals) with a direction to the legal heir of the assessee to file amended form 35 before the Commissioner (Appeals) bringing the legal representatives on record after intimating the Commissioner (Appeals) about the death of the assessee. The Commissioner (Appeals) may thereafter proceed in accordance with law giving reasonable, sufficient opportunity of being heard to the assessee, if the appeal is filed in accordance with law and rules.(AY.2013-14)

Rajan Roy (Late) v. ACIT (2020) 79 ITR 3 (SN) (Delhi)(Trib.)

2204 **S. 253 : Appellate Tribunal – Monetary limits – CBDT Circular – Information received from DIT(Investigation) being an internal wing of Income Tax department cannot be treated as an external source and hence not covered by exception to Circular – Circular No 17/ 2029 dt 8-8-2019 (2019) 416 ITR 106 (St) – Circular No 23/2019 dt 16-9-2019 (2019) 417 ITR 4 (St) applies only to capital gains on penny stocks and not to share application money. [S. 45, 68]**

Dismissing the appeal of the revenue the Appellate Tribunal held that for the purpose of exceptions to low tax effect Circular No. 17/2019 dt. 8.-8-2019 issued by CBDT (2019) 416 ITR 106 (St)

1. Information received from DIT(Investigation) being an internal wing of Income Tax department cannot be treated as an external source and hence not covered by exception to Circular.
2. Circular No. 23/2019 r.w. OM dt. 16.09.2019 (2019) 417 ITR 4 (St) applies only to capital gains on penny stocks and not to share application money. Followed, ITO v.

Late Shri Amarchand P. Shah. (ITA No.818-820/Mum/2017 dated 08/07/2019) (ITA No. 3607 /Mum/ 2017 dt-5-2-2020 (AY. 2007-08)
ITO v. Nidhi Premises Pvt. Ltd. (Mum.)(Trib.) (UR) www.itatonline.org

S. 253 : Appellate Tribunal – Monetary limits – Tax effect less than prescribed limit – Circular is applicable to pending appeals. [S. 268A] 2205
Circular No. 17 of 2019 dated August 8, 2019 (2019) 416 ITR 196 (St) referred to Circular No. 3 of 2018 and its amendment dated August 20, 2018 in which the monetary limits for filing of Income-tax appeals by the Department before the Tribunal, the High Court, special leave petitions and appeals before the Supreme Court have been specified. Circular No. 17 of 2019 applies retrospectively to pending appeals. Thus, the Department appeal was not maintainable. (AY.2008-09)
ACIT v. Madhyam House Pvt. Ltd. (2020) 77 ITR 307 (Delhi)(Trib.)

S. 253 : Appellate Tribunal – Monetary limits – Tax effect less than prescribed limit – Appeal is not maintainable. [S. 268A] 2206
Tribunal held that since Circular No. 17 of 2019 dated August 8, 2019 was issued to amend Circular No. 3 of 2018 all the conditions of Circular No. 3 of 2018 shall apply accordingly. The Department in view of the Board's circulars did not press its appeal. The case of the Department did not fall within the exceptions provided in the circulars. The appeal was not maintainable as it was filed against the instructions and was liable to be dismissed.(AY.2006-07)
ITO v. Madhuri Devi (Smt.) (2020) 77 ITR 303 (Delhi)(Trib.)

S. 253 : Appellate Tribunal – Delay of 615 days – Health problem – Delay is condoned. [S. 253(3)] 2207
Assessee-company filed appeals against orders of CIT(A) after delay of 615 days. The delay was stated that assessee company lying closed since 2012 had only two directors who were husband and wife and they remained pre-occupied due to life threatening health problems of husband; that company being defunct existed on strength of one semi-literate employee. Tribunal condoned the delay and directed the CIT(A) to decide on merit. (AY. 2005-06, 2009-10 to 2012-13)
Emsons Organics Ltd. v. DCIT (2020) 180 ITD 762 / 203 TTJ 1 (UR) (Chd.)(Trib.)

S. 253 : Appellate Tribunal – Condonation of delay of 318 days – Delay "Useless advice" by a professional to not file appeal and to instead file a Cross Objection if Revenue filed the appeal cannot help the assessee because there was always going to be a chance that Revenue might not file appeal – Delay is not condoned. [S. 253(3), 254(1)] 2208
Dismissing the appeal for not condoning the delay of 318 days the Tribunal held that, the tendency to perceive delay as a non-serious matter should be discouraged. The notion that the ITAT should always condone the delay should not be promoted. For mistake of lawyer to serve as valid consideration for the purpose of condonation of delay, the mistake must be such as may be made by a professional lawyer well-versed and experienced in law. "Useless advice" by a professional to not file appeal and to instead file a Cross Objection if Revenue filed the appeal cannot help the assessee

because there was always going to be a chance that Revenue might not file appeal. Counsel must disclose the circumstances in which incorrect advice was given and, it is not sufficient to make a perfunctory and general statement that wrong advice was given bonafide. (AY. 2009-10)
Boutique Hotel India (P.) Ltd. v. ACIT (2020) 180 ITD 817 / 187 DTR 353 / 204 TTJ 525 (Delhi)(Trib.)

2209 **S. 253 : Appellate Tribunal – Delay of 486 days – Sufficient and reasonable cause for condoning delay – Cause of substantial justice deserved to be preferred – Delay of in filing appeal condoned – Appeal allowed for adjudication. [S.253 (5)]**
When there exists sufficient and reasonable cause for condoning the delay in filing the appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. Followed, *Concord of India Insurance Co Ltd v. Nirmala Devi (Smt) AIR 1979 SC 1666, Collector Land Acquisition v. M. Kataji & Ors (1987) 167 ITR 471 (SC) N. Balakrishna v. M. Krishnamurthy (1998) 7 SCC 123* (AY. 2011-12)
Kishan Lal v. ITO (2020) 207 TTJ 1089 / (2021) 198 DTR 117 (Jaipur) (Trib.)

2210 **S. 254(1) : Appellate Tribunal – Duties – Pronouncement of orders – Repeated adjournments for orders or for pronouncement of judgment where arguments have been heard and orders have been reserved would not be permissible even during lockdown. [S. 260A, Order XII, Rule 6 of CPC]**
Petitioner, had filed a suit for mandatory and permanent injunction against his sons in respect of property-In said suit, petitioner had moved an application under Order XII, Rule 6 of CPC, which was heard on 18-2-2020 and thereafter was reserved for orders. Petitioner submitted that despite matter being reserved for orders, no orders were pronounced in Order XII, Rule 6 application. Accordingly, petitioner filed instant petition seeking directions to be given for early disposal of said application. As per settled law, orders which are reserved have to be pronounced within two months and if they are not pronounced for three months, litigant is entitled to approach High Court. National lockdown could not have acted as an impediment in pronouncement of orders because once matter is heard and orders are reserved, no further hearing would be required, only pronouncement of order/ judgment needs to take place. Therefore, repeated adjournments for orders or for pronouncement of judgment would not be permissible even during lockdown.
Dalbir Singh v. Satish Chand (2020) 273 Taxman 317 (Delhi)(HC)

2211 **S. 254(1) : Appellate Tribunal – Duties – Grounds of reassessment was not adjudicated – Matter remanded to the Tribunal. [S. 147]**
Assessee challenged reassessment proceedings contending that mere audit objection could not form basis to reopen completed assessment and Assessing Officer had no reason to believe to reopen assessment and reopening amounted to change of opinion. Commissioner (Appeals) dismissed assessee's appeal. On appeal, Tribunal did not render any specific finding on assumption of jurisdiction by Assessing Officer. On appeal the

Court held that Tribunal ought to have adjudicated all grounds raised by assessee, that is, whether reopening was valid in law and whether there were materials in hands of Assessing Officer for reopening assessment and, thus, matter was restored to Tribunal. (AY. 2011-12)
Gopal Yadav Selvakumar v. ITO (2020) 274 Taxman 492 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Condonation of delay of 1333 days – Affidavit was filed explaining the delay – Matter remanded to the Tribunal – Cost of Rs.25000 was levied [S. 253 (5), 260A] 2212
Assessee filed an appeal before Tribunal after a delay of approximately four years against an order of Commissioner passed under section 263. Tribunal dismissed same for reason that assessee had failed to explain reason for such delay. In appeal before High Court the assessee contended that delay in filling appeal before Tribunal occurred because it had waited for passing of a penalty order, for which a direction was given by Commissioner under section 263. Further when penalty order was passed by Commissioner, assessee filed appeal before Tribunal challenging said order under section 263 and in that process, delay occurred. High Court held that Tribunal could have condoned delay upon application supported by an affidavit if a reasonable ground for delay was made out by assessee, therefore, matter was to be remanded back to Tribunal by giving an opportunity to assessee to file such application for seeking condonation of delay along with affidavit. (AY. 2007-08)
Rathna Stores P. Ltd. v. CIT (2020) 274 Taxman 489 (Mad.) (HC)

S. 254(1) : Appellate Tribunal – Duties – Condonation of delay of 92 days – Dismissed on the ground that averments made in application was not supported by a affidavit – Directed to file fresh application with in fifteen days of passing of the order – Order of Tribunal is set aside [S. 253 (5), 260A] 2213
Assessee's appeal an appeal before the Tribunal seeking condonation of delay of 92 days against order of Commissioner (Appeals). Tribunal dismissed in limine holding that averments made in application were not supported by any affidavit of assessee or its CA. On appeal High Court allowed the petition and directed the assessee to make fresh application along with affidavit in support of application for condonation of delay in filing appeal before appellate authority within 15 days from date of passing of said order. Matter remanded. (AY. 2008-09)
Sandeep Kumar Jain v. PCIT (2020) 274 Taxman 172 (All.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Remand – Fresh claim Wholesale remand for framing a fresh assessment, – Assessing Officer could not deny to evaluate fresh claim raised by assessee during remand assessment proceedings. [S. 144] 2214
Assessing Officer passed best judgment assessment without examining books of account of assessee. Tribunal set aside said assessment and remanded matter to Assessing Officer to pass a fresh order after considering documents and submissions of assessee. During remand assessment assessee raised a fresh claim regarding non-taxability of income arising from write-off of liability by Canara Bank which was earlier offered as taxable income. Assessing Officer rejected said claim holding that in remand proceedings

assessee could not raise a fresh claim. Order of the Assessing Officer was affirmed by the CIT(A) and Appellate Tribunal. On appeal allowing the appeal the Court held that since remand made by Tribunal to Assessing Officer was a complete and wholesale remand for framing a fresh assessment, Assessing Officer ought to have evaluated claim made by assessee for write-off of liability and should not have rejected same merely on ground of it being raised for first time. Accordingly the matter was to be remitted back to Assessing Officer for evaluation of said claim on merits. (AY. 2002-03)
Curewel (India) Ltd. v. ITO (2020) 269 Taxman 397 / 185 DTR 145 / 312 CTR 164 (Delhi)(HC)

2215 **S. 254(1) : Appellate Tribunal – Duties – Transportation charges – cryptic order – Matter remanded. [S. 37(1)]**
Assessing Officer disallowed payments made by assessee towards transportation charges for transporting mineral. Order of Assessing Officer affirmed by CIT(A), Tribunal deleted entire additions made by lower authorities except for confirming addition of a nominal amount. On appeal by the revenue the Court held that since Tribunal had neither assigned any valid reason nor disclosed any basis for deleting such additions made by lower authorities, impugned order of Tribunal was cryptic and same was to be set aside and matter was to be remanded to the Tribunal to decide in accordance with law. (AY. 2005-06)
CIT v. Rajmahal Silk (2020) 275 Taxman 150 (Karn.)(HC)

2216 **S. 254(1) : Appellate Tribunal – Duties – Cryptic and suffers from the vice of non application of mind – Matter remanded to the Tribunal. [S. 37(1)]**
Allowing the appeal of the revenue the Court observed that it is evident that the Tribunal has neither assigned any reasons nor has disclosed any basis for directing deletion of additions made by the assessing authority as well as Commissioner of Income Tax (Appeals) except confirming the addition of Rs.31 Lakhs made by the assessing authority. It is also pertinent to mention here that the Tribunal has not assigned any reasons on the issues raised before it and has not given any reasons in support of its conclusion. The order passed by the Tribunal is cryptic and suffers from the vice of non application of mind. Matter remanded to the Appellate Tribunal. (AY 2005-06)
CIT v. Rjamahal Silks Partnership Firm (2020) 194 DTR 25 (Karn.)(HC)

2217 **S. 254(1) : Appellate Tribunal – Duties – Charitable Trust – Computation of income – Commercial sense – Matter remanded. [S. 2(24), 2(45), 11]**
Allowing the appeal the Court held Central Board of Direct Taxes has issued a Circular No.5-P dated 19.05.1968, which provides that the word 'income' in Section 11(1a) of the Act must be understood in commercial sense and the entire income of the trust in the commercial sense has been spent for the purpose of charity. The real income of the trust is exempt to the extent to which some income is applied to such purposes in India.. However the Appellate Tribunal has not examined the case of the assessee on the touchstone of well settled legal principles. Accordingly the order was quashed and directed the Appellate Tribunal to decide accordance with law. (AY. 2007-08)
Cutchi Memon Union v. Dy.CIT(E) (2020) 195 DTR 351 / (2021) 318 CTR 335 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Additional income offered – Confirming the levy of concealment penalty without giving an opportunity is held to be bad in law – Matter remanded to the Appellate Tribunal. [S. 271(1)(c)] 2218

Allowing the appeal the Court held that the Tribunal has not only committed some factual errors in respect of filing of return of income by the Assessee but also invoked Explanation 3 and 5A of Section 271(1)(c) of the Act with respect to the alleged non-filing return of income by the Assessee in pursuance of notice issued after the Search which took place in the business place of the Assessee and such a revised Return was filed by the Assessee voluntarily surrendering such income of Rs.1,53,99,000/-and while apparently surrendering all the income on its own by the Assessee ought not to have attracted penalty for concealment under Section 271(1)(c) of the Act, the learned Tribunal has not only restored the penalty by the impugned order but also restored the penalty on the issue for which no ground was raised in the Grounds of Appeal filed by the Revenue before it. The Explanations which give rise to presumption of concealment are rebuttable presumptions and therefore without discussing those facts about such rebuttal or otherwise, the Penalty could not be reimposed by the Tribunal particularly when it was reversing the order of the learned Commissioner of Income Tax (Appeals) in this regard, who found the explanation of the Assessee satisfactory and had deleted the penalty in question. The order was quashed and remanded to the Tribunal to decide in accordance with law. (AY.2006-07)

S & P Foundation P. Ltd. v. ACIT (2020) 195 DTR 10 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Conditional remand without reasons – Held to be not proper – Power of Assessing Officer cannot be curtailed. [S. 14A, 143(3)] 2219

Allowing the appeal of the revenue the Court held that the observations made by the Tribunal in that portion of the order conditionally remitting the matter were set aside and the order of remand was confirmed as an open remand. The Assessing Officer was to consider all the issues raised by the Department and the assessee, either factual or legal or both and decide the matter after affording an opportunity of hearing to the insolvency resolution professional representing the assessee. (AY. 2012-13), (AY. 2008-09, 2010-11)

CIT v. Thiru Arooran Sugar Ltd. (No. 1) (2020) 275 Taxman 428 / (2021) 431 ITR 347 (Mad.)(HC)

CIT v. Thiru Arooran Sugar Ltd. (No. 2) (2020) 275 Taxman 428 / (2021) 431 ITR 352 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Order passed without considering submission that case was covered by earlier decisions of Tribunal – Matter remanded. [S. 273B] 2220

Allowing the appeal of the assessee the Court held that the Tribunal had a duty to consider the orders and upon consideration, three options were available to the Tribunal, (a) to apply the decisions and decide the case in favour of the assessee, (b) to distinguish the decision in the assessee's earlier case on factual grounds and set out reasons as to how they did not apply to the assessment year under consideration and distinguishable, or (c) to consider the findings given by the Co-ordinate Bench of the Tribunal and assign reasons why the decisions did not lay down the correct

legal principle or that there was an error of law committed by the Co-ordinate Bench prompting the Tribunal to take a different decision and after abiding by the principles of judicial discipline, the Tribunal ought to have put the matter up for reference to a larger Bench. The Tribunal had not followed any one of these three options. Matter remanded. (AY. 2006-07 to 2012-13)
M. Palani Adaicalam v. ACIT (2020) 428 ITR 47 / (2021) 277 Taxman 176 (Mad.)(HC)

2221 **S. 254(1) : Appellate Tribunal – Duties Reassessment – After the expiry of four years – Non speaking order by the Appellate Tribunal – Matter remanded. [S. 50B, 147, 148, 253]**
Allowing the appeal of the revenue the Court held that the assessment order as well as the order passed by the Commissioner (Appeals) were speaking orders. If the Tribunal came to the conclusion that the Assessing Officer had not recorded any failure on the part of the assessee to disclose fully and truly any material facts necessary for its assessment, it was required that the Tribunal expressed itself as to how it formed such an opinion. In the absence of any such reasons emanating from the order, the order passed by the Tribunal was devoid of reasons. The order was set aside and the matter was remanded to the Tribunal. Relied on Mohinder Singh Gill v. Chief Election Commissioner [1978] AIR 1978 SC 851. (AY.2008-09)
CIT v. Hyundai Motor India Ltd. (2020) 428 ITR 539 (Mad.)(HC)

2222 **S. 254(1) : Appellate Tribunal – Duties – Accumulation of income – Failure by Tribunal to consider relevant facts – Matter remanded to Tribunal. [S. 11(2), 253, Form No. 10]**
Allowing the appeal of the assessee the Court held that though the Tribunal had referred to the resolution dated September 1, 2008 passed by the assessee, without finding it to be defective, it had not given any benefit thereof to the assessee. Therefore, in the light of these facts, the Tribunal should re-examine form 10 furnished by the assessee with the resolution and additional evidence, which might be produced by the assessee before it. Matter remanded. (AY.2008-09, 2009-10)
CNN Educational Trust v. ITO (2020) 428 ITR 312 (Mad.)(HC)

2223 **S. 254(1) : Appellate Tribunal – Duties – Claims though not raised in return or revised return – Appellate Authorities must consider the claim if facts are on record – There is no estoppel in taxation law – Contradictory claim can be raised. [S. 250]**
Court held that Claims though not raised in return or revised return, the Appellate Authorities must consider the claim if facts are on record the fundamental legal principle is that there is no estoppel in taxation law. An alternative plea can be raised and it can even be a plea which is contradictory to the earlier plea. (AY.2006-07)
Areva T & D India Ltd. v. CIT (2020) 428 ITR 1 / 317 CTR 633 / 195 DTR 361 (Mad.)(HC)

2224 **S. 254(1) : Appellate Tribunal – Duties – Infrastructure Facility – Container Freight Station – Part of Inland Port – Tribunal cannot ignore Decision Of Co-Ordinate Bench – Order of the Tribunal is not interfered with – The Assessing Officer is directed to follow the order of the Tribunal. [S. 80IA(4)(i), 253]**
Allowing the appeal of the assessee the Court held that the Tribunal ought to have applied its decision in the assessee's own case for the earlier assessment years. The

Court also observed that Tribunal could not ignore the decision of a Co-ordinate Bench unless it distinguished the decision on the merits or disagreed with the view taken by the Tribunal in which case the only option would be to refer it for consideration to a larger Bench. Since the matters had been remanded to the Assessing Officer, the order was not to be interfered with. The matters were remanded to the Assessing Officer with a direction to the Assessing Officer to apply the decision of the Tribunal in I. T. A. Nos. 825 and 826/Mds/2010 dated June 14, 2011. (AY. 2006-07 to 2008-09, 2010-11, 2011-12)
A. S. Shipping Agencies Pvt. Ltd. v. Dy. CIT (2020) 428 ITR 38 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Speaking order – Reassessment – After the expiry of four years – Quashing of reassessment – Matter remanded as the Tribunal has not passed a speaking order. [S. 5OB, 147, 148, 253] 2225

The AO passed the reassessment order, which was affirmed by the CIT(A)b. On the facts of the case the reassessment order was passed after a period of four years. On appeal the Tribunal held that the Assessing Officer had not recorded any failure on the part of the assessee to disclose fully and truly any material facts and that the reopening of assessment was invalid. On appeal, allowing the appeal of the revenue the Court held that, If the Tribunal came to the conclusion that the Assessing Officer had not recorded any failure on the part of the assessee to disclose fully and truly any material facts necessary for its assessment, it was required that the Tribunal expressed itself as to how it formed such an opinion. In the absence of any such reasons emanating from the order, the order passed by the Tribunal was devoid of reasons. The order was set aside and the matter was remanded to the Tribunal. High Court relied on, *Mohinder Singh Gill v. Chief Election Commissioner [1978] AIR 1978 SC 851* for the proposition that,an order passed by a court or a Tribunal should stand or fall based on the reasons contained in that order. The order cannot be substituted by reasons at the appellate stage when they did not find place in the original order. (AY. 2008-09)
CIT v. Hyundai Motor India Ltd. (2020) 428 ITR 539 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Oral application – Subject matter of appeal – Order passed by the ITAT suffered from perversity in so far as it refused to allow the assessee to urge the grounds by way of an oral application under Rule 27 of the ITAT Rules – Matter remanded back before the ITAT with a direction to hear the matter afresh by allowing the assessee to raise the additional grounds. [S. 153C, ITAT Rules, R.27] 2226

Appeal before the CIT(A)the besides challenging the addition made by the AO on merits, the assessee also raised legal grounds qua validity of reassessment proceedings u/s 153C of the Act. On merit the CIT(A) decided the issue in favour of assessee. On legal ground decided against the assessee. Revenue challenged the addition deleted by the CIT(A). Before the Tribunal the assessee an oral application under Rule 27 of the ITAT Rules and urged that additional grounds against the finding of the CIT(A) about the issue of the recording of satisfaction note, and the necessary condition of existence of nexus between assessment and incriminating material by contending that these findings were the teeth of the law as settled by various High Courts in respect of said issues. The ITAT disagreed with the assessee and on technical ground refused to consider the legal

issues that were premised on the Rule 27 of the ITAT Rules. As the assessee has not filed any such application, the Tribunal was of the view that the Revenue cannot be put to surprise by the respondent. However, at the same time the ITAT observed that the assessee had filed additional evidence before CIT(A) and CIT(A) has deleted the addition without complying with Rule 46A and without granting an opportunity to rebut those evidence. The ITAT restored the matter before the AO for deciding the fresh with further direction to the assessee to produce all necessary documentary evidence in support of claim. Aggrieved by the order of the Tribunal the assessee filed an appeal before the High Court. Allowing the appeal the Court held that Order passed by the ITAT suffered from perversity in so far as it refused to allow the assessee to urge the grounds by way of an oral application under Rule 27 of the ITAT Rules. Matter remanded back before the ITAT with a direction to hear the matter afresh by allowing the assessee to raise the additional grounds pertaining to issue relating to the assumption of jurisdiction and validity of the assessment proceedings under S. 153C of the Act. Referred *CIT v. Sundaram Co (P) Ltd (1964) 52 ITR 763 (Mad.) (HC).* (ITA No. 834 of 2019 dt. 18-5-2020) (AY. 2008-09)

Sanjay Sawhney v. PCIT (2020) 116 taxmann.com 701 / 273 Taxman 33 / 192 DTR 105 / 316 CTR 392 (Delhi)(HC)

2227 **S. 254(1) : Appellate Tribunal – Duties – Condonation of delay – Adequate reason – delay of 154 days – Delay should be condoned. [S. 253, 263 Limitation Act, 1963, S. 5]**

Allowing the appeal the Court held that the assessee was an individual and may not be well versed in law. It was not as if the assessee acted deliberately in not approaching the advocate after he received the order of the revisional authority. The revisional authority had remitted the matter back to the Assessing Officer to redo the exercise of assessment and the assessee could very well have been under the impression that the consequential order of the Assessing Officer alone required to be challenged and not the order of the revisional authority. The explanation for the delay offered by the assessee could not be said to smack of mala fides nor that it was put forth as a part of a dilatory strategy, and therefore, the Tribunal ought to have condoned the delay of the period of 154 days in filing the appeal and taken up the matter on its merits. The rejection of application for condonation of delay in filing the appeal, was not justified. Referred *N. Balakrishnan v. M. Krishnamurthy [1998] 7 SCC 123.* (AY. 2011-12)

Thunuguntla Jagan Mohan Rao v. Dy. CIT (2020) 427 ITR 204 / 275 Taxman 218 / (2021) 198 DTR 171 / 319 CTR 200 (Telangana)(HC)

2228 **S. 254(1) : Appellate Tribunal – Duties – Rule of consistency – Judicial discipline – Tribunal wishing to take different view from its earlier decision in assessee's own case on same issues – Only option is to refer to larger bench – Matter remanded to Tribunal. [S. 253]**

Allowing the appeal the Court held that the methodology adopted by the Tribunal, while passing the order was incorrect. The Tribunal in the assessee's own case in *ITO v. Sarvodaya Mutual Benefit Trust (2013) 22 ITR (Trib.) 277 (Chennai) (Trib.)* had considered two issues and had held in favour of the assessee, that surplus was not taxable in the assessee trust's hands and that the assessee-trusts, being representative assessees of self-

help groups were not liable to deduction of tax at source. The Tribunal had considered the object for forming those self-help groups. In such a situation, firstly, if the decision was per incuriam, a finding to such effect had to be given and secondly, the court or the Tribunal could refuse to follow the decision by distinguishing it on the factual matrix. If for reasons other than these two reasons, the court or the Tribunal was of the view that the decision rendered earlier was not acceptable to it, then the option was to refer it to a larger Bench of the court or the Tribunal. The matter was remanded to the Tribunal.(AY.2009-10)

Sarvodaya Mutual Benefit Trust, Thellar v. PCIT (2020) 427 ITR 153 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Donation – Power to remand matter – Based on the statement made by the donee, the Tribunal had rightly remanded the matter to the Assessing Officer. [S.35(1)(ii)] 2229

Court held that the having given a finding that the assessee was entitled to exemption, the Tribunal went further and based on the sworn statement of the founder director of H that the organization had returned the donation to the assessee, thought it fit to remand the matter to ascertain the means of the assessee and the actual amount paid by the assessee and decide the issue afresh after affording sufficient opportunities to the assessee. There was nothing wrong with that. The approach of the Tribunal was very balanced. Initially, it found that the disallowance made by the lower authorities was unsustainable and allowance should be given. However, based on the statement made by the donee, the Tribunal had rightly remanded the matter to the Assessing Officer. (AY. 2012-13)

Krupa Trading Co. v. ITO (2020) 427 ITR 224 / 271 Taxman 166 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Additional evidence – Failure by Appellate Tribunal to exercise jurisdiction vested in it – Matter Remanded to Appellate Tribunal. [S.69C, 260A, ATR, 1963, R.29] 2230

Allowing the appeal of the assessee the Court held that the Appellate Tribunal had not considered the assessee's application seeking leave to produce additional evidence at the stage of appeal by it. This amounted to failure to exercise jurisdiction which was vested in the Tribunal by virtue of the provisions in rule 29 of the 1963 Rules. Upon exercise of such jurisdiction, thereafter, it was open to the Tribunal to examine whether the application made by the assessee fulfilled the parameters of rule 29 of the Rules, 1963 or whether something was required to be said as regards the documents that were sought to be produced at the appellate stage. There was no discussion on whether such material could be admitted in evidence at the appellate stage and thereafter considered. The order of the Tribunal was to be set aside and the matter was to be remanded to the Tribunal for consideration of the assessee's application seeking leave to produce additional evidence before the Tribunal. Matter remanded.

Braganza Construction Pvt. Ltd. v. ACIT (2020) 425 ITR 115 / 193 DTR 332 / 271 Taxman 173 (Panaji) (Bom.)(HC)

2231 **S. 254(1) : Appellate Tribunal – Duties – Natural Justice – Additional evidence – Opposing party should be given opportunity to rebut evidence – Tribunal cannot reliance upon a google study in order to have an idea about the air pollution control equipment without giving an opportunity to rebut the evidence – Order of Appellate Tribunal set aside. [S. 131(1), 255(6)]**

The assessee-company produced before the Assessing Officer the certificate of the chartered engineer to claim 100 per cent depreciation on the ground that the machinery was under operation for pollution control measures. The AO restricted the depreciation to 15 per cent. for the first quarter and allowed further depreciation to the extent of 20 per cent. This order was affirmed by the CIT(A). On further appeal the Tribunal placed reliance upon a google study in order to have an idea about the air pollution control equipment. The Tribunal based on the google search upheld the order of the CIT(A) Court held that Sub-section (6) of section 255 of the Act refers to S. 131 of the Act and under sub-section (1) of section 131 of the Act, the authorities have the same powers that are vested in a court under the Code of Civil Procedure, 1908. In the absence of any specific rule including the applicability of natural justice, it is a well settled position of law that adherence to the principles of natural justice, is implied in any legislation. Accordingly the Court held that with regard to the study or research done by the Tribunal, the assessee was not put on notice. Order of Appellate Tribunal was set aside. (AY. 2012-13, 2013-14)

Ramco Industries Ltd. v. Dy.CIT (2020) 426 ITR 388 / 273 Taxman 364 / (2021) 201 DTR 84 / 320 CTR 616 (Mad.)(HC)

2232 **S. 254(1) : Appellate Tribunal – Duties – Tribunal bound to give reasons for reversing findings rendered by lower authorities – Deletion of addition is held to be not justified. [S. 132(4), 158BA, 158BC]**

Allowing the appeal of the revenue the Court held that, even in affirming the findings of the authorities below, the burden was heavier for the higher appellate authority when it decided to reverse the findings of the authorities below. The findings of the Tribunal were perverse and required interference of the court under appeal. Additions confirmed. Order of the AO and CIT(A) is up held (BP.1-4-1996 to 4-6-2002)

CIT v. Dr. K. Kannagi (2020) 424 ITR 470 / 194 DTR 145 / 316 CTR 695 (Mad.)(HC)

CIT v. Dr. N. Rajkumar (2020) 424 ITR 470 / 194 DTR 145 / 316 CTR 695 (Mad.)(HC)

2233 **S. 254(1) : Appellate Tribunal – Duties – Tribunal cannot dismiss appeals in limine merely for non – appearance of party; it should give decision on merit – Matter remanded.**

Tribunal dismissed appeals filed by assessee on ground that none appeared on behalf of assessee when matters were called on. On appeal by the assessee the Court held that Tribunal could not dismiss appeals in limine and issue was to be restored to file of Tribunal for a decision on merit. Followed *Tribhuvan Kumar v. CIT (2007) 294 ITR 401 (Raj) (HC), CIT v. Chenniappa Mudaliar (1969) 74 ITR 1 (SC).* (AY. 2012-13, 2013-14)

Government Telecommunication Employees Cooperative Society Ltd. v. ITO (2020) 268 Taxman 17 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Ex-parte decision on first day of hearing – Issue covered in earlier years – Rejection of application for recalling the order is held to be not justified – Directed to hear the appeal on merits. [S. 254(2), Art. 226] 2234

In course of appellate proceedings, assessee did not cause appearance before Tribunal. Tribunal allowed revenue's appeal ex-parte. Assessee filed an application under S. 254(2) of the Act to recall said order. Tribunal rejected assessee's application on ground that assessee was not able to point out any mistake in Tribunal's order. On writ the Court held that Tribunal had decided issue in revenue's favour on first date of hearing itself and, thus, Tribunal could have accommodated assessee's request for rectification of order. Court also held that the issue before Tribunal was a recurrent issue and assessee had succeeded in respect of same in earlier years. Accordingly the order of Tribunal rejecting assessee's application was set aside and, matter was to be remanded back to Tribunal for disposal on merits of case. (AY. 2000-01)

Universal Cold Storage Ltd. v. DCIT (2020) 268 Taxman 178 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Relying on the case laws not cited by both the parties – Not dealing with the case law cited by the representative of the assessee – Matter remanded to the Tribunal to pass the fresh order. [S. 80IB(10)] 2235

The Tribunal the dismissed the appeal of the assessee by relying on 63 cases which were not cited by either side. The Tribunal also not given any finding on case law relied by the authorised representative. High court at the stage of admission its self allowed the appeal by observing that, this manner of disposing appeals by the Tribunal is not expected of it and cannot stand to the scrutiny of law and justice. The Tribunal cannot refer to decisions on its own without giving the litigant an opportunity to distinguish it. This results in a breach of the principles of natural justice. It also cannot omit to deal with the decisions relied upon by the litigant. Not dealing with the cited decisions leads to the order being bad as an order without reasons. Accordingly the matter remanded. (ITA No. 1009 of 2017, dt. 30.01.2020) (AY. 2007-08) (also refer, *DSP Investment Pvt Ltd v. Add. CIT ITA No 2342 of 2013 dt 8-03 2016 (Bom.) (HC), Reliance Infrastructure Ltd v. Dy.CIT ITA No.701of 2014 dt.29-11-2016 (Bom.) (HC), Dattani and Co v. ITO ITA No. 847 of 2013 dt 21-10 2013 (Guj.) (HC), Lakhmi Mewal Das v. ITO (1972) 84 ITR 649 (Cal) (HC) (659), Kranti Associates Pvt Ltd v. Masood Ahamed Khan & ors (2010) 9 SCC 496). Bhavya Construction Co. v. ACIT (Bom.)(HC), www.itatonline.org*

S. 254(1) : Appellate Tribunal – Duties – Delay of 253 days in filing the appeal before the Tribunal is condoned – Directed the assessee to deposit Rs. 10000 / with the Maharashtra State Legal Services Authority and submit receipt of the same before the Office the Tribunal – Directed the Tribunal to decide on merit. [S. 12A(3), 253] 2236

The assesee has preferred an appeal before the Tribunal against the cancellation of the registration. The appeal was delayed by 253 days and affidavits were filed. Tribunal refused to condone the delay on the ground that there were inconsistences in the affidavit filed by the assessee. On appeal High Court condoned the delay and directed the Tribunal to decide on merit. Court also directed the assessee to deposit Rs 10000/- with the Maharashtra State Legal Services Authority and submit receipt of the same before the Office the Tribunal. (ITA No. 942/PUN/2010 dt 21-03-2017). (ITA No 1762 of 2017 dt 22-01 2020. (AY. 2009-10)

Nandkishor Education Society v. CIT (Bom.)(HC)(UR)

2237 **S. 254(1) : Appellate Tribunal – Duties – Strictures – Disallowance of administrative expenses – Matter remanded to the Tribunal following the earlier year order. [S. 40(a)(ia), 40(b)(a), 194C]**

The department has raised the question regarding the disallowance of expanses for failure to deduct tax at source. During the course of the arguments, learned standing counsel Revenue has fairly placed before the Court a copy of order of this Court in the case of *CIT v. ITD CEM India JV, (2018) 405 ITR 533 (Bom.) (HC)* and submits that the same issue was gone into by this Court in respect of the same assessee for the assessment year 2008-09. Regarding deletion of the disallowance under the head of 'administrative expenses', it was held that it was a concurrent finding of fact and no substantial question of law arose therefrom. However, on the question of deletion of the amount of salary which was disallowed by the Assessing Officer under Section 40(ba) of the Income Tax Act, 1961, the same was remanded back to the Tribunal for a fresh decision on merit and in accordance with law. Honourable Court referred "para 25. However, we have expressed our displeasure and unhappiness at the manner in which the Tribunal approached the matter/issue insofar as the applicability of Section 40(ba) (question no. 10(a) reproduced above) of the IT Act is concerned, we allow this Appeal. We set aside the Tribunal's order to that extent. We restore the issue to the file of the Tribunal for being decided afresh on merits and in accordance with law. The Tribunal shall not be influenced in any manner by it's earlier observations. We also clarify that when we note the rival contentions, beyond that exercise, we have expressed no opinion on the correctness of these contentions. All of them are open insofar as this issue is concerned for being raised before the Tribunal. There will be no order as to costs." Following the order the matter is remanded to the Tribunal. (ITA No.1246/Mum/2015 dt.19-10-2016) (ITA NO.1742 of 2017 dt-20-01 2020 (AY. 2011-12)

PCIT v. ITD CEM INDIA JV (Bom.)(HC) (UR)

2238 **S. 254(1) : Appellate Tribunal – Powers – Legal opinion – Delay of 458 in filing an appeal against an order under section 263 of the Act was condoned on payment of cost of Rs 25000 to the Maharashtra State legal Services. [S. 253, 263, 260A]**

Appellate Tribunal dismissed the appeal of the assessee against the order under section 263 of the Act there was no reasonable cause and the assessee has taken conscious decision not to file appeal against the revision order on the basis of legal opinion. Accordingly the delay of 458 days in filing the appeal was not condoned. On appeal the High Court held that in the interest of justice the delay in filing of an appeal was condoned and the appellant was directed to pay costs of Rs 25000 to the Maharashtra State legal Services Authority. (ITA No. 1210 of 2017 dt-4-2-2020) (AY. 2008-09)

Procter & Gamble Hygine & Healthcare Ltd. v. CIT (2020) BCAJ-May-2020-P. 72 (Bom.)(HC)

2239 **S. 254(1) : Appellate Tribunal – Powers – Delay of 3389 days – No sufficient cause is shown – Tribunal is justified in rejecting the application for condonation of delay. [S. 260A]**

The appeal of the assessee was delayed by 3389 days. The affidavit filed by the assessee was rejected by observing that Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in

filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Chartered Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence, the contents of the second submission cannot be treated but as an afterthought." On appeal High Court also affirmed the order of the Tribunal. (referred *Collector, Land Acquisition v. Mst. Katiji (1987) 167 ITR 471 (SC) Cenzer Industries Ltd., v. ITO dt 15th January, 2016 passed in NM Nos.492 of 2015 and 493 of 2015 in ITA (L) Nos.2079 and 2077 of 2014 (Bom.) (HC). (ITA No.3403/Mum/2014 dt 28-02-2017 (AY.2001-02.) (ITA No 1269 of 2017 dt 28-01-2020) Perfect Circle India Ltd. (Now known as Anand I-Power Ltd.) v. ACIT (2020) 423 ITR 65 / 274 Taxman 516 (Bom.)(HC)*

S. 254(1) : Appellate Tribunal – Duties – Application for admission of Additional ground – Legal ground validity of approval raised for the first time was admitted for adjudication. [S.153D] 2240

Where the assessee filed an application for admissions of additional ground in the appeal challenging the procedure adopted by revenue authorities while granting approval u/s 153D. The Additional ground of appeal was held to be purely legal and capable of being decided on the basis of material/relevant appeal record already before the Tribunal, therefore, admitted for adjudication. (AY. 2010-11 to 2015-16)

ACIT v. Dilip Constructions (P) Ltd. (2020) 190 DTR 181 / 203 TTJ 422 (Cuttack) (Trib.)
ACIT v. Shilpa Seema Constructions (P) Ltd. (2020) 190 DTR 181 / 203 TTJ 422 Cuttack) (Trib.)

S. 254(1) : Appellate Tribunal – Duties – Special Category States – Deduction u/s. 80IC on basis of 'NOC' – Matter restored with AO for fresh evaluation under the guidelines laid down by High Court [S.80IC] 2241

Where assessee claimed eligibility to avail deduction u/s 80IC on the basis of acquisition of 'No Objection Certificate' from Himachal Pradesh State Environment Protection Pollution Board. The matter was restored with the AO to examine the claim of the assessee in accordance with the guidelines laid down by the Hon'ble Uttarakhand High Court in the case of *CIT v. Anchal Hotels Pvt Ltd (2016) 138 DTR 169 / 287 CTR 233 / 241 Taxman 108 (Uttarakhand) (HC)*, for determining whether the assessee is carrying out eco tourism activity.(AY. 2012-13)

Dy. CIT v. Hotel Landmark (2020) 190 DTR 415 / 205 TTJ 469 (Chd)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Capital gains – Natural justice – Sham Transactions – Assessee to be allowed adequate opportunity of being heard – Matter remanded. [S.45, 50C, 143(3)] 2242

Where the assessee contended that sale transaction executed by her through registered sale deed in favour of her husband is a sham transaction, the onus is on the assessee to prove that it was a sham transaction and it is for the assessee to rebut the presumption

that transfer was complete when registered sale deed was executed by assessee and possession handed over to husband of the assessee, by cogent evidence in de novo assessment proceedings before AO. The AO was directed to allow assessee to file evidences/explanations in her defence and shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice. (AY. 2008-09)
Saheera Banu v. ITO (2020) 192 DTR 152/ 204 TTJ 641 / 78 ITR 365 (Chennai)(Trib.)

2243 **S. 254(1) : Appellate Tribunal – Duties – Appeal – Condonation of delay – Delay of 271 days in filing of appeals – Justice oriented approach has to be taken while deciding the condonation of delay – Delay was condoned.**
Where the assessee had requested condonation of delay in filing the appeal and furnished such reasons which were not found mala fide or a device to cover up any ulterior purpose. The delay was condoned based on the principle that whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred and justice oriented approach has to be taken while deciding the condonation of delay. (AY. 2008-09, to 2012-13)
Principal Maulana Azad Inter College v. JCIT (2020) 196 DTR 361 / (2021) 209 TTJ 264 (All)(Trib.)

2244 **S. 254(1) : Appellate Tribunal – Duties – Passing order – Rules for pronouncement – Period of lockdown to prevent spread of Covid-19 epidemic, has to be exclude. [ITAT R. 34(5)]**
Tribunal held that in terms of rule 34(5) of 1963 Rules, an order should be pronounced by Bench within 90 days from date of concluding hearing however, while computing said period of 90 days, period of lockdown to prevent spread of Covid 19 epidemic, has to be excluded. (AY. 2008-09)
Bhavesh Valjibhai Maraviya v. ITO (2020) 183 ITD 563 (Rajkot)(Trib.)

2245 **S. 254(1) : Appellate Tribunal – Duties – Additional evidence – Failure by department to show why documents needed or explain connection of documents with controversy in question – Additional evidence not to be admitted. [ITAT R, 1963, 29]**
Tribunal held that rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 categorically bars the production of additional evidence either oral or documentary before the Tribunal. However, if the Tribunal requires any document to be produced or any witness to be examined so as to enable it to pass the order or for any other substantial cause then for the reasons to be recorded may allow such document to be produced or witness to be examined. The Department had nowhere mentioned why the documents needed to be filed nor explained the connectivity of these documents with the controversy in question and how in the absence of these documents, the Tribunal would not be in a position to decide the controversy in question effectively and completely. Therefore, the Department's application for admitting the additional evidence did not satisfy the ingredients contained in rule 29. (AY.2009-10)
ITO v. Aravali Prime Consultants P. Ltd. (2020) 83 ITR 2 (SN) (Jaipur)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Remand proceedings – Claim accepted by the Assessing Officer – Deletion of addition by the CIT(A) is held to be justified. [S. 250, 253] 2246

Tribunal held that the Department had not been able to explain why the appeal has been filed when the Assessing Officer himself had accepted the claim of the assessee in the remand report, which was endorsed by the supervisory officer also. The stand taken by the Assessing Officer and the supervisory officer in the remand proceeding was to be considered the stand of the Department unless anything mala fide was not found in the action of the Assessing Officer in the remand report. (AY. 2009-10, 2010-11)

Dy. CIT v. Phoenix Lamps Ltd. (2020) 79 ITR 276 (Delhi)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Limitation – Pronouncement – The period of 90 days should be computed by excluding at least the period during which the lockdown due to Covid-19 was in force. [ITAT R. 34(5)] 2247

On the facts of the case the matter was heard on 7-01 2020 and order was pronounced on 14-05-2020. Tribunal held that Rule 34(5) of the ITAT Rules provides that "ordinarily" the order on an appeal should be pronounced within no more than 90 days from the date of concluding the hearing. A pedantic view of the rule cannot be taken. The period of 90 days should be computed by excluding at least the period during which the lockdown due to Covid-19 was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. (ITA No 6264/M/18 dt 14-05-2020) (AY. 2013-14)

Dy.CIT v. JSW Ltd. (2020) 116 taxmann.com 565 / 79 ITR 585 / 183 ITD 148 / 189 DTR 15 / 205 TTJ 1 (Mum.)(Trib.) www.itatonline.org

S. 254(1) : Appellate Tribunal – Powers – Period of the first national lock – down from March 25, 2020 to April 19, 2020, when offices were not allowed to be physically opened, was excluded the period within which this order was pronounced was within 90 days. 2248

Tribunal held that, period of the first national lock-down from March 25, 2020 to April 19, 2020, when offices were not allowed to be physically opened, was excluded the period within which this order was pronounced was within 90 days. (AY.2001-02)

K. Srikanth v. ACIT (2020) 80 ITR 272 / 195 DTR 17 / 206 TTJ 273 (Chennai)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Delay of 349 days – Substantial justice deserved to be preferred – Delay was condoned – Matter remanded to CIT (A) to decide on merit [S. 250, 253(5), 271(1)(c)] 2249

It is settled proposition of law if the cause of delay by the assessee if found to be factual correct then laps on the part of the assessee cannot be a ground for rejecting the condonation of delay. The cause of substantial justice has to be preferred then the technical consideration. Therefore, even if there is lapse or inaction on the part of the assessee a justice oriented liberal approach has to be taken while considering the condonation of delay. Followed, *Improvement Trust v. Ujagar Sing (2010) 6 SSC 786 / (2010) 6 Scale 173 (SC).* (AY. 2010-11)

Munka Dall & Oil Mills Pvt. Ltd. v. ITO (2020) 207 TTJ 29 (UO) (Jaipur)(Trib.)

2250 **S. 254(1) : Appellate Tribunal – Powers – Pronouncement of orders – Extraordinary situation In Light of Covid-19 Pandemic and lockdown – Period of Lockdown days to be excluded.**

The order was pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days needed to be excluded. (AY.2014-15)

Arvind Metals and Minerals P. Ltd. v. ACIT (2020) 81 ITR 648 (Kol.)(Trib.)

2251 **S. 254(1) : Appellate Tribunal – Powers – Delay of 92 days – Averments made in the application for condonation of delay was not supported by any affidavit either of assessee or Chartered Accountant – Appeal was dismissed.**

The appeal of the assessee was delayed of 92 days on ground that Chartered Accountant was not available when order was received. Dismissing the appeal the Appellate Tribunal held that averments made in application were not supported by any affidavit either of assessee or its Chartered Accountant appeal was dismissed in limine, as barred by limitation, being defective. (AY. 2008-09)

Sandeep Kumar Jain v. ACIT (2020) 184 ITD 276 (Delhi)(Trib.)

2252 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Assess ability of capital gains – New plea could not have been considered by the Tribunal – Re assessment – Limitation – Reassessment proceedings were not barred by limitation – Matter remanded to the Assessing Officer. [S. 149, 150, 254(1)]**

Allowing the appeal of the revenue the Court held that the Tribunal completely fell into error in passing the order dated May 31, 2010 and holding that no capital gains tax was leviable in the assessment years 2003-04 and 2004-05 and missed the basic facts altogether that it was dealing with capital gains tax liability in respect of sale of flats by the assessee-company and not on the transfer of land for joint development in December, 2000 and the Tribunal had refused to correct what was obviously an error in facts, holding it to be an impermissible review. Court also held that the Tribunal had erred in not going to the root of the matter and taking the help of the relevant provisions, including section 150 of the Act. The Tribunal ought to have directed the assessing authority to take the reassessment proceedings to bring to tax the admitted tax liability. The Tribunal wrongly allowed the assessee to take a changed and wrong stand before it in the first instance, that no capital gains tax was leviable for the assessment years 2003-04 and 2004-05 but for the assessment year 2001-02 and then later on holding that reassessment for the assessment year 2001-02 was time barred. Accordingly all the orders passed by the Tribunal for all the three assessment years and the orders passed by the lower authorities for all these three assessment years, viz., 2001-02, 2003-04 and 2004-05 had to be set aside. Matter remanded to the Assessing Officer. (AY. 2001-02, 2003-04, 2004-05)

CIT v. Emgeeyar Pictures P. Ltd. (2020) 428 ITR 341 / 317 CTR 148 / 194 DTR 273 / (2021) 276 Taxman 335 (Mad.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation of six months – Tribunal does not have the power to condone the delay – High court has the power to condone the delay – Tribunal is bound to dispose the appeal on merits even in the absence of the assessee or its counsel – Dismissal of appeal for prosecution is resulted in a failure of justice. [S. 144C, 254(1), ITAT, R. 24, Art.226, 227] 2253

The appeal of the assessee was dismissed on the ground that there was no representation by the assessee. Assessee filed a Miscellaneous application before the Tribunal under Rule 24 of the Income tax Appellate Tribunal Rules, 1963 to recall the matter and further condone the delay of 497 days. The Tribunal dismissed the said miscellaneous application on the ground that the Tribunal did not have the power to condone the delay beyond six months. The said was challenged by filing writ before High Court. Allowing the petition the Court held that the Tribunal was bound to dispose of the matter on merits even in the absence of the appearance of the assessee or its counsel and dismissal of the appeal for non prosecution resulted in failure of justice. Considering the same, the Court condoned the delay of 497 days by imposing cost of Rs 5000 to the assessee company. The Court set aside the order of the Tribunal and restored the proceedings to the Tribunal for fresh consideration. (WP No. 25597 of 2019 dt 4-7-2019) (AY. 2011-12)

Karuturi Gobal Ltd. v. Dy.CIT (2020) 116 taxmann.com 924 (Karn.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Bogus purchases – Statement by Investigation Wing – Disallowance of 15% of unverifiable purchases – Order of Tribunal is affirmed – Rejection of rectification is held to be justified. [S. 69C, 132,147, 148, Art. 226] 2254

The AO made addition of 25% of unverifiable purchases. The CIT(A) restricted the addition to 15 per cent. of the unverifiable or bogus purchases. The Tribunal confirmed the order passed by the CIT(A) The assessee filed an application for rectification of mistake which was dismissed. On writ dismissing the petition the Court held that the view taken by the appellate authorities was correct.

Lunawat Gems Corporation v. CIT (2020) 423 ITR 171 (Raj)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Duty of Tribunal to decide on merits – Appeal dismissed ex-parte for non prosecution – Granted liberty for recall of order – Application for recalling the order rejected on ground of limitation – Date of communication or knowledge, actual or constructive, of the orders sought to be rectified or amended under S. 254(2) of the Act becomes critical and determinative for the commencement of the period of limitation – Rejection of rectification is held to be not valid. [S. 254(1), Appellate Tribunal) Rules, 1963, R. 24, 35] 2255

Allowing the petition the Court held that the appeal had been dismissed ex parte for non-prosecution. At the same time, the assessee was granted liberty to approach the Appellate Tribunal for recall of the order if it was able to show a reasonable cause for non-appearance. Thus, there was no adjudication on the merits of the appeal. The dismissal of the application for recall of the order on the ground of limitation was not

valid. Court considered the Rule 24 and 35 of the Appellate Tribunal Rules 1963. As per Rule 24 no limitation is prescribed. Rule 35 also requires that the orders are required to be communicated to the parties. The section and the rule mandates the communication of the order to the parties. Thus, the date of communication or knowledge, actual or constructive, of the orders sought to be rectified or amended under S. 254(2) of the Act becomes critical and determinative for the commencement of the period of limitation. (AY.2006-07)
Golden Times Services Pvt. Ltd. v. Dy.CIT (2020) 422 ITR 102 / 107 CCH 0016 / 191 DTR 101 / 271 Taxman 123 (Delhi)(HC)

2256 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Bogus purchases – Estimation of profit at 1.5 % of on sales and purchases – Re hearing of appeal is not permissible in law – Writ against the rectification is held to be not bonafide – Cost of Rs 10000 is imposed on each of the petitioners. [S. 69C, 254(1), Art.226]**
The assessee is in the business of builder and developer. Writ petition is filed against the order of Tribunal rejecting the miscellaneous application filed by the appellant. CIT(A)has restricted the addition to 1.5% from 3 % on sales and purchases of the alleged bogus purchases. Tribunal affirmed the order of the CIT(A). The petitioner moved the application for rectification of mistake which was dismissed by the Tribunal. Dismissing the petition the Court observed as under "In the instant case, what we notice is that not only was there no mistake from the record but in the garb of the mis. Application, petitioner had sought for review of the final order passed by the Tribunal and for re-hearing of the appeal which is not permissible in law. In our view, Writ petition does not appear to be bonafide. "Accordingly the petition is dismissed and cost of Rs.10000 is imposed on each of the petitions on the petitioner. (Arising MA. No. 658/M/2018 dt. 13-03 2019, ITA No.4875/Mum/2014) (AY. 1999-2000)
Cavalier Trading Pvt. Ltd. v. Dy.CIT (2020) 421 ITR 394 (Bom.)(HC)
Kalpit Trading Pvt. Ltd. v. Dy.CIT (2020) 421 ITR 394 (Bom.)(HC)

2257 **S. 254(2) : Rectification of mistake apparent on record – Application for rectification was filed within period of six months – Order recalling the order is beyond period of limitation is held to be valid. [S. 255(5), ITAT R.24, Art. 226]**
Tribunal recalled its order in the case of Nutrela Marketing Pvt Ltd v. ITO ITA No 3910/ Mum/ 2010 dt 10-01-2018 and placed for hearing. After hearing the Tribunal recalled the earlier order on 1-02-2019. On writ the department contended that miscellaneous application was filed by the assessee on 9-7-2018 i.e with in period of six months however the Tribunal did not dispose the same with in the period of limitation, hence the order passed by the Tribunal is beyond the jurisdiction. Court held that the initial order passed by the Tribunal on 10th January, 2018 was an ex-parte one for the AY. 2006-07. The limitation of six months as noticed above was substituted by the Finance Act, 2016 with effect from 1st June, 2016. Therefore, for the assessment year under consideration the limitation period may be construed to be four years from the date of the order. Even otherwise, if a view is taken that since the order was passed by the Tribunal on 1st February, 2019, the substituted limitation period of six months would be applicable, then also it is seen that the said period of six months was available to respondent till 31st July,

2018. Respondent had filed the application for recall of the ex-parte order on 9th July, 2018 within the limitation period of six months. However, Tribunal passed the impugned order only on 1st February, 2019. Court also observed that from a careful reading of the provision, it is seen that Tribunal is vested with the power to rectify any mistake apparent from the record to amend any order passed by it under sub-section (1) of Section 254 at any time within six months from the end of the month in which the order was passed, provided the mistake is brought to its notice by the assessee or by the Assessing Officer. The use of the expression "may" in the aforesaid provision is clearly indicative of the legislative intent that the limitation period of six months from the end of the month in which the order was passed is not to be construed in such a manner that there cannot be any extension of time beyond the said period of six months. This is so because the assessee or the Assessing Officer can only bring the mistake to the notice of the Tribunal. The assessee or the Assessing Officer has no control over the Tribunal. For one reason or the other, the Tribunal may not be in a position to pass the order under Section 254(2). For the inability of the Tribunal to pass such an order within the period provided, neither the assessee nor the revenue should suffer. What therefore becomes relevant is that the assessee or the Assessing Officer should bring the mistake to the notice of the Tribunal within the limitation period. (Referred *Srei Infrastructure Finance Ltd v. Tuff Drilling Private Limited, (2018)11 SCC 470. Grindlays Bank Ltd. v.. Central Government Industrial Tribunal, 1980 Supp SCC 420, Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Limited, (2005) 13 SCC 777, Sree Ayyanar Spinning and Weaving Mills Ltd v. CIT (2008) 301 ITR 434 SC, Harshavardhan Chemicals and Minerals Limited v. UOI (.2002) 256 ITR 767 (Raj) (HC), Assam Company Ltd. v. State of Assam (2001) 248 ITR 567 (SC))*
(MA No.483/M/2018 dt.1-02 2019 (AY.2006-07)
PCIT v. ITAT (2020) 425 ITR 581 / 186 DTR 342 / 271 Taxman 99 (Bom.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent on record – Recall of order – Appellate Tribunal remand matter to the Assessing Officer – If order of the Tribunal is correct, there is no reason or necessity for recalling such correct order just because Co-ordinate Bench decision was not mentioned or discussed in the order – The order of recall was not valid. [S. 254(1), ITAT R. 24, Art. 226] 2258

Allowing the petition of the revenue High Court held that in miscellaneous application there was no reference to any provision of law under which it was filed, court treats it to be an application u/s. 254(2) and not an application under Rule 24 since admittedly order dated 30.04.2008 was not an ex-parte order. All that is stated in application before the Tribunal is that Tribunal did not refer to order of its Co-ordinate Bench regarding block assessment, moreover, in application, assessee had merely stated that a mistake had crept in order of Tribunal for not considering its own order passed by Co-ordinate Bench. Court held that, it was not case of assessee that it was a mistake apparent from record which was required to be rectified; all mistakes cannot be rectified u/s. 254(2). Only a mistake which is apparent from the record can be rectified under said provision. On one hand Tribunal says that its decision was correct, court fails to understand why and how Tribunal had recalled said correct order. If order was correct, there was no reason or necessity for recalling such correct order, order passed by Tribunal in quantum appeal, no prejudice has been caused to assessee when the Tribunal has remanded the

matter to the Assessing Officer for consideration. (WP No. 1813 Of 2009 dt.02/03/2020) (AY 1999-2000)
CIT v. Ronak Parikh (HUF) (2020) 426 ITR 203 / 191 DTR 36 / 316 CTR 490 (Bom.)(HC)

2259 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Ten grounds raised, only three adjudicated – Order recalled for limited purpose of considering other grounds. [S. 254 (1)]**
Allowing the petition the Tribunal held that grounds 1, 9 and 10 of the assessee were general in nature. The Bench had decided only grounds 6, 7 and 8 and had not adjudicated upon grounds 2, 3, 4 and 5. The order of the Tribunal was recalled for limited purposes, i.e., for adjudication of grounds 2, 3, 4 and 5 of the assessee. (AY. 2010-11)
Narayan Construction v. ITO (2020) 83 ITR 599 (Cuttack)(Trib.)

2260 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Non-consideration of jurisdictional High Court, though not cited before the Tribunal at the time of hearing of appeal, constitute a mistake apparent on record – Gain derived from foreign currency bonds – Order recalled. [S. 4, 28(i)]**
Allowing the miscellaneous petition the Tribunal held that jurisdictional High Court in *CIT v. Reliance Industries Ltd [2020] 423 ITR 236 (Bom.) (HC)* after taking note of the decision of the supreme Court in *CIT v. Mahindra & Mahindra Ltd (2018) 408 ITR 1 (SC)* and *CIT v. T.V Sundram Iyengar & Sons Ltd (1996) 222 ITR 355 (SC)* has up held the decision of the Tribunal in holding that the gain derived from buyback of foreign currency bonds issued by the assessee cannot be treated as revenue receipts. Tribunal held that though it may be the fact that the aforesaid decision was not cited before the Tribunal at the time of hearing of appeal, as held by the Supreme Court in *ACIT v. Saurashtra Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC)*, non consideration of the supreme court judgement or the jurisdictional High Court, even rendered post disposal of appeal, would constitute apparent on the face of the record. Accordingly the order of the Tribunal dt 21-5 2019 was recalled and the appeal was restored. (MA.No 596 / Mum/2019 arising out of ITA No. 3036 /Mum/ 2009 dt 22-5-2009). (AY. 2003-04)
Tata Power Company v. ACIT (2020) BCAJ-September P. 42 (Mum.)(Trib.)

2261 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Delay in filing miscellaneous application two years 11months – No specific power conferred on Tribunal to condone delay in filing miscellaneous applications – Miscellaneous applications dismissed.**
The Tribunal held that the reasons stated in the petition for condonation of delay were not sufficient for not filing the applications in due time. Even in the first round before the Tribunal, in the order pronounced on February 1, 2013 no one had appeared either in person or on behalf of the assessee and an ex parte order was passed by the Tribunal dismissing the case of the assessee for non-prosecution. In the case of miscellaneous applications under section 254(2) of the Act, there was no specific power or provision provided to the Tribunal for condonation of delay if the application was filed after the relevant period. The power to condone the delay with the Tribunal could only be exercised if it was specifically provided in the statute itself. Therefore, all the

condonation of delay petitions were to be dismissed. Consequently, the miscellaneous applications became academic and were also to be dismissed.(AY. 2002-03 to 2004-05)
Daryapur Shetkari Sahakari Ginning And Pressing Factory Ltd. v. ACIT (2020) 82 ITR 547 (Nag.)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Income deemed to accrue or arise in India – Business connection – Stay of employees in India – Issue referred to AO for verification – No mistake Apparent on record – DTAA-India-UK. [S. 9(1)(i), Art. 5(2)(k)(i)] 2262

Assessee claimed that in relevant previous year, its employees/personnel were in India for rendering services for a period of 42 days, hence, there was no PE as per Article-5(2)(k)(i) of India-U.K. Tax Treaty. The said claim was not factually verified either by Assessing Officer or by DRP. Tribunal after considering all relevant facts had taken a conscious decision of directing Assessing Officer to verify assessee's claim regarding stay of employees/personnel in India. The assessee filed miscellaneous application, rejecting the application the Tribunal held that there being no mistake in decision of Tribunal, application filed by assessee for rectification of order passed by Tribunal was rejected. (AY. 2013-14)
Link Laters LLP v. DCIT(IT) (2020) 183 ITD 156 / 195 DTR 140 / 208 TTJ 20 (Mum.)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Decision of jurisdictional High Court binding on Tribunal – Failure to consider judgment in favour of department of another High Court which was not cited by department at time of hearing of appeal – Not a mistake apparent from record. 2263

Dismissing the application, that while deciding this issue the Tribunal had taken a firm view which was supported by various judgments including the judgment of the Rajasthan High Court. The judgment of the Rajasthan High Court was binding on the Tribunal specifically the Jaipur and Jodhpur Benches of the Tribunal. The decision of the Madras High Court was not relied upon or cited by the Department at the time of hearing of the appeal. Further, even where there was a divergent view the Tribunal was bound by the view taken by the Rajasthan High Court. Hence, the fact that the decision which was not cited by the Department at the time of hearing was not considered could not be a considered mistake in the order of the Tribunal. The jurisdiction of the Tribunal under section 254(2) of the Income-tax Act, 1961 was limited and did not permit review or revision of its own decision taken on the merits. (AY. 2011-12)
ITO v. Kailash Chand Bangur (2020) 81 ITR 88 (SN) (Jaipur)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Capital gains – Distribution of capital asset – Retirement – Amount credited to Partner's capital account prior to retirement for goodwill whether taxable as capital gains with cost of acquisition as per sec. 55(2)(a) as NIL – Miscellaneous application of the revenue is dismissed. [S. 45(4), 55(2)(a)] 2264

Appellate Tribunal in the appeal ITA No.1700/Bang/2016 dt. 3-5-2019 held that the amount received by the partner on settling the account in the firm is not taxable to

tax. In this MA the revenue has submitted that while in para 34 the Tribunal has upheld the action of the revenue authorities in taxing the excess paid over and above the sum standing to the credit of the capital account of the Assessee as capital gain has modified the computation of the capital gain by treating value of goodwill also as part of the credit in the partners capital account. According to the revenue, the value of Goodwill should not be considered as cost of acquisition or sum standing to the credit of the partners capital account because as per section 55(2)(a) of the IT Act, the cost of the goodwill has to be taken as nil. If this provision is applied the capital gain would be the same as calculated by the AO. Dismissing the petition the Tribunal held that goodwill was not an asset which was subject matter of transfer and therefore the provisions of section 55(2)(a) of the Act will not apply. What was subject matter of transfer was right of partner in the partnership firm which comprises of several components, goodwill being one of the components. Apart from the above, we are also of the view that the issue that is sought to be agitated by the revenue in this miscellaneous petition is a highly debatable issue. The jurisdiction u/s. 254(2) of the Act confined only to rectifying mistakes that are apparent on the face of record. In the garb of an application u/s 254(2) of the Act, the assessee cannot seek a review of the order of Tribunal. There is no mistake apparent on the face of the record. (MA 123 of 2019 dt 28-9-2020) (AY. 2008-09)
ITO v. Savitri Kadur (Smt.) (Bang.)(Trib.) www.itatonline.org

2265 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – High court admitting department appeal on same issue – Review of order is impermissible. [S. 260A, 271AA, 271(1)(c)]**
Dismissing the application, the Tribunal held that, the High Court had admitted the appeal filed by the Department on the same issue contested in the application. Therefore, the application did not survive. Besides this, the Department was seeking review of the order which was beyond the scope of section 254. There was no mistake apparent from the record. (AY. 2010-11)
ACIT v. Saviour Builders Pvt. Ltd. (2020) 77 ITR 305 (Delhi)(Trib.)

2266 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Review of order is not permissible – Rectification application of the revenue is dismissed. [S. 40A(3)]**
The assessee purchased the land by paying the amount in cash. AO disallowed the payment by applying the provision of S.40(A)(3) of the Act. CIT(A) deleted the addition. Tribunal affirmed the order of CIT(A). revenue filed the miscellaneous application to recall the order. Dismissing the rectification application, the Tribunal held that it is trite to say that mistake must be apparent from record, which in instant case does not appear so because the co-ordinate bench while adjudicating the appeal under challenge, though have taken note of order passed by the Tribunal in assessee's own case for the assessment year 2010-11, but also considered overall facts and judicial verdict of jurisdictional High Court as on date of passing the order and applied its mind independently, therefore there is no any error apparent from record. (AY. 2011-12)
ITO v. Sakun Aggarwal (2020) 180 ITD 68 / 187 DTR 65 / 204 TTJ 129 (Amritsar)(Trib.)

S. 254(2A) : Appellate Tribunal – Stay – During pendency of appeal stay of recovery proceedings is held to be justified. [S. 253] 2267

Dismissing the appeal of the revenue the Court held that During pendency of appeal stay of recovery proceedings is held to be justified. Followed *Pepsi Food (P.) Ltd. v. ACIT (2015) 376 ITR 87 (Delhi)(HC)*

CIT v. MSD Pharmaceuticals (P.) Ltd. (2020) 113 taxmann.com 136 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, CIT v. MSD Pharmaceuticals (P.) Ltd (2020) 269 Taxman 48 (SC)

S. 254(2A) : Appellate Tribunal – Stay – Stay order does not vacate after expiry of a period of 365 days if delay in disposal of appeal is not attributed to assessee – Order of Tribunal is affirmed. [S. 260A] 2268

Question raised by the revenue, whether order of Tribunal was to be treated as void-ab-initio in light of third proviso to section 254(2A) which provides that stay of demand stands vacated after expiry of a period of 365 days, even if delay in disposal of appeal is not attributable to assessee. High Court dismissed the appeal as not a substantial question of law. (AY. 2010-11)

PCIT v. Jindal Steel & Power Ltd. (2020) 114 taxmann.com 617 (P&H)(HC)

Editorial : SLP of revenue is granted PCIT v. Jindal Steel & Power Ltd (2020) 269 Taxman 575 (SC)

S. 254(2A) : Appellate Tribunal – Powers – Stay – Capital gains – Denial of exemption – Deposited a sum of Rs. 15.71 lakhs out of demand of Rs. 61.99 lakhs, and directed to deposit a further sum of Rs. 15 lakhs and on such deposit there shall be an order of interim stay till disposal of appeal before Tribunal. [S. 10(38), 45, 254(1), Art. 226] 2269

Assessee purchased shares of a company between October, 2004 and November, 2004 and sold same in year 2010 and claimed exemption under section 10(38). Assessing Officer disallowed assessee's claim and raised demand of Rs. 61.99 lakhs upon him. Assessee filed appeal before Tribunal along with stay petition. Tribunal dismissed stay petition on ground that there was no prima facie case in favour of assessee in view of incriminating documents. On writ the Court held that in view of fact that assessee had already deposited a sum of Rs. 15.71 lakhs out of demand of Rs. 61.99 lakhs, he was to be directed to deposit a further sum of Rs. 15 lakhs and on such deposit there shall be an order of interim stay till disposal of appeal before Tribunal.

Suneel Hirachand Shah v. ITO (2020) 271 taxman 97 (Mad.)(HC)

S. 254(2A) : Appellate Tribunal – Stay – Order of Tribunal granted the stay is affirmed – Appeal is held to be misconceived. [S. 253, 260A] 2270

During pendency of appellate proceedings, assessee filed application for stay of demand. Tribunal allowed assessee's application. High Court confirmed order passed by Tribunal. Followed *Pepsi Food (P) v. ACIT (2015) 376 ITR 87 (Delhi) (HC)*. High Court also held that appeal of the revenue is misconceived as the appeal of the revenue and cross objection of the assessee is restored to the file of the Tribunal to decide the appeals afresh.

CIT v. MSD Pharmaceuticals (P.) Ltd. (2020) 113 taxmann.com 136 / 269 Taxman 49 (Delhi)(HC)

Editorial : SLP of revenue is dismissed; CIT v. MSD Pharmaceuticals (P.) Ltd. (2020) 269 Taxman 48 (SC)

2271 **S. 254(2A) : Appellate Tribunal – Stay – Paid half of demand – Garnishee proceedings – Stay was granted. [S. 220, 226(3)]**

Assessee, a civil contractor, builder and developer, had been granted several contracts by statutory authorities for poor and economically weaker sections of society under Prime Minister Awas Yojana. During reassessment proceedings, additions were made on account of bogus purchases in hands of assessee. All bank accounts of assessee had been attached by garnishee proceedings under section 226(3) of the Act. Before the Tribunal the Assessee submitted that it had already paid tax component and balance outstanding demand represented interest and penalty only and sought for vacation of garnishee proceedings contending that it was not in a position to pay its labourers. Tribunal held that since assessee was not in a position to clear dues of its workers due to attachment of its bank accounts and debtors, in view of COVID-19 pandemic, it would be fit and proper to grant stay on collection and recovery of remaining outstanding demand. (AY. 2010-11)

Pandhes Infracon (P.) Ltd. v. ACIT (2020) 184 ITD 868 / 189 DTR 340 / 205 TTJ 478 (Mum.)(Trib.)

2272 **S. 254(2A) : Appellate Tribunal – Stay – Cash credits – No case has been made for stay of recovery – Stay application is rejected. [S. 68, 220, 226]**

Dismissing the stay the Tribunal held that the assessee has not proved prima facie case balance of convenience, irreparable loss and financial difficulties hence stay petition was dismissed. (AY. 2011-12)

Shantananda Steels (P.) Ltd. v. ITO (2020) 182 ITD 434 / 195 DTR 417 / 208 TTJ 672 (Chennai)(Trib.)

2273 **S. 254(2A) : Appellate Tribunal – Stay – No case made out for stay of demand – Irreparable loss and financial difficulties – Stay petition dismissed. [S. 254(1)]**

Tribunal held that no case had been made out by the assessee for stay of demand on all the grounds of prima facie case, balance of convenience, irreparable loss and financial difficulties and hence the stay petition filed by the assessee was liable to be dismissed. (AY.2015-16)

G. Hemalatha (Smt.) v. ACIT (2020) 80 ITR 456 (Chennai)(Trib.)

2274 **S. 254(2A) : Appellate Tribunal – Stay – CIT (IT) had already granted stay on collection of disputed demands till disposal of appeal on condition that assessee paid 30 per cent of demand – Order of stay being in a reasonable manner, order is affirmed. [S. 143(3), 144C]**

Tribunal held that since authorities below had dealt with stay petitions of assessee in a reasonable manner and there was no perversity or unreasonableness in their approach, no occasion was there for Tribunal to interfere in impugned matter. Power of Tribunal to grant stay on collection/recovery of demands during pendency of appeal could not be exercised in a routine manner simply on basis of an assessment of prima facie merits in appeal. (AY. 2015-16)

Kersiwood Holdings Ltd. v. ACIT (2020) 181 ITD 170 (Mum.)(Trib.)

S. 254(2A) : Appellate Tribunal – Stay – Special Bench – Amendment in first proviso to s. 254(2A) by the Finance Act 2020 – Whether directory or mandatory – Reference to special Bench. [S. 253] 2275

Honourable President of the Appellate Tribunal to consider whether a Special Bench should be constituted to decide two very significant aspects relating to the powers of the Appellate tribunal to grant unconditional stay of demand after the amendment in first proviso to S. 254(2A) by the Finance Act 2020, namely, (i) The legal impact, if any, of the amendment on the powers of the Tribunal u/s 254(1) to grant stay; and, (ii) if the amendment is held to have any impact on the powers of the Tribunal u/s 254(1),-(a) whether the amendment is directory in nature or is mandatory in nature; (b) whether the said amendment affects the cases in which appeals were filed prior to the date on which the amendment came into force; (c) whether, with respect to the manner in which, and nature of which, security is to be offered by the assessee, under first proviso to S. 254(2A), what are broad considerations and in what reasonable manner, such a discretion must essentially be exercised, while granting the stay,by the Tribunal. (SA Nos. 147 and 148/Mum/2020,arising out of ITA Nos 1423 and 1424/Mum/2018 dt 17-06-2020) (AY. 2011-12, 2012-13)

Tata Education and Development Trust v. ACIT (2020) 117 taxmann.com 500 / 183 ITD 883 (Mum.)(Trib.) www.itatonline.org.

S. 254(2A) : Appellate Tribunal – Stay – Video conferencing – Attachment of bank account lifted and stay against coercive recovery granted. [S. 226(3)] 2276

Tribunal held that as the physical office of the ITAT is not functioning due to the lockdown, the stay petition was heard through video conferencing, from home offices of the respective Members. Attachment of bank account lifted and stay against coercive recovery granted as all of us are traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. It is necessary for every employer company to take care of its employees. The assessee not in a position to perform these obligations in view of the attachment of its bank accounts and debtors. (SA No. 184/Mum/2020 Arising out of ITA No. 189/Mum/2020, dt. 24/4/2020) (AY. 2010-11)

Pandhes Infracon Pvt. Ltd. v. ACIT (2020) 116 taxmann.com 376 (Mum.)(Trib.) www.itatonline.org

Editorial : ITAT Mumbai created history by hearing a stay petition, on humane ground during period of complete lockdown, through video conferencing from home offices of Coram Members.

S. 254(2A) : Appellate Tribunal – Stay – Garnishee notices – Department should wait till disposal of stay petition – Interim stay is granted and garnishee proceedings placed under suspension till disposal of stay petition. [S. 226(3), 254(1)] 2277

The assessee prayed that the recovery proceedings be stayed till the disposal of the appeal by the Tribunal and to restrain the AO from taking any coercive action as regards recovery of tax, interest and penalty levied or leviable for the assessment year 2013-14 and to forthwith release the attachment of bank accounts. Tribunal held that the hearing of the stay petition was concluded but the order thereon had not been passed. In the meantime, the Department had already issued garnishee notices under S.

226(3) of the Act to the bankers of the assesses. Such undue haste in recovery of the disputed demands, in respect of which the hearing of appeal as also the stay petition had already concluded, was inappropriate. The Department should have at least waited for the disposal of the stay petition. In these circumstances, the garnishee proceedings initiated by the Department should be placed under suspension till the stay petition was disposed of. In the meantime, operation of all the garnishee notices issued by the Department on the bankers of the assessee shall remain suspended. The Department was further directed not to resort to, or continue with, any other coercive measures also, in the meantime, to recover the disputed outstanding demands. (AY.2013-14)
Cleared Secured Services Pvt. Ltd. v. Dy.CIT (2020) 77 ITR 93 (SN) / 186 DTR 105 / 203 TTJ 657 (Mum.)(Trib.)

2278 **S. 255 : Appellate Tribunal – Reference to Special Bench – Interest – Paid by subsidiary – Matter referred to Larger Bench to examine connotations of expression 'paid' appearing in article 11 as in various decisions of Tribunal, there was no discussion about connotations of expression 'paid' and these decisions simply proceed on basis that since expression 'paid' is used in article 11(1) of India Cyprus tax treaty, taxability of interest can only be on cash basis – DTAA-India-Cyprus. [Art. 11(1)]**
Assessee, a Cyprus based company, challenged decision of DRP charging notional interest on loan advanced by it to its Indian subsidiary company. It submitted that no interest was paid by its subsidiary in relevant period as said period was covered by moratorium under loan agreement and as per article 11, interest is chargeable to tax only when it is arising and paid to non-resident. There were various decisions of Tribunal holding that taxability of interest under DTAA could only be done on cash basis. In all said decisions, there was no discussion about connotations of expression 'paid' and these decisions simply proceed on basis that because expression 'paid' is used article 11(1), taxability of interest can only be on cash basis and expression 'paid' is admittedly not defined in treaty-Whether since connotations of expression 'paid' appearing in article 11 are required to be examined in detail, and that exercise can at best be conducted by a Bench of three or more members so that decision is unfettered by earlier decisions in this regard, it would be fit and proper to refer said matter to a Special Bench of three or more members. In event of a doubt about correctness of earlier decisions of Tribunal, a reference can be made for constituting a larger Bench for considering same. (AY. 2011-12, 2012-13)
Ampacet Cyprus Ltd. v. DCIT (2020) 184 ITD 743 / 195 DTR 289 / 208 TTJ 653 (Mum.) (Trib.)

2279 **S. 260A : Appeal – High Court – High court shall formulate question and may then pronounce judgment either by answering question in affirmative or negative – If High Court wishes to hear appeal on any other substantial question of law not formulated by it, it may, for reasons to be recorded, formulate and hear such questions if it is satisfied that case involves such question. [S. 4, 28(ii)(a), Code of Civil Procedure 1908, S.100]**
On appeal by the assessee, the Court observed that the substantial question of law that was raised by the High Court did not contain any question as to whether the non-

compete fee could be taxed under any provision other than Section 28(ii)(a) of the Act. Without giving an opportunity to the parties followed by reasons for framing any other substantial question of law as to the taxability of such amount as a capital receipt in the hands of the assessee, the High Court answered the substantial question of law, without any recorded reasons and without framing any substantial question of law on whether the said amount could be taxed under any other provision of the Income-tax Act, the High Court went ahead and held that the amount of INR 6.6 crores received by the assessee was received as part of the full value of sale consideration paid for transfer of shares. Court held that high court shall formulate question and may then pronounce judgment either by answering question in affirmative or negative or by stating that case at hand does not involve any such question. If High Court wishes to hear appeal on any other substantial question of law not formulated by it, it may, for reasons to be recorded, formulate and hear such questions if it is satisfied that case involves such question. (AY. 1995-96)

Shivraj Gupta v. CIT (2020) 425 ITR 420 / 272 Taxman 391 / 315 CTR 601 / 192 DTR 20 (SC)

Editorial : CIT v Shiv Raj Gupta (2014) 52 taxmann.com 425 / [2015] 372 ITR 337 / 273 CTR 353 (Delhi) (HC) (Delhi) (HC) reversed. Followed Guffic Chem (P.) Ltd. v. CIT (2011) (2011) 332 ITR 602 / 239 CTR 225 / 52 DTR 289 / 198 Taxman 78 / 225 Taxation 383 (SC) / 4 SCC 254.

S. 260A : Appeal – High Court – Situs of the Assessing Officer has to be seen to consider which High Court exercise territorial jurisdiction of such an officer. [S. 127] 2280

On appeal by revenue High Court dismissed the appeal held that jurisdiction of High Court is determined by situs of Assessing Officer at time of filing appeal Followed *CIT v. Motorola India Ltd., (2010) 326 ITR 156 (P&H) (HC) and PCIT v. ABC Papers Ltd. ITA No. 130 of 2018 dt. 7-2-2019.*

PCIT v. Kuantum Paper Ltd. (2020) 117 taxmann.com 141 (Punj. & Har)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Kuantum Paper Ltd. (2020) 272 Taxman 532 (SC) / 273 Taxman 449 (SC)

S. 260A : Appeal – High Court – Delay of 875 days – Appeal was dismissed as there was no reasonable cause. 2281

High Court dismissed the appeal of the revenue as there was an inordinate delay of 875 days in re-filing the appeal without reasonable cause.

CIT v. Shirin Kamaljit Singh (Smt.) (2020)115 taxmann.com 242 (Delhi) (HC)

Editorial : SLP of revenue is dismissed due to low tax effect, CIT v. Shirin Kamaljit Singh (Smt.) (2020) 272 Taxman 528 (SC)

S. 260A : Appeal – High Court – Delay of 950 days – Defects not removed – Mistake of earlier standing counsel of Department – Appeal was dismissed. 2282

Dismissing the appeal of the revenue the Court held that, it is not possible to accept that no one in the Department followed up on the filing of appeals and allowed a period of more than two and a half years to elapse before the appeal could be refiled. The Department has a cell in the High Court which is under the supervision of a Deputy

CIT. He ought to be keeping track of the filing of appeals and should be able to know if any appeal entrusted to the panel counsel for filing has not been listed even once before the Court for a long time. Delay of 950 days was not condoned.
CIT v. Kapil Dev (2020) 119 taxmann.com 290 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, as withdrawn due to low tax effect. CIT v. Kapil Dev (2020) 274 Taxman 222 (SC)

2283 **S. 260A : Appeal – High Court – Delay of 1744 days – Manager not keeping well – Duty of assessee to watch affairs – Delay was not condoned.**
Dismissing the appeal of the assessee the Court held that t here is nothing on record to show that Late Padam Prakash Singh was suffering from ailments and was such an ailment which did not permit him to take initiative for filing of appeal. It was otherwise duty of the assessee to watch the affairs of its firm and in any case, Late Padam Prakash Singh died on 22-11-2017. At least thereupon, the assessee was expected to file appeal immediately but it was filed almost after one and half years. The delay in filing the appeal is not of few days or months but is of more than four and half years. Accordingly the delay was not condoned.
Mani Mandir Sewa Nyas Samiti Ramghat Ayodhaya v. CIT (2020) 119 taxmann.com 382 (All.)(HC)
Editorial : SLP of assessee is dismissed, Mani Mandir Sewa Nyas Samiti Ramghat Ayodhaya v. CIT (2020) 274 Taxman 277 (SC)

2284 **S. 260A : Appeal – High Court – Capital gains – Full value of consideration – Stamp valuation – Reference to DVO – Grounds not raised before the Tribunal – Not allowed to raise the ground in an appeal before High court. [S. 45, 50C, 254(1)]**
Assessee was aggrieved by order of Tribunal contending that Tribunal should have directed Assessing Officer to refer valuation of sale of gala (industrial building) to Valuation Officer as per section 50C(2). Court held that since there was no submission before Tribunal that Assessing Officer should have referred valuation to Valuation Officer, question raised by assessee could not be considered by Court. (AY. 2010-11)
Vipin Mehta v. CIT (2020) 270 Taxman 67 (Bom.)(HC)

2285 **S. 260A : Appeal – High Court – Appellate Tribunal – Stay granted matters – Delay of more than 365 days – Delay in disposal of appeal not attributable to assessee – No substantial question of law. [S.254(2A)]**
In appeal against the order of Tribunal the revenue sought to raise a question as to whether order of Tribunal was to be treated as void-ab-initio in light of third proviso to section 254(2A) which provides that stay of demand stands vacated after expiry of a period of 365 days, even if delay in disposal of appeal is not attributable to assessee. High Court held that a view that question raised by revenue was not a substantial question of law. (AY. 2010-11)
PCIT v. Jindal Steel & Power Ltd. (2020) 114 taxmann.com 617 (P&H)(HC)
Editorial : SLP against the High Court order is granted PCIT v. Jindal Steel & Power Ltd. (2020) 269 Taxman 575 (SC.)

S. 260A : Appeal – High Court – Review – Low tax effect – Audit objection – Appeal decided as per CBDT Circular dt 8-8-2019 – No error apparent on the face of the record Review petition was dismissed. [S. 268(A)] 2286

High Court dismissed the order of Department as per the no error apparent on the face of the record. In the review petition it was argued that there was audit objection hence circular is not applicable. Order was passed in ITA No 93/2009 dt 12-12 2019. Referred *Income tax Department v. Krishna Ware House ITA No 75 /2019 and also CIT v. Naway Construction Co P. ltd (2018) 98 taxmann.com 294 (Bom.)(HC) Haridas Das v. Usha Rani Bank (Smt) and Ors., (2006) 4 SCC 78, State of West Bengal and Ors. v. Kamal Sengupta and Anr (2008) 8 SCC 612 Inderchand Jain (dead) Through LRs v. Motilal (dead) Through LRs, (2009) 14 SCC 663, S. Bagirathi Ammal v. Palani Roman Catholic Mission (2009) 10 SCC 464.* Accordingly review the order dated 12.12. 2020 passed in ITA No. 93/2019 dt 31-12-2019 (2020) 191 DTR 356 / 315 CTR 584 (MP) (HC) was dismissed as there is no error apparent on the face of the record. No case for interference is made out in the matter.

ITO v. Kalimuddin Badnawarwala (2020) 191 DTR 359 / 315 CTR 587 (MP)(HC)

S. 260A : Appeal – High Court – Tax effect – Less than monetary limit – Appeal dismissed. 2287

Dismissing the appeal of the revenue the Court held that the tax effect is less than one crore and therefore, in the light of the Circular dated 8/8/2019 issued by the CBDT, fixing the monetary limit, the present appeal is dismissed as withdrawn. However, the question of law is left open. The appeals are not covered under the Exceptional Clause of the Circular dated 8/8/2019. (ITA No 93 of 2019 dt 31-12-2019).

PCIT v. Kalimuddin Badnawarwala (2020) 191 DTR 356 / 315 CTR 584 (MP) (HC)

Editorial : Review petition was dismissed, ITO v. Kalimuddin Badnawarwala (2020) 191 DTR 359 / 315 CTR 587 (MP) (HC)

S. 260A : Appeal – High Court – Monetary limits – Revision by commissioner – Appeal not maintainable. [S. 263, 268A] 2288

The Central Board of Direct Taxes issued Circular No. 3 of 2018 dated July 11, 2018 ([2018] 405 ITR (St.) 29) which was amended by Circular No. 5 of 2019, dated February 5, 2019 ([2019] 411 ITR (St.) 7) and Circular No. 17 of 2019, dated August 8, 2019 ([2019] 416 ITR (St.) 106). Circular No. 17 of 2019, substituted paragraph 5 of Circular No. 3 of 2018 dated July 11, 2018 with regard to the monetary limits prescribed. This circular does not distinguish the order passed under section 263 of the Income-tax Act, 1961 which pertains to the invocation of revisional powers of the Commissioner for revising assessment orders which are erroneous or prejudicial to the interests of the Revenue or any other section of the Act but it refers to the monetary limits prescribed in the circular itself and if any appeal is filed, which is not a writ matter, the monetary limits prescribed under the circular would apply and the Department is bound by such monetary limits and accordingly, the Department cannot pursue the matter, if the monetary limit prescribed in the circular is adhered to. The Tribunal quashed and set aside the orders passed by the Commissioner under section 263 against the assessee. The Department contended that the circular would not be applicable to appeals that arose from an order under section

263. On appeal dismissing the appeals, that even if the consolidated tax effect in all these appeals was taken, it would not exceed the monetary limits prescribed in Board's Circular No. 17 of 2019 dated August 8, 2019 (2019) 416 ITR 106 (St.) and therefore, the appeals were to be dismissed due to low tax effect.
PCIT v. Vinodbhai Ranchhodbhai Parekh (2020) 429 ITR 225 / 316 CTR 346 / 188 DTR 284 (Guj.)(HC)

2289 **S. 260A : Appeal – High Court – Territorial Jurisdiction of High Court – Precedent – Assessed in Karnataka – Appeal decided by Mumbai Tribunal – Bombay High Court has no jurisdiction to decide the appeal. [S. 147, 148, Art. 142, 226, 227]**
The Assessing Officer, Belgaum, reopened the assessment. Commissioner (Appeals), Bangalore decided the appeal. Panji Bench of the Tribunal decided the matter in favour of the assessee. Department has filed an appeal before the Bombay High Court. Dismissing the petition the Court held that the assessee was located in Karnataka, and so were the Income-tax authorities. The primary order, too, emanated from Karnataka; so did the first appellate order. All challenges, including the appeal before the Tribunal, were in continuation of that primary adjudication or consideration before the Assessing Officer at Belgaum, Karnataka. The Bombay High Court had no jurisdiction to entertain the appeal. Relied on *Ambica Industries v. CCE AIR 2007 SC 1812/ (2009) 20 VST 1 (SC)* (AY.2008-09)
CIT v. MD Waddar and Co. (2020) 429 ITR 451 / 317 CTR 713 / 196 DTR 33 / (2021) 277 Taxman 558 (Bom.)(HC)

2290 **S. 260A : Appeal – High Court – Monetary limit – Notification dated 11-7-2018 of Central Board Of Direct Taxes – Case not falling within Exception – Appeal not maintainable. [S. 253, 254(2)]**
That though the Departmental authorities were directed by the notification dated August 8, 2019 of the Central Board of Direct Taxes not to file appeal before the High Court where the monetary limit was less than Rs. 1 crore, but in the notification of the Board dated July 11, 2018 there was an exception to the effect that if there was a valid question, where an order, notification, instruction or circular was to be challenged as illegal or ultra vires, an appeal could be filed before the High Court on the merits notwithstanding the fact that the tax effect entailed was less than Rs. 1 crore. No such exception was available to the Department. Court also held that the Tribunal did not err in holding that the issue could not be decided under section 254(2) and the only remedy was to file appeal under section 260A before the High Court. (AY.1996-97 to 1999-2000)
PCIT v. Ambuja Darla Kashlog Mangoo Transport Co-Operative Society (2020) 428 ITR 94 / 269 Taxman 618 / 317 CTR 363 / 195 DTR 99 (HP)(HC)

2291 **S. 260A : Appeal – High Court – High court refusing to frame question as substantial question of law – High Court cannot review its decision – Even if the principle of res judicata does not apply to tax matters, consistency and certainty of law would require the State to take a uniform position and not change its stand in the absence of change in facts or the law. [S. 260A(4)]**
Dismissing the appeal the Court held that S. 260A (4) does not empower the High Court to reconsider its earlier view in the same proceedings and reformulate a question

of law which it had earlier refused to formulate. In other words, (1) a question that had escaped the court's earlier attention, or (2) a question the appellant had not presented to the court, or even (3) a question that cropped up because of subsequent developments stands on a different footing. But a question which the High Court consciously refused to treat as a substantial question of law fails to qualify under any of the above three categories. Even if the principle of res judicata does not apply to tax matters, consistency and certainty of law would require the State to take a uniform position and not change its stand in the absence of change in facts or the law.(AY.2008-09)

CIT v. V. M. Salgaonkar Brothers (P.) Ltd. (2020) 428 ITR 386 / 317 CTR 529 / 195 DTR 241 / (2021) 277 Taxman 469 (Bom.)(HC)

S. 260A : Appeal – High Court – Monetary limit – Case not falling within exception – Appeal not maintainable. [S. 253, 254(2)] 2292

Dismissing the appeal of the revenue the Court held that ; though the Departmental authorities were directed by the Notification /Circular No.17 of 2019, dated August 8, 2019 (2019) 416 ITR 106 (St) of the Central Board of Direct Taxes not to file an appeal before the High Court where the monetary limit was less than Rs. 1 crore, but in the notification of the Central Board of Direct Taxes Circular No. 3 of 2018, dt. 11th July, 2018, there was an exception to the effect that if there was a valid question, where an order, notification, instruction or circular was to be challenged as illegal or ultra vires, an appeal could be filed before the High Court on the merits notwithstanding the fact that the tax effect entailed was less than Rs. 1 crore. No such exception was available to the Department. (AY.1996-97 to 1999-2000)

PCIT v. Solan District Truck Operators Transport Co-Operative Society (2020) 428 ITR 264 / 274 Taxman 397 (HP)(HC)

S. 260A : Appeal – High Court – Case not falling within exception – Appeal not maintainable. [S. 143(1), 154, 244A, 254(2) 2293

Court held that though the Departmental authorities were directed by the notification dated August 8, 2019of the Central Board of Direct Taxes not to file appeal before the High Court where the monetary limit was less than Rs. 1 crore, but in the notification of the Board dated July 11, 2018, there was an exception to the effect that if there was a valid question, where an order, notification, instruction or circular was to be challenged as illegal or ultra vires, an appeal could be filed before the High Court on the merits notwithstanding the fact that the tax effect entailed was less than Rs. 1 crore. No such exception was available to the Department. Miscellaneous application is not maintainable, only remedy is to file an appeal That the Tribunal did not err in holding that the issue could not be decided under section 254(2) and the only remedy was to file appeal under section 260A before the High Court. (AY.1996-97 to 1999-2000)

PCIT v. Ambuja Darla Kashlog Mangoo Transport Co-Operative Society (2020) 428 ITR 94 / 195 DTR 99 / 317 CTR 363 / 269 Taxman 618 (HP)(HC)

2294 **S. 260A : Appeal – High Court – Substantial question of law – Speculative transaction – Remand by tribunal to consider nature of transaction – No question of law. [S. 43(5), 73(1)]**

Dismissing the appeal, that the assessee had been dealing in shares whereof delivery was in fact taken and also in shares whereof delivery was not ultimately taken. The Tribunal had directed the Assessing Officer to consider the foreign exchange derivative in proportion to the export turnover as regular business transactions of the assessee. If the derivative transactions undertaken by the assessee were in excess of the export turnover the loss suffered in respect of the excess transactions had to be considered as speculative loss. The excess derivative transactions had no proximity with the export turnover and the Assessing Officer was directed to compute accordingly. Further, the Assessing Officer had to see whether there was any premature cancellation of forward contract in foreign exchange and if so, those transactions should be taken out for the purpose of considering the business loss and only transactions which were completed were to be considered for the purpose of determining the business loss from these foreign exchange forward contracts. No question of law arose from this order. (AY.2008-09)

Capricorn Food Products India Ltd. v. Asst. CIT-Tax (2020) 427 ITR 120 (Mad.) / 273 Taxman 312 (HC)

2295 **S. 260A : Appeal – High Court – Rejection of accounts – Estimation of income – No perversity in finding of facts by Tribunal – Appeal not maintainable – No substantial question of law. [S. 144]**

Court held that the Tribunal's order clearly showed that the gross profit at the rate of 14.21 per cent and net profit at the rate of 3.83 per cent declared by the assessee, with the addition of 10 per cent agreed by the assessee before the Commissioner (Appeals), resulted in a much better result of profits declared by the assessee in the AY. 2010-11 as compared to the previous years. The net profit rate in the previous three years was less than 3 per cent, whereas the assessee itself declared the net profit at the rate of 3.83 per cent before the addition of 10 per cent of Rs. 4,41,08,210. Therefore, the estimation of profits by the appellate authorities even on the premise taken by the assessing authority that some of the sub-contractors could not be produced before the assessing authority, did not result in any perversity in the findings of the Commissioner (Appeals) as well as the Tribunal. It is well known that where the books of account maintained by the contractors were not accepted by the Department, estimation of profits made on the basis of the history of the gross profit rate and net profit rate of the assessee in the previous years or comparable cases of contractors can be made. Once such profit rates were compared, the additions on account of non-confirmation or non-production of the sub-contractors, was totally irrelevant and could not be made. The estimation of income by the Tribunal was valid.

Obiter dicta : Though the provisions of section 260A of the Act are intended only to settle the substantial questions of law arising from the order of the Tribunal, there seems to be no application of mind by the higher authorities in sanctioning filing of these appeals before the High Court. The authorities should see the absence of reasonableness in filing such appeals in future. Merely because the Revenue's stake may be more than

rupees one crore for the Revenue Department, the validity of substantial question of law arising in the matter ought to have been examined by the responsible authorities of the Revenue Department, before filing such appeals before this court. (AY. 2010-11)
CIT v. SPL Infrastructure Pvt. Ltd. (2020) 427 ITR 213 / 274 Taxman 292 (Mad.)(HC)

S. 260A : Appeal – High Court – Delay of 3345 days – Abatement of appeal due to death of the assessee – Delay was not explained – Application for condonation of delay was rejected and appeal was dismissed as abated. [S. 220(2A)] 2296
The Department filed an application to set aside the abatement of appeal by reason of the death of the assessee, condonation of delay of 3345 days, as also impleadment of the legal heir and son of the deceased assessee as additional respondent. Dismissing the petition the court held that the impleading petition was filed only on August 3, 2016. In the year 2013, the Tax Recovery Officer had implemented the order of the Tribunal and had communicated the demand to the wife of the deceased assessee. Before giving effect to the order, the Tax Recovery Officer should have enquired about the further proceedings taken on the basis of the order of the Tribunal and this appeal itself was filed in the year 2003. Notice was issued only in the year 2009. The Department ought to have taken up the proceedings for setting aside the abatement and condonation of delay within a reasonable period and there was no explanation for the gross delay caused. Hence the applications were to be rejected.
CIT v. V. M. Varghese (2020) 424 ITR 561 (Ker.)(HC)

S. 260A : Appeal to High Court – Rule of consistency – Taxability of profits of overseas branches of assessee – Earlier year order of Appellate Tribunal was accepted – Precluded from raising point for later year – Appellate Tribunal – Powers – Subsidy – Capital or revenue – New issues can be raised first time before the Appellate Tribunal on the basis of material already on the record. [S. 4, 254(1)] 2297
Dismissing the appeal of the revenue the Court held that, on the issue of the Assessing Officer's attempt to tax the profits of the assessee's units situated in the U. S. A. and the U. K., the Department having accepted the order of the Tribunal in the earlier assessment years it was not open to it to pick a certain year for carrying the challenge further before the Assessing Officer. The Commissioner (Appeals) and the Tribunal had referred to the earlier orders in the case of the assessee and the Double Taxation Avoidance Agreement between the respective countries to conclude that such income was not taxable in the hands of the assessee in India. Court held that earlier year order of Appellate Tribunal was accepted hence precluded from raising point for later year.
The assessee had received a subsidy. It did not raise the contention before the authorities below that such subsidy was towards capital account and, therefore, not taxable but raised it before the Tribunal. The Tribunal relied upon its order in the assessee's case for the assessment year 1999-2000 and restored the issue to the Assessing Officer. Dismissing the appeal of the revenue the Court held that as long as the material existed on record, a contention raised by the assessee for the first time before the Tribunal was not to be barred. It was always open to the assessee to contend before the Assessing Officer by pointing out the relevant clauses of the subsidy that in law the subsidy cannot be treated to be towards revenue account. It would be equally open for

the Revenue to oppose such a contention if so advised. The Assessing Officer and the Revenue authorities would have to take a decision in accordance with law.
PCIT v. Grasim Industries Ltd. (2020) 424 ITR 236 (Bom.)(HC)

2298 **S. 260A : Appeal – High Court – Question of law – Can be entertained by the High Court on the issue of jurisdiction even if the same was not raised before the Tribunal – The question relating to non-striking off of the inapplicable portion in the s. 271(1)(c) show-cause notice goes to the root of the lis & is a jurisdictional issue. [S. 271(1)(c), 274]**
High court held that question of law which was not raised before the Tribunal can be raised before the High Court. Non striking of relevant portion of the penalty notice whether penalty cab be levied or not being question of law, the high Court entertained the question of law raised by the assessee. (Referred *CIT v. Jhabua Power Ltd (2013) 37 taxmann.com 162 / 217 Taxman 399 (SC), Ashis Estates & Properties (P) Ltd v CIT (2018) 96 taxmann.com 305 /257 Taxman 585 (Bom.)(HC) (ITA NO 958 of 2017 dt 12-06-2020* (AY.2003-04)
Ventura Textiles Ltd. v. CIT (2020) 426 ITR 478 / 315 CTR 729 / 190 DTR 165 / 274 Taxman 144 (Bom.) (HC)

2299 **S. 260A : Appeal – High Court – Issue not contested cannot be agitated before the High Court. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, revenue has not urged this issue of disallowance of expenses before the Tribunal, it cannot now be urged by the Revenue before us. This Court in *CIT v. Mahalaxmi Glass Works Co (2009) 318 ITR 116 (Bom.) (HC)* held that if a concession is made before the Tribunal, then on that issue no substantial question of law arises. (AY. 2010-11)
PCIT v. Merck Ltd. (2020) 185 DTR 401 / 312 CTR 242 / 275 Taxman 181 (Bom.)(HC)

2300 **S. 260A : Appeal – High Court – Monetary limits – In view of the Circular issued by the Central Board of Direct Taxes, the present appeal is dismissed as withdrawn/not pressed without answering the purported substantial questions of law.**
The appeal of revenue is dismissed by referring Circular No. 3 of 2018, dated July 11, 2018 ([2018] 405 ITR (St.) 29, revising the monetary limits for filing appeals by the Department before the Appellate Tribunal, High Courts and Supreme Court and the earlier monetary limits for the High Courts were upwardly revised from Rs. 20,00,000 to Rs.50,00,000 with effect from July 11, 2018.
CIT, LTU v. Bosch Ltd. (2020) 425 ITR 667 (Karn.)(HC)

2301 **S. 260A : Appeal – High Court – Capital or revenue – Income from other sources – Reimbursement received on account of assets purchased – Department not appealing against orders for other years on same facts – Appeal not maintainable. [S. 4]**
Dismissing the appeal of the revenue the Court held that the appeal was not maintainable. The CIT(A), while deciding the appeal filed by the assessee against the order of assessment, partly allowed the assessee's appeal following the decision in the assessee's own case in respect of an identical transaction for the assessment years 2006-

07 and 2007-08. As on the date when the CIT(A) had allowed the assessee's appeal, no appeal was preferred before the court, questioning the correctness of the orders passed by the Tribunal for the assessment years 2006-07 and 2007-08. Since no such appeals were filed, the decisions had been accepted by the Department and the facts for the assessment year 2005-06 being identical to those assessment years, the CIT(A) had followed the order of the Tribunal. The Tribunal had followed its earlier decisions and dismissed the appeal for the assessment year 2005-06. The Tribunal was correct in holding that the excess amount received by the assessee on reimbursement received from the foreign company on account of assets purchased and used by it for the work towards the payee company was "capital receipts". (AY.2005-06)
CIT v. Sutherland Global Services Pvt. Ltd. (2020) 426 ITR 499 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Tax credit – High Court affirmed the order of Tribunal by following the rule of consistency – DTAA – India – Oman. [S. 90(a)(ii), Art. 25(4)] 2302
On appeal by the revenue High Court affirmed the order of Tribunal by following the rule of consistency and revision order was quashed.(AY. 2010-11)
PCIT v. Indian Farmers Fertilizers Cooperative Ltd. (2020) 113 taxmann.com 598 (Delhi)(HC)
Editorial : SLP is granted to the revenue PCIT v. Indian Farmers Fertilizers Cooperative Ltd. (2020) 270 Taxman 187 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Unexplained investments – Increase in capital investment – Specific question was raised in the original assessment proceedings – Revision is held to be bad in law. [S. 69] 2303
Assessment was completed u/s. 143 (3) considering the explanation for substantial increase in capital investment, mismatch in sale consideration of property in return of income and AIR etc. PCIT exercising revisionary jurisdiction under section 263 and set aside assessment order mainly on ground that substantial increase in capital investment reflected by assessee in his balance sheet as compared to preceding year was not examined by Assessing Officer. Tribunal set aside revisional order observing that these issues were raised by Assessing Officer in scrutiny assessment and that assessee had given proper explanation, which was taken note of by Assessing Officer while completing assessment. On appeal by revenue the court held that since Pr. Commissioner did not point out anything specifically as to how assessment order was erroneous, no question of law arose out of impugned order of Tribunal. (AY. 2014-15)
CIT v. Vijay Kumar Koganti (2020) 275 Taxman 394 / 195 DTR 428 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Shipping business – Non-residents – Failure to deduct tax at source – Revision is held to be not valid – Order of Appellate Tribunal is affirmed. [S. 40(a)(ia), 143 (3), 172, 194C, 195] 2304
Assessment was completed u/s 143 (3) of the Act. PCIT revised the order on the ground that the assessee has not deducted tax at source in respect export freight to shipping agent of non-resident ship owner or charter without deduction of tax at source hence entire amount to be disallowed. On appeal the Appellate Tribunal relying on the Circular No 723 dt 19-9 1995 held that where payment was made to shipping agent

of non-resident ship owner or charter, agent would step into shoe of principal, i.e., shipping company and accordingly provisions of section 172, which provide for shipping business in respect of non-residents, would be applicable and provisions of section 194C or section 195, which provide for deduction of tax at source, shall not be applicable. Accordingly the revision order was quashed. On appeal by the revenue High Court affirmed the order of the Tribunal. (AY. 2013-14)
PCIT v. Summit India Water Treatment and Services Ltd. (2020) 271 Taxman 69 / 189 DTR 160 / 315 CTR 682 (Guj.)(HC)

2305 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Set off of carried forward loss (Unabsorbed portion of depreciation). [S. 68, 71,115BBE]**
During year, assessee filed its return of income and claimed set off of carried forward loss (unabsorbed portion of depreciation). Same was allowed. PCIT invoked revision under section 263 on ground that assessee's income included deemed income being unexplained cash credit under section 68 which is not classified under any heads of income under section 14; therefore, set off of brought forward loss against this deemed income was not correct. Order of PCIT is affirmed by the Appellate Tribunal. On appeal allowing the appeal the Court held that amendment brought in section 115BBE(2) by Finance Act, 2016 whereby set off of losses against income referred to in section 68 was denied, would be effective from 1-4-2017 where as during relevant assessment year, there was no bar existed with respect to allowing set off of carried forward unabsorbed depreciation on fixed assets against deemed income under section 68. Accordingly the order of Appellate Tribunal is set a-side. (AY. 2013-14)
Vijaya Hospitality and Resorts Ltd. v. CIT (2020) 269 Taxman 513 / 188 DTR 183 / 315 CTR 412 (Ker.)(HC)

2306 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Made enquiries and dropped reassessment proceedings – Possible view – Revision is held to be not valid. [S.11, 12A, 80G, 139(4A), 147, 148]**
During proceedings for grant of registration under section 80G, assessee filed statement of accounts showing certain income before grant of exemption under sections 11 and 12. Assessee was required to file return under section 139(4A). Assessee, did not submit its return under section 139(4A) stating that its accounts have been submitted to ISKON, Mumbai, for consolidation purpose. Assessing Officer initiated reassessment proceedings in response to which assessee submitted its return claiming exemption of income under section 11. Assessing Officer after making due enquiries found claim for exemption of income as correct and, thus, reassessment proceedings were dropped. DIT(E) passed an order under section 263 setting aside assessment and directing Assessing Officer to pass a fresh assessment order.-Tribunal held that the Assessing Officer had allowed assessee's claim for exemption of income under section 11 after making due enquiries and DIT(E) had also recorded in his revisional order that assessee had submitted its accounts to ISKON, Mumbai, for consolidation and nothing wrong was found in same. Accordingly the revision order was quashed. Dismissing the appeal of the revenue High Court affirmed the order. (AY. 1997-98)
CIT v. International Society For Krishna Consciousness (2020) 272 Taxman 534 (Karn.) (HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – No material to support the finding of Commissioner – Revision is held to be not valid. [S. 80IB(10)] 2307
Assessee claimed deduction under section 80IB(10) which was allowed by Assessing Officer. Commissioner found that land was transferred to firm at lower price and firm was used as a device to divert excess profit to sons of land owners. He accordingly set aside assessment Tribunal held that there was no material available before Commissioner that such guideline value of land was ridiculously low, therefore, in absence of any material to show that assessee had so arranged business and made transaction to produce more than ordinary profits, there was no ground for Commissioner to exercise its power under section 263 of the Act. High Court affirmed the order of the Appellate Tribunal. (AY 2012-13)
CIT v. Doshi Estates (2020) 274 Taxman 475 / (2021) 202 DTR 297 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – When order u/s 263 is no more in existence order passed in accordance with the direction would be infructuous. [S. 143 (3)] 2308
Court held that when an order under section 263 was no more in existence, consequential order passed by Assessing Authority was infructuous even though order passed by Assessing Authority was in accordance with directions issued by Commissioner under section 263. (AY. 2009-10)
CIT v. India Heritage Foundation (2020) 274 Taxman 284 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Risk Policy Premium – Revision barred by limitation – Order of Tribunal is affirmed. [S. 37(1)] 2309
Assessee claimed deduction on account of Accountants Risk Policy Premium paid by it. Assessing Officer passed order, dated 31-12-2009, allowing claim of assessee. On 27-3-2017, Commissioner passed order under section 263 setting aside order passed by Assessing Officer and directed Assessing Officer to pass fresh order after enquiry in respect of allowability of Accountants Risk Policy Premium. On appeals, Tribunal quashed order passed under section 263 holding that same was barred by limitation. High Court affirmed the order of the Tribunal.(AY. 2007-08)
PCIT v. Prince Water House (2020) 270 Taxman 307 (Cal.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – AO had taken a plausible view – Merely on ground that enquiry conducted by AO was inadequate revision is held to be not valid. [S. 14A] 2310
Assessee filed its return of income which was accepted by passing order u/s. 143 (3) of the Act. Revision order was passed on the ground that enquiry conducted by AO was inadequate. Tribunal quashed the revision order. On appeal by revenue the Court held the assessee had filed all details before Assessing Officer that no expenditure was attributable to such exempt dividend income earned by it during year and Assessing Officer accepted same. Since Assessing Officer had taken a plausible view in allowing claim of assessee, impugned invocation of revision under section 263 by Commissioner merely on ground that enquiry conducted by Assessing Officer was inadequate was unjustified. (AY. 2007-08)
CIT v. Chemsworth (P) Ltd. (2020) 275 Taxman 408 (Karn.) (HC)

2311 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Transfer pricing – Failure to provide draft assessment order – Direction to pass fresh assessment order – Void ab initio – Revision is held to be not valid. [S. 92CA, 144C]**
The assessment order was passed without referring the matter to pass Draft Assessment order. The assessee challenged the said order before CIT(A). when the appeal was pending before the CIT(A) the Commissioner passed revision order and set aside the original order, with the direction to pass fresh assessment order. Against the revision order, the assessee filled an appeal before the Tribunal. Tribunal up held that the revision order. Assessee filed an appeal before the High Court against the revision order affirmed by the Appellate Tribunal. On behalf of the assessee, it was contended that when the order passed by the AO being void ab-initio or a nullity revision jurisdiction is bad in law. It was argued on behalf of the revenue that the Tribunal was justified in holding that revision is justified as the assessee has not challenged the original order by filing writ petition. On appeal the Court held that merely because the assessee has not filed writ petition but challenged in appeal, ratio laid down by various High Courts could not have been ignored by the Tribunal merely observing that these were the decisions in writ petitions instituted by the assessees. Accordingly the revision order was set aside and consequently the order of the ITAT also set aside. (Referred *Zuari Cement Ltd v. ACIT (AP) (HC) (WP.No. 5557 of 2012 dt 21-2 2013), Control Risk India (P) Ltd v. Dy.CIT (2019) 107 taxmann.com 82 (Delhi) (HC), International Air Transport Association v Dy.CIT (2016) 68 taxmann.com 246 (Bom.) (HC), PCIT v. Lion Bridge Technologies (P) Ltd (2019) 260 Taxman 273 (Bom.) (HC), Vijay Television (P) Ltd v. Dispute Resolution Panel Chennai (2014) 46 taxmann.com 100 (Mad.)(HC).* (AY. 2006-07)
Cigabyte Technology (India) (P) Ltd v. CIT(2020) 195 DTR 337/ 317 CTR 585 / (2021) 276 Taxman 104 (Goa Bench) (Bom.)(HC)

2312 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessment passed after due verification by Assessing Officer – Not erroneous. [S. 40A(2)(b), 142(2A)]**
Dismissing the appeal of the revenue the Court held that the reasons assigned by the Tribunal while allowing the appeal of the assessee and quashing the order passed by the Commissioner under section 263 were justified. The findings of fact recorded by the Tribunal, after due consideration of the relevant aspects of the matter, were that the assessment was made under section 143(3) after due verification by the Assessing Officer and therefore, the order of the Assessing Officer was not erroneous and prejudicial to the interests of the Revenue. The Tribunal had also recorded a finding that the assessee had furnished complete details of the parties and the accounts in support of its reasonings and conclusions and had placed reliance on various decisions of the Supreme Court and the High Courts. (AY.2010-11)
PCIT v. N. K. Proteins Ltd. (2020) 429 ITR 493 (Guj.)(HC)

2313 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order Giving effect to order of commissioner in revision – Assessing Officer cannot traverse beyond directions of commissioner – Order of Tribunal is affirmed. [S. 143(3), 254(1)]**
Dismissing the appeal of the revenue the Court held that the Tribunal is right in holding that the Assessing Officer could not go beyond the directions of the Commissioner in an order passed under section 263 of the Income-tax Act, 1961. (AY.2005-06)
CIT v. Lakshmi Machine Works Ltd. (2020) 429 ITR 464 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Appellate Tribunal – Power – Revision on ground of lack of enquiry by Assessing Officer – When the Tribunal agreeing with Commissioner, the Tribunal has no power to set aside the order, when it is not subject matter of appeal. [S. 11, 12AA, 3(8), 80IB(10), 254(1)] 2314

On appeal by the revenue the Court held that the Tribunal had recorded the finding that the Assessing Officer should have examined the claim for deduction of the assessee in the light of section 11. The Tribunal thereafter could not have proceeded to examine the matter on the merits after setting aside the order under section 263 of the Act with reference to section 13(8) of the Act as the merits of the matter were not the subject matter of the appeal before the Tribunal. The order of the Tribunal was liable to be quashed. The order passed by the Director (Exemptions), in so far as it contained a direction to the Assessing Officer to disallow the deduction under section 80IB(10) was also liable to be quashed. Matter remanded to the Assessing Officer.(AY.2009-10)

DIT(E) v. India Heritage Foundation (2020) 428 ITR 299 / 196 DTR 241 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Purchase of three units – Possible view – Revision is held to be not valid. [S. 54, 54F] 2315

Dismissing the appeal of the revenue the Court held that on the facts the order of the Tribunal quashing the revisional order passed by the Principal Commissioner under section 263 was not erroneous. The findings of facts recorded by the Tribunal was that one of the requisite conditions for the exercise of power under section 263 the Commissioner should consider the assessment order to be erroneous and prejudicial to the interests of the Revenue was not satisfied and in arriving at such conclusion the Tribunal had assigned cogent reasons. No question of law arose. (AY.2014-15)

PCIT v. Minal Nayan Shah (2020) 428 ITR 23 / 275 Taxman 540 (Guj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Export of computer software – Development of software at client's site outside India – Assessing Officer taking one of two plausible views – Revision is held to be not valid. [S. 10A] 2316

Court held that the twin conditions were required to be satisfied to invoke the revisional jurisdiction under section 263, firstly, the order of the Assessing Officer was erroneous and secondly, that it was prejudicial to the interests of the Revenue on account of erroneous order. The view taken by the Assessing Officer was a plausible view and was not erroneous. Therefore, invocation of powers under section 263 was not justified. The Tribunal had rightly set aside the order passed by the Commissioner. (AY.2005-06)

CIT v. Aztec Software Technology Ltd. (2020) 428 ITR 245 / 275 Taxman 206 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Appellate Tribunal – Power – Lack of enquiry – Tribunal agreeing with Commissioner but setting his order on merits – Tribunal has no power to consider merits of assessment order when it was not subject matter of appeal. [S. 12AA, 80IB(10), 254(1)] 2317

The assessee declared the income as "nil" after deduction under section 80-IB(10) of the Act. The deduction was allowed by the Assessing Officer. The DIT(E) held that the order passed by the Assessing Officer was prejudicial to the interests of the Revenue. On appeal the Tribunal held that the Assessing Officer should have examined the claim for

exemption under section 80-IB(10). However it held that in the light of the retrospective amendment of the law, the application of income for charitable purposes was irrelevant and that income derived from business could not be considered as income derived from the property held for charitable purposes. The Tribunal, therefore, set aside the order passed under section 263 and allowed the appeal preferred by the assessee. On appeal the Court held that the Tribunal had recorded the finding that the Assessing Officer should have examined the claim for deduction of the assessee in the light of section 11. The Tribunal thereafter could not have proceeded to examine the matter on the merits after setting aside the order under section 263 of the Act with reference to section 13(8) of the Act as the merits of the matter were not the subject matter of the appeal before the Tribunal. The order of the Tribunal was liable to be quashed. The order passed by the DIT(E), in so far as it contained a direction to the Assessing Officer to disallow the deduction under S. 80IB(10) was also liable to be quashed. Matter remanded to the Assessing Officer.(AY.2009-10)

DIT(E) v. India Heritage Foundation (2020) 428 ITR 299 (Karn.)(HC)

2318 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Purchase of three units in same building – Assessing Officer allowing the exemption taking one of plausible views – Order is not erroneous. [S. 45, 54, 54F, 260A]**

The Commissioner has passed the revision order against which the appeal was filed before the Tribunal. The Tribunal held that the three units were located on different floors of the same structure and were purchased by the assessee by a common deed of conveyance. The Tribunal held that the two prerequisites that the order was erroneous and prejudicial to the interests of the Revenue, that an erroneous order did not necessarily mean an order with which the Principal Commissioner was unable to agree when there were two plausible views on the issue and one legally plausible view was adopted by the Assessing Officer. The Tribunal quashed the revision order passed by the Principal Commissioner On appeal dismissing the appeal the Court held that the findings of facts recorded by the Tribunal was that one of the requisite conditions for the exercise of power under section 263 the Commissioner should consider the assessment order to be erroneous and prejudicial to the interests of the Revenue was not satisfied and in arriving at such conclusion the Tribunal had assigned cogent reasons. No question of law arose. (AY. 2014-15)

PCIT v. Minal Nayan Shah (2020) 428 ITR 23 (Guj.)(HC)

Editorial : Order in Minal Nayan Shah. (Smt.) v. PCIT (2020) 180 ITD 149 (Ahd.) (Trib.) affirmed.

2319 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessment – Limited scrutiny case – Commissioner cannot exercise the power to look in to any issue which the Assessing Officer Could not look at [S. 50C(2), 56(2)(vii)(b)(ii), 143(3)]**

Dismissing the appeal of the revenue the Court held that the Assessing Officer in his limited scrutiny has verified the source of funds noted the sale consideration and paid and the expenses incurred for stamp duty and other charges. The assessee has filed a detailed reply in the course of assessment proceedings. Based on the reply the Assessing Officer did not make any addition. The Court held that the PCIT has not dealt with the

specific objection, but would fault the Assessing Officer for not invoking section 56(2)(vii)(b)(ii) of the Act, merely on the ground that the guidance value was higher. The guidance value is only an indicator and will not always represent the fair market value of the property, therefore the invocation of revision power was not sustainable in law. (TC/350/2020 dt.6-10-2020) (AY 2014-15)
CIT v. Padmavathi (Smt.) (2020) 120 taxmann.com 187 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Duty drawback – Subject matter of appeal – Issue neither considered nor decided in appeal before Commissioner (Appeals) – Revision is held to be proper. [S. 80I, 147, 251] 2320
In appeal before the CIT(A) was whether the assessee was entitled to deduction under section 80I on the goods manufactured and exported,which was allowed. An appeal was filed by the Revenue before the Tribunal and the assessee filed cross-objections. In the meantime, a notice under section 263 was issued on the ground that the Assessing Officer had erred in allowing deduction under section 80-I on the duty drawback received on manufactured goods. The contention of the assessee that the issue was the subject-matter of appeal before the Commissioner (Appeals) was rejected. The assessment order was set aside directing the Assessing Officer to withdraw the relief allowed under section 80-I on the duty drawback on the goods manufactured and exported. The appeal filed against the revision order was dismissed by the Tribunal. On appeal dismissing the appeal, that the issue whether the assessee was entitled to deduction under section 80-I on duty drawback with regard to goods manufactured and exported was neither considered nor decided in appeal. The Tribunal had rightly held that the issue whether deduction under section 80-I was available on duty draw-back on manufactured goods was never specifically dealt with in the appeal. The issue taken up in revision was not subject-matter of the appeal. The Tribunal rightly dismissed the appeal filed by the assessee against the revision order.(AY.1989-90)
Nahar Spinning Mills Ltd. v. CIT (2020) 427 ITR 131 / 193 DTR 161 / 274 Taxman 325 / (2021) 318 CTR 108 (P&H)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revaluation of land and building – Capital gains on sale of land – Two possible views – Revision is held to be bad in law. [S. 45] 2321
The assessee had revalued the land during the financial year 2010-11 and computation of indexed cost of acquisition for the purpose of working of capital gains, started with the revalued amount. The only income of the assessee for the assessment year was capital gains arising on the sale of the land. Though the Assessing Officer had not passed a detailed order, he had accepted the returns filed by the assessee. The present shareholders of the assessee-company paid capital gains tax considering the market value of the landed property. The Assessing Officer had accepted the claim of the assessee that the calculation from the revised value was correct. The Assessing Officer had accepted the returns filed by the assessee-company and the assessee-company had also given reasons for adopting the revised value and pointed out that except the property, the company had no other property for income, that the entire shares had been transferred and that the value of the land were revised and revalued and that capital gains tax also

paid. Dismissing the appeal of the revenue the Court held that the order of revision setting aside the assessment order was not justified. (AY. 2014-15)
CIT v. A. R. Builders and Developers P. Ltd. (2020) 425 ITR 272 / 271 Taxman 34 (Mad.) (HC)

2322 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision – Interest-free loans having own interest-free funds – Valuation of closing stock – Discrepancy owing to export sales not having element of excise duty – Method consistent with Accounting Standards prescribed by Institute of Chartered Accountants of India – Commission payment to non resident – Failure to deduct tax at source – Revision order held to be not valid – Order of Appellate Tribunal is affirmed. [S. 14A, 143(3), 145, 195]**
Dismissing the appeal of the revenue the Court held that the assessee had not advanced the funds to the entities interest-free. The Commissioner had proceeded on surmises that the investment in shares was out of the borrowed funds of the assessee whereas it was not so. As regards valuation of stock the assessee had explained the difference in the value of stocks stating that 91 per cent of its stocks were comprised of goods meant for export whereas 80 per cent of the sales during the year were for the domestic market. Inasmuch as the export sales did not have an element of excise duty, the prices in the domestic market were higher. Further the stocks were comprised of various grades and therefore the prices could not be worked out by merely dividing the total quantity by the sale value. As regards commission payment to non-resident the Tribunal had found that the Assessing Officer had obtained a written explanation on the non-reduction of tax deducted at source on commission payment to non-resident parties and had held that there was nothing unusual about the commission payment. Importantly, this was not a case where the Assessing Officer had not made any inquiry. The order of the Tribunal affirmed. (AY.2000-01)
CIT v. Saw Pipes Ltd. (2020) 426 ITR 579 (Delhi)(HC)

2323 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Estimate of income – Possible view – Revision is held to be not justified – Dropping of concealment penalty by the Assessing Officer – Revision order directing to levy of 300% – Tribunal affirming 200% levy of penalty – Order of tribunal is affirmed. [S. 133A, 271(1)(c)]**
The assessee is in the business of conducting a bar attached hotel. It filed a return of income for the assessment year 2006-07. In the survey conducted under S. 133A at the business premises of the assessee. Incriminating documents and evidence were noticed, The daily statement and sales vouchers were found to be destroyed by burning after reporting the sale amount of liquor to the managing partner. The assessee offered an additional amount of Rs.23,00,000 for assessment consequent to the survey proceedings, but the AO found this insufficient and added a sum of Rs. 14,00,000 to make good the shortfall. The assessee agreed to that. The penalty proceedings were dropped by the AO. The CIT passed two orders in respect of the quantum and penalty proceedings. The Commissioner also held that this was a fit case for imposing a maximum penalty of 300 per cent. The Tribunal upheld the assessment and justified the penalty, but reduced the penalty from 300 per cent. of the tax on the admitted income to Rs. 200 per cent. On

appeal the Court held that the calculation of the gross profit was made by the Assessing Officer, and the assessee agreed to the additions made. The changes suggested by the Commissioner invoking the revisional jurisdiction under S. 263 were not sustainable. As regards the concealment penalty the Court held that it was only consequent to the survey that the assessee had filed a return of income and shown an additional income of Rs. 23 lakhs. Even that was not found to be sufficient, and the Assessing Officer had made a further addition of Rs. 14 lakhs. There was a conscious attempt on the part of the assessee to destroy accounts. Accordingly the order of Appellate Tribunal is affirmed. (AY.2006-07)
Malanadu Tourist Home v. CIT (2020) 423 ITR 262 (Ker.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Provision for warranty – Revision order is held to be not valid. [S.143(3)] 2324
Dismissing the appeal of the revenue the Court held that,the provision made on the basis of turnover on the same or similar percentage year after year followed a rationale and scientific method of making a provision for such warranty. The actual claims made by customers against such warranty provision could not be the sole criteria, to be labelled as the scientific method. It was the consistency and the commercial prudence of the assessee, in which the assessee chose to make a provision for warranty based on its total turnover figure, which could not be said to be unscientific, by any stretch of imagination. Such decisions, taken in normal commercial prudence, could not be interfered with or superseded by the tax authorities. The Tribunal was perfectly justified in holding that the revisional proceedings in such circumstances were not justified. (AY.2004-05)
CIT v. Rane Trw Steering Systems Ltd. (2020) 423 ITR 291 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer making enquiries pertaining to remuneration of partners and expenses and receipts – Order is neither erroneous nor prejudicial to interests of revenue. 2325
Dismissing the appeal of the revenue the Court held that the assessment order indicated that the Assessing Officer had made enquiries that pertained to the issues of the remuneration of the partners and other expenses and receipts and the assessee had submitted details therefor he had enhanced the returned income of the assessee making additions out of various expenses. Accordingly there was no infirmity in the order passed by the Tribunal reversing the revision order of the PCIT and restoring the assessment order passed by the Assessing Officer.(AY.2011-12)
PCIT v. Hari Om Stones (2020) 423 ITR 198 (Raj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Export business – No proper bifurcation of direct and indirect cost – Revision is held to be valid. [S. 80HHC, 260A] 2326
Dismissing the appeal of the assessee the Court held that, the S. 263 was rightly invoked by the Commissioner to revise the assessment order. The Computation of the exact amount of deduction under S. 80HHC was a fact finding exercise. S. 260A enables the High Court to decide only substantial questions of law and not return any finding of facts, which are arrived at by the Tribunal, which was the final fact finding body. Unless

the finding of facts are shown to be perverse, the High Court cannot hold such findings to be erroneous. Accordingly the order of Tribunal is up held. (AY. 1995-96 to 1998-99)
Narasus Coffee Company v. JCIT (2019) 104 CCH 0728 / (2020) 421 ITR 445 (Mad.)(HC)

2327 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Export business – Every loss of revenue as a consequence often order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue – Revision is held to be not valid. [S. 80HHC]**

Dismissing the appeal of the revenue the Court held that there was no infirmity in the calculations made by the AO while computing the deductions and hence the view of the Commissioner that the AO committed an error while passing the respective assessment orders which resulted in loss of revenue prejudicial to interests of the Revenue could not be sustained. Consequently, the direction in the order of the Commissioner to the AO to compute deduction under S. 80HHC was without any basis. The Commissioner had erred in invoking the revisional powers under S. 263 in the facts of the present cases. Followed *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC).* (AY. 1998-99, 2003-04)
CIT v. Madura Coats Ltd. (2019) 106 CCH 0431 / (2020) 422 ITR 390 (Mad.)(HC)

2328 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Amalgamation – Accumulated Loss and unabsorbed depreciation – Both conditions to be satisfied concurrently – Sick Industrial Companies (Special Provisions) Act, 1985, Act override those of the 1961 Act – Additional depreciation – Revision is held to be not valid. [S. 72(2), 72A, Sick Industrial Companies (Special Provisions) Act, 1985, S. 18, 32(2)]**

The AO allowed the accumulated and unabsorbed losses. Commissioner was of the view that there was no application of mind by the AO while he allowed the claim made by the assessee under S. 72A of the Act and that there were no reasons in support thereof. Accordingly he passed a revision order. The Tribunal held that the very fact that the Board for Industrial and Financial Reconstruction had sanctioned the scheme was sufficient and no further compliance was called for in regard to the conditions set out under S. 72A of Act as the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, Act overrode those of the 1961 Act, and confirmed the order of the AO allowing the claim of the assessee for the carry forward of loss. On appeal dismissing the appeal, the Court held that the view taken by the AO to the effect that the claim of the assessee under S. 72A of the Act was liable to be allowed in the light of the provisions of S. 32(2) of the 1985 Act and its interpretation by the Supreme Court was the correct one. S. 263 of the Act empowered the Commissioner to revise an order of assessment if it was erroneous or prejudicial to the interests of the Revenue. Both conditions were to be satisfied concurrently. The action of the Assessing Officer though prejudicial could hardly be termed "erroneous" in so far as the AO had followed the dictum laid down by the Supreme Court in the case of *Indian Shaving products Ltd v. BIFR [1996] 218 ITR 140 (SC)*. Thus in the absence of concurrent satisfaction of the two conditions under S. 263 of the Act, the action of the Commissioner was contrary to the statute and was therefore to be set aside.(AY. 2004-05,) (AY.2005-06)
CIT v. Lakshmi Machine Works Ltd. (2020) 422 ITR 235 / 107 CCH 0452 (Mad.)(HC)
CIT v. Lakshmi Machine Works Ltd. (2020) 422 ITR 540 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Business income or other sources – Income should be taxed as business income or as arising from the other source is a debatable issue – Revision is held to be not justified. [S. 28(i), 56] 2329
Dismissing the appeal of the revenue the Court held that whether the income should be taxed as business income or as arising from the other source was a debatable issue, the AO took a plausible view. Revision proceeding is unjustified. (Arising out of ITA No.2637/Mum/2013 dt.28/10/2015)(ITA No. 1761 of 2016, dt.11/02/2019)(AY 2008-09)
PCIT v. Canara Bank Securities Ltd. (Bom.)(HC) (UR)
Editorial : SLP of revenue is dismissed (SLP No.24546 of 2019 dt.14/10/2019) (2019) 418 ITR 17 (St.)(SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – No loss to revenue – Assessment after detailed inquiry – Revision is held to be not valid. [S. 45(2), 143(3)] 2330
PCIT set aside the order of the AO in respect of three issues. On appeal the Tribunal held that as regards first issue did not result in any revenue loss hence assumption of jurisdiction is held to be not valid. As regards the second issue the assessee has shown the income under the head income from other sources, directing the AO to assessee the income as undisclosed income is held to be without jurisdiction. As regards the applicability of S.45(2) the CIT had accepted applicability of the said provision, hence no error in the order of the AO. Further the AO has passed the order after detailed inquiry hence, revision order was quashed. On appeal by the revenue, High Court affirmed the order of the Tribunal. (ITA No 2881/Mum/2015 dt 14-05 2015) (ITA No. 1740 of 2017 dt 22-01-2020 (AY. 2010-11)
PCIT v. Rakesh Kumar Agarwal (2020) BCAJ-March-P. 54 (Bom.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Rectification of mistake – When the claim is justifiably allowed by the AO the rectification order could not be construed to be erroneous and prejudicial to the interest of revenue. [S. 154] 2331
AO on the basis of rectification application rectified the assessment order and allowed unobserved depreciation of earlier years. CIT revised the order. On appeal the appellate Tribunal set aside the revision order following the judgement in *CIT v. Virmani Industries Pvt. Ltd., (1995) 216 ITR 607* which view has been followed by several High Courts as well as by the Tribunal and held that when the claim of the respondent was justifiably allowed by the assessing officer then the same could not have been interfered with by the Commissioner by invoking the provisions of S. 263 of the Act because the rectification order could not be construed to be erroneous and prejudicial to the interest of Revenue. On appeal by the revenue, High Court affirmed the view of the Tribunal. (Arising from I.T.A. No.3055/ Mum/2015 dt 28-10-205) (ITA no 1029 of 2017 dt 23-2-2020 (AY. 2011-12)
PCIT v. Destimoney India Services Pvt. Ltd. (Bom.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Operation loss in share trading – Verified D – mat accounts, sales, purchases and closing stock – Revision is held to be bad in law. [S. 28(i), 143(3)] 2332
Assessee is engaged in business of financing and trading in shares, filed return declaring operating loss. During assessment proceeding, AO recorded that he had examined D-mat

account in order to verify share trading activities sale, purchase and closing stocks were also examined Revision order passed by the CIT is quashed by the Tribunal on the ground that the show cause notice was issued by the CIT, without examining the assessment records. On appeal by the revenue the Court held that the AO had applied his mind while accepting assessee-company's claim of operating loss, which was a possible view, there was no basis to invoke S. 263 to revise assessment order on ground that books of account and transaction accounts of share trading carried out by assessee vis-a-vis D-mat accounts had not been examined by AO. (AY. 2011-12)
PCIT v. Cartier Leaflin (P.) Ltd. (2020) 268 Taxman 222 (Bom.)(HC)

2333 **S.263 : Commissioner – Revision of orders prejudicial to revenue – Limited liability scrutiny – Assessing Officer examined documents in the original assessment proceedings – Revision is held to be not valid. [S.143(3)]**
If in the view of Pr. CIT it was the case of inadequate enquiry, then the enquiry had to be undertaken by him to invoke section 263 that assessment order is erroneous insofar as it is prejudicial to interests of Revenue. No such enquiries were sought to be made by PCIT, therefore the impugned order was set aside. (AY. 2014-15)
Magic London LLP v. PCIT (2020) 188 DTR 238 / 204 TTJ 765 (Del.)(Trib.)
Graffiti Technologies LLP v. PCIT (2020) 188 DTR 238 / 204 TTJ 785 (Delhi)(Trib.)

2334 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer has not examined the issue in proper perspective – Revision is held to be justified. [S.14A, 115JB]**
Where the assessee is engaged in the business of setting up of SEZ and providing IT park for Information Technology enabled services and allied services. Assessing Officer has not examined the issue in proper perspective as regards the disallowance u/s 14A of the Act. Revision is held to be justified (AY. 2013-14)
Tanglin Developments Ltd. v. Dy. CIT (2020) 194 DTR 65 / 207 TTJ 752 (Bang.) (Trib.)

2335 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – View of the Assessing Officer is in conformity with the view of judgement of High Court – Revision is held to be not valid. [S.144C]**
The twin conditions required for invoking revisional jurisdiction u/s. 263 viz. (a). the order of A.O. sought to be revised is erroneous; and (ii). it is prejudicial to the interest of the revenue. The view taken by the A.O. which is found to be in conformity with the Hon'ble High Court of Karnataka in the case of *CIT v. I-Gate Global Solutions Ltd (ITA No. 452/2008 dt 17-6-2015)* could not have been held to be erroneous. (AY.2009-10, 2011-12)
Shell India Markets Private Limited v. CIT (2020) 206 TTJ 405 (Mum.) (Trib.)

2336 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Just because Commissioner was not satisfied with manner of verification and investigation – Assessment order held not to be erroneous – Revision order was quashed.[S. 143(3)]**
An order passed by the Assessing Officer cannot be erroneous only because the Assessing Officer has written a brief order without bringing all the documents submitted

by the assessee on record An order cannot be said to be erroneous on the basis of the ground that a deeper enquiry should have been made, these principles were upheld by the Hon'ble Delhi High Court in the case of *CIT v. Sunbeam Auto Ltd (2011) 332 ITR 167 (Delhi) (HC)* (AY. 2014-15)
Mandeep Singh Dhillon v. PCIT (2020) 207 TTJ 9 (UO) (Amritsar)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loss on account of sale of shares – Mere non-mentioning of reasons for allowing said claim of assessee by Assessing Officer would not make assessment order erroneous so as to invoke revision jurisdiction – Unabsorbed depreciation – Sale of land – Difference between stamp value and actual consideration received – Addition is justified – loss on sale of vehicle – Remanded to Assessing Officer. [S. 28(i), 50, 50C, 72, 143(3), 170] 2337
Assessee was an individual and proprietor of a proprietorship firm. He filed his return of income which was processed under section 143(3) and an assessment order was passed making certain additions. Commissioner invoked provisions of section 263 on ground that assessee's case was selected for scrutiny under CASS to verify loss on sale of shares claimed by assessee as business loss but Assessing Officer completed assessment under section 143(3) by bringing to tax only capital gains on development agreement entered into by assessee and disallowing interest on TDS. Tribunal held that during scrutiny assessment, Assessing Officer had required assessee to furnish details of loss on sale of shares as claimed by assessee and allowed such loss only after considering reply of assessee. Therefore mere non-mentioning of reasons for allowing claim, would not make assessment order erroneous and, thus, impugned invocation of revision under section 263 was unjustified and same was to be set aside. Assessee was a partner in a partnership firm which was dissolved as all other partners retired and assessee took over business of firm as a proprietor. Since assessee continued business of firm as a successor-in-business in his individual capacity, unabsorbed depreciation of erstwhile firm was to be allowed to be carried forward and set off against his income of relevant assessment year in terms of provisions of section 170. Assessee had sold a piece of land and showed a sale consideration of Rs. 3.56 crores. Same was accepted and assessment was completed. Commissioner invoked provisions of section 263 on ground that SRO value of land was Rs. 3.99 crores and difference of Rs. 43 lakhs was to be brought to tax under section 50C. Assessee submitted that such difference was between 10 per cent and 15 per cent, provisions of section 50C should not be applied. Tribunal held that section 50C did not make any discount in respect of difference between SRO value and sale consideration received by assessee therefore, order of commissioner on application of section 50C was to be confirmed. Assessee claimed a short-term capital loss against sale of vehicle. Same was allowed. Commissioner invoked provisions of section 263 on ground that sale consideration received by assessee should have been reduced from block of assets and that loss could not be set off against capital gain of assessee. Assessee contended that assessee had treated car as a separate asset and it was not part of any block of assets and, therefore, loss on sale of such car was claimed as short-term capital loss which could be set-off against long-term capital gains. However, he fairly admitted that loss should have been debited to profit & loss account but in computation of income assessee had claimed it as short-term capital loss. He also

pointed out that he had not set-off loss against long-term capital gains. Tribunal held that since there was a mistake in computation of income by assessee in relation to loss on sale of car, Assessing Officer was to be directed to reconsider issue in accordance with law. (AY. 2011-12, 2012-13)
Yerram Venkata Subba Reddy v. ACIT (2020) 196 DTR 41 / 208 TTJ 885 / (2021) 187 ITD 22 (Hyd.)(Trib.)

2338 **S. 263 : Commissioner – Revision of orders prejudicial to revenue Capital gains – Substantial investment in new property within prescribed period – Receipt of occupancy certificate after period of two years irrelevant – Exemption allowed is held to be valid – Revision is held to be not valid. [S. 54]**
Allowing the appeal the Tribunal held that the assessee had sold her residential house on November 19, 2014. The capital gains received on the transfer were invested by the assessee in a new residential flat in a building under construction for which the assessee received an allotment letter dated February 5, 2015 on making payment of Rs. 3,62,97,800. Thus, substantial consideration towards investment was made within two years from the date of transfer. Merely because the assessee got the occupancy certificate after the time period that could not be a reason to deny the exemption since such delay was beyond the control of the assessee. Revision order is held to be not valid. (AY. 2015-16)
Jyotsna Sunderlal Shroff v. PCIT (2020) 84 ITR 38 (SN) (Mum.) (Trib.)

2339 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Method of accounting – Construction company – Percentage competition method – Mandatory from assessment year 2017 – 18 – Revision is held to be not valid. [S. 43CB]**
Tribunal held that under section 43CB of the Income-tax Act, 1961 the profits and gains of a construction company arising from a construction contract or a contract for providing services shall be determined on the basis of the percentage completion method and the method was mandatory for revenue recognition with effect from April 1, 2017, i.e., assessment year 2017-18 but it was not mandatory and compulsory to be followed for the assessment year 2013-14. Therefore, the Principal Commissioner could not revise or revisit the assessment order under the provisions of section 43CB. The findings arrived at by him without any deliberation of explanation of the assessee explaining the method of accounting of revenue on account of sales and regarding non-applicability of Accounting Standard 7 were not sustainable without any further examination and exercise. The Principal Commissioner could not direct the Assessing Officer to make assessment de novo without assigning any defects or deficiencies in the method of accounting of revenue recognition on account of sale of flats and residential units and land and regarding non-applicability of Accounting Standard 7 as contended by the assessee during the proceedings under section 263. Thus, the revision order passed by the Principal Commissioner was without jurisdiction and all proceedings and orders, if any, in pursuant thereto had to be quashed on the legal issue as well as on the merits. (AY.2013-14)
HI-Tech Estates and Promoters Pvt. Ltd. v. PCIT (2020) 183 ITD 690 / 84 ITR 10 / 207 TTJ 209 (Cuttack)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue Infrastructure undertaking – Assessing Officer taking plausible view – Revision is held to be not valid. [S. 80IA] 2340

Tribunal held that the Assessing Officer had taken only a plausible view in accepting the assessee's section 80IA deduction claim in his assessment under section 143(3) of the Act. The exercise of revision jurisdiction by the Principal Commissioner was not sustainable moreover, the revision notice had treated the section 143(3) assessment as a case of the Assessing Officer having erroneously accepted the assessee's section 80IA deduction claim whereas in his section 263 order he had merely restored the issue back to the Assessing Officer for a fresh adjudication. The order was not sustainable. (AY. 2012-13)

MBL Infrastructure Ltd. v. Dy.CIT (2020) 84 ITR 189 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Search and Seizure – Original assessment was completed prior to date of search – No incriminating documents found during search – Revision is held to be not valid. [S. 143(3), 153A] 2341

Tribunal held that during the original assessment the issue relating to exemption had been examined by the Assessing Officer and the assessment was completed much prior to the search and seizure. Therefore the assessment for the AY. 2010-11 did not abate and the Assessing Officer could not disturb the findings given in the original assessment. Unless there was any incriminating material found during the course of search relatable to such concluded year, the statute does not confer any power on the Assessing Officer to disturb the findings given and the income determined, as finality had already been reached thereon, and the proceeding was not pending on the date of search. Therefore, the assessee was entitled to exemption. Relied on *CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi) (HC) and Malabar Industrial Co. Ltd v. CIT (2000) 243 ITR 83 (SC)* The period during which lock down was in force for Covid-19 pandemic was to be excluded for the purpose of the 90-day time limit for pronouncement of orders by the Appellate Tribunal. (AY. 2010-11)

Kusumlata Sonthalia v. PCIT (2020) 82 ITR 382 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Charitable trust – Assessment Order Cryptic and without any discussion – Revision is held to be justified. [S. 11, 12A] 2342

Tribunal held that the assessment order was a cryptic order without any discussion. It was also not shown that the Assessing Officer did examine the taxability or otherwise of the surplus shown by the assessee in its income expenditure account. Since the Assessing Officer had not examined the issue in the assessment order, the assessment order was rendered erroneous and prejudicial to the interests of the Revenue. The revision was justified. (AY. 2013-14)

Mymul Raitha Kalyana Trust v. CIT(E) (2020) 82 ITR 434 (Bang.)(Trib.)

2343 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash deposits – Detailed reply along with documentary evidence filed before Assessing Officer to explain source of Cash deposits – Order neither erroneous nor prejudicial to the interest of revenue.**

Allowing the appeal the Tribunal held that the assessee has filed Detailed reply along with documentary evidence filed before Assessing Officer to explain source of Cash deposits. Order neither erroneous nor prejudicial to the interest of revenue. (AY. 2014-15)

Sameer Gupta v. PCIT (2020) 82 ITR 180 (Indore)(Trib.)

2344 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revised return – Substitution of sub-section (5) of section 139 vide Finance Act, 2016 which came into force from 1-4-2017 is prospective in nature – Revision is held to be valid. [S. 139(4), 139 (5)]**

Assessee filed original return of income under section 139(4) on 30-3-2013 for the assessment year 2012-13, but failed to claim certain exemption. Assessee filed revised return under section 139(5) for making such claims. Principal Commissioner invoked section 263 and held that assessee was not entitled to file revised return of income since original return was filed under section 139(4). Tribunal held that that return filed under section 139(4) was validly filed and it was incumbent upon Assessing Officer to complete assessment in pursuance of valid return. However since substitution of sub-section (5) came into force on 1-4-2017 vide Finance Act, 2016 and was prospective in nature, same would not be applicable in instant case. Accordingly assessment made by Assessing Officer was not invalid and non-est but was erroneous and prejudicial to interest of revenue. Revision is held to be valid. (AY. 2012-13)

Avadhut Ban (HUF) v. PCIT (2020) 185 ITD 508 (2021) 198 DTR 180 / 209 TTJ 1044 (Pune)(Trib.)

2345 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Specified domestic transactions – When clause (i) of section 92BA has been omitted by Finance Act, 2017 with effect from 01-04-2017, without any saving clause of General Clauses Act, it would be treated as said clause never existed in Statute Book – Revision is held to be bad in law. [S. 92BA]**

Tribunal held that when clause (i) of section 92BA has been omitted by Finance Act, 2017 with effect from 01-04-2017, without any saving clause of General Clauses Act, it would be treated as said clause never existed in Statute Book and, thus, impugned revisional proceedings initiated by Commissioner under section 263 in respect of specified domestic transactions referred to in clause (i) of section 92BA in relevant assessment year is held to be bad in law. (AY. 2014-15)

Raipur Steel Casting India (P.) Ltd. v. PCIT (2020) 184 ITD 86 / 208 TTJ 450 (Kol.)(Trib.)
Srinath Ji Furnishing (P) Ltd. v. PCIT (2020) 184 ITD 86 / 208 TTJ 450 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Losses – Set off of one head against income from another – There is no provision in section 115BBD to eliminate dividend income received from specified foreign company before setting off of loss – Revision proceeding is quashed. [S. 71, 115BBD] 2346

Assessee had received dividend income from specified foreign company under section 115BBD and it claimed set off of business loss against dividend income received from foreign company which was offered to tax. Assessment was completed allowing the claim. Revision proceedings Commissioner held that as per section 115BBD, dividend income needed to be taxed separately at rate of 15 per cent which was not done by Assessing Officer resulting in short levy of tax and he initiated revision proceeding and he directed Assessing Officer to tax dividend income. Tribunal held that on facts, assessee should be allowed to set off business loss against dividend income received from foreign company. Accordingly the revision order was quashed. (AY. 2012-13)

Tata Motors Ltd. v. DCIT (2020) 184 ITD 680 / 208 TTJ 486 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Branch to head office – Interest paid by Indian branch of assessee non-resident bank to its Head Office and overseas branches being a payment to self would be governed by principle of mutuality and, therefore, same could not be brought to tax as per provision of section 9(1)(v)(c) – Revision is held to be not valid – DTAA-India-USA. [S. 9(1)(v)(c), Art. 11] 2347

Assessee was a non-resident banking company incorporated in U.S.A. During year, said Indian branch of assessee paid certain amount of interest to its Head office and overseas branches. Commissioner invoked jurisdiction under section 263 on grounds that interest paid to Head Office and overseas branches were taxable in India as per provisions of India-USA Double Taxation Avoidance Agreement (DTAA) as business profits through its Permanent Establishment (PE) i.e., Indian branch. On appeal the Tribunal held that explanation to section 9(1)(v)(c) inserted by Finance Act, 2015, with effect from 1-4-2016 which clarified that interest paid by an Indian branch of a non-resident banking company would be deemed to be accruing or arising in India and would be chargeable to tax in addition to any income attributable to PE in India, would apply from assessment year 2016-17 onwards. Accordingly during relevant assessment year, interest paid by Indian branch of assessee to its Head Office and overseas branches being a payment to self would be governed by principle of mutuality and, therefore, same could not be brought to tax by relying upon provision of section 9(1)(v)(c). Accordingly the revision order was quashed. (AY. 2011-12, 2012-13)

JP Morgan Chase Bank N.A. v. DCIT(IT) (2020) 183 ITD 190 / 185 DTR 305 / 203 TTJ 443 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Commission – Without show cause notice cannot presume that incentive had not been paid – Share capital – Source of introduction of capital fully explained – Revision is held to be not valid. [S. 37(1), 68] 2348

Tribunal held that without show causing assessee, Commissioner could not presume that incentive had not been actually paid to employees; addition of incentive was not sustainable. Assessing Officer has allowed the commission after proper inquiry. Tribunal

also held that source of money introduction in capital account being fully explained to satisfaction of Assessing Officer, revision was unjustified.(AY. 2014-15)
Shailesh Kumar Gandhi v. PCIT (2020) 183 ITD 567 / 195 DTR 259 / 207 TTJ 899 (Cuttack)(Trib.)

2349 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Allotment letter – Holding period – From date of allotment of flat and not date of possession of flat – Revision is held to be not valid [S.2(29A) 45, 54]**
Assessee computed the capital gain by considering the holding period from the date of allotment letter and not from the date of passion. Assessing Officer after making necessary verifications having held that assessee will be entitled for deduction under section 54 of the Act. Commissioner passed the revision order. On appeal the Tribunal held that the view of the Assessing Officer be a possible and a plausible view and it could not have been dislodged by Commissioner in exercise of her revisional jurisdiction. (AY. 2014-15)
Yogesh Mavjibhai Gala v. PCIT (2020) 183 ITD 665 / 196 DTR 27 / 208 TTJ 872 (Mum.) (Trib.)

2350 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash credit – Assessing the deposits as undisclosed turnover and estimating income at 4% of turnover – Only probability and likelihood to find error in assessment order is not permitted – Revision is held to be not valid – When undisclosed amount of assessee in his bank account as undisclosed business receipts/turnover provision of 115BBE would not attract. [S. 68, 115BBE]**
Assessing Officer assessed deposits pertaining to undisclosed business receipts/ undisclosed turnover, computed margin of profit of undisclosed business receipts at 4 per cent. Assessing Officer also made addition on account of interest on saving bank account. The PCIT passed the order u/s 263 of the Act. Tribunal held that since bank account in question had been verified by Assessing Officer and his order was not erroneous, Tribunal has observed that only probability and likelihood to find error in assessment order is not permitted under section 263, Commissioner ought to find out specific error in assessment order. The Tribunal also held that when undisclosed amount of assessee in his bank account as undisclosed business receipts/turnover provision of section 115BBE would not attract. (AY. 2014-15)
Abdul Hamid v. ITO (2020) 183 ITD 711 / 195 DTR 321 / 207 TTJ 1109 (Gauhati)(Trib.)
Abdul Hannan v. ITO (2020) 183 ITD 711 / 195 DTR 321 / 207 TTJ 1109 (Gauhati)(Trib.)

2351 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Construction and service contracts – Percentage completion – Project completion method – Cannot be declared as invalid – Provisions of section 43CB prescribing percentage completion method for determining profits and gains of a construction company are to be applied mandatorily with effect from 01-04-2017 i.e. assessment year 2017-18 onwards – Revision is held to be not valid. [S. 43CA, 145]**
Assessee company was engaged in construction of flats and residential units on land owned by it consistently following revenue recognition method by adopting completed project method, wherein revenue was recognized at time of sale of flats /residential units

by way of registered sale deed in favour of customers. For relevant year, assessment was completed by accepting method of accounting adopted by assessee. Commissioner passed a revisional order rejecting assessee's method of accounting based on AS-7- Commissioner also directed Assessing Officer for de novo assessment by applying percentage completion method as mandated by section 43CB. On appeal the Tribunal held that as per section 43CB, profits and gains of a construction company arising from construction contract or a contract for providing services shall be determined on basis of percentage completion method and same is mandatory for revenue recognition with effect from 01-04-2017 i.e. assessment year 2017-18 and, thus, said method was not mandatory and compulsory to be followed in assessment year in question, therefore, Commissioner could not revisit assessment order passed in case of assessee by pressing into service provisions of section 43CB. Accordingly the revision order was set aside. (AY. 2013-14)

Hi-tech Estates & Promoters (P.) Ltd. v. Pr. CIT (2020) 84 ITR 10 / 183 ITD 690 / 207 TTJ 209 (Cuttack)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Business income or income from house property – Amendment bringing to tax notional annual value of property held as stock-in-trade – Not applicable to prior years – Revision is held to be not valid. [S. 22, 23(5)] 2352

Tribunal held that there were two divergent opinions of two High Courts on the issue, the Delhi High Court holding that the notional annual value of unsold flats should be assessed as income from house property, and the Gujarat High Court that income derived from property held as inventory was taxable as business income. The Assessing Officer had taken one possible view. Where two views are possible and the Assessing Officer takes one possible view with which the Commissioner does not agree, this would not make the assessment order erroneous. Section 263 of the Act requires two conditions to be satisfied: not only should the order of the Assessing Officer be erroneous, it should also be prejudicial to the interests of the Revenue in the instant case, the assessment order did not suffer from any error, and the order of the Principal Commissioner was liable to be quashed as he was clearly in error in invoking revisional jurisdiction under section 263 of the Act. Relied on *Malabar industrial co. Ltd. v. CIT (2000) 243 ITR 83 (SC) and CIT v. Max India Ltd. (2007) 295 ITR 282 (SC)*. Tribunal also held that section 23(5), whereby notional annual value of property held as stock-in-trade was brought to tax subject to conditions thereunder, was applicable only from April 1, 2018 and not for the assessment year under consideration here. Thus, no addition on account of notional rental value of the flats held as stock in trade by the assessee could have been made by the Assessing Officer in the assessment years in question. (AY. 2014-15, 2015-16)

Tata Housing Development Company Ltd. v. PCIT (2020) 83 ITR 59 (SN) (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation – Different treatment for leased assets for book purposes and Income tax return – Revision is held to be valid. [S. 32] 2353

Tribunal held that the assessee had followed different treatment for leased assets for book purposes and for Income-tax purposes. In the show cause notice the Principal

Commissioner had proposed to disallow the claim of the principal portion of the lease "after allowing depreciation". Hence, the Principal Commissioner was well aware of the fact that the assessee had not claimed depreciation under the Income-tax Act. The assessee had furnished a reply with regard to the claim of principal component of lease payment and the treatment given in the books of account for leased assets. However, the Assessing Officer did not further probe the matter, which should have been made. Before the Tribunal also, the assessee could not immediately show that the assessee had not claimed depreciation on leased assets. It submitted that it would furnish the details and furnished a reconciliation statement. The very fact that the contention of the assessee could be understood only after examining the reconciliation statement would show that the Assessing Officer should have also examined the submission of the assessee. Accordingly, the assessment order was erroneous and prejudicial to the interests of the Revenue in terms of Explanation 2 to section 263 of the Act. (AY.2012-13)

NXP India P. Ltd. v. PCIT (2020) 83 ITR 52 (SN) (Bang.)(Trib.)

2354 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Long term capital gains – Penny stock – Sale of shares – Acceptance of declaration – Plausible view – Revision is held to be not sustainable. [S. 10(38), 45, Income Declaration Scheme, 2016]**

The Tribunal held that, the Assessing Officer has issued a questionnaire wherein specific information was sought on transaction of equity shares and working of short-term and long-term capital gains. The assessee furnished a detailed reply to the notice informing that a declaration under the 2016 Scheme in respect of the long-term capital gains arising on sale of shares and the Assessing Officer after examining the documents accepted it and made no addition. Merely because the Assessing Officer had taken a plausible view after examining the records that was not acceptable to the Principal Commissioner, that would not make the assessment order erroneous. The twin conditions set out in section 263 were not satisfied and the Principal Commissioner had wrongly assumed revisional jurisdiction. The order was liable to be quashed. (AY. 2015-16)

Manisha Ajay Shah (Mrs.) v. PCIT (2020) 83 ITR 75 (SN) (Mum.)(Trib.)

2355 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Penny stock – Capital gains – Order passed in haste and without proper enquiry can be revised – PCIT cannot conclude the issue and direct the Assessing Officer to decide it in a particular manner. [S. 45]**

Tribunal held that if the order passed by the Assessing Officer in haste and without proper enquiry can be revised, however PCIT cannot conclude the issue and direct the Assessing Officer to decide it in a particular manner. Accordingly the ITAT modified the order of the PCIT and directed the AO to frame the assessment order as per the provisions of the Act after giving a reasonable opportunity of being herd. Followed *CIT v. Shree Manjunathswara Packing, Products & Camphore Works (1998) 231 ITR 53 (SC), Rampyari Devi Sarogi v. CIT (1968) 67 ITR 84 (SC) (ITA No. 2943 /Mum/ 2018 dt 13-1-2020)* (AY. 2013-14)

Motilal Salecha HUF v. PCIT (2020) The Chamber's Journal-April P. 127 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Rejection of books of account – Revision order directing the Assessing Officer to make addition u/s. 68 or 41 is held to be not valid. [S. 41, 68, 145(3)] 2356

Allowing the appeal of the assessee the Tribunal held that, the Assessing Officer has rejected the books of account and estimated the gross profit. When the books of account is rejected the PCIT cannot invoke the revisionary power and direct the Assessing Officer to make addition u/s 68 or 41 of the Act, after accepting the returned income. (ITA No. 200/CTK 2018 dt 15-11-2019) (AY. 2013-14)

Sri Purna Chandra Biswal v. PCIT (2020) The Chamber's Journal-January-P. 91 (Cuttack) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Record – Provision for warranty – Assessing Officer forming proper opinion after making due enquiries and verification – Revision not valid. [S. 37(1), 145] 2357

Tribunal held that ; the claim for deduction towards provision for warranties made on the basis of past experience based on statistical data by adopting scientific method to fulfil contractual obligations arising out of concluded contracts of sale/services was an ascertained liability. The principles of res judicata are not applicable but the principles of consistency have to be maintained to instil certainty in tax matters in the minds of taxpayer so that they can plan their affairs unless perversity is shown in the action of a taxpayer in claiming deduction while computing income chargeable to tax or it is shown that an attempt is made by taxpayer to defraud the Revenue or an unconscionably high claim of deduction is made by the taxpayer which breaches all canon of equity, justice and law. (AY. 2013-14)

SL Lumax Ltd. v. PCIT (2020) 78 ITR 1 (SN) (Chennai)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Fees from students – Explanation was furnished at the original assessment proceedings – Revision is held to be not valid. [S. 2(15), 12A, 143(3)] 2358

The Tribunal held that,the Commissioner merely mentioned that since these issues had not been enquired into by the Assessing Officer, Explanation 2 to section 263 would apply against the assessee. The assessee had explained all the issues at the original assessment stage as well as before the Commissioner in the proceedings under section 263. Therefore, this was not a fit case for invocation of jurisdiction under section 263 against the assessee. The order under section 263 was unjustified and was liable to be set aside. (AY.2014-15)

Shugan Chandra Kothari Trust v. CIT(E) (2020) 78 ITR 340 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Source of funds from abroad – Commissioner not conducting enquiry to find order erroneous and prejudicial to revenue – Revision not valid. [S. 11, 12, 12AA] 2359

Tribunal held that this was not a case of no enquiry by the Assessing Officer. Nor had the Commissioner conducted the enquiry himself so as to record the finding that the assessment order was erroneous. Commissioner has set aside the order and directed the Assessing Officer to conduct the enquiry which was not sustainable in the eyes of law. The order passed under section 263 was not sustainable. (AY. 2014-15)

Seth Madan Lal Palriwala Foundation v. CIT(E) (2020) 78 ITR 436 / 196 DTR 169 (Delhi) (Trib.)

2360 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Prior period income – Disclosure before Settlement Commission – Neither erroneous nor causing prejudice to interests of revenue – Revision is held to be not valid. [S. 43B, 115JB]**
The Tribunal held that the insertion of Explanation 2 in section 263 by the Finance Act, 2015 with effect from June 1, 2015 does not ipso facto mean that every regular assessment could be revised even in cases where the action of the Assessing Officer satisfies the normal "prudence" test in scrutiny. The Principal Commissioner's revision directions qua the issue of section 115JB minimum alternate tax computation of prior period income was not substantive. As regards excise duty Section 43B made it clear such a deduction of excise duty under sub-section (1) thereof is allowable only on actual payment irrespective of the previous year in which the liability to pay it as arose to the assessee according to the method of accounting regularly employed. The Revenue's stand questioning the liability of the assessee to excise duty whether for factual reverification or on legality, was rejected on this sole ground. (AY. 2014-15)
Maithan Steel and Power Ltd. v. PCIT (2020) 78 ITR 532 / 208 TTJ 334 (Kol.)(Trib.)

2361 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest income – Business income or income from other sources – View already taken by Assessing Officer after calling for explanation and considering submission – View could not be held to be illegal or unsustainable in law – Revision is held to be not valid.**
The Tribunal held that The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. If an ITO acting in accordance with law makes a certain assessment, the assessment cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should have been written differently or more elaborately. The section does not visualise the substitution of the judgment of the Commissioner for that of the ITO who passed the order unless the decision is not in accordance with law. There is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. When a specific query had been raised by the Assessing Officer regarding the chargeability of the interest. The assessee stated that the moneys were advanced in order to reduce financial losses and the interest on tax refund was rightly offered as business income. The loans were stated to be granted out of funds borrowed for business purposes for the reason that projects had not started. It could not be said that the submissions had not been considered by the Assessing Officer while passing the quantum assessment order. There was due application of mind to the issue by the Assessing Officer and the claim was accepted after due consideration of the factual matrix rather than by merely relying upon the appellate order for the assessment year 2011-12. (Referred, *CIT v. Amitabh Bachchan (2016) 384 ITR 200 (SC) Malabar Industrial Co. Ltd v. CIT (2000) 243 ITR 83 (SC), CIT v. Vikas Polymers [2012 341 ITR 537 (Delhi) (HC), CIT v. Max India Ltd. [2007 295 ITR 282 (SC) and Grasim Industries Ltd. v. CIT [2010 321 ITR 92 (Bom.) (HC)*. Tribunal also held that, Explanation 2 has been inserted

by the Finance Act, 2015 in section 263 with effect from June 1, 2015 to declare that an order shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if in the opinion of appropriate authority, (1) the order was passed without making inquiries or verifications which should have been made; (ii) the order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions, etc., issued by the Board under section 119 ; or (iv) the order was not in accordance with the binding judicial precedent. However, the Explanation would come into play only if the primary conditions, i.e., the order being erroneous and prejudicial to interests of the Revenue are fulfilled. (AY.2013-14)
Asian Homes P. Ltd. v. PCIT (2020) 78 ITR 240 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Notice of assessment and assessment order completed in name of legal representative – Issue of notice on late assessee and consequent assessment invalid – Revision is held to be in valid. [S. 143(2), 143(3)] 2362

Tribunal held that the assessee had expired before passing the order under section 263. This fact was evident from the order passed under section 143(3) which was passed in the name of the legal representative of the late assessee. The Principal Commissioner passed order under section 263 on a dead person, which was invalid. In the order under section 263, the Principal Commissioner had set aside the assessment order passed under section 143(3) read with section 263, with a direction to redo the assessment. For initiation of reassessment proceedings, the Assessing Officer required to issue notice under section 143(2) which the Assessing Officer had issued in the name of the dead person. Initiation of proceedings under section 143(2) on a dead person was bad in law and made the assessment also invalid. The notice under section 143(2) was issued on a dead person and the order under section 263 was also passed on a dead person. The notice under section 143(2) was invalid and rendered the assessment made under section 143(3) read with section 263 void ab initio. (AY.2008-09)
Deverasetty Venkata Subba Rao (Late) v. ITO (2020) 79 ITR 6 (SN) (Vishakha)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share application money – Share premium – Merely because assessment order silent, order could not be considered as erroneous and prejudicial to Interests of revenue – Revision order was quashed. [S. 56(2)(vii)(b), 68, 143(3)] 2363

Tribunal held that there was a specific query from the Assessing Officer to which a specific reply along with supporting documents was submitted by the assessee during the course of scrutiny assessment proceedings itself. The assessment was framed after detailed enquiries and verification and merely because the assessment order was silent, the order could not be considered as erroneous and prejudicial to the interests of the Revenue. (AY.2014-15)
Sunray Cotspin (P.) Ltd. v. PCIT (2020) 79 ITR 193 (Delhi)(Trib.)

2364 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Amalgamated Company filing return after merger in its name – Revision upon non – existent entity – Not valid. [S. 143(3)]**

Tribunal held that that it was in the knowledge of the Commissioner that the assessee had merged with Gollops Motor Pvt Ltd but he still continued with the proceedings. Gollops Motor Pvt Lt had been filing its return at Ahmedabad from the assessment year 2015-16, i. e., after merger of the assessee with G Gollops Motor Pvt Ltd. The Commissioner ought to have remitted the record to the Commissioner having jurisdiction over Gollops Motor Pvt Ltd for taking action under section 263, if any such ground was available. The notice under section 263 was issued upon a non-existent entity. It was not sustainable. Therefore, no proceeding could be assumed in the legal sense. Consequently, the order passed under section 263 against a non-existent entity was a nullity and void ab initio. (AY.2012-13)

Snowhill Agencies P. Ltd. v. PCIT (2020) 79 ITR 176 / 193 DTR 73 / 206 TTJ 998 (Ahd.) (Trib.)

2365 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Reassessment – Issue subject of revision pertaining to original assessment – Original assessment passed on 16-1-2014 – Revision order on 26-2-2019 – Revision is barred by limitation, revision could have been taken up to 31-3-2016. [S. 80IA, 80IB 143(3), 147, 148, 263(2)]**

Tribunal held that the issue of production of coal mines was not an issue in the reopened assessment proceedings. The precise issues for which action under section 263 was initiated were for assessing the income of the assessee on account of showing the incorrect production according to the report of a commission of inquiry. Action under section 263 was not initiated in respect of the deduction of the assessee under section 80-IA or 80-IB. Therefore, the issue for which revision under section 263 was proposed was not the issue for which the case of the assessee was reopened under section 147. Action under section 263 was initiated on issues which had already been decided in the original assessment and not in the reopened assessment. Therefore, the time limit for passing the order under section 263 would run from the date of the original order and not that of the subsequently reopened assessment order under section 147. The original assessment order was passed on January 16, 2014, and revision thereof could have been taken up to March 31, 2016. The order under section 263 was passed on February 26, 2019, and therefore it was clearly beyond the limitation prescribed under section 263(2). (AY.2009-10)

Jindal Steel and Power Ltd. v. PCIT (2020) 79 ITR 636 (Delhi)(Trib.)

2366 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Accommodation entry – Principal Commissioner not agreeing with manner of enquiry conducted by Assessing Officer – PCIT cannot substitute his own reasons – Revision is held to be not valid. [S.143(3)]**

Tribunal held that the Assessing Officer had examined the documents and confirmations in detail and adopted a possible view that the assessee had established the identity and creditworthiness of the lender and the genuineness of the transaction. Action under

section 263 can be taken only when there is lack of enquiry or no enquiry. However, in the assessee's case necessary enquiry was conducted. Therefore, merely because the Principal Commissioner did not agree with the manner of enquiry conducted by the Assessing Officer he could not substitute his own reasons and hold the order to be erroneous and prejudicial to the interests of the Revenue. (AY.2009-10)
Arihant Technology P. Ltd. v. PCIT (2020) 79 ITR 119 (Delhi) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order passed under section 144 overlooking provision of section 184 (5) – Order is erroneous – Revision is held to be valid. [S. 144, 184 (5)] 2367
Assessment order was passed under section 144 wherein he allowed deduction towards interest and remuneration paid to partners. Commissioner passed the revisional order setting aside assessment. On appeal the Tribunal held that, while completing assessment Assessing Officer completely overlooked provisions of section 184(5) and allowed deduction on account of interest/remuneration paid to partners, it certainly made assessment order erroneous and prejudicial to interests of revenue, therefore, impugned revisional order was up held. (AY. 2010-11)
Saroj Print Arts v. PCIT (2020) 181 ITD 502 / 194 DTR 171 / 207 TTJ 185 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share premium – Accepting the value of shares issued at premium could not be considered as erroneous or prejudicial to interest of revenue – Revision is held to be bad in law. [S. 56(viib), Rule 11U, 11UA] 2368
Commissioner invoked revisional jurisdiction on ground that assessee issued certain shares during relevant assessment year with a share premium of Rs. 140 and face value of Rs. 10 totalling to Rs. 150 per unit of share and Assessing Officer had not made enquiry in respect of valuation of shares. According to Commissioner, while applying formula under rule 11U and 11UA of Income-tax Rules, as per section 56 (viib) valuation of shares would come to only Rs. 27 and, thus, income to that extent had escaped assessment. Tribunal held that in section 56 (viib) two methods are envisaged for calculating fair value of shares and out of two values thus computed value whichever is higher should be adopted; and that in instant case, Assessing Officer, on being satisfied with computation of fair value of shares, had accepted value of Rs. 150 per share which was higher than Rs. 27 as calculated by Commissioner applying rules 11U and 11UA. On facts if Commissioner had to hold view of Assessing Officer to be erroneous as well as prejudicial to revenue he was required to conduct enquiries and record a finding that assessee's calculation of fair market value of Rs. 150 was unsustainable in law and Commissioner having not done so, action of Assessing Officer, who had conducted enquiry on issue and called for documents and after examination had not drawn any adverse view against assessee, could not be held to be erroneous well as prejudicial to revenue. (AY. 2013-14)
Trimex Fiscal Services (P) Ltd. v. PCIT (2020) 181 ITD 10 / 190 DTR 381 / 205 TTJ 611 (Kol.)(Trib.)

2369 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest on Arbitration Award reduced while computing taxable income – Offering income in the year of receipts – Revision is held to be not valid. [S. 4, 145]**

Tribunal held that the Assessing Officer had duly considered the documents since a specific disallowance had been made, being conscious of the fact that certain arbitration income was not offered to taxation by the assessee. The assessment orders for earlier years were specifically called for by notice under section 142(1) and these were furnished by the assessee. Upon perusal thereof, the Assessing Officer specifically took note of the fact that similar disallowance was made in earlier years and, therefore, he chose to make similar disallowance during the year under consideration. The computation of income filed by the assessee clearly demonstrated that the arbitration awards received during the year were offered to tax whereas interest on the arbitration award was reduced while computing the taxable income. The revenue recognition policy followed by the assessee to recognise the interest income was fully disclosed in the notes to the account. The position taken by the assessee to recognise the interest income was accepted by the Assessing Officer who was well conscious of the fact that certain arbitration income was not offered to tax. Hence, there was application of mind by the Assessing Officer on the issue of interest on arbitration award and he chose not to make any addition thereof. The view was taken in the matter by the Assessing Officer could not be said to be contrary to law, perverse or unsustainable in law, in any manner and was a possible view keeping in mind the rule of consistency. Hence, the assessment order could not be termed erroneous or prejudicial to the interests of the Revenue under section 263 as held by the Principal Commissioner. The action of the Assessing Officer was in consonance with the position accepted by the Revenue in earlier years and, therefore, it could not be said that the order was not in accordance with law. In such a case, the action of the Principal Commissioner in invoking jurisdiction under section 263 could not be sustained in the eyes of law. (AY.2014-15)

Afcons Infrastructure Ltd. v. PCIT (2020) 80 ITR 410 (Mum.)(Trib.)

2370 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision – Housing project – Method of accounting – Adopting Percentage Completion Method And Project – Revision is held to be not valid. [S. 145]**

Tribunal held that the assessee had adopted the methodology for revenue recognition for both the projects adopting the percentage completion method but the Principal Commissioner had only disputed the revenue recognition of the one project. During the assessment proceedings, the Assessing Officer had made proper, sufficient and adequate enquiry on the issues including the issue of revenue recognition of the assessee following the percentage completion method and project-wise revenue recognition. Therefore, it was not a case of no enquiry, inadequate enquiry or insufficient enquiry. The assessment order was not erroneous or prejudicial to the interests of the Revenue. (AY. 2013-14)

Surekha Builders and Developers Pvt. Ltd. v. PCIT (2020) 81 ITR 24 (SN) (Ctk.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Service of order not relevant passing of order is relevant – Not given sufficient opportunity to give reply – Natural justice violated – Order quashed. [S. 263(2)] 2371

Tribunal held that the assessment order was passed on March 22, 2013 and the Principal Commissioner had passed his order on March 30, 2015. Therefore, the order was within two years from the relevant date. According to the provisions of section 263(2) there was no mention about "service" of the order but only that the order shall be "made". Tribunal also held that it is mandatory to apply the principles of natural justice irrespective of whether there is any statutory provision. The assessee had not been afforded opportunity, much less sufficient opportunity to reply to the show-cause notice. The Principal Commissioner, hurriedly and without affording opportunity of hearing to the assessee, had passed the order in violation of the principle of audi alteram partem. He had committed a gross error in not providing any effective and reasonable opportunity of being heard to the assessee before passing the order. Accordingly, the revisional proceedings framed under section 263 by the Principal Commissioner were liable to be quashed. (AY. 2010-11)

Jaidurga Minerals v. PCIT (2020) 81 ITR 67 (SN) / 208 TTJ 96 / (2021) 200 DTR 205 (Cuttack)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision – No discussion in assessment order – Mere extraction of submissions would not show assessing Officer applied his mind – Revision is held to be valid. [S. 80IA] 2372

Tribunal held that there was no discussion on the difference in figures between the original return and the corrected computation. In the entire order of the Assessing Officer, he had only extracted the submissions of the assessee in the original return and the revised computation and finally accepted them without any application of his mind. The decision must reflect the reasoning of the officer. In this case in the assessment order, the entire exercise was missing. Merely extraction of submissions could not show that the Assessing Officer had applied his mind. The Assessing Officer while accepting the documents submitted by the assessee had not conducted any specific enquiry into the facts of the case. In this case, the Assessing Officer had only done the work of extraction of submissions of assessee and nothing else and therefore, in fact the Assessing Officer had not formed any view. When no view has been taken, no enquiry had been conducted, and when no reasons on facts had been placed on record, the order of assessment was bound to be erroneous in so far as prejudicial to the interest of the revenue. (AY. 2014-15)

Hindumal Balmukund Investment Co. Pvt. Ltd. v. PCIT (2020) 81 ITR 48 (SN) (Pune)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Income from holiday home – Income from business or Income from other sources – Income from house property – Revision is held to be not valid. [S. 22, 28(i), 56] 2373

The Tribunal held that the Assessing Officer had examined the very issue and assessed the assessee's income from the holiday homes under the business head rather than as claimed, as income from other sources. The Assessing Officer had not only carried out necessary enquiries but had changed the head of its income from "other

sources" to business. Whether it was income from house property as per the Principal Commissioner, or business income going by the Assessing Officer in assessment and the residuary head of "other" sources in its computation, was purely a debatable issue. It could not be held that the Assessing Officer's action was erroneous and causing prejudice to interests of the revenue. (AY. 2014-15)
Electro Urban Co-Operative Credit Society Ltd. v. PCIT (2020) 81 ITR 17 (SN) (Kol.)(Trib.)

2374 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Advancing loans on hundi – Cash credits – Books of account not rejected – Assessing officer has passed a detailed order while dealing and adjudicating the issues – Revision order is quashed. [S. 68, 143(3)]**
Allowing the appeal of the assesssee the Tribunal held that the assessing Officer has passed detailed order in the course of assessing proceedings by requisitioning various details, books of account was verified. Revision is held to be not valid. (AY.2012-13)
Vinod Bhandari v. PCIT (2020) 81 ITR 237 (Indore)(Trib.)

2375 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Best judgement assessment – Interest and remuneration paid to partners – Revision of order is held to be valid. [S. 144, 184(5)]**
The assessment was completed u/s 144 wherein the AO has allowed deduction towards interest and remuneration paid to partners. CIT passed the revision order on the ground that provision of S.184(5) was not considered by the AO. On appeal the Appellate Tribunal held that once assessment is completed under S. 144, provision of S. 184(5) gets triggered automatically and it will override all other provisions of Act. In instant case, while completing assessment AO overlooked provisions of S. 184(5) and allowed deduction on account of interest/remuneration paid to partners, it certainly made assessment order erroneous and prejudicial to interests of revenue. Accordingly the order of the CIT is affirmed. (AY. 2010-11)
Saroj Print Arts v. PCIT (2020) 181 ITD 502 (Mum.)(Trib.)

2376 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – TDS mismatch – PCIT has issued show cause notice for seven issues and passed the revision order – Appellate Tribunal quashed the revision order after discussion all seven issues. [S. 4, 14A, 37(1), 40A(2), 41(1), 43(6), 48, 50C, 80IC, 92CA]**
The AO passed the assessment order u/s 143 (3) of the Act. The PCIT has issued show cause notice for revision of seven issues such as mismatch of TDS, expenditure on exempt income, allowability of business expenditure, payment to related parties, allowability of depreciation, transfer pricing etc. Appellate Tribunal after discussing each and every issue in details held that the order passed by the AO is not erroneous hence quashed the revision order passed by the PCIT. (AY. 2014-15)
Eveready Industries India Ltd. v. PCIT (2020) 181 ITD 528 / 114 taxmann.com 610 (Kol.) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Bad debt – Penalties – AO has called the relevant details in the course of assessment proceedings which were filed – Order of revision is held to be not valid. [S. 36(1)(vii,) 37(1), 43B] 2377

Assessment was completed under S. 143(3) of the Act. PCIT invoked revision jurisdiction under section 263 on four grounds; firstly, as per proviso provided to S. 36(1) (viia) and 36(1)(vii) deductions towards bad debt written off was allowed over and above amount of provision for bad debts in books of account, as on first date of financial year; secondly, since assessee was maintaining its account on mercantile basis, advance payment towards contribution to gratuity fund which did not pertain to relevant assessment year, was not allowable in view of matching principles; thirdly, penalty payment made by assessee for violation of KYC norms to RBI would not be allowed under S. 37(1) and; lastly, exact liability as regards provision for wage arrears made by assessee, was not ascertainable, thus, same was not allowable. On appeal the Appellate Tribunal held that all four issues questioned by PCIT were thoroughly examined by AO during assessment proceedings Assessee had also furnished a detailed reply to questions raised by AO regarding all four issues and after considering relevant facts and explanations furnished by assessee AO had chosen to accept claim of assessee. Accordingly it could not be said that AO had failed to carry out required enquiries which ought to be carried out in accordance with law. Accordingly revision order was quashed. (AY. 2014-15)

Dena Bank v. PCIT (2020) 181 ITD 322 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Investment Bonds – Month means calendar month and not period of 30 days – Period of six months is to be considered as six calendar months and not 180 Days – Entitle to exemption – Order is not erroneous. [S. 54EC] 2378

Assessee sold two properties vide sale deed, dt. 15-2-2011 and deposited capital gain amount in Bond 30-8-2011. AO allowed the exemption u/s 54EC of the Act. CIT passed the revision order on the ground that the investment was not made within period of six months. On appeal allowing the appeal the Appellate Tribunal held that term Month means calendar month and not period of 30 days. Accordingly the six calendar months from date of sale deed would complete on 31-8-2011 and the assessee made investment o 30-8-2011 which was within period of six months hence the order of the AO is affirmed and revision order was quashed. (AY. 2011-12)

Kartick Chandra Mondal v. PCIT (2020) 181 ITD 89 / 192 DTR 248 / 206 TTJ 904 (Kol.) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Lack of enquiry and non application of mind – Revision is held to be valid – Repayment of brought forward loan – Revision is held to be not valid – Revision is up held partially. [S. 2(22)(e), 43B, 68] 2379

Tribunal held that as regards lack of enquiry and non application of mind revision is held to be valid as regards other issues such as S.2 (22) (e) and repayment of loan, the revision is held to be bad in law. (AY. 2014-15)

Anand Lilaram Raisinghani v. PCIT (2020) 77 ITR 431 (Mum.)(Trib.)

2380 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Non-resident – Foreign assignment allowance – Revision is held to be bad in law – AO enquire into the issue of taxability of foreign assignment allowance but had consciously applied his mind to the facts made available before him and adopted the view permissible in law. [S. 5(2), 9(ii)]**

Tribunal held that the AO had made due enquiries into the nature and mode of receipt of foreign assignment allowance as also about its taxability in India. The AO had also obtained declaration from the employer to the effect that the allowance in question was paid in relation to services rendered in Switzerland. The AO had also obtained requisite documentary evidence in support of fact that the applicable taxes on such allowance was paid in Switzerland. After examining the specific details furnished by the assessee, the AO did not find any fault with the claim of the assessee that the foreign assignment allowance was not taxable in India. Accordingly the Tribunal held that not only did the AO enquire into the issue of taxability of foreign assignment allowance but had consciously applied his mind to the facts made available before him and adopted the view permissible in law. Accordingly the assessment order did not suffer from the error of non-enquiry or non-application of mind or assumption of wrong facts. Tribunal also held that show cause notice had proceeded on assumption of incorrect facts and wrong interpretation of applicable legal provisions. It was also established before the CIT that before completion of assessment, the AO had indeed made enquiries into the foreign assignment allowance and after being satisfied about its non-taxability, the order u/s 143(3) of the Act was passed. On receipt of these objections, though the ld. CIT did not agree with the submissions, we find that ultimately the reasons on which the ld. CIT proceeded to pass the order did not contain any substantive legal or factual material by which he was able to prove that the said explanations suffered from any infirmity. Instead we note that the ld. CIT ultimately merely set aside the assessment order directing AO to pass the order afresh in accordance with law which in our opinion was nothing but giving the AO second innings without establishing that the AO's order was erroneous as well as prejudicial to the interests of the Revenue. Accordingly the revision order was quashed. (AY. 2014-15)

Bodhisattva Chattopadhyay v. CIT(2020) 185 DTR 89 / 203 TTJ 26 (Kol.)(Trib.)

2381 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Allowing depreciation at 100% and allowance of finance cost which is attributable to period prior to commencement of business – Revision is held to be valid. [S. 32, 37(1)]**

The Tribunal held that the AO had not examined the complete aspect of the case and had allowed the assessee's claim without any inquiry. The order of the CIT stating that the AO did not make any proper inquiry while making the assessment and had accepted the explanation of the assessee, was to be upheld on the issue of enhanced depreciation claimed by the assessee at 100 per cent. on air pollution control equipment. Tribunal also held that no specific query had been raised by the AO regarding the assessee's claim to deduction of interest and he had simply relied on the details provided in the audited financial statements. Revision is held to be valid. (AY. 2011-12)

Delhi Aviation Services Pvt. Ltd. v. PCIT (2020) 77 ITR 22 (SN) / 185 DTR 185 / 203 TTJ 359 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Sequence of events such as sale, purchase and other consequential transactions not discussed by AO – Revision is held to be valid. [S. 54F] 2382

Tribunal held that the, sequence of events such as sale, purchase and other consequential transactions not discussed by AO. AO had referred to the Assistant Valuation Officer the valuation of land and the cost of acquisition as on April 1, 1981, but by the time of framing of assessment, the reply from the Assistant Valuation Officer had not been received by the AO and without considering it he had completed assessment and allowed the claim of the assessee under S. 54F without referring to it and recording the same in the assessment order. The AO failed to examine the claim of the assessee in terms of law contemplated therein. Therefore this was a case of lack of enquiry. The PCIT rightly assumes jurisdiction. Revision is held to be justified, (AY.2014-15)

Muzaffer Mahmood Khan v. PCIT (2020)77 ITR 62 (SN) (Pune)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Doctrine of merger – Revision on issues not subject matter of reassessment but pertaining to original assessment – Limitation would run from date of order of original assessment and not from date of order of reassessment – Revision barred by limitation. [S. 143(3), 147, 263(2)] 2383

Tribunal held that the three issues raised by the PCIT did not pertain to the reassessment. Thus, the error, if any, committed by the AO related to the original assessment order. Where that part of the order of assessment was found to be prejudicial to interests of the Revenue which had nothing to do with the reassessment proceedings and was never a subject matter of the reassessment proceedings, the doctrine of merger would not apply and the period of limitation provided for in S. 263(2) of the Act would begin to run from the date of order of the original assessment and not from the order of reassessment. Thus, the revisional jurisdiction being beyond the period of limitation was wholly without jurisdiction rendering the entire proceeding a nullity. (AY. 2008-09)

Shyam Steel Manufacturing Ltd. v. Dy. CIT (2020) 77 ITR 37 (SN) (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Issue of shares at premium – Commissioner had neither conducted any enquiry on issue nor recorded finding that assessee's calculation was unsustainable in law – Revision is held to be bad in law. [S. 56(2)(viib), R. 11U, 11UA] 2384

AO on being satisfied with computation of fair value of shares, had accepted value of Rs. 150 per share which was higher than Rs. 27 as calculated by Commissioner applying rules 11U and 11UA. Tribunal held that on facts if Commissioner had to hold view of Assessing Officer to be erroneous as well as prejudicial to revenue he was required to conduct enquiries and record a finding that assessee's calculation of fair market value of Rs. 150 was unsustainable in law and Commissioner having not done so, action of Assessing Officer, who had conducted enquiry on issue and called for documents and after examination had not drawn any adverse view against assessee, could not be held to be erroneous well as prejudicial to revenue. (AY. 2013-14)

Trimex Fiscal Services (P.) Ltd. v. PCIT (2020) 181 ITD 10 (Kol.)(Trib.)

2385 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Return of income – Without audit report – Revised return along with audit report – Loss is allowed to be carried forward – Revision is held to be not valid. [S. 44AB, 80, 139 (3)]**

Assessee had filed its original return of income within due date prescribed under S. 139(1) claiming carry forward of loss of certain amount. The return was not accompanied by audit report as required under S. 44AB of the Act. Thereafter the assessee filed revised return of income, claiming said loss at lesser amount and assessee had also filed audit report. On basis of revised return of income filed by assessee, AO ultimately completed assessment allowing carry forward of loss as shown in revised return of income. CIT invoked revision on ground that since assessee had not filed audit report along with its original return as required under S. 44AB, original return of income was defective and invalid, hence, loss claimed by assessee could not be allowed to be carried forward. Tribunal held that since the assessee had voluntarily filed a revised return of income along with furnishing of audit report, defect in original return stood removed and, therefore, original return was to be treated as a valid return and assessee was eligible to claim carry forward of business loss. Revision is held to be not valid. (AY. 2013-14)

B.E. Billimoria & Co. Ltd. v. PCIT (2020) 180 ITD 808 / 192 DTR 114 / 206 TTJ 650 (Mum.)(Trib.)

2386 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest received by head office is chargeable to tax or not is a debatable issue – Revision cannot be initiated on the basis of retrospective amendment as the AO has to proceed on the basis of law prevailing as on the date of assessments – Revision is held to be not valid – DTAA-India-USA. [S. 9(1)(v)(c), Art. 14(6)]**

Allowing the appeal the Tribunal held that, revision cannot be initiated on the basis of retrospective amendment as the AO has to proceed on the basis of law prevailing as on the date of assessments. Revision is held to be not valid. Whether or not interest received by the Head Office/overseas Branches from the Indian Branch is taxable in India is a highly debatable issue and the position of law prevailing at the time of completion of assessments as per the available judicial precedents on the issue, clearly held that the interest income was not taxable as it is governed by the principle of mutuality. Therefore, it cannot be said that it is not a possible view. (AY. 2011-12, 2012-13)

JP Morgan Chase Bank N.A. v. Dy.CIT (2020) 185 DTR 305 / 203 TTJ 443 (Mum.)(Trib.)

2387 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Closing stock – Limited scrutiny – What cannot be done directly cannot be done indirectly – PCIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the AO while framing the assessment. [S. 115JB, 142(1), 143(3)]**

Tribunal held that when the case of the assessee was selected for limited scrutiny for the reasons viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison High Loans/advance/Investment in shares, therefore, no infirmity could be attributed to the assessment framed by the AO on the ground that he had failed

to deal with other issues which though did not fall within the realm of the limited reasons for which the case was selected for scrutiny assessment. PCIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the AO while framing the assessment. Revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issues for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which did not form part of the reasons for which the case was selected for limited scrutiny under CASS. Revision order was quashed. (AY. 2014-15)
Su-Raj Diamond Dealers Pvt. Ltd. v. PCIT (2020) 185 DTR 1 / 203 TTJ 137 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – No change in tax liability – Revision is held to be not valid. [S. 45(2), 48, 50C, 54EC] 2388
Allowing the appeal of the assessee the Tribunal held that, even after invoking the provisions of S. 45(2) of the Act, there would be no change in the tax liability of the assessee and hence the order passed by the AO cannot be said prejudicial to the interest of the Revenue. Tribunal also held that it is undisputed proposition of law that for exercising the power u/s 263 of the Act, the Commissioner has to satisfy itself that the order passed by the AO is erroneous as well as prejudicial to the interest of the Revenue. Without satisfaction of the twin conditions that the order passed by the AO is erroneous as well as prejudicial to the interest of the Revenue, the provisions of S. 263 cannot be invoked. Therefore, in the case in hand, when there will be no Revenue loss even if provisions of S. 45(2) is applied then in such a situation the Commissioner is not allowed to exercise its power u/s 263 of the Act merely because the AO has accepted the capital gains declared by the assessee. Hence, in the facts and circumstances of the case, the impugned ex-parte order passed by the PCIT without proper opportunity of hearing to the assessee and without establishing the order of the AO is prejudicial to the interest of the Revenue is not sustainable in law and consequently the same is quashed and set aside. (AY. 2015-16)
Late Shri Ramavtar Gupta v. PCIT (2020) 185 DTR 385 / 203 TTJ 643 (Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest adjusted against project expenditure – AO putting specific question and accepting the explanation – Revision is held to be not valid. [S. 145] 2389
Allowing the appeal of the assessee the Tribunal held that during the assessment proceedings when the AO proposed to charge the interest to tax, the very same explanation had been offered by the assessee and accepted by the AO. Therefore it was not a case of no enquiry and as a matter of fact, it was specifically brought to the notice of the Assessing Officer that the interest earned was adjusted against the project expenditure. The PCIT did not conduct any independent enquiry to reach the conclusion that the assessment order was erroneous in so far as it was prejudicial to the interests of the Revenue. The PCIT was not justified in invoking the jurisdiction under

S. 263 or to hold that the assessment order was erroneous or prejudicial to the interests of the Revenue. (AY.2012-13, 2013-14)
Brahma Center Development Pvt. Ltd. v. PCIT (2020) 185 DTR 353 / 77 ITR 156 / 203 TTJ 560 (Delhi)(Trib.)

2390 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Cash credits – Share capital – No material was placed during assessment proceedings to prove genuineness of share capital issued at premium – Revision order is held to be valid. [S. 143(3), 153(1)]**
Dismissing the appeal of the assessee the Tribunal held that the assessee has not produced any material during assessment proceedings to prove genuineness of share capital issued at premium. Revision order is held to be valid. (AY. 2014-15)
Rissala Décor (P.) Ltd. v. PCIT (2020) 186 DTR 73 / 203 TTJ 521 (Delhi)(Trib.)

2391 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – The AO failed to make any inquiry on vital aspects while admitting the claim of the assessee and allowing the claim summarily – Revision is held to be justified – The AO could not expand the scope of inquiry while passing the order under s.143(3) r.w.s. 263 of the Act. [S. 54B, 143(3)]**
AO completed assessment and accepted income declared as per return of income. On revision CIT held that exemption allowed u/s 54B on sale of agricultural land was not allowable as land was a non-agricultural land before the date of transfer. Accordingly the order was set aside. On appeal the Tribunal held that the Assessee has not declared any worthwhile agricultural income in earlier years from such large track of land. Assessee had failed to adduce any satisfactory evidence that land was subjected to any systematic agricultural operation in last two years immediately preceding date of transfer as required in law indeed. AO has failed to make any inquiry on this vital aspect while admitting claim and allowed claim summarily. Accordingly the order of CIT is affirmed. While giving effect to the order of the CIT, the AO also disallowed the brokerage, which was affirmed by the CIT(A) on appeal the Tribunal held that, The AO was in error in making disallowance of Rs.3,12,500/-towards brokerage in the second round of proceedings. The AO has clearly travel led beyond the scope of inquiry under s. 263 of the Act guided to him by the PCIT. The action of the CIT(A) confirming the addition is therefore set aside and the AO is directed to delete the disallowance of brokerage amounting to Rs.3,12,500/-. (AY. 2008-09)
Riddhish B. Trivedi v. CIT (2020) 186 DTR 41 / 203 TTJ 634 (Ahd.)(Trib.)

2392 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Provision for expenses – Revision is held to be not valid. [S. 37(1)]**
Assessee is engaged in business of real estate development. During year, assessee sold certain bare flats. Assessee made provision for expenses to be incurred to complete such sold out flats and included same in cost of construction and development expenses. Assessment was completed u/s 143(3) of the Act. CIT in revision proceeding held that the liability was an unascertained liability, which was to be disallowed. On appeal the Tribunal held that the assessee had produced before AO relevant document such as

architect's certificate, site engineer/architect's estimation which showed that assessee had actually incurred these expenses and that AO had duly taken note of same before allowing impugned provision made by assessee as deduction. Accordingly provision claimed by assessee was an ascertained liability, thus, same was to be allowed. Accordingly invocation of revision jurisdiction is held to be unjustified. (AY. 2014-15)
Khetawat Properties Ltd. v. PCIT (2020) 180 ITD 535 / 205 TTJ 412 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Long term capital gain – Information from DIT (Inv) – All relevant documents in relation to LTCG which reflected occurrence of transaction of sale of shares in normal course on platform of stock exchange – Revision is held to be not valid. [S. 10(38), 45] 2393
During year, assessee filed its return of income inter alia claiming exemption under S.10(38) on account of long term capital gains on sale of shares which was accepted. PCIT has passed the revision order on the ground that an information was received from DIT (Inv) that assessee was beneficiary of bogus long terms capital gain (LTCG) on sale of shares and, accordingly, exemption under S.10(38) claimed by assessee was disallowed. On appeal the Tribunal held that the assessee had duly produced all primary documents in relation to LTCG earned by it before AO and these documents reflected occurrence of transactions in normal course on platform of stock exchange. Details of information received by PCIT from DIT (Inv.) were not provided to assessee at all at any stage of proceedings. PCIT had remained silent on contents of interim reply filed by assessee against invocation of revision. Accordingly the Tribunal held that PCIT is unjustified in invoking provisional jurisdiction so as to hold transaction of assessee of LTCG to be bogus and deny exemption under S. 10(38) of the Act. (AY. 2013-14)
Shardaben B. Patel. (Smt.) v. PCIT (2019) 75 ITR 13 / (2020) 180 ITD 328 / 190 DTR 228 / 204 TTJ 231 (Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Investment in residential house – Position prior to 1-4-2015: Multiple residential units are included within sphere of S. 54F of the Act – Revision is held to be not justified. [S. 54F] 2394
Assessee individual had sold an immovable property and invested sale consideration for purchase of entire block (consisting of 3 residential units located at different floors of same building) of residential project within specified time. Assessee claimed exemption under S 54F of the Act which was allowed. PCIT under revision held that entire super structure of block in residential project comprised of 3 independent units could not be regarded as 'a residential house' as contemplated under S. 54F and, hence, assessee was not eligible for claim of deduction under said section. On appeal the Tribunal held that, position prior to 1-4-2015, multiple residential units are included within sphere of S. 54F of the Act, accordingly the revision is held to be not justified (AY. 2014-2015)
Minal Nayan Shah. (Smt.) v. PCIT (2020) 180 ITD 149 (Ahd.)(Trib.)
Editorial : Affirmed in PCIT v. Minal Nayan Shah (2020) 428 ITR 23 (Guj.)(HC)

2395 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Profit on sale of property used for residence – Revision is held to be valid as the conditions of S. 54(2) had been violated as the assessee had not invested the capital gain in purchasing a new residential house before the due date of filing of return under S. 139(1) of the Act – Judgment of jurisdictional High Court is followed. [S. 45, 54, 139(1), 139(4), 139(5)]**

The assessee sold a residential flat and derived long-term capital gain of Rs. 30.08 lakhs. The assessee filed his return of income under S. 139(1) on 17-7-2014 and claimed deduction under section 54 on account of purchase of new residential flat. The AO completed assessment under S. 143(3) and accepted income returned by the assessee. PCIT in revision proceedings held that the conditions of S. 54(2) had been violated as the assessee had not invested the capital gain in purchasing a new residential house before the due date of filing of return under S. 139(1). The assessee made first payment toward purchase of flat on 5-10-2015 and next on 15-2-2016 and had not deposited the unutilized capital gain in Capital Gain Account Scheme before the due date of furnishing return under S. 139(1). Thus, the assessee was not eligible for deduction under S. 54(1) of the Act. On appeal the Tribunal held that it cannot be said that the decision of the AO is in accordance with the legal position prevailing at the relevant point of time. The decisions cited by the assessee challenging the validity of exercise of jurisdiction under S. 263, would not help the assessee in view of the specific fact involved in the instant case. Thus, on overall consideration of facts and material on record and keeping in view the ratio laid down in the catena of decisions, including the decision of the jurisdictional High Court in *Humayun Suleman Merchant v. CIT (2016) 387 ITR 421 (Bom.) (HC)*, it is to be held that PCIT has correctly exercised his power under section 263 to revise the impugned assessment order. Accordingly, the order passed under S. 263 is to be upheld by dismissing the grounds raised by the assessee. (AY. 2014-15)

Rajan Gumba Telang v. PCIT (2020) 180 ITD 184 / 187 DTR 385 / 204 TTJ 479 (Mum.) (Trib.)

2396 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Provision for expenditure – Contingent – provision was certified by auditors as well as approved by shareholders of company – Revision to disallow the provision as contingent id held to be not valid. [S. 37(1), 145]**

Assessee is engaged in business of manufacturing copper rods, copper lathodes, phosphoric acid, sulphuric acid, power slime, dore etc. Assessee made a provision on account of expenditure towards purchase of copper concentrate, on basis of provisional invoices issued before final prices were fixed.-When final amount was realised at end of year, difference in provisioning made by assessee and final amount of purchase was adjusted in debit and credit side of profit & loss account accordingly. The method followed by the assessee is accepted by the AO. PCIT invoked revision jurisdiction on grounds that assessee was not entitled for deduction of provision made on account of expenditure towards copper purchase as liability was contingent. On appeal the tribunal held that the assessee had created provision in books of account based on price of copper concentrate at London Metal Exchange which was. was certified by auditors

as well as approved by shareholders of company and this method of making provision by assessee was regularly followed by assessee since financial year 2003-04 which had never been challenged by other statutory authority including Ministry of Corporate Affairs. Accordingly on facts, provision made by assessee on account of expenditure for copper concentrate purchase was to be allowed. (AY. 2010-11)
Vedanta Ltd. v. ACIT (2020) 180 ITD 8 (Delhi)(Trib.)

S. 264 : Commissioner – Revision of other orders – Conversion of immoveable property in to stock in trade – Shown as capital gains – Matter remanded to Commissioner. [S. 5A, 143(1), Art. 226] 2397
Petitioners purchased an immovable property (land) in Goa and showed same under head Investment. In year 2014, they converted said property into stock-in-trade for purpose of development. In assessment year 2015-16, they computed profits from sale of said property after giving effect to provisions of section 5A.Thereafter, they filed petition under section 264 and applied for revision of intimation under section 143(1) for assessing gain on sale of said property as business income. However, Commissioner had rejected said application on the ground that since petitioners had not produced any evidence to support their claim of conversion of said capital asset into stock-in-trade and neither books of account/ledgers nor balance sheets were produced by petitioners along with their application under section 264 of the Act. On writ allowing the petition interests of justice would require that petitioners should be given an opportunity to produce relevant material before Commissioner, and thus, matter be remanded back.
Rajesh Prakash Timlo v. PCIT (2020) 272 taxman 59 (Bom.)(HC)

S. 264 : Commissioner – Revision of other orders – Capital gains – Sale of agricultural land – Order set aside – Matter remanded to the Assessing Officer. [S. 45, 54B, Art. 226] 2398
Assessee claimed deduction under section 54B in respect of capital gain arising from sale of agricultural land. Assessing Officer rejected assessee's claim on ground that purchaser of land was a builder and, thus, said piece of land was not agricultural land. The assessee filed revision petition before the Commissioner of Income tax. Commissioner rejected the revision by holding that the petitioner had not produced any proof that the sold land was used for agricultural purpose for two years prior to the same. The petitioner filed copy of chitta and adangal before the authorities clearly showing that the petitioner had harvested crops in the said land. However, the same were not considered by both authorities and therefore, the present writ petition is filed. Allowing the petition the Court held that view taken by Assessing officer while rejecting assessee's claim was not in consonance with requirements made under section 54B. Therefore, impugned order was to be set aside and, matter was to be remanded back to Assessing Officer for disposal afresh keeping in view conditions imposed under section 54B. (AY. 2015-16)
S. Sundaramurthy v. PCIT (2020) 269 Taxman 107 (Mad.)(HC)

2399 **S. 264 : Commissioner – Revision of other orders – Delay in filing the writ petition against revision order – No explanation was furnished – Writ petition was dismissed. [S. 154, 271(1)(c), Art. 226]**

Dismissing the petition the Court held that in the instant case, for the sake of repetition just to circumvent the procedure of appeal, which prima facie is time barred; writ petition in the year 2020 has been filed. This Court cannot assume a role of an appellate court and examine the veracity and legality of an order of assessment on merits. Accordingly the petition was dismissed. (AY. 2009-10)

H. M. Sahajhan v. PCIT (2020) 192 DTR 278 (Ker.)(HC)

2400 **S. 264 : Commissioner – Revision of other orders – Application for refund – Delay in filing application not explained – Dismissal of revision application is held to be valid. [S. 119(2)(b), Art. 226]**

The assessment order was passed on August 24, 2005. Against a portion of the order, the assessee had filed an application under S. 264 of the Act and it was rejected on July 21, 2006. Thus, the assessee had a cause of action with reference to the assessment year 2003-04 on or before March 31, 2010 which was the outer limit in terms of the circular dated June 9, 2015. [2015] 374 ITR (St.) 25) The assessee had not explained the inordinate delay and latches from July 21, 2006 to May 24, 2011. Hence the delay could not be condoned Paragraph 3 of the circular of the Central Board of Direct Taxes dated June 9, 2015 ([2015] 374 ITR (St.) 25) lays down that no condonation application for claim of refund or loss shall be entertained beyond six years from the end of the assessment year for which such application or claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. Paragraph 8 states that this circular will cover all such applications or claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the circular. (AY.2002-03)

R. Ramakrishnan v. CBDT (2020) 422 ITR 257 (Karn.)(HC)

2401 **S. 264 : Commissioner – Revision of other orders – Expenses or payments not deductible – Cash payments exceeding prescribed limits – Use of electronic clearing system through bank account – Deposit of cash directly in beneficiary's bank account beyond prescribed limit – Transaction not through clearing house of electronic mode – Business expediency is not established – Disallowance is held to be justified. [S. 40A(3), R. 6DD, Art. 226]**

The assessee carried on retail trade in readymade and other clothes. He made advance payments to his supplier by way of cash deposits in the supplier's bank account in a sum of Rs. 3.40 lakhs on various dates. The AO disallowed the amount by applying the provisions of S.40A(3) of the Act. Revision application filed by the assessee is dismissed by the PCIT. On a writ dismissing the petition, the Court held that the deposit of cash directly in the bank account of the beneficiary supplier was not routed through any clearing house nor was the money sent through electronic mode and therefore such a transaction would not be covered by rule 6DD(c)(v) and the benefit of the provision could not be given to the assessee. The assessee could not lead any evidence to show that he had deposited the amount on the instructions of the supplier or due to any

business exigency. In the absence of such evidence, the assessing authority had rightly denied the benefit of exemption to the assessee. The assessee could not also demonstrate that the order was bereft of reasons or that it was perverse or that it had failed to consider the relevant material or document. Court also held that, the term "use of electronic clearing system through bank account" in section 40A(3) would necessarily include transfer of funds by electronic mode through clearing system. Any transfer of funds through the use of electronic clearing system through a bank account would mean a transfer of funds through electronic mode of transfer, i.e., RTGS, IMPS, NEFT etc., where the funds are transferred through the bank account of one individual into the bank account of a beneficiary through electronic means. When the funds are transferred through the electronic clearing system at least two banks or two branches of the same bank have to be involved. Only then is the money transferred through the electronic clearing system between them. (AY. 2008-09)
Ajai Kumar Singh Khaldelial v. CIT (2020) 421 ITR 6 / 186 DTR 57 / 312 CTR 473 / (2021) 277 Taxman 91 (All.)(HC)

S. 264 : Commissioner – Revision of other orders – Rejection of application on the ground that availability of remedy of appeal – Commissioner is directed to decide the application on its merits. [Art. 226] 2402
The Commissioner rejected the application filed by the assessee under section 264 of the Income-tax Act, 1961 on the ground that remedy of appeal was available. On a writ the High Court set aside the order and directed the Commissioner to decide the application on its merits and in accordance with law. Followed *Kewal Krishna Jain v. CIT (CWP No. 1818 of 1995 dt 11-10-2013)*
Hirdey Ram v. CIT (2020) 421 ITR 4 (P&H)(HC)

S. 264 : Commissioner – Revision of other orders – Accumulation of income – Mistake in form no 10 – Delay in filing the form – CIT is directed to consider whether cogent reason exists for condonation of delay. [S. 11(2), 12AA, 139(4A), Form No. 10, Art.226] 2403
The assessee Trust filed the return of income u/s 139(4A) disclosing nil income, after claiming exemption us 11(2) of the Act. In the intimation passed by the AO u/s 143(1) of the Act accumulation of income to the extent of Rs 58,00, 000 was refused on the ground that form No 10 as required to be filed was filed beyond the period specified in S.11(2) of the Act. The assessee trust moved application u/s 264 of the Act to condone the delay in filing of form no 10, which was rejected. On writ it was contended that the there was error while filing up form No 10 electronically and for this error entire claim ought not be rejected. Court held that there was no finding in the order as to whether the entry was made due to error or it was a deliberate act. The Court remanded the matter to CIT(E) to decide on merits and also whether cogent reason exists for condonation of delay. (WP No. 3633 of 2019 dt 3-1-2020)
St. Thomas Orthodox Syiran Church v. CIT(E) (Bom.)(HC) (2020) CTCJ-Feb-P.120

2404 **S. 264 : Commissioner – Revision of other orders – Income from sale of property is shown as short term capital gains – Revision application made to assessee the income as business income. [S. 5A, 28(i), 45(2), 143(1), Portuguese Civil Code, Art. 226]**
Petitioners have filed the return of income showing the sale of property income as short term capital gains. The return was accepted u/s 143(1) of the Act. The petitioner there after filed the revision application u/s 264 of the Act contenting that they have wrongly shown as short term capital gains the correct position should have been the income should have shown as business income. CIT rejected the petition on the ground that application on the ground that it was afterthought top avoid the payment of capital gains tax. Allowing the petition the Court held that the petitioners have made a genuine error hence directed the CIT to dispose the petition expeditiously as possible and in any case with in a period of four months from today. (WP No. 924 of 2019 dt 14-01 2020 (AY. 2015 16)
Rajesh Prakash Timlo v. PCIT (Bom.)(HC) (UR)
Vidya Rajesh Timlo v. PCIT (Bom.)(HC)(UR)

2405 **S. 268A : Appeal – Development agreement – Monetary limit – Less than one crore – Appeal dismissed. [S. 2(47)(v), 48]**
Court held that since tax effect in instant appeal was lower than monetary limit of Rs. 1 crore, fixed by Circular No. 17/2019, dated 8-8-2019, appeal of revenue was dismissed. (AY. 2005-06,) (AY. 2008-09) (AY. 2011-12)
CIT v. Lakshmi Devi (2020) 274 Taxman 442 (Mad.)(HC)
CIT v. Marry Zohn (Mrs.) (2020) 274 Taxman 444 (Mad.)(HC)
PCIT v. Foxteq Services India (P.) Ltd. (2020) 274 Taxman 440 (Mad.)(HC)
CIT v. Shriram Properties (P.) Ltd. (2020) 269 Taxman 313 (Mad.)(HC)
PCIT v. Mangal Tirth Estates Ltd. (2020) 269 Taxman 80 (Mad.)(HC)
CIT v. Rudra Blades and Edges (P) Ltd (2020) 275 Taxman 364 (Mad.)(HC)
CIT v. Anna Poorna Re-Rolling (P) Ltd (2020) 275 Taxman 36 (Mad.)(HC)
PCIT v. Mangal Tirth Estates Ltd. (2020) 269 Taxman 80 (Mad.)(HC)

2406 **S. 268A : Appeal – Monetary limit – Audit objection – Dismissal of appeal on account of below monetary limit is held to be not valid. [S. 254 (1)]**
Allowing the appeal of the revenue the Court held that since there was an audit objection, raised by department, case fell within exception pointed out under para 10(c) of Circular No. 3 of 2018, dated 11-7-2018 and, thus, Tribunal erred in dismissing revenue's appeal on ground of low tax effect. (AY. 2009-10)
CIT v. Acurus Solutions (P) Ltd. (2020) 275 Taxman 17 (Mad.)(HC)

2407 **S. 268A : Appeal – Monetary limit – Penalty – Appeal of revenue is dismissed. [S. 271(1)(c)]**
In view of Circular No. 17, dated 8-8-2019, appeal so filed was not maintainable. (AY. 2012-13)
ITO v. Dushyant Manilal Pandya (2020) 183 ITD 581 (Ahd.)(Trib.)

S. 271(1)(b) : Penalty – Failure to comply with notices – Entire additions deleted at appellate stage – Bona fide explanation – Penalty not leviable. [S. 142(1)] 2408

Tribunal held that when the entire additions were deleted at appellate stage and the explanation of the assessee being bonafide, levy of penalty is held to be not valid. (AY.2005-06 to 2009-10)

Sanjay Tyagi v. Dy. CIT (2020) 82 ITR 44 (SN) (Delhi)(Trib.)

S. 271(1)(b) : Penalty – Failure to comply with notices – Co-operating in assessment proceedings Attending – None of assessment orders ex-parte – Levy of penalty is held to be not valid. [S. 142(1)] 2409

Tribunal held that having failed to appear on the initial date of hearing, subsequently complied with the notice issued under S. 142(1) on subsequent dates. Based on the Compliances the assessments were completed. None of these assessments were ex-parte. Accordingly the penalty levied was deleted. (AY.2010-11 to 2016-17)

Manu Rai (Smt.) v. Dy.CIT (2020) 82 ITR 22 (SN) (Indore) (Trib.)

Manish Rai v. Dy.CIT (2020) 82 ITR 22 (SN) (Indore)(Trib.)

Meena Devi Rai (Smt.) v. Dy.CIT (2020) 82 ITR 22 (SN) (Indore) (Trib.)

S. 271(1)(b) : Penalty – Failure to comply with notices – Regular assessment details were filed – Not ex prate best judgment – Penalty is held to be not justified. [S. 142(1), 274] 2410

Tribunal held that the assessee had subsequent to issue of both notices under section 142(1) entered appearance before the Assessing Officer during assessment proceedings and filed the requisite details. The Assessing Officer passed an assessment order and not an ex parte best judgment assessment order. Thus, it was not a case where the assessee did not enter appearance post-notices during assessment proceedings nor where it did not furnish the desired details. The assessee had entered appearance post-issue of these notices and furnish the details before the Assessing Officer as well in uploaded details in the e-proceedings portal during assessment proceedings and thus penalty of Rs. 10,000 levied against the assessee by the Assessing Officer under section 271(1)(b) was deleted. (AY. 2016-17)

Suresh Mutha v. ACIT (2020) 78 ITR 75 (SN) (Chennai)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Mercantile method of accounting – Recovery of loan was doubtful – Interest has shown as income – Deletion of penalty is held to be justified. [S. 145] 2411

Dismissing the appeal of the revenue the Court held that even though assessee had followed mercantile system of accounting not offering the interest on doubtful debt, levy of penalty is not justified.

CIT v. Hiralal Amritlal Parekh & Co. (2020) 117 taxmann.com 125 (Guj.)(HC)

Editorial : Revenue was granted two weeks time to refile SLP and, in case of revenue's failure to do so, SLP would be treated as dismissed for non-prosecution CIT v. Hiralal Amritlal Parekh & Co. (2020) 272 Taxman 96 (SC)

2412 **S. 271(1)(c) : Penalty – Concealment – Sale of land – Levy of penalty was held to be not justified.**
Dismissing the appeal of the revenue the Court held that on identical facts penalty in the case of sister concern was deleted,following the same the penalty is deleted. (AY. 2008-09)
PCIT v. Synbiotics Ltd. (2019) 112 taxmann.com 399 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Synbiotics Ltd (2020) 269 Taxman 50(SC)

2413 **S. 271(1)(c) : Penalty – Concealment – Unless while issuing notice under section 271, read with section 274, no details of any charge were provided penalty cannot be levied. [S. 274]**
Dismissing the appeal of the revenue the Court held that unless while issuing notice under section 271, read with section 274, no details of any charge were provided penalty cannot be levied. Relied on *Amrit Foods v. Commissioner of Central Excise, U.P. [2005] 13 SCC 419.*
PCIT v. Basanti Properties (P.) Ltd. (2020) 114 taxmann.com 540 (Cal.)(HC)
Editorial : SLP of revenue is dismissed due to low tax effect, PCIT v. Basanti Properties (P.) Ltd. (2020) 269 Taxman 573 (SC)

2414 **S. 271(1)(c) : Penalty – Concealment – Depreciation withdrawn during subsequent search proceedings – Levy of penalty is held to be not justified. [S. 32, 132(4), 153A]**
Dismissing the appeal of the revenue the Court held that merely because the depreciation claimed on intellectual property was withdrawn in the course of search proceedings, levy of penalty was held to be not justified. Followed *CIT v. Reliance Petro Products (P.) Ltd. (2010)322 ITR 158 (SC)* (AY. 2004-05)
PCIT v. Financial Technologies Ltd (2019) 112 taxmann.com 398 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Financial Technologies Ltd (2020) 269 Taxman 32 (SC)

2415 **S. 271(1)(c) : Penalty – Concealment – Capital gain not shown in original return – Revised return prior to issue of notice u/s. 153C of the Act-Deletion of penalty is held to be justified. [S. 45, 133A, 153C]**
Dismissing the appeal of the revenue the Court held that, the assessee has shown the capital gains in revised return prior to issue of notice u/s 153C of the Act and the Assessing Officer has no-where recorded his satisfaction to the fact that the assessee has concealed the particulars of income or furnished any inaccurate particulars of such income. Accordingly the order of Tribunal is affirmed. Followed *CIT v. Suraj Bhan (2007) 294 ITR 481 (P&H) (HC) Pr. CIT v. Neeraj Jindal (2017)393 ITR 1 (Delhi) (HC)* (AY. 2010-11)
PCIT v. Prabhjot Kaur Chhabra (Smt.) (2020) 113 taxmann.com 140 (MP)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Prabhjot Kaur Chhabra (Smt.) (2020) 269 Taxman 34 (SC)

S. 271(1)(c) : Penalty – Concealment – Disallowance of claim – Appeal pending before High Court – Reasonable explanation – Deletion of penalty is held to be justified. [S. 36(1)(iii)] 2416
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the penalty primarily on the ground that the explanation rendered by the assessee was reasonable further though quantum additions were confirmed till the stage of Tribunal, further appeal at the hands of the appellant is pending before the High Court. Referred *PCIT v. National Diary Development Board (Tax Appeal No. 515 of 2018 dt 11-6-2028).* (Guj.)(HC)
PCIT v. National Diary Development Board (2020) 114 taxmann.com 553 (Guj.)(HC)
Editorial : SLP of revenue is dismissed PCIT v. National Diary Development Board (2020) 270 Taxman 6 (SC)

S. 271(1)(c) : Penalty – Concealment – Not declared capital gain arising from sale of leasehold rights – Deletion of penalty is held to be justified. [S. 45, 54EC] 2417
Dismissing the appeal of the revenue the Court held that, during assessment proceedings assessee had made full representation why according to his belief, receipt was not chargeable to tax and, in such a case, merely because Assessing Officer did not accept such a stand of assessee, would not automatically permit revenue to levy penalty. Relied, *CIT v. Reliance Petroproducts Pvt. Ltd (2010) 322 ITR 158 (SC). Distinguished, UOI v. Dharmendra Textiles Processors (2008) 306 ITR 277 (SC) Mak Data P. Ltd. v. CIT (2013) 322 ITR 158 (SC)* (AY. 2010-11)
PCIT v. Ashok Kumar Maneklal Parikh (2020) 120 taxmann.com 268 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Ashok Kumar Maneklal Parikh (2020) 274 Taxman 457 (SC)

S. 271(1)(c) : Penalty – Concealment – Writ against penalty order is not maintainable when the quantum addition is in challenge before Appellate Authorities. [S. 144, 271(1))(b), Art. 226] 2418
Dismissing the writ petition the Court held that Writ against penalty order is not maintainable when the quantum addition is in challenge before Appellate Authorities. (AY. 2007-08)
Vikas Bhatnagar v. ITO (2020) 120 taxmann.com 461 (AP)(HC)
Editorial : SLP of assessee is dismissed, Vikas Bhatnagar v. ITO (2020) 275 Taxman 594(SC)

S. 271(1)(c) : Penalty – Concealment – Capital gains – Year of taxability – Offered on the basis of consideration received – In response to notice u/s 148 the entire consideration was offered and accepted – levy of penalty is held to be not justified for furnishing in accurate particulars of income. [S. 45, 147, 148] 2419
Assessee sold a plot of land and received consideration in several instalments in different assessment years. During relevant assessment year, assessee offered to tax amount of consideration which was received during previous year. An assessment order was passed. Later on, Assessing Officer issued a reopening notice against assessee raising objection with manner in which capital gains from sale agreement with respect to said plot was offered to tax by assessee on receipt basis. In response to same, assessee filed return withdrawing amount of capital gains and offering to tax capital gains on entire

sale consideration. Assessing Officer completed reassessment and taxed capital gains arising on entire sale consideration for relevant assessment year. He also levied penalty under section 271(1)(c) on assessee for furnishing inaccurate particulars of income as a result of default committed by assessee in not offering capital gains arising out of entire sale consideration in relevant assessment year. The levy of penalty was affirmed by the CIT(A) and Appellate Tribunal. On appeal the appellant contended that there was a complete disclosure by assessee and, therefore, it was not a case of assessee furnishing inaccurate particulars of income or of concealing particulars of income. It was noted that it was quite evident that assessee had declared full facts and sale agreement at first instance. Full factual matrix or facts were before Assessing Officer while passing assessment order. The assessee had never suppressed any material fact from revenue it was another matter that claim based on such facts was found to be inadmissible. This was not same thing as furnishing inaccurate particulars of income as contemplated under section 271(1)(c). High Court deleted the penalty. (AY. 2005-06)
Omprakash T. Mehta v. ITO (2020) 274 Taxman 110 / 193 DTR 25 / 316 CTR 280 (Bom.)(HC)

2420 **S. 271(1)(c) : Penalty – Concealment – Not recording of satisfaction – Order of Tribunal quashing the reassessment proceeding was affirmed.**
Dismissing the appeal of the revenue the Court held that there was no recording of satisfaction by Assessing Officer in relation to any concealment of income or furnishing of inaccurate particulars by assessee in notice issued for initiation of penalty proceedings under section 271(1)(c), same being sina qua non for initiation of such proceedings, Tribunal had rightly ordered to drop penalty proceedings. Distinguished.
Mak Data (P.) Ltd. v. CIT (2013) 358 ITR 593 (SC)
PCIT v. Goa Coastal Resorts and Recreation (P) Ltd. (2020) 272 Taxman 157 (Bom.)(HC)

2421 **S. 271(1)(c) : Penalty – Concealment – Export oriented undertakings – Bonafide claim – Deletion of penalty is held to be justified. [S. 10B]**
For relevant years assessee filed its returns claiming exemption of income under section 10B. Subsequently, assessee realizing that it was not eligible for said exemption in assessment years in question, withdrew its claim itself before assessing authority. Assessing Officer levied the penalty. Tribunal held that the assessee had furnished full particulars of income in support of its claim raised under section 10B in its returns. It was also found that said claim was raised bona fidely as there was confusion over admissibility of same on account of statement of Union Finance Minister, extending Sunset clause for exemption in question for 100 percent EOUs up to year 2015. Tribunal set aside penalty order. On appeal High Court affirmed the order of the Tribunal (AY. 2010-11, 2011-12)
PCIT v. Core Carbons (P) Ltd. (2020) 273 Taxman 420 (Mad.)(HC)

2422 **S. 271(1)(c) : Penalty – Concealment – Finding in assessment proceedings – Burden of proof – Gift held to be nongenuine – In penalty proceedings revenue authorities have to arrive at independent finding related to concealment of income or inaccurate particular. [S. 68]**
Assessee disclosed fact of gift in his return of income of income. The Assessing Officer assessed the gift as income from other sources. Addition was affirmed by the CIT(A)

and also Tribunal. The Assessing Officer levied the penalty on the ground the assessee had furnished inaccurate particulars and had concealed particulars of its income. According to Assessing Officer, assessment order clearly demonstrated gift to be a sham transaction designed to avoid payment of tax and such findings were relevant evidence in penalty proceedings. Tribunal deleted the levy of penalty. On appeal by the revenue the Court held that since Assessing Officer did not record any findings as to incorrect, erroneous or false return of income filed by assessee and only doubted genuineness of gifts on ground of human probabilities, penalty imposed under section 271(1)(c) was not justified. Followed *Anantharam Veerasinghaiah & Co (1980) 123 ITR 4 (SC) CIT v. Khoday Eswarsa & Sons (1972) 83 ITR 369 (SC) and Dilip N. Shroff v. CIT (2007) 291 ITR 519 (SC).* (AY. 2000-01)
PCIT v. Dinesh Chandra Jain (2020) 271 Taxman 262 (All.)(HC)

S. 271(1)(c) : Penalty – Concealment – Failure to file form No 29B – Retrun filed on the advice of Chartered Accountant – Levy of penalty is held to be not justified. [S. 115JB] 2423
Allowing the appeal of the assessee the court held that t assessee's specific case was that they were advised to file the return of income in a particular fashion and prior to the assessment proceedings, their Chartered Accountant had passed away and this had led to the mistake, which the Assessing Officer pointed out during the assessment proceedings. Thus, in our considered view, the assessee's case is not a case where the provisions of Section 271(1)(c) of the Act could have been invoked, as there has been no finding recorded by the Assessing Officer that they have furnished inaccurate particulars or for concealing particulars. Therefore, we find that the order passed by the Assessing Officer imposing penalty vide order dated 27.06.2012 is perverse. Consequently, the orders passed by the CIT(A) and the Tribunal confirming such orders are liable to be interfered with. (AY. 2009-10)
Vinay Autoparts P. Ltd. v. ITO (2020) 187 DTR 398 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Notice not specifying the charge – Mere disbelieving of explanation is not sufficient – levy of penalty is held to be not valid. [S. 274] 2424
Allowing the appeal the Court held that the notice under section 274 read with section 271(1)(c) was issued for the assessment year 2002-03 and not for the assessment year in question that is 1999-2000. Besides this, there was no mention in the notice that the assessee had concealed the income or furnished inaccurate particulars of income. The authorities had failed to appreciate that penalty proceedings and the assessment proceedings are distinct and since, the assessee had not commenced the business, it could not have earned income, which had not been accounted for. The Tribunal had failed to take into account the well settled legal principles that mere disbelief of an explanation would not be sufficient to impose penalty. The order of penalty was not valid.(AY.1999-2000)
Kaveri Associates v. ACIT (2020) 429 ITR 40 / 275 Taxman 545 (Karn.)(HC)

2425 **S. 271(1)(c) : Penalty – Concealment – Search and seizure – Block assessment – Penalty confirmed – Direction by CIT(A) regarding levy of penalty under S. 271AAA was rightly deleted by the Tribunal – Assessee has not challenged the levy of penalty u/s 271(1)(c) of the Act. [S. 153A, 251, 271AAA]**

Dismissing the appeal, that the Tribunal stated that the appeal filed by the assessee was allowed and the appeal filed by the Department was dismissed. However, this was incorrect because the order had to be read as a whole particularly paragraphs 6 and 7 of the order. It was clear that the Tribunal came to the conclusion that the assessee was liable to penalty under section 271(1)(c). After holding that the assessee was liable to penalty under section 271(1)(c) of the Act, the Tribunal had proceeded to consider the question whether the Commissioner (Appeals) was justified in giving a direction to the Assessing Officer to levy penalty under section 271AAA of the Act. After considering the effect of the provision, the Tribunal held that the Commissioner (Appeals) did not have the power to give a direction to the Assessing Officer to levy penalty under section 271AAA of the Act on the undisclosed income and accordingly set aside that direction. Therefore, the appeal filed by the assessee stood allowed only to that extent and did not amount to deletion of the penalty levied by the Assessing Officer under section 271(1)(c) of the Act by order dated June 27, 2011. Hence, the Tribunal had rightly observed that when the Tribunal held that the penalty could not be levied under section 271AAA of the Act, it was automatic that the levy of penalty made under section 271(1)(c) of the Act was confirmed. The Tribunal further observed that the assessee had not challenged the levy of penalty under section 271(1)(c).(AY.2008-09)

R. Mahalakshmi (Smt.) v. ACIT (2020) 427 ITR 126 / 193 DTR 313 / 273 Taxman 17 (Mad.)(HC)

2426 **S. 271(1)(c) : Penalty – Concealment – Survey – Before due date of filing of return – Amount disclosed in the return – Return accepted without additions – Levy of penalty is held to be not valid. [S. 132, 133A, 139(1)]**

Dismissing the appeal of the revenue the Court held that the Tribunal proceeded on the principle of law that when the assessee had disclosed the amount during the survey action under S. 133A and the amount was disclosed in the return of income filed under section 139(1), there could not be any order of penalty under section 271(1)(c). (AY.2012-13)

PCIT v. Yamunaji Corporation (2020) 424 ITR 369 (Guj.)(HC)

2427 **S. 271(1)(c) : Penalty – Concealment – Capital or revenue – Claim for deduction disallowed – Penalty cannot be levied.**

Dismissing the appeal of the revenue the Court held that the disallowance of expenditure on account of the professional fees, travelling expenses, tender expenses, etc., with respect to the new power projects were wrongfully claimed as revenue expenditure by the assessee which was confirmed in quantum proceedings would not justify levy of penalty on the ground that inaccurate particulars of income had been furnished. *CIT v. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC),* (AY.2007-08)

PCIT v. CLP Power India Pvt. Ltd. (2020) 424 ITR 98 (Guj.)(HC)

S. 271(1)(c) : Penalty – Concealment – Inadvertent error – Failure to disallow the unpaid interest – Levy of penalty is held to be not justified. [S. 43B(e)] 2428

The assessee has not disallowed the unpaid interest under S. 43B of the Act. In response to penalty notice the assessee submitted that the it had returned a loss and had substantial carry forward losses also and consequently, the assessee had no benefit, interest or intention in making an unsupportable claim to enhance the loss. However the AO levied the penalty. On appeal the CIT(A) Deleted the penalty, which was affirmed by the Appellate Tribunal on the ground that the omission to make suo motu disallowance under section 43B(e) was an inadvertent error and not with an intention to understate the income. On appeal by revenue dismissing the appeal the Court held that the conduct of the assessee established that the omission to make suo motu disallowance under section 43B(e) was an inadvertent error and not with an intention to understate its income by furnishing inaccurate particulars and could not be stated to be a contumacious conduct on the part of the assessee with an intention to understate its income. (*MAK DATA P. LTD. v. CIT(2013) 358 ITR 593 distinguished, followed Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 (SC)*. (AY. 2012-13)
CIT v. Celebrity Fashions Ltd. (2019) 105 CCH 0499 / (2020) 421 ITR 458 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Business expenditure – Full particulars were declared in the return – Merely because disallowance of expense, levy of penalty is held to be not justified on merit – Not sticking of inapplicable portion in the notice – In assessment order it was clearly mentioned that penalty proceedings u/s 271(1)(c) had been initiated separately for furnishing inaccurate particulars of income – Penalty cannot be quashed only on technical ground not sticking of inapplicable portion in the notice. [S. 37(1), 274] 2429

Court held that it would be too technical and pedantic to take the view that because in the printed notice the inapplicable portion was not struck off, the order of penalty should be set aside even though in the assessment order it was clearly mentioned that penalty proceedings u/s 271(1)(c) had been initiated separately for furnishing inaccurate particulars of income, (iv) Penalty cannot be imposed for alleged breach of one limb of s. 271(1)(c) of the Act while proceedings were initiated for breach of the other limb of s. 271(1)(c). This vitiates the order of penalty, (v) Threat of penalty cannot become a gag and / or haunt an assessee for making a claim which may be erroneous or wrong Concealment of particulars of income was not the charge against the appellant, the charge being furnishing inaccurate particulars of income. It is trite that penalty cannot be imposed for alleged breach of one limb of Section 271(1)(c) of the Act while penalty proceedings were initiated for breach of the other limb of Section 271(1)(c). This has certainly vitiated the order of penalty. Followed *CIT v. Reliance Petroproducts Ltd. (2010) 322 ITR 158 (SC) (Referred v. CIT v. SSA's Emerald Meadows, (2016) 73 Taxmann.com 248(SC) / 242 Taxman 180 (SC); CIT v. SSA's Emerald Meadows, (2016) 73 Taxmann.com 241 (Karn.)(HC) CIT v. Manjunath Cotton and Ginning Factory 359 ITR 565 (Kran) (HC), CIT v. Samson Pernchery, (2017) 98 CCH 39 (Bombay); PCIT vs. New Era Sova Mine, (2019) SCC OnLine Bom.1032; PCIT v. Goa Coastal Resorts & Recreation Pvt. Ltd., (2019) 106CCH 0183 (2020) 113 taxmann.com 574 (Bom.) (HC); PCIT v. Shri Hafeez S. Contractor, ITA Nos.796 and 872 of 2016 dt. 11.12.2018.* (AY.2003-04)
Ventura Textiles Ltd. v. CIT (2020) 426 ITR 478 / 315 CTR 729 / 190 DTR 165 / 274 Taxman 144 (Bom.)(HC)

2430 **S. 271(1)(c) : Penalty – Concealment – Capital gains – Merely because claim is not accepted levy of penalty is held to be not justified. [S. 45, 54EC]**
Dismissing the appeal of the revenue that, merely because claim is not accepted levy of penalty is held to be not justified. Distinguished, *Mak Data P. Ltd v. CIT (2013) 358 ITR 593 (SC) UOI v. Dharmendra Textiles Processors and others (2008) 306 ITR 277 (SC)*. (AY. 2010-11)
CIT v. Bharatkumar Maneklal Parikh (2020) 185 DTR 77 (Bom.)(HC)

2431 **S. 271(1)(c) : Penalty – Concealment – Depreciation – Claim was withdrawn in the course of search proceedings – Deletion of penalty by the Tribunal is held to be justified. [S. 32, 132(4), 153A]**
Assessee filed its return claiming depreciation on its intellectual property rights. During the course of search proceedings as per the statement u/s 132(4) director of the company reduced the claim depreciation. AO imposed penalty under S. 271(1)(c) for raising a false claim. On appeal the Tribunal held claim of depreciation being a plausible claim, mere fact that same was withdrawn during subsequent search proceedings, would not give rise to penalty. Followed *CIT v Reliance Petro Products (P) Ltd (2010) 322 ITR 158 (SC)* (AY. 2004-05)
PCIT v. Financial Technologies India Ltd. (2019) 112 taxmann.com 398 / (2020) 269 Taxman 33 (Bom.)(HC)
Editorial : SLP of revenue is dismissed ; PCIT v. Financial Technologies India Ltd. (2020) 269 Taxman 32 (SC)

2432 **S. 271(1)(c) : Penalty – Concealment – Capital gains on sale of land – Revised return prior to issue of notice u/s 153C – Deletion of penalty is held to be justified. [S. 45, 139(3),153C]**
AO imposed penalty by taking a view that she had not shown capital gain arising from sale of land in original return and said gain was declared only in return filed pursuant to notice issued under S.153C of the Act. Tribunal held that the assessee had filed a revised return prior to issue of notice under S.153C wherein capital gain in question was duly reflected. High Court affirmed the order of the Tribunal. (AY. 2010-11)
PCIT v. Prabhjot Kaur Chhabra (2020) 113 taxmann.com 140 / 269 Taxman 35 (MP)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Prabhjot Kaur Chhabra (2020) 269 Taxman 34 (SC)

2433 **S. 271(1)(c) : Penalty – Concealment – Deletion of penalty on the basis of order of sister concern is held to be justified – No question of law. [S. 260A].**
Tribunal deleted the penalty relying upon its own decision in respect of sister concern of assessee. High Court affirmed the order of the Tribunal. (AY. 2008-09)
PCIT v. Synbiotics Ltd. (2019) 112 taxmann.com 399 / (2020) 269 Taxman 51 (Guj.)(HC)
Editorial: SLP of revenue is dismissed; PCIT v. Synbiotics Ltd. (2020) 269 Taxman 50 (SC)

S. 271(1)(c) : Penalty – Concealment – Gift – Burden of proof on revenue – Donors taxpayers declared transactions in their returns – Deletion of penalty by the Tribunal is held to be justified. 2434

Dismissing the appeals of the revenue the Court held that t it was not a case of either concealment of income or of furnishing inaccurate particulars as neither the assessing authority nor the first appellate authority had recorded any finding to the effect that the details furnished by the assessee were incorrect, erroneous or false. The Assessing Officer did not record any finding as to an incorrect, erroneous or false return of income having been filed by the assessee which could lead to the fact that the assessee had furnished inaccurate particulars of income which would have made him liable for penalty under section 271(1)(c). The Assessing Officer had only doubted the genuineness of the gifts on the ground of human probabilities and had also doubted the creditworthiness of the donors and genuineness of the transactions. The Tribunal had recorded that the identity of creditors, their creditworthiness and genuineness of the transactions were before the Assessing Officer who had not properly appreciated them and had discarded and doubted the genuineness of the gifts on the ground of human probabilities, though the donors were taxpayers and the amounts gifted had been disclosed in their tax returns for the relevant year. The Tribunal had recorded a finding of fact and that no penalty could be imposed under section 271(1)(c) as the Department had failed to establish that the assessee had concealed income or furnished inaccurate particulars of income. The order of the Tribunal deleting the penalty was justified. (ITA Nos. 276 to 277 of 2015, ITA Nos 187 to 200 of 2015 dt 26-08-2019) (AY. 2000-01 to 2005-06)

CIT v. Dinesh Chandra Jain. (2020) 420 ITR 364 (All) (HC)

S. 271(1)(c) : Penalty – Concealment – Order of Tribunal set aside the appeal to CIT(A) is held to be valid. [S. 254(1)] 2435

Dismissing the appeal of the assessee the Court held that the order of Tribunal directing the CIT(A) to decide the issue on merit is held to be valid. (ITA No. 52 of 2014 dt 4-2-2020) (AY.1997-98)

Gangadhar Narsingas Agrawal (HUF) v. ACIT (2020) 188 DTR 119 / 317 CTR 138 (Bom.) (HC)

S. 271(1)(c) : Penalty – Concealment – Assessee's good faith cannot be disproved – Transaction is held to be at ALP – Levy of penalty is held to be not justified.[S.92CA (3)] 2436

From the given facts it cannot be said that there was any surreptitious mechanism embarked upon by the assessee nor it can be said that the assessee failed to exercise their transactions with all the due diligence. In the present case the assessee has prepared its TP report in good faith and with due care. There is nothing on record to disprove the good faith and the due diligence discharged by the assessee in determining the ALP of transactions in the TP report submitted by the assessee. Therefore, it was held that Explanation 7 to section 271(1)(c) is not attracted in the present case, and hence, it is not a fit case for levying the penalty u/s 271(1)(c). Appeal of revenue was dismissed. (AY. 2006-07)

ITO v. Tianjin Tianshi India P. Ltd. (2020) 189 DTR 26 / 205 TTJ 107 (Delhi)(Trib.)

2437 **S. 271(1)(c) : Penalty – Concealment – Disallowance u/s 10A – Only on presumption basis – Not due to inaccurate information – Penalty was deleted[S.10A]**
The assessee has challenged imposition of penalty under section 271(1)(c). It was noted that the addition/disallowance made by Revenue on account of deduction claimed under section 10A of the Act is not due to any inaccurate particulars furnished by the assessee but on a purely presumptive basis. Thus, the penalty was accordingly deleted. (AY. 2006-07, 2008-09, 2009-10)
Auro Gold Jewellery Pvt. Ltd. v. Dy. CIT (2020) 192 DTR 89 / 204 TTJ 1005 (Mum.)(Trib.)

2438 **S. 271(1)(c) : Penalty – Concealment – Notice – Irrelevant words were not strike down by AO – Non-application of mind by AO – Notice was bad in law – Levy of penalty is held to be bad in law. [S.274]**
Where notice u/s 274 was issued by AO without striking the irrelevant words, the same shall be inferred as non application of mind by the AO. The said notice failed to specify whether the assessee had concealed the particulars of income or had furnished inaccurate particulars of income, so as to provide adequate opportunity to the assessee to explain the show cause notice. Thus, the notice was considered bad in law and could not be considered a valid notice sufficient to impose the penalty u/s 271(1)(c).(AY. 2008-09, 2009-10, 2011-12)
Darshan Pal Singh Garewal v. Dy. CIT (2020) 196 DTR 1 / 208 TTJ 259 (Amritsar) (Trib.)
Malti Gupta v. Dy. CIT (2020) 196 DTR 1 / 208 TTJ 259 (Amritsar) (Trib.)
Tejender Singh Sahai v. Dy. CIT (2020) 196 DTR 1 / 208 TTJ 259 (Amritsar) (Trib.)

2439 **S. 271(1)(c) : Penalty – Concealment – Failure to strike off the irrelevant default in show cause notice – Levy of penalty is held to be not valid [S. 274(1)]**
AO had failed to discharge his statutory obligation of fairly putting the assessee to notice as regards the default for which he was being proceeded against, therefore, the penalty under Sec. 271(1)(c) imposed by him in clear violation of the mandate of Sec. 274(1). Penalty order was quashed. (AY. 2004-05)
Pardeep Kumar Sareen v. ITO (2020) 206 TTJ 12 (UO) (Amritsar) (Trib.)

2440 **S. 271(1)(c) : Penalty – Concealment – Notice – Not specifying the charge – Quantum appeal admitted before High Court – Penalty was deleted. [S.274]**
In the present case, considering the observations of the Assessing Officer in the assessment order alongside his action of non-striking off of the irrelevant clause in the notice shows that the charge being made against the assessee qua S. 271(1)(c) of the Act is not firm and, therefore, the proceedings suffer from non-compliance with principles of natural justice. The penalty is not leviable in accordance with law. Also on the ground that quantum appeal is admitted and pending before High Court to decide on merit . (AY. 2010-11)
Jamsetji Tata Trust v. ACIT (2020) 208 TTJ 303 (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Failure to deduct tax at source – Transfer pricing adjustments – Explanation 7 – Deletion of penalty is held to be justified. [S. 92C] 2441

The Assessing Officer levied the penalty on TP adjustment. On appeal CIT(A) held that provisions of Explanation 7 to Section 271(1)(c) are not attracted. On appeal by the revenue the Tribunal held that the assessee has prepared its TP report in good faith and with due care. There is nothing on record to disprove good faith and due diligence discharged by assessee in determining ALP of transactions in TP report submitted by assessee. Accordingly Explanation 7 to section 271(1)(c) is not attracted. Appeal of revenue was dismissed.

ITO v. Tianjin Tianshi India P. Ltd. (2020) 189 DTR 26 / 205 TTJ 107 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Depreciation on digital set top box and control room equipment at sixty per cent – Restricted to fifteen per cent – Levy of penalty is not valid. 2442

Allowing the appeals the Tribunal held that the declining of the claim of depreciation at 60% on digital set top box and control room equipment at sixty per cent and restricted to fifteen per cent, levy of penalty is held to be not valid.(AY. 2011-12, 2014-15)

Abs Entertainment Pvt. Ltd. v. Dy. CIT (2020) 84 ITR 20 (SN) (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Capital gains – Transfer of book adjustment – Income resulting to loss – Inadvertent mistake – Levy of penalty is held to be not justified. [S. 45] 2443

Allowing the assessee the Tribunal held that the explanation furnished by the assessee that by inadvertent mistake and human error, the capital gains derived from transfer of equity shares were not reported in the return of income filed for the relevant year was bona fide. It was possible when a transaction was settled by book adjustment that too on the direction of the High Court, to have an understanding that the particular transaction could not lead to tax. Moreover, even after computation of long-term capital gains from transfer of the equity shares the assessed income for the year resulted in a net loss. Thus, there was no deliberate attempt by the assessee to conceal particulars of income or evade payment of taxes. Liability could not be fastened under section 271(1)(c) of the Act. (AY. 2007-08)

Advent Computer Services Ltd. v. ACIT (2020) 84 ITR 29 (SN) (Chen.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Bona fide and inadvertent reporting of lower Book profits in return – Levy of penalty is not valid. [S. 115JB] 2444

Tribunal held that a perusal of the details filled in the return would show that the assessee had filled in the business income details therein, instead of filling up the details of the profit and loss account. This mistake had a cascading effect and the software had picked up the erroneous figures for computing the book profits under section 115JB. The audited profit and loss account disclosed the net profit before tax at Rs. 1,52,18,851. The audit report obtained in form 29B under section 115JB of the Act also disclosed the net profit at Rs. 1,52,18,851 and the book profits were also arrived at, at the very same figure. The mistake had occurred due to erroneous feeding of data

while filling up the return of income. This was a bona fide and inadvertent error. The imposition of penalty was not justified. (AY.2011-12)
Vanshee Builders and Developers P. Ltd. v. Dy.CIT (2020) 84 ITR 1 (SN) / (2021) 187 ITD 361 (Bang.)(Trib.)

2445 **S. 271(1)(c) : Penalty – Concealment – Show-cause Notice and penalty order not specifying the charge – Levy of penalty is held to be not valid. [S. 274]**
Tribunal held that the appeal, that the Assessing Officer had initiated the penalty proceedings in the assessment order both on the counts of concealment of income as well as of furnishing of inaccurate particulars of income. In the show-cause notice under section 274 also neither of the two charges was struck out. In the penalty order also the penalty was levied for both defaults. The penalty levied by the Assessing Officer was not sustainable in law. (AY. 2012-13)
Sequel Alloys and Wires Pvt. Ltd. v. Dy. CIT (2020) 83 ITR 190 (Delhi)(Trib.)

2446 **S. 271(1)(c) : Penalty – Concealment – Failure to specify the charge, which limb penalty proceedings initiated – Penalty quashed.**
Tribunal held that the notice issued before levy of the penalty, the Assessing Officer had mentioned "have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of Explanations 1, 2, 3, 4 and 5." The notice clearly showed that it had not specified under which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated, whether for concealment of particulars of income or furnishing inaccurate particulars of income. The entire penalty proceedings were, therefore, vitiated and no penalty was leviable. Further, the Assessing Officer in the assessment order had not recorded any satisfaction under which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated. The Assessing Officer merely mentioned at the bottom of the assessment order after computing the income that penalty proceedings under section 271(1)(c) of the Act had been initiated separately. Thus, there was violation of the law in the matter. Hence, there was no justification to levy the penalty under section 271(1)(c) of the Act against the assessee. The orders of the authorities were to be set aside and the penalty was to be deleted. (AY. 1996-97)
Raj Kumar v. ITO (2020) 82 ITR 509 (Delhi)(Trib.)

2447 **S. 271(1)(c) : Penalty – Concealment – Search cases – Income declared in return filed – Levy of penalty is held to be not valid – Not mentioning the specific offence committed – Levy of penalty is held to be not valid. [S. 132(4), 153A]**
The Tribunal held that the assessee duly disclosed the transactions reflected in the diaries in the returns filed pursuant to the notice under section 153A and paid taxes thereon. Hence, all the three conditions for claiming immunity from levy of penalty, viz., declaration made under section 132(4) by duly substantiating the manner in which such undisclosed income was derived ; including those undisclosed income in the return filed under section 153A and the payment of taxes thereon, were duly complied with by the assessee in the instant case. Hence, the case of the assessee fell within clause 2 of Explanation 5 to section 271(1)(c) wherein immunity from levy of penalty is squarely provided in the statute itself. In respect of penalty on additions made during the course

of assessments for the three assessment years, i.e., assessment years 2001-02, 2003-04 and 2007-08, the penalty was to be deleted because the Assessing Officer had not mentioned the specific offence committed by the assessee in the quantum assessment order (thus improperly recording satisfaction) and also for initiating penalty under one limb and levying penalty under the other limb of the alleged offence. By this, the penalty levied for the three assessment years in the sum was deleted. (AY.2001-02 to 2007-08)
Jayant B. Patel HUF v. Dy.CIT (2020) 80 ITR 44 (SN) (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Claim supported by various decisions and documentary evidence – Levy of penalty is held to be not valid. 2448
Tribunal held that the assessee had incurred expenditure under the heads repairs and collection charges, expenditure on tourist buses and interest on housing loan. The Department had not questioned the genuineness of the expenditure. Even at the time of hearing, the Department did not produce any evidence suggesting that the assessee had not incurred these expenses. Therefore, these expenses were genuine. All the facts were disclosed and the claim was made for deduction on expenditure incurred by the assessee. As per record the assessee had made a bona fide claim. The Assessing Officer as well as the Commissioner (Appeals) had not challenged the genuineness or bona fides of the expenditure so incurred. The claim of the assessee was also supported by various decisions and documentary evidence placed on the record. Thus, penalty could not be levied where a bona fide claim of the assessee was rejected by the Department. This was not a fit case for levy of penalty under section 271(1)(c).(AY.2013-14)
Kumudini V. Gavit (Smt.) v. ITO (2020) 80 ITR 30 (SN) (Pune) (Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of professional fees and interest on borrowed capital – Levy of concealment penalty is held to be not valid. [S. 36(1)(iii), 37(1)] 2449
Allowing the appeal of the assessee the Tribunal held that, since assessee had furnished all particulars related to its claim of expenditures towards professional fees and interest paid on capital borrowed and none of evidences filed by assessee were incorrect, merely because issue was decided against assessee by instant court by confirming disallowance of these expenses, it could not result into levy of penalty. (AY. 2010-11)
Quippo Telecom Infrastructure (P.) Ltd. v. ACIT (2020) 185 ITD 275 / (2021) 198 DTR 202 / 2009 TTJ 828 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Arbitration award – dredging contract – Annexed a Note in ITR based on relevant DTAA that said amount was not taxable in India – Levy of penalty is held to be not justified – DTAA-India-Netherland – In computing time limitation for pronouncement of order by Tribunal, nation wide COVID 19 lockdown period was to be excluded. [S. 28(i), 255, ITAT R. 34, Art. 5, 7] 2450
Pursuant to a dredging contract awarded by New Mangalore Port Trust (NMPT) in 1994, assessee Dutch Company opened a site office there and upon completion of project in 1995-96, assessee closed it. Appellant made claims on NMPT for additional work performed while NMPT made counter claim for loss due to delay in completion

of contract. In 1998, Arbitral award was passed in favour of appellant. Ultimately issue reached before High Court, but NMPT withdrew its appeal and in September, 2000, paid assessee Rs. 30.79 crores. In return of income, this amount was reduced from business profit for determining taxable income. In support of its stand, assessee annexed a Note that relying upon content of India-Netherlands Treaty said amount was not taxable-Assessee's contention, based on Article 5, read with article 7 of DTAA, was that amount of said arbitration award was not taxable in India since there was no permanent establishment in India in Financial Year 2000-01 for NMPT project. Tribunal held that though such explanation had not been found to be false by authorities below, same was not, however, found tenable by them, said amount was brought to tax and penalty proceeding had been initiated. Tribunal held that since explanation given by assessee was supported by rational supporting evidences, bonafides should be taken as proved. Accordingly the penalty was deleted. Tribunal also held that in computing time limitation for pronouncement of order by Tribunal, nation-wide COVID 19 lockdown period was to be excluded.(AY. 2001-02)

Van Oord Dredging and Marine Contractors BV v. ADIT (2020) 184 ITD 750 / 191 DTR 276 / 206 TTJ 386 (Mum.)(Trib.)

2451 **S. 271(1)(c) : Penalty – Concealment – Estimate of income – Satisfaction – 8% of contractual receipts – Levy of penalty is held to be not justified.**

Assessing Officer also passed a penalty order for furnishing inaccurate particulars of income. Allowing the appeal of the assessee the Tribunal held that when income of assessee is determined on estimate basis then no penalty under section 271(1)(c) can be imposed for concealment and furnishing inaccurate particulars of income. Tribunal also held that penalty order was silent on issue as to how satisfaction of concealment/ furnishing of inaccurate particulars was arrived at. Accordingly the penalty order was set aside. (AY. 2013-14)

Anil Abhubhai Odedara v. ITO (2020) 183 ITD 313 (Rajkot)(Trib.)

2452 **S. 271(1)(c) : Penalty – Concealment – Show cause notice – Charge not specified – Concealment of income or inaccurate particulars of income – Levy of penalty is not justified – Monetary limit less than 50 lakhs – Appeals of revenue was dismissed. [S. 253, 268A, 274]**

Dismissing the appeal of the revenue the Tribunal held that, where the Assessing Officer had not struck down irrelevant portion in show-cause notice and it was not clear whether penalty levied was for concealment of income or furnishing inaccurate particulars of income. Deletion of penalty is held to be justified. Tribunal also held that monetary limit less than 50 lakhs the appeals of revenue was dismissed, followed Circular No 3/2018 dt 11-7-2018. (AY. 2000-01 to 2004-05)

ITO v. A. Shihabudeen (2020) 182 ITD 91 / 79 ITR 280 (Cochin)(Trib.)

2453 **S. 271(1)(c) : Penalty – Concealment – Disallowance of set-off of loss from purchase and sale of shares treating it as speculation loss – Disallowance of claim – Penalty not sustainable. [S. 73]**

The Tribunal held that the mere disallowance or disagreement of a claim could not be the basis for levy of penalty and the addition made in the assessment order by the

Assessing Officer could not be a gateway for automatic levy of penalty. The penalty could not be automatic. The claim of the assessee was in consideration of the financial statements and the assessee adopted one of the possible views that the business loss could be set off against the income from other sources. The assessee had made a claim under the bona fide belief that it was allowable under the law. The penalty was not sustainable.(AY.2005-06)
TIL Investments P. Ltd. v. ITO (2020) 83 ITR 77 (SN) (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of interest on estimate basis – Penalty not leviable. [S. 36(1)(iii)] 2454
Tribunal held that, disallowance of interest on estimate basis, there being no concealment of fact per se, imposition of penalty was not justified in the absence of any contumacious or dishonest conduct by the assessee. (AY.2012-13)
Electron Colour Chem Pvt. Ltd. v. ITO (2020) 83 ITR 73 (SN) (Ahd.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Failure to specify the specific charge in the show cause notice – Penalty levied was quashed. 2455
Allowing the appeal the Tribunal held that the show-cause notices issued by the Assessing Officer did not specify under which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, since the issue of notice itself was bad in law, the entire penalty proceedings were vitiated and the penalty proceedings were liable to be quashed. (AY.2009-10 to 2012-13)
Akhil Meditech Pvt. Ltd. v. CIT (2020) 83 ITR 68 (SN) (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of expenses on estimate basis – Capital or revenue – Debatable issue – Levy of penalty is not justified – Disallowance was deleted – Levy of penalty is not justified. [S. 14A] 2456
Tribunal held that when the disallowance of expenses on estimate basis and also on the issue whether allowable as revenue or Capital being a debatable issue, levy of penalty is not justified. Tribunal also held that when the disallowance was deleted, the Levy of penalty is not justified. (AY.2002-03)
Piramal Healthcare Ltd. v. Dy. CIT (2020)82 ITR 47 (SN) (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – No specific charge recorded – addition on estimate basis – Appeal not filed against quantum addition – Levy of penalty is not justified. [S. 274] 2457
Allowing the appeal the Tribunal held that the Assessing Officer had not raised any specific charge against the Assessee. The assessment order did not record a specific charge whether the assessee had concealed income or had furnished inaccurate particulars of income. The notice issued under S.274 was also silent on this issue, and the Assessing Officer had levied the penalty on concealment of income without confronting the assessee with any specific charge. The addition made on estimate basis. Levy of penalty is held to be not justified. *PCIT v. Sahara India Life Insurance Co Ltd. (ITA. No. 475 of 2019 dt. 2.8. 2019 (Delhi)* relied. (AY. 2012-13)
Arvind Kumar Arora v. ITO (2020) 82 ITR 28 (SN) (Delhi)(Trib.)

2458 **S. 271(1)(c) : Penalty – Concealment – Failure to disclose in respect of income with respect to two bank accounts – Mistake of consultant – Omission neither deliberate nor contumacious in conscious disregard to his obligation – Bona fide mistake – Levy of penalty is held to be not justified. [S. 44AD, 139, 143(2)]**

Tribunal held that notice under section 143(2) was required to be given to an assessee by the Assessing Officer for scrutinising its return. This was an opportunity to an assessee to submit what the assessee wants to submit in support of the return he had submitted. On receipt of such notice, the assessee realised the mistake that his tax consultant had not included the income with respect two bank accounts. The assessee had submitted details of the bank accounts to the tax consultants and its income was to be computed under section 44AD. Somehow the details from two banks accounts were not considered by the tax consultant while filing the return. Therefore, the moment it came to know to the notice of the assessee, he immediately filed a revised statement and paid taxes. He did not dispute inclusion of the income embedded in those accounts. Similarly, he had included certain minor income in shape of dividend income and interest income. No doubt the assessee should have been more vigilant while filing return but he was running a proprietary concern and had given all the details to his tax consultant. Under some human error, the proceeds from retail sale of chemicals deposited in two accounts remained to be accounted for the purpose of computation of turnover for estimating the profits under section 44AD. Omission by the assessee was neither deliberate nor contumacious in conscious disregard to his obligation. The assessee had immediately filed a revised statement and paid taxes. It was a bona fide mistake not warranting penalty. (AY.2014-15)

Rashid K. Nurani v. ITO (2020) 78 ITR 26 (SN) (Ahd.)(Trib.)

2459 **S. 271(1)(c) : Penalty – Concealment – Disallowance of interest – Mere wrong claim not tantamount to furnishing of inaccurate particulars of income or concealment of income.**

Tribunal held that it was only a case of opinion on the part of the Assessing Officer that the assessee had diverted interest bearing funds to interest-free advances ignoring the fact that the assessee had huge interest-free reserves. The penalty was imposed by calculating notional interest on interest-free advances. The assessee had not concealed any particulars of income. Even if the assessee had made a wrong claim a mere wrong claim could not amount to furnishing of inaccurate particulars of income or concealment of income. The penalty was not sustainable. (AY.2011-12)

Deem Roll-Tech Ltd. v. Dy.CIT (2020) 78 ITR 45 (SN) (Ahd.) (Trib.)

2460 **S. 271(1)(c) : Penalty – Concealment – Not representing before CIT(A) – Matter remanded to CIT(A). [S. 250, 254(1)]**

Tribunal held that after the resignation of the erstwhile directors, the Central Excise Department had conducted a search at the premises of the assessee. The erstwhile directors were not associated with the assessee's matters subsequent to their retirement and were not aware of the assessments completed and consequent penalty levied. Being unaware, they did not represent the assessee either in quantum proceedings or in penalty proceedings. Consequent to labour unrest and the financial difficulties faced by the present directors, they also could not represent before the Commissioner (Appeals)

as regards the penalty imposed under section 271(1)(c). The penalty proceedings initiated were separate from the quantum assessments and if the assessee could prove in the penalty proceedings that the additions in the quantum assessments were not warranted, necessarily the penalty imposed had to be deleted. Since the assessee had not been represented before the Commissioner (Appeals) with regard to the penalty proceedings, in the interest of justice and equity, as a last chance, the assessee should be granted one more opportunity of being heard. The assessee shall co-operate with the Department and furnish necessary documents and evidence to prove its case. For the purpose the issue was restored to the Commissioner (Appeals). (AY.2000-01 to 2004-05)
United Tropicon Veneers P. Ltd. v. ACIT (2020) 78 ITR 299 (Cochin)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Notice not specifying charge – Natural justice – Show – cause notice void ab initio – Levy of penalty is not valid. [S. 274] 2461
Tribunal held that, assessee and the charge against the assessee in the assessment order as well as in the penalty notice was nebulous and the assessee was unable to understand the purport and import of the notice issued under section 274 read with section 271. Therefore, the principles of natural justice had been flagrantly violated. Thus the show-cause notice, which did not specify the charge and limb under which the penalty was proposed to be levied, was void ab initio and the consequent penalty imposed on the basis of such notice was illegal and bad in law and liable to be deleted. (AY. 2014-15)
Risha Tour And Travels v. ITO (2020) 78 ITR 77 (Luck.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Not specifying the charge – Notice vague – Levy of penalty not sustainable. [S. 274] 2462
Tribunal held that in the notice issued to the assessee the Assessing Officer had levied a charge of concealing the particulars of income or furnishing inaccurate particulars of such income. Neither the assessee nor anyone else could make out whether the notice under section 274 read with section 271 was issued for concealing the particulars of income or for furnishing inaccurate particulars of such income disabling it to meet the case of the Assessing Officer. The jurisdictional notice was vague and the consequent levy of penalty could not be sustained.(AY.2009-10)
Rajendra Kumar Khandelwal v. Dy.CIT (2020) 78 ITR 252 (Jaipur)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Failure to furnish details of persons from whom donations received – Not a case of concealment of income or furnishing inaccurate particulars of income – Penalty not leviable. [S. 11, 132] 2463
Tribunal held that the assessee had disclosed the entire receipt of donations. However the Assessing Officer found that it was not a voluntary donation but anonymous donation. When the assessee had disclosed the entire receipt and the expenditure and claimed the receipt was exempted under section 11, merely because the assessee could not furnish the details of the persons from whom the donations were received, could not be a reason for concluding that the assessee had concealed any part of income or furnished inaccurate particulars. Making a statutory claim under section 11 could not be construed as furnishing inaccurate particulars. (AY.2011-12 to 2014-15)
Meenakshi Ammal Trust v. ACIT (2020) 78 ITR 138 / 186 DTR 257 / 203 TTJ 785 (Chennai)(Trib.)

2464 **S. 271(1)(c) : Penalty – Concealment – Disallowance of expenses – Amount debited in profit and loss account – Neither concealment of income nor furnishing inaccurate particulars of income – Penalty not warranted. [S.14A, R. 8D]**
Tribunal held that the assessee had shown all the expenses in the profit and loss account and there was no rejection of books of account and there was no such finding in the penalty order or the appellate order. There was no mandatory rule that for earning exempt income the assessee had to incur any expenditure. It is only when the Assessing Officer is satisfied about the type and amount of expenses which have been incurred specifically for earning the exempt income and had been debited to the profit and loss account for claiming expense against the revenue liable to be taxed. In the instant case the disallowance under section 14A was on estimated basis made proportionately out of the finance charges. There was no case of concealment of particulars of income or furnishing of inaccurate particulars of income since the amount had been duly debited as expenses in the profit and loss account. Since no intention or mens rea on the part of the assessee was apparent on the face of the record the Assessing Officer was not justified in levying the penalty (AY.2006-07)
Unique Ways Management Service P. Ltd. v. ACIT (2020) 79 ITR 11 (SN) (Indore)(Trib.)

2465 **S. 271(1)(c) : Penalty – Concealment – Penalty initiated under both limbs – Penalty levied for concealment of income – Levy of penalty is held to be not valid.**
Tribunal held that the penalty was initiated under both limbs of section 271(1)(c) of the Income-tax Act, 1961 whereas in the assessment order the penalty was only initiated for concealment of income. There was an ambiguity in the mind of the Assessing Officer while imposing penalty. Whenever penalty is to be imposed, the assessee must have a chance of self-defence, under the principles of natural justice and in this, since satisfaction was not recorded by the Assessing Officer it was obvious that the assessee was unable to prepare her defence whether penalty was imposed for concealment or furnishing of inaccurate particulars of income. In such circumstances, there could not be any imposition of penalty under section 271(1)(c). Accordingly the penalty was cancelled.
Vimalaben B. Patel (Smt.) v. ITO (2020) 79 ITR 25 (SN) (Pune)(Trib.)

2466 **S. 271(1)(c) : Penalty – Concealment – Disallowance of expenses due to not deduction of tax at source – Disallowance of expenses on Corporate social responsibility expenses – Levy of penalty is held to be not valid.[S. 37(1), 40(a)(1), 40(a)(iii)]**
Held, that the disallowances made under section 40(a)(i) and 40(a)(iii) are statutory disallowances which are required to be made for failure to deduct tax at source under the provisions of the Act. It was not the case of the Department that the expenses, which were disallowed due to statutory provisions, were either bogus or non-genuine, i.e., but for the statutory provisions, the expenses were allowable under the Act. The assessee had disclosed the details relating to the relevant expenses. Hence, the question of furnishing of inaccurate particulars of income with regard to these disallowances did not arise. Merely making a claim which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars of income. The assessee had claimed expenditure which was otherwise allowable, but for the statutory provisions of section 40(a)(i) and (iii). Hence,

such statutory disallowance would not fall under the category of furnishing of inaccurate particulars of income and therefore, penalty levied under section 271(1)(c) was not sustainable on such kind of disallowances. Followed *CIT v. Reliance petroproducts P. Ltd (2010) 322 ITR 158 (SC) Tanushree basu v. ACIT (I. T. A. No. 2922/Mum/2012, dt 25-5 2013*. As regards disallowance of expenses on Corporate social responsibility expenses, claim being bonafide levy of penalty is held to be not justified. (AY.2015-16)
Frontier Business Systems P. Ltd. v. ITO (2020) 79 ITR 34 (SN) (Bang.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Not specifying the charge – Valuation estimation – Levy of penalty is not justified – Below monetary limit – Department is precluded from filing an appeal before Appellate Tribunal. [S. 253, 274] 2467
Tribunal held that the Assessing Officer had not struck out the irrelevant portion in the notice. It was not clear whether he had levied the penalty for concealment of particulars of income or furnishing of inaccurate particulars of income. In the penalty order also, it was not clear that whether he had levied the penalty for concealment of income or furnishing inaccurate particulars of income. The penalty was levied by the Assessing Officer on account of unexplained investments in construction of building, on receipt of valuation report from the District Valuation Officer and the addition was not related to any items mentioned in para 10(d) of the Circular No. 3 of 2018 dated July 11, 2018 (2018) 405 ITR 29(St.). This being so, the Department was precluded from filing the appeal since the monetary limit for filing the appeal before the Tribunal was Rs. 50 lakhs, as prescribed by the Central Board of Direct Taxes. There was no evidence to show that the assessee had understated the construction expenses in its accounts. The only basis for the addition in the assessment as well as for the levy of penalty was the Department Valuer's estimated figure. A valuation estimate, without more, could not justify a finding of concealment(AY.2000-01 to 2004-05)
ITO v. A. Shihabudeen (2020) 79 ITR 280 / 182 ITD 91 (Cochin)(Trib.)

S. 271(1)(c) : Penalty – Concealment – No detailed finding – Matter remanded to CIT(A) to decide the issue by passing a reasoned order. 2468
Tribunal held that there was no detailed finding given by the Commissioner (Appeals) as regards how the concealment of particulars of income relating to the confirmation in respect of unsecured loan or receipt of cash and insurance commission fell within the purview of section 271(1)(c). Merely holding that confirmation in respect of unsecured loan, receipt of cash and insurance commission clearly fell within the ambit of concealment was not sufficient. The Commissioner (Appeals) had not considered the submissions of the assessee during the appellate proceedings. Therefore, this issue of unsecured loan, receipt of cash and insurance commission was set aside to the Commissioner (Appeals) for decision by a reasoned order.(AY.2010-11, 2011-12)
Devender Kumar v. ITO (2020) 79 ITR 419 (Delhi)(Trib.)

2469 **S. 271(1)(c) : Penalty – Concealment – Addition set aside Levy of penalty is held to be not valid – Not specifying the charge – Levy of penalty is not valid – Penalty on account of deemed concealment is unsustainable as the Assessing Officer has not made any reference to any incriminating material or income declared by the assesssee. [S. 132(4), 153A, Explanation 5, 274]**

Tribunal held that as regards the addition made by the Assessing Officer on account of disallowance of certain expenses since this issue had been set aside by the Tribunal to the record of the Assessing Officer, the addition itself was no more in existence and consequently the penalty levied under section 271(1)(c) in respect of such addition would not survive. Tribunal held that the show-cause notice itself suffered from illegality of not specifying the default or charges for which the penalty proceedings were proposed to be initiated by the Assessing Officer. Even in the penalty order, the Assessing Officer had levied the penalty in respect of the amount surrendered by the assessee as well as the additions made by him in the assessment proceedings. Even in the concluding part the Assessing Officer was not sure about the charge and default of the assessee for which the penalty was levied under section 271(1)(c). The Assessing Officer had failed on both the counts as neither at the time of initiation of penalty proceedings nor at the time of passing the penalty order has specified the charge. Tribunal also held that

Explanation 5A to section 271(1)(c) was a deeming fiction which could not be extended beyond the scope of the provision. Only when the conditions prescribed under Explanation 5A and particularly the income representing money, bullion, jewellery or other valuable article or thing or income based on any entry in any books of account or other record was found, would Explanation 5A be attracted and the assessee could not escape from the mischief of the penalty provision under section 271(1)(c) merely because the income was declared in the return filed after search. The Assessing Officer had even not made any reference to any incriminating material so as to bring the income declared by the assessee in the return filed in response to the notice under section 153A within the ambit of Explanation 5A to section 271(1)(c). Accordingly, Explanation 5A to section 271(1)(c) would not be applied in the case of the assessee. (AY.2010-11, 2011-12, 2012-13)

Dy.CIT v. Prakash Chand Sharma (2020) 79 ITR 386 (Jaipur)(Trib.)

2470 **S. 271(1)(c) : Penalty – Concealment – Initiation of penalty proceedings on both charges – Penalty levied on a specific charge of concealing particulars of income – Levy of penalty is held to be justified. [Explanation 5A]**

The Tribunal held that the assessee was made aware of both the charges at the time of initiation of penalty proceedings and while finally levying the penalty, the Assessing Officer had given a specific finding that it was a case of concealment of particulars of income. This was not a case of lack of opportunity to the assessee or lack of application of mind on the part of the Assessing Officer. It was not the case of the assessee that the charge of concealment of particulars of income was not attracted in the facts of the present case. The Assessing Officer had invoked the provisions of Explanation 5A to section 271(1)(c) of the Income-tax Act, 1961 and this had been confirmed by the Commissioner (Appeals). The Commissioner (Appeals) had dismissed the assessee's

contention that it had suo motu filed the revised return disclosing unexplained investment in jewellery found during the course of search, on the ground that such return had been filed subsequent to the date of search. The penalty levied by the Assessing Officer was confirmed. (AY. 2012-13)
Sarla Mundra (Smt.) v. Dy. CIT (2020 81 ITR 65 (SN) (Jaipur)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Capital gains – Bonafide belief – Sale not complete – Failure to disclose capital gains – Levy of penalty is held to be not justified. [S. 45] 2471
Tribunal held that the buyer and the seller had agreed that they would present the cheques in October, 2010 whereas the Reserve Bank of India put restrictions on the functioning of the bank with effect from September 24, 2010. Due to the bank being in critical financial condition and the restrictions imposed on the bank by the Reserve Bank of India no payment was realised in the year 2011-12. The assessee was under the bona fide belief that since he had not received any consideration during the relevant year, the sale was not complete and no profits accrued to him. The procedure of imposition of penalty under section 271(1)(c) shall arise only if there was any concealment of income or furnishing of inaccurate particulars of income. To determine these factors, the facts and circumstances are essential. The facts did not suggest even remotely that the assessee had concealed his income. Rather the assessee had acted under a bona fide belief and the Department had not placed on record any evidence of receipt of income regarding one-fourth share of the property by the assessee in the relevant year. Neither there was mens rea nor actus reus on the part of the assessee. Therefore this was not a fit case for imposition of penalty under section 271(1)(c) and the Assessing Officer was directed to delete the penalty. (AY. 2011-12)
Ravindra Anant Bhuskute v. ITO (2020)81 ITR 40 (SN) (Pune)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of service tax – Nether debited to profit and loss account nor claimed as expenditure – levy of penalty is held to be not justified. [S .43B] 2472
Allowing the appeal of the assessee the Tribunal held that merely disallowance of service tax under section 43B of the Act when nether debited to profit and loss account nor claimed as expenditure, levy of penalty is held to be not justified. (ITA No. 3915 / Delhi/ 2016 dt.15-6-2020) (AY. 2011-12)
C.S. Datamation Research Pvt. Ltd. v. ITO (2020) BCAJ-July-P. 48 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Employee Stock ownership Plan – Tax was deducted at source – Mistake of tax consultant – No intention to conceal income or deliberate default on part of assessee – Levy of penalty is not justified. 2473
Allowing the appeal the Tribunal held that the the assessee had been out of India and had been receiving salary from three different employers and the returns had been prepared by a consultant. The tax deducted at source on the salary had been already deducted and deposited to the Department. Further, the employee stock ownership plan (ESOP) amount was a non-cash transaction and on which the tax deducted at source had also been deducted and form 26AS clearly showed the tax deducted at source. Keeping in view the facts of the case, that the assessee had been in different jobs and

out of India, and that the returns had been prepared by a consultant, the explanation of the assessee could fairly substantiate that such explanation was bona fide and the material relevant to the computation of the total income had been disclosed by him. In the absence of any deliberate default on the part of the assessee, no penalty under S. 271(1)(c) of the Act was leviable. Since there was no intention of the assessee to conceal the income, the penalty levied was to be deleted. (AY.2011-12)
Sushil Kumar Bhati v. ITO (2020) 81 ITR 218 (Delhi)(Trib.)

2474 **S. 271(1)(c) : Penalty – Concealment – Loan against property – Interest capitalized – Inadvertently claimed in the return as deduction – Levy of penalty is not valid.**
Tribunal held that the assessee had explained before the Assessing Officer and the Commissioner (Appeals) that the business activity of the assessee was investment in real estate business and the activity constituted the business activity. The Assessing Officer and the Commissioner (Appeals) had proceeded on the basis that there was no income during the year 2015-16 and therefore there was no business activity, but this was a fallacy and could not be taken as the basis for imposing penalty. Thus, the provisions of section 271(1)(c) were not applicable in the present case. Hence, the penalty order were not sustainable. (AY. 2015-16)
UMG Properties P. Ltd. v. ACIT (2020) 80 ITR 448 (Delhi) (Trib.)

2475 **S. 271(1)(c) : Penalty – Concealment – Not specifying a specific charge – Levy of penalty is not valid. [S. 69B]**
Tribunal held that while issuing the notice under section 271(1)(c), the specific charge in terms of concealment of particulars of income or furnishing of inaccurate particulars of income was not ascertainable. Even while passing the penalty order, the Assessing Officer had not given a clear and specific finding how it was a case of concealment of income as well as furnishing of inaccurate particulars of income. Once the return filed under section 153A had been accepted by the Assessing Officer, it could not be a case of furnishing inaccurate particulars of income. It may be a case of concealment of income where the income had been found basis search proceedings conducted at the premises of the assessee. (AY.2008-09 to 2013-14)
Laxman Nainani v. Dy. CIT (2020) 80 ITR 1 (Jaipur) (Trib.)

2476 **S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction – Failure to state specific charge of penalty – Penalty deleted. [S. 274]**
The Tribunal held that the Assessing Officer had not recorded his satisfaction for initiation of penalty proceedings, but merely stated that the penalty proceedings under section 274 read with section 271(1)(c) had been issued separately for concealment of income and furnishing of inaccurate particulars of such income. This was not sufficient and therefore, the penalty proceedings could not said to be validly initiated. Similarly, in the penalty order passed under section 271(1)(c) of the Act, the Assessing Officer had mentioned that it was a case of deliberate concealment of income by furnishing inaccurate particulars. This was not sufficient to levy the penalty in dispute. Therefore, the entire penalty proceedings stood vitiated, because it was not in accordance with law. The penalty imposed was to be deleted. (AY.2003-04)
Hindon Forge P. Ltd. v. Dy. CIT (2020) 80 ITR 545 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment of income – Addition on basis of which penalty levied was deleted – Penalty will not survive. 2477

Dismissing the appeal of the revenue the Tribunal held that, addition on basis of which penalty levied was deleted. Penalty will not survive. (AY.2011-12, 2012-13)

Dy. CIT v. Galderma India Pvt. Ltd. (2020) 80 ITR 452 (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Gratuity and exhibition expenses – Genuineness of expenses not doubted – Failure to deduct tax at source – Levy of penalty is held to be not justified. 2478

The Tribunal held that the genuineness of exhibition expenses claimed was not found incorrect by the authority. Therefore the assessee should not be visited with penalty merely because the claim made by the assessee was not maintainable in the view of the Department unless and until the genuineness of the expenses claimed found to be incorrect or erroneous. The provisions of law permit the assessee to claim the deduction in the year in which the assessee deducts the tax at source and deposits the amount to the Department. Thus the assessee had not furnished any inaccurate particulars of income deliberately. Accordingly he could not be visited with the concealment penalty. Followed *Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 (SC)* (AY.2012-13)

Arrow Digital P. Ltd. v. Dy. CIT (2020) 80 ITR 360 (Ahd.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Not recording of satisfaction – Penalty is held to be not valid. 2479

Allowing the appeal of the assessee the Tribunal held that when the AO initiated penalty proceedings and sought for explanation, the assessee explained his transactions and brought to the notice of the Assessing Officer that the transactions were undertaken through banking channels. Therefore, the assessee prima facie placed relevant materials and explained the transaction. The penalty proceedings being a separate proceeding, if at all, the Assessing Officer intended to levy penalty, he is bound to record satisfaction that the explanation offered by the assessee is false. Since the Assessing Officer had not recorded such findings, the penalty levied was unsustainable and liable to be deleted. (AY.2016-17)

Gurusamy Ramamurthy v. ITO (2020) 81 ITR 9 (Chennai)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Furnishing inaccurate particulars of income – Sufficient interest – free funds available with Assessee – Interest expenses not disallowable – Mere wrong claim does not tantamount to furnishing of inaccurate particulars of income or concealment of income – Penalty not leviable in such cases. 2480

On appeal, the Tribunal held that sufficient interest-free funds were available with the assessee against which it had advanced a meagre amount on which it had not charged interest. Hence, interest was not disallowable. Moreover, it was only a case of opinion on the part of the Assessing Officer that assessee had diverted interest bearing funds to interest-free advances ignoring the fact that the assessee had huge interest-free reserves. The penalty was imposed by calculating notional interest on interest-free advances. The assessee had not concealed any particulars of income. Mere wrong claim could not amount to furnishing of inaccurate particulars of income or concealment of income, hence, levy of penalty was not sustainable. (AY.2011-12)

Deem Roll-Tech Ltd. v. DCIT (2020) 78 ITR 45 (SN) (Ahd.)(Trib.)

2481 **S. 271(1)(c) : Penalty – Concealment – Sale of fixed asset – Slump sale – Amount not offered as income – Levy of penalty is justified – Not striking off relevant limb of notice – Reply filed in response to notice – Presumption is that the assessee has understood the notice. [S. 50B, 50C, 274]**

The assessee sold immovable properties consisting of land, building and tea factory. Contention that sale was slum sale was not accepted by the AO. Addition is confirmed and penalty was also levied. CIT(A) confirmed the addition. On appeal the Tribunal held that the assessee failed to rebut the factual position on the basis of which the addition was made, the levy of penalty under S. 271(1)(c) was justified. As regards the contention of the assessee that in the show-cause notice, the AO had not struck off the relevant limb had no relevance since the assessee had filed an explanation in response to the notice, which meant that the assessee had understood the show-cause notice. (AY. 2013-14)

Muthukumaran Rangarajan v. ITO (2020) 77 ITR 421 / 185 ITR 365 / 192 DTR 263 / 206 TTJ 746 (Chennai)(Trib.)

2482 **S. 271(1)(c) : Penalty – Concealment – Addition on estimate basis – Levy of penalty is held to be not justified – Un accounted cash transaction – Levy of penalty is held to be justified – Disallowances u/s. 40(a)(ia) – Levy of penalty is held to be justified. [S. 40(a)(ia), 153A]**

Following the ratio in *CIT v. Smt. K. Meenakshi Kutty (2002) 258 ITR 494 (Mad.) (HC)*, the Tribunal held that addition on estimate basis, does not attract the penalty. As regards. Un accounted cash transaction the Levy of penalty is held to be justified. Similarly disallowances u/s 40(a) (ia) which the assessee failed to add while filing the return u/s 153A the levy of penalty is held to be justified. (AY. 2007-08)

S & P Foundations (P) Ltd. v. ACIT (2020) 186 DTR 122 (Chennai)(Trib.)

2483 **S. 271(1)(c) : Penalty – Concealment – Charitable Trust – Donation – Details of the persons from whom the donations were received could not be furnished – Levy of penalty is held to be not valid. [S. 11]**

Allowing the appeal of the assessee the Tribunal held that,the assessee has disclosed the entire receipt of donations. However the AO found that it is not a voluntary donation but anonymous donation. The fact that the assessee has disclosed the entire donation and claimed exemption U/s.11 of the Act is not in dispute. When the assessee has disclosed the entire receipt and the expenditure and claimed the same as exempted U/s.11 of the Act, merely because the assessee could not furnish the details of the persons from whom the donations was received, cannot be a reason for concluding that the assessee concealed any part of income or furnished inaccurate particulars. Making a statutory claim u/s.11 of the Act cannot be construed as furnishing inaccurate particulars. Accordingly the penalty levied is deleted. (AY. 2011-12 to 2014-15)

Meenakshi Ammal Trust v. ACIT (2020) 186 DTR 257 / 78 ITR 138 / 203 TTJ 785 (Chennai)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Survey – Surrender of income – No difference between returned income and assessed income – Penalty is not leviable – As regards non disclosure of rental income – Penalty is leviable. [S. 22, 133A] 2484

Tribunal held that the income of Rs. 3 crores as surrendered during the survey was duly declared in the return. The applicability of Explanation 5A is exclusively in the case of search and seizure action under S. 132 and the deeming provision cannot be applied in the case of survey conducted under S. 133A. When there was no difference between the returned income and the assessed income so far as the amount of Rs. 3 crores it would not amount to concealment of particulars of income or furnishing of inaccurate particulars of income in the return. Therefore the penalty was deleted. However with regard to the penalty levied by the AO in respect of the addition of Rs. 10,565 on account of non-disclosure of the rental income since it was a clear case of concealment of particulars of his income, the penalty levied by the AO to the extent of the addition of Rs. 10,565 was upheld. (AY. 2016-17)

Rajendra Shringi v. Dy.CIT (2020) 77 ITR 85 (Jaipur)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Inapplicable words in notice not struck off – Penalty order not specifying exactly under which limb penalty is levied – Penalty is held to be unjustified. [S. 274] 2485

The AO levied penalty which was confirmed by the CIT(A) On appeal the Tribunal held that notices under S. 274 read with S. 271(1)(c) issued to the assessee showed the inapplicable words in the notice had not been struck out. Even the last line of the notice only spoke of S. 271 and did not mention of S. 271(1)(c). The penalty order was based on furnishing of inaccurate particulars but the notice did not specify exactly under which limb the penalty under S. 271(1)(c) had been initiated. The AO was not sure under which limb of provisions of S. 271 the assessee was liable for penalty. The penalty levied under S. 271(1)(c) was not sustainable. (AY.2011-12)

Dibyajyoti Chemicals P. Ltd. v. Dy. CIT (2020) 77 ITR 40 (SN) (Cuttack)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Vague allegation – Not specifying specific charge – 0levy of penalty is not valid. [S. 274] 2486

Tribunal held that notice under S. 274 should specifically state the grounds mentioned in S. 271(1)(c), i.e., whether it is for concealment of income or for furnishing of inaccurate particulars of income and sending a printed form where all the grounds mentioned in S. 271 are mentioned would not satisfy requirement of law. The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed to the assessee. Accordingly, that in each of the notices issued by the AO under S. 274, the AO alleged that the assessee had concealed the particulars of his income or had furnished inaccurate particulars of such income. The allegation was vague and no penalty could be levied. (AY. 2009-10 to 2014-15)

Harshvardhan v. Dy. CIT (2020) 77 ITR 81 (SN) / 195 DTR 145 / 206 TTJ 894 (Bang.)(Trib.)

2487 **S. 271(1)(c) : Penalty – Concealment – Long term capital gains – Search – Addition on account of difference between the rate adopted by assessee and department – levy of penalty is held to be not justified. [S. 132, 139, 153A, 271(1)(c), Expl. 5A, 274]**

Tribunal held that under Explanation 5A to S 271(1)(c) the penalty shall be levied if the assessee in the course of action initiated under S. 132 was found to be the owner of any money, bullion, jewellery or other valuable article or there is some income based on the entry in the books of account or documents. Then, it shall be presumed that the assessee has either concealed the particulars of income or furnished inaccurate particulars of income. However in the case of the assessee there was no such allegation made by the authorities. The assessee had already disclosed the long-term capital gains in the return filed under S. 139. The addition in the assessment framed under S. 153A was made on account of the difference between the rate adopted by the assessee vis-a-vis that adopted by the Department as on April 1, 1981. The assessee had taken the rate at Rs. 84.80 per square foot for the acquisition of the land whereas the Assessing Officer had adopted the rate at Rs. 15 per square foot for the acquisition of such land as on April 1, 1981. Thus the addition was not on the basis of any incriminating document found during the course of search. The additional income in the return file under S. 153A was declared voluntarily and without any income or documents having been found by the Department in the manner provided under Explanation 5A to S. 271(1)(c). No undisclosed income by the Department was found in the course of the search conducted under S. 132. There could not be any penalty under Explanation 5A to S. 271(1)(c) until and unless it supported on the basis of incriminating document. (AY.2011-12)

Lopa Pankaj Dave (Smt.) v. Dy.CIT (2020) 77 ITR 29 (SN) (Ahd.)(Trib.)
Manubhai Bhailal Patel (Late) v. Dy.CIT (2020) 77 ITR 29 (SN) (Ahd.)(Trib.)
Ramanbhai Bhailal Patel (Late) v. Dy. CIT (2020) 77 ITR 29 (SN) (Ahd.)(Trib.)
Prabhaben M. Patel (Smt.) v. Dy.CIT (2020) 77 ITR 29 (SN) (Ahd.)(Trib.)

2488 **S. 271(1)(c) : Penalty – Concealment – Receipt of additional income not disclosed prior to search – Levy of penalty is justified – AO not sure on which count he intends to levy penalty – Two situations contradictory to each other – Returned and assessed income the Same and revised income accepted – Levy of penalty is not justified. [S. 132, 153A]**

Tribunal held that that both the two previous years had ended before the date of search. In the returns filed in response to the notice under S. 153A the assessee claimed that additional income had been received by him and the income was not declared by him in the returns filed before the date of search. Therefore the provisions of Explanation 5A to S. 271(1)(c) were applicable on account of concealment of particulars of his income or furnishing of inaccurate particulars of income because all the conditions laid down in Explanation 5A were met and the deeming provisions of S. 271(1)(c) were clearly applicable to the assessee. The assessee had concealed particulars of his income to the extent of additional income received by him. The assessee could not bring any cogent material to controvert the findings of the authorities. Accordingly, the penalty was justified for the assessment years 2010-11 and 2011-12.

The AO for the AYs 2012-13 to 2015-16 initiated penalty proceedings under S. 271(1)(c) on the differential amount disclosed in the return filed under S. 153A by the assessee without

mentioning either of the two limbs as provided under the provisions of S. 271(1)(c), i.e., for concealment of particulars of income or for furnishing of inaccurate particulars of such income. In the penalty order also he used both the expressions. The CIT(A) confirmed the penalty. On appeal the Tribunal held that the AO was not sure on which count he intended to levy penalty under the provisions of S. 271(1)(c) either for concealment of particulars of income or for furnishing of inaccurate particulars of such income. These two situations were contradictory to each other. Neither the assessment order nor the penalty order stated the specific charge of concealment or furnishing of inaccurate particulars of income. In all the cases, both the returned income and the assessed income was the same. Therefore, when the revised return was accepted and the income was assessed as per the revised return, there was no scope for penalty. The penalty levied by the AO which is confirmed by the CIT(A) is held to be not valid. (AY.2010-11 to 2015-16)
Dr. Subash Chandra Jena v. ACIT (2020) 77 ITR 44 (SN) (Cuttack)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of expenditure – Deletion of penalty is held to be valid. 2489
Dismissing the appeal of the revenue the Tribunal held that,where facts are on record and all information relating to expenditure has been fully disclosed in the financial statements and there is only a difference of opinion between the assessee and the AO regard the nature of expenditure. Deletion of penalty is held to be justified. (ITA No 1978 /Mum/2018 dt 11-10-2019) (AY. 2012-13)
DCIT v. Akruti Kailash Construction (2020) BCAJ-January-P.34 (Mum.)(Trib.)

S. 271A : Penalty – Failure to keep maintain – Retain books of accounts – Documents – Income exceeded prescribed limit – Levy of penalty is up held. [S. 44AA] 2490
Assessee was deriving income from sale of IMFL. During course of assessment proceedings, assessee was asked to produce books of account as per provisions of section 44AA for completing assessment. Since assessee failed to produce required books of account, Assessing Officer computed profits at rate of 4 percent of total turnover. He also imposed penalty under section 271A for not complying with provisions of section 44AA of the Act. Tribunal held that it is duty of assessee to maintain books of account as per provisions of section 44AA if his/her income exceeds prescribed limit. since assessee failed to do so, impugned order levying penalty was to be upheld. (AY. 2013-14)
Sanghamitra Pattnaik (Smt.) v. ITO (2020) 184 ITD 647 / 206 TTJ 35 (UR) / 79 ITR 46 (SN) (Cuttack)(Trib.)

S. 271A : Penalty – Failure to keep maintain – Retain books of accounts – Documents – Failure to produce books of account – Levy of penalty is held to be justified. [S. 44AA, 273B] 2491
Tribunal held that the explanation given by the assessee being not satisfactory levy of penalty is held to be justified. (AY. 2013-14)
Sanghamitra Pattnaik (Smt.) v. ITO (2020) 79 ITR 46 (SN) / 117 taxmann.com 179 (Cuttack)(Trib.)

2492 **S. 271AA : Penalty – Failure to keep and maintain books of accounts – Documents – International transaction – Transfer pricing – Information regarding international Transactions maintained properly in Transfer Pricing Report – Deletion of penalty is held to be justified. [S. 92, 92C, 92D, 92E, R. 10D, Form 3CEB]**
Dismissing the appeal of the revenue the Tribunal held that information regarding international Transactions maintained properly in Transfer Pricing Report and the Revenue had failed to point out any fallacy in the findings of the Commissioner (Appeals). (AY.2011-12)
ACIT v. Micromax Informatics Ltd. (2020) 84 ITR 19 (SN) (Delhi)(Trib.)

2493 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Undisclosed income and specifies manner in which such income derived – Failure of the raiding party to elicit a response from assessee regarding manner of deriving income – Deletion of penalty by the Tribunal is held to be valid. [S. 132(4), 271AAA(2)]**
Dismissing the appeal of the revenue the Court held that, failure of the raiding party to elicit a response from assessee regarding manner of deriving income-Deletion of penalty by the Tribunal is held to be valid. (R/TA No. 836 of 2028 dt 10-07-2018) (AY. 2011-12)
CIT v. Backbone Enterprise Ltd. (2020) 420 ITR 305 (Guj.)(HC)

2494 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Undisclosed income and specifies manner in which such income derived – Failure of the raiding party to elicit a response from assessee regarding manner of deriving income – Deletion of penalty by the Tribunal is held to be valid. [S. 132(4), 271AAA(2)]**
Dismissing the appeal of the revenue the Court held that t both the CIT(A)) as well as the Tribunal had recorded concurrent findings of fact that during the course of search the director of the assessee-company had admitted undisclosed income of Rs. 15 crores as unaccounted cash receivable, for the year under consideration, i.e., financial year 2010-11. The director of the assessee in his statement, had explained that the income was earned out of booking/selling shops and had specified the buildings. Thereafter the assessee could not be blamed for not substantiating the manner in which the disclosed income was derived. The cancellation of penalty by the Tribunal was justified. (R/TA No. 174 & 540 of 2019 dt 17-09 2019)(AY. 2011-12)
CIT v. Patdi Commercial and Investment Ltd. (2020) 420 ITR 308 / 187 DTR 35 (Guj.)(HC)

2495 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Addition deleted – Penalty does not survive.**
Allowing the appeal the Tribunal held that against the order of the Assessing Officer disallowing the set off of brought forward loss of Rs. 49,83,312, the assessee had carried the matter before the Tribunal. The Tribunal had held that the assessee was eligible for set-off of brought forward loss against the income declared by him. Thus, when the claim of the assessee of adjusting the brought forward capital loss against the income declared pursuant to the search had been upheld by the Tribunal and since such order in quantum proceedings had attained finality, the assessee was justified in reducing the unabsorbed short-term brought forward capital loss against the income and paying tax on the resultant income. Penalty was not imposable under section 271AAA. (AY.2011-12)
Roop Kishore Madan v. Dy.CIT (2020) 84 ITR 36 (SN) (Delhi)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Concealment – Additions deleted – Penalty does not survive – Notice not mentioning specific limb of explanation – Penalty not imposable. [S. 274] 2496

Tribunal held that since the Commissioner (Appeals) giving relief to the assessee on various additions had attained finality in view of the dismissal of the appeal filed by the Revenue before the Tribunal and the various additions of income had been set aside for the assessment year, there was no question of imposing penalty. The Department's appeal did not survive. Tribunal also held that the notice issued under section 274 read with section 271AAA did not mention the particular limb of the Explanation to section 271AAA under which penalty was proposed to be levied. Rather, the notice reproduced the language of section 271(1)(c) and not section 271AAA. Therefore, the notice was vague and had to be treated as invalid. Since the notice clearly showed non-application of mind on the part of the Assessing Officer and there was no specific ground on which the penalty proceedings had been initiated, the notice issued under section 274 read with section 271AAA was bad in law and, therefore invalid. (AY. 2012-13)

ACIT v. Sanjiv Gupta (2020) 84 ITR 29 (Delhi)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Unexplained cash – Not giving any plausible reply to satisfy search team or Assessing Officer during course of assessment proceedings – Levy of penalty is held to be justified. 2497

Tribunal held that as regards the addition for unexplained cash of Rs. 59,116 which was found during the course of search at the assessee's residence, the assessee could not give any plausible reply to satisfy the search team or the Assessing Officer during the course of assessment proceedings. The assessee had also not challenged this addition before the Tribunal. So as far as unexplained cash of Rs. 59,116 was concerned the assessee did not fall within the scope of section 271AAA(2). Therefore the assessee was liable to pay penalty under section 271AAA at 10 per cent. on the undisclosed income of Rs. 12,52,670 and unexplained cash of Rs. 59,116 totalling Rs. 13,11,786 on which the penalty was sustained at 10 per cent. at Rs. 1,31,179. (AY. 2011-12)

Nitesh Munje v. ACIT (2020) 78 ITR 14 (SN) (Indore)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Previous year ended before date of search and the date of filing of return of income u/s 139(1) had also been expired – Penalty cannot be levied. [S. 139(1)] 2498

Previous year ended before date of search and the date of filing pf return of income u/s 139(1) had also been expired,penalty cannot be levied (AY. 2007-08)

S & P Foundations (P.) Ltd. v. ACIT (2020) 186 DTR 122 (Chennai)(Trib.)

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012-undisclosed income – Filed income tax return as per specified date – Penalty leviable only 10% – Anonymous donations – Derived income – purpose for which it is utilized-No need to mention address of donors [S.115BBC] 2499

The assessee has fulfilled all the conditions laid down in section 271AAB(1)(a), therefore penalty at 10% is leviable. Assessee being an educational society received anonymous

donations, is not necessary to mention identity/address and other particulars in books (AY. 2013-14)
ACIT v. G.S.L. Education Society (2020) 204 TTJ 17 (UO) (Vishakha) (Trib.)

2500 **S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Undisclosed income – Cash seized – Past savings of other family members – Inherited jewellery – Advances given to for purchase of land – Deeming fiction cannot be applied – Levy of penalty is held to be not justified. [S. 69, 69B, 132(4)]**
Tribunal held that as regards the cash found during the search, past savings of the family members could not be ignored while considering the amount as undisclosed income and in the absence of any clear-cut findings about the cash not representing and belonging to other family members as their past savings, it could not be treated as undisclosed income. The penalty levied on this count was liable to be cancelled. As regards the jewellery it was explained that it belongs to family members and old jewellery the statement recorded under section 132(4) of the Act itself would not either constitute incriminating material or undisclosed income in the absence of any corresponding asset or entry in the seized documents representing such income. Levy of penalty was deleted. As regards advance given for purchase of land, though there are deeming provisions under sections 69 and 69B, no new facts had been brought by the Revenue in order to controvert or rebut the findings recorded by the Commissioner (Appeals)therefore, penalty was not imposable. (AY. 2014-15)
Rajendra Kumar Jain v. ACIT (2020) 84 ITR 325 (Jaipur)(Trib.)

2501 **S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – Surrendering additional income – Appeal not filed – Levy of penalty at 10% is held to be justified – Difference in valuation as per books and Department valuer – Levy of penalty is not justified. [S. 132, 153B(1)(b)]**
Tribunal held that once the assessee had surrendered the amount during the course of search, there was no basis to state that there was no undisclosed income. The Assessing Officer made the assessee aware of the charge against it and the assessee was granted an opportunity to refute charge and file its explanations and submissions. Therefore, the assessee was liable for penalty under section 271AAB(1)(a) at 10 per cent on the undisclosed income. There was no infirmity in the initiation of penalty proceedings and consequent penalty order passed by the Assessing Officer. As regards difference in valuation of stock the levy of penalty is held to be not justified. (AY. 2015-16)
Sumangal Gems v. Dy.CIT (2020) 84 ITR 40 (Jaipur)(Trib.)

2502 **S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – Charge not specified in the notice – Penalty not sustainable – Returned income accepted – Levy of penalty is not justified. [S. 132(4), 143(3), 274]**
Tribunal held that the show-cause notice issued by the Assessing Officer did not specify the charge or charges against the assessee for levy of penalty, as required by law. The penalty was liable to be quashed. Applied *Padam Chand Pungliya v. ACIT [2019 71 ITR (Trib.) 562 (Jaipur), Ashok Bhatia v. Dy. CIT (I. T. A. No. 869/Indore/2018 dated February 5, 2020) and Ravi Mathur v. Dy.CIT (I. T. A. No. 969/JP/2017 dated June 13,*

2018). Tribunal also held that even otherwise, section 271AAB of the Act contemplates imposition of a penalty pursuant to the disclosure of income in statement recorded under section 132(4) of the Act by the assessee. It was an admitted fact that no such statement had been recorded from the assessee. Thus, the levy of penalty was not sustainable. Nowhere in the assessment order was it stated that undisclosed income had been assessed. The assessment was made under section 143(3) of the Act and the returned income was accepted. Thus, the penalty levied under section 271AAB of the Act was liable to be quashed. (AY.2013-14)
Rashmi Jalan (Smt.) v. ACIT (2020) 83 ITR 19 (SN) (Kol.)(Trib.)

S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – Surrender of income – Recording of specific charge is mandatory – Penalty levied was quashed. [S. 153A] 2503

Tribunal held that the once a specific definition of undisclosed income has been provided in section 271AAB, being a penal provision, the provision must be strictly construed and the Assessing Officer had to record a clear and specific finding to this effect and could not be solely guided by the surrender made by the assessee during the course of search. There was no finding in the penalty order to this effect that undisclosed income found and surrendered during the course of search fell under the definition of "undisclosed income" as defined in section 271AAB and in the absence thereof, on this ground itself, the penalty proceedings deserved to be set aside. The levy of penalty is not mandatory and depends upon the specific facts and circumstances of each case. The surrender of the during the course of search may be the basis for the assessment but could not form the basis for levy of penalty which proceedings were separate and distinct proceedings in the absence of a specific finding as to how the amount qualify as an undisclosed income as so defined under section 271AAB. Hence, penalty levied thereon was liable to be set aside (AY.2008-09 to 2013-14)
Laxman Nainani v. Dy.CIT (2020) 80 ITR 1 (Jaipur)(Trib.)

S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – Disclosure of additional income in statement recorded under S. 132(4) itself is not sufficient to levy penalty unless income so disclosed falls in definition of undisclosed income defined in Explanation to S. 271AAB(1). [S. 69C, 132(4) 153(B)(1)(b)] 2504

Assessee was also one of members of the wherein search and seizure action was initiated. In course of search, certain material by way of loose sheets were found and seized. Statement of assessee was recorded under S. 132(4) in which he disclosed certain additional income by way of expenditure on house construction, stock jewellery and debtors/advances. The AO completed assessment and levied penalty on basis of loose sheets found and statement of assessee. CIT(A) affirmed the order of the AO. On appeal the assessee contended that he had surrendered income just to buy peace and avoid unnecessary litigation and there was no iota of evidence that surrendered income was undisclosed income of assessee. It was noted that from entries in alleged seized material, it was found that most of them were unrealistic and these were not entries representing real and actual transactions. The Tribunal held that tough admission on part of assessee was a relevant evidence, however, when entries/notings in loose

papers were apparently not representing real transactions then it was incumbent upon department to find out and establish existence of these assets in possession of assessee. In absence of such efforts and even any question put to assessee regarding existence of these assets, these entries alone would not ipso facto constitute undisclosed income of assessee. Accordingly penalty was deleted (AY. 2014-15)
Padam Chand Pungliya. v. ACIT (2019) 71 ITR 562 / 201 TTJ 307 / (2020) 181 ITD 261 / 188 DTR 258 (Jaipur)(Trib.)

2505 **S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – Concealment – Search and seizure – Undisclosed income – Disallowances cannot automatically lead to penalty – levy of 10% penalty is held to be not valid. [S. 132, 271(1)(c)]**
Allowing the appeal the Tribunal held that disallowances cannot automatically lead to penalty. The assessee had made full and true disclosure in its return of income and furnished the full particulars of income. No information given in the return was found to be incorrect. All the expenses were genuine business expenses, paid by account payee cheques, and were properly accounted for in the regular books of account. Therefore, penalty could not be levied. (AY.2013-14)
Ajanta Pharma Ltd. v. Dy. CIT (2020) 77 ITR 555 / 187 DTR 159 / 204 TTJ 241 (Mum.) (Trib.)

2506 **S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012 – In statement admits undisclosed income and specifies manner in which such income derived – No undisclosed income – Penalty not leviable. [S. 132(4)]**
Assessee in statement admits undisclosed income and specifies manner in which such income derived. Accordingly amount disclosed cannot be assessed as undisclosed income and levy of penalty is not justified. (AY.2009-10 to 2014-15)
Harshvardhan v. Dy.CIT (2020) 77 ITR 81 (SN) / 195 DTR 145 / 206 TTJ 894 (Bang.)(Trib.)

2507 **S. 271B : Penalty – Failure to get accounts audited – Audit conducted under provisions of Co – Operative Societies Act – No Report by Accountant – Levy of penalty justified. [S. 44AB, 273B]**
Dismissing the appeal the Court held that the mere fact that the audit of the assessee was conducted under the provisions of the Co-operative Societies Act would not be sufficient. Even assuming (without admitting) that the furnishing of a report of the audit conducted by the competent auditor stipulated under the Co-operative Societies Act would be sufficient compliance with the first limb of the second proviso, it was evident that the further report by an accountant, as mandated to be furnished in form 3CD, was not furnished by the assessee. Moreover, the factual finding arrived at by the Tribunal was to the effect that the assessee had furnished only the annual report depicting the audited financial statement along with copy of the receipts and distribution statements. The levy of penalty was held to be justified. (AY. 2014-15)
Peroorkkada Service Co-Operative Bank Ltd. v. ITO (2020) 424 ITR 422 / 270 Taxman 55 (Ker.)(HC)

S. 271B : Penalty – Failure to get accounts audited – Vague notice – Failure mention specific charge – Levy of penalty is held to be not valid – Delay in filing tax audit report – Reasonable cause – Levy of penalty is held to be not justified. [S. 273B] 2508

Assessing Officer issued penalty notice wherein he had not spelt out what was fault for which assessee was being proceeded against for levy of penalty and also had not struck down irrelevant portion/fault which was not applicable in facts and circumstances of case. Allowing the appeal of the assessee the Tribunal held that notice proposing penalty should clearly spell out fault/charge for which assessee was put on notice, so that he could defend charge properly, since impugned penalty notice was vague, penalty order was also bad in eyes of law. Tribunal also held that assessee's explanation that accountant of assessee suddenly left office/service without properly handing over books causing delay in completing audit report is reasonable and, thus, no penalty could be levied. (AY. 2015-16)

North Eastern Constructions v. ITO (2020) 183 ITD 348 / 194 DTR 257 / 206 TTJ 354 (Guwahati)(Trib.)

S. 271B : Penalty – Failure to get accounts audited – Reasonable cause – May – Levy of penalty is held go be not justified. 2509

Tribunal held that the Notification issued by The Central Board Of Direct Taxes dated MAY. 1, 2013 clearly states that the assessee was required to file the audit report along with the return from the AY. 2013-14 onwards. Therefore, it was possible that the assessee may have a view that prior to the date he was not required to file the audit report along with the return but obtain tax audit report prior to due date of filing of Registrar of companies. Accordingly the levy of penalty is held to be not justified. (AY. 2012-13)

Arvind Kumar Arora v. ITO (2020) 82 ITR 28 (SN) (Delhi)(Trib.)

S. 271B : Penalty – Failure to get accounts audited – Not maintaining books of account – Penalty for not getting books audited could not be levied – Penalty for failure to maintain books of account is restricted to Rs. 25,000. [S. 44AB, 271A] 2510

The assessee transacted in shares and securities. The AO held that t the assessee had incurred total loss of Rs. 1,96,168.49 in the transactions but had not filed a return for the assessment year 2010-11 in response to the notice under S. 148 of the Act. Therefore, he considered the loss as speculation loss and initiated penalty proceedings under S. 271B for failing to get the accounts audited as required under S. 44AB. Thereafter he levied penalty of Rs. 1,50,000. The CIT(A) confirmed the penalty under S. 271A as well as under S. 271B of the Act. On appeal the Tribunal held that when the AO found that assessee was not maintaining books of account, penalty under S. 271B for not getting the books audited could not be levied. Since the CT (A) had exercised his co-terminous power to levy penalty under S. 271A for failure to maintain books of account, the penalty was restricted to Rs. 25,000. (AY.2010-11)

Mukti Roy (Smt.) v. ITO (2020) 77 ITR 20 (SN) (Kol.)(Trib.)

2511 **S. 271C : Penalty – Failure to deduct at source – Non – Resident – Deducting the tax at one percent and before conclusion of proceedings depositing correct amount of tax at 20.6 % with applicable interest – Reasonable cause – Levy of penalty is held to be not valid. [S. 194(IA), 195, 273B]**

Tribunal held that the seller had not provided any documentary evidence to show that he was a non-resident Indian. Having a local address in the U. S. A., could not be a sufficient evidence to show that the person was a non-resident Indian. The assessees prudently deducted tax at one per cent. under section 194(1A) of the Act. Subsequently, when it was brought to their notice that the seller was a non-resident Indian they immediately deposited the correct amount of tax deducted at source at 20.6 per cent applicable to the transaction under section 195 of the Act with interest. No mens rea to evade tax was apparent at any stage of the proceedings on the part of the assessee. The assessees under a bona fide belief had deposited tax at one per cent. under section 194(1A) of the Act considering the seller a resident and later, before conclusion of the proceedings before the Assessing Officer, had deposited the correct amount of tax at 20.6 per cent and applicable interest. Thus they had reasonable cause for the failure. The penalty was liable to be deleted. (AY. 2015-16)

Jitendra Sharma v. JCIT(IT) (2020) 83 ITR 71 (SN) / (2021) 187 ITD 352 (Indore) (Trib.)
Bharat Sharma v. JCIT(IT) (2020) 83 ITR 71 (SN) (2021) 187 ITD 352 (Indore) (Trib.)
Shatrughan Sharma v. JCIT (IT) (2020) 83 ITR 71 (SN) /(2021) 187 ITD 352 (Indore) (Trib.)

2512 **S. 271C : Penalty – Failure to deduct at source – Assessee in default – Fixed deposit – Form 15G – Reasonable cause – Levy of penalty is not valid. [S. 201(1), 201(IA), Form 15G]**

Tribunal held that the order of the Assessing Officer under section 201(1) read with section 201(1A) holding the assessee to be in default for non-deduction of tax at source had been held null and void and the order holding so, has attained finality. Thus, in effect, there was no order where the assessee has been held guilty of non-deduction of tax at source. Further, the assessee had relied on form 15G filed by the Samiti and on its basis had not deducted tax at source. Therefore there was reasonable cause for non-deduction of tax at source and the levy of penalty under section 271C had to be set aside. (AY.2010-11)

Bank of India v. JCIT (2020) 83 ITR 412 (SN.) (Jaipur)(Trib.)

2513 **S. 271C : Penalty – Failure to deduct at source – Leave travel allowance – Reasonable cause – Penalty not warranted. [S. 10(5), 133A, 273B]**

Tribunal held that while calculating the estimated tax liability of its employees, the assessee always considered leave travel concession claim as exempt under section 10(5) and the same position, being followed and accepted consistently in the past years, was followed in the current financial year as well. However, for the first time, after the survey by the Department, this issue arose for consideration and after the judgment of the Tribunal, the matter got clarified and the assessee had duly complied and deposited the outstanding demand along with interest and had taken corrective steps in subsequent years as well. There was reasonable cause in terms of section 273B for not

deducting tax by the assessee and the penalty levied under section 271C was deleted. (AY. 2011-12 to 2013-14) (AY. 2012-13)
State Bank of India v. Add. CIT (2020) 78 ITR 636 (Bang.)(Trib.)
State Bank of India v. Add. CIT (2020) 80 ITR 11 (SN) (Bang.)(Trib.)

S. 271C : Penalty – Failure to deduct at source – Non-resident – Short deduction of tax – levy of penalty is not justified when the assessee has deducted tax at source under S. 194IA instead of S 195 of the Act – Levy of penalty was deleted. [S. 194IA, 195, 201, 201(IA), 273B] 2514

The assessee deducted the tax under section 194IA of the Act and when he came to know that one of the purchaser is non-resident he deducted the tax as per section 195 of the Act. The AO levied the penalty which was confirmed by the CIT(A), on appeal the Tribunal held that no penalty under S. 271C is leviable when the Assessee has deducted tax at source under S. 194IA instead of S. 195 when the immovable property is purchased from non resident especially when on pointing out the tax was correctly recovered and deposited. Tribunal also observed that the moment a person comes to know that he has committed a mistake and being a person of reasonable intelligence and ordinary prudence if he takes the corrective measures to rectify the same immediately, then it cannot be said that he acted deliberately with complete disregard to law. Penalty was deleted. Followed *DCIT v. Sms India Ltd (supra) (2006) 7 SOT 424 (Mum.) (Trib)*. (ITA No.500/Ind/2018 dt 14-10-2020)(AY. 2015-16)
Shri Jitendra Sharma v. JCIT (Indore)(Trib.) www.itatonline.org
Shri Bharat Sharma v. JCIT (Indore)(Trib.) www.itatonline.org
Shri Shatrughan Sharma v. JCIT (Indore)(Trib.) www.itatonline.org

S. 271C : Penalty – Failure to deduct at source – Land Acquisition Authority – Interest payment on delayed compensation voluntarily paid to farmers – Technical breach – Levy of penalty is held to be not valid. [S. 194A, Rule 29C] 2515

Land Acquisition Authority, a Government Authority, acquired lands on behalf of UP Awas Evam Vikas Parishad. It paid compensation along with interest on delayed payment to farmers for their lands,however, no TDS, was deducted on interest amount. AO levied penalty which was affirmed by the CIT(A) In appeal before the Appellate Tribunal the assessee contended that said compensation and interest on delayed payment was paid voluntarily and there existed bona fide belief that tax was not deductible at source, as assessee was ignorant of amendment in rule 29C which was brought in statute with effect from 1-4-2010 i.e. year under consideration. Allowing the appeal the Tribunal held that since payment was made by Government Authority there was no element of personal profit attributable to assessee it was bona fide belief and in ignorance of amendment of rule 29C assessee did not make TDS on interest amount; thus, it was an inadvertent mistake amounting to mere technical breach. Accordingly deleted the penalty. (AY.2010-11 to 2012-13)
Additional District Magistrate Land Acquisition v. JCIT(TDS) (2020) 181 ITD 576 (Luck.)(Trib.)

2516 **S. 271D : Penalty – Takes or accepts any loan or deposit – Ignorance of provisions or lack of banking facilities in area – Not accepted as reasonable cause when the assessee doing large scale finance business dealing with public. [S. 269SS, 273B]**
Assessing Officer held that assessee-society conducted finance business by violating section 269SS by accepting deposits in cash from various clients, exceeding sum of Rs. 20,000 and, thus, imposed penalty proceedings under section 271D of the Act. Order of penalty was up held by the Tribunal. On appeal dismissing the contention that ignorance of provisions or lack of banking facility in area, etc., could not be accepted as reasonable cause for accepting deposits in cash when assessee was doing large scale finance business dealing with public. There being nothing to indicate that assessee had got any registration as a banking company, or that assessee was a non-banking financing company, contention of assessee that it would fall within exempted category of banking company contained under 1st proviso to section 269SS could not be accepted. Levy of penalty is affirmed. (AY. 2005-06)
N.S.S. Karayogam v. CIT (2020) 271 Taxman 193 (Ker.)(HC)

2517 **S. 271D : Penalty – Takes or accepts any loan or deposit – Depositors belonged to rural areas where adequate banking facilities were not available – Deletion of penalty is held to be justified. [S. 269SS]**
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the penalty on ground that depositors belonged to rural areas where adequate banking facilities were not available. (AY. 2009-10)
PCIT v. Sahara India Financial Corpn. Ltd. (2020) 119 taxmann.com 284 (Delhi) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. Sahara India Financial Corpn. Ltd (2020) 274 Taxman 214 (SC)

2518 **S. 271D : Penalty – Takes or accepts any loan or deposit – Amount received from sister concern in a running account were held not to constitute as an infraction under Section 269SS – Tribunal should have remanded matter back – Order of penalty was set aside. [S. 254(1), 269SS]**
Allowing the appeal of the assessee the High Court held that amount received from sister concern in a running account were held not to constitute as an infraction under Section 269SS. Accordingly the Tribunal should have remanded matter back. High Court set aside the order of the Tribunal. Court observed that ITAT completely ignored its previous order which had the effect of restoring back to the AO the matter for the relevant AYs for fresh assessment. The judgment of the Supreme Court in *CIT v. Jai Laxmi Rice Mills Ambala City (2015) 379 ITR 521 (SC)*(AY. 1992-93)
Asian Consolidated Industries Ltd. v. Dy.CIT (2020) 114 taxmann.com 105 (Delhi)(HC)
Editorial : SLP of revenue is dismissed Dy.CIT v. Asian Consolidated Industries Ltd (2020) 270 Taxman 184 (SC)

2519 **S. 271D : Penalty – Takes or accepts any loan or deposit – Dairy seized – Deletion of penalty is held to be valid. [S. 132]**
Dismissing the appeal of the revenue Court held that the revenue is not able to establish that the assessee has accepted the loan or deposit from Shri Jivraj V. Desai and in the

absence of any material showing acceptance of any loan or deposit, order of Tribunal is affirmed. (TA No. 738 of 2019 dt 27-1-2020) (AY. 2001-02)
PCIT v. Devchand B. Patel (2020) The Chamber's Journal-April-P. 120 (Guj.)(HC)

S. 271D : Penalty – Takes or accepts any loan or deposit – Wife, son and daughter – Penalty not leviable – Transactions with business associates – Running account – Matter remanded to the Assessing Officer. [S. 269SS, 269T, 271E] 2520
Tribunal held that majority of the loans or deposits were taken from relatives, viz., wife, son and daughters. The loan or deposits accepted by the assessee in cash from his wife, son and daughter would not suffer penalty under section 271D of the Act. Therefore, the penalty, imposed under section 271D of the Act, was to be deleted. Followed *Deepika (Smt) v. Add. CIT (I. T. A. No. 561/Bang/2017 dated October 13, 2017), CIT v. Sunil Kumar Goel [2009 315 ITR 163 (P&H) (HC) and CIT v. M. Yesodha (smt.) [2013 351 ITR 265 (Mad.) (HC)*. In respect of the loans or deposits accepted from persons other than relatives, the assessee contended that it was business transactions. Tribunal restored the matter to the Assessing Officer for verification whether the said transaction was a business transaction and not a loan or deposit. (AY.2004-05 to 2009-10)
Gopal S. Pandith v. JCIT (2020) 83 ITR 66 (SN) (Bang.)(Trib.)
Rajeshwari Pandith (Smt.) v. JCIT (2020) 83 ITR 66 (SN) (Bang.)(Trib.)

S. 271D : Penalty – Takes or accepts any loan or deposit – Money returned to father – Receipt of money from family members for medical emergency – Receipt of money from member of association for building school – Neither loan or advances – Levy of penalty is held to be not justified. [S. 269SS, 273B] 2521
Tribunal held that, money returned to father, receipt of money from family members for medical emergency and receipt of money from member of association for building school is neither loan or advances hence levy of penalty is held to be not justified (AY.2013-14)
Gourang Chandra Nayak v. Jt. CIT (2020) 77 ITR 192 (Cuttack)(Trib.)

S. 271D : Penalty – Takes or accepts any loan or deposit – Gift transactions between husband and wife – Levy of penalty is held to be not valid. [S. 269SS, 269T, 271E, 273B] 2522
Tribunal held that according to the assessee, she received a gift from her husband in cash. Thereafter, she had given gift to her husband in cash. Since the gift amount received and repaid was the same even if it was considered as loan transactions, the penalty was not leviable since the loan transactions between close relatives were considered to constitute reasonable cause in terms of S. 273B. Since the transactions had been entered into between the assessee and her husband the penalty levied under S. 271E was not sustainable.(AY.2014-15)
Savita S. Gangadshetti (Smt.) v. JCIT (2020) 77 ITR 79 (SN) (Bang.)(Trib.)

S. 271D : Penalty – Takes or accepts any loan or deposit – Loan from partner – Bonafide belief – Levy of penalty is held to be not justified. [S. 269SS, 273B] 2523
Assessee firm had availed cash loan of certain amount from one of its partners. AO held that assessee received loan in contravention to S. 269SS and levied the penalty.

The assessee contended that, loan transaction between firm and partner does not come within purview of S. 269SS, as they could not be treated as different entities and; secondly, due to business exigencies arising out of immediate payment to be made to a creditor, assessee was compelled to avail cash loan from its partner. The Tribunal held that from material on record, it appeared that assessee had availed cash loan from partner for making payment to creditors. Assessee had placed on record ledger account copies of two creditors in support of its claim. Further, assessee had availed cash loan from partner, with a bona fide belief that provisions of S. 269SS were not applicable in relation to transaction between firm and partner. Accordingly the penalty levied was deleted. (AY. 2012-13)
Surendra Engg. Corpn. v. JCIT (2020) 180 ITD 708 (Mum.)(Trib.)

2524 **S. 271E : Penalty – Repayment of loan or deposit – Loans from directors – Reasonable cause – Repayment by demand draft – Levy of penalty is not justified.**
Tribunal held that the assessment was completed after verification of the books of account and had made no adverse comment with regard to payment of loan through demand drafts. The assessee also furnished the demand draft number in the account copy. Therefore, there was no reason to disbelieve the submission of the assessee that the repayment was made through demand drafts as furnished in the account copies and there was no case for levy of penalty under section 271E with respect to the payments made to the depositors. Accordingly, the penalty was set aside. (AY. 2013-14)
Sudha Agro Oil and Chemical Industries Ltd. v. Add. CIT (2020) 79 ITR 520 (Vishakha) (Trib.)

2525 **S. 271E : Penalty – Repayment of loan or deposit – Reasonable cause – Levy of penalty is not valid. [S. 269T, 273B]**
Deleting the penalty the Tribunal held that the repayment was made in cash as the cheques were dishonoured and people have gheraoed the business premises. Explanation submitted showed a reasonable cause hence the penalty levied was deleted. (Followed *ADIT v. Kumari A. R.Shanti (2008) 255 ITR 258 (SC) Suresh R. Solanki v. ACIT (2014) (4) TMl 557-ITAT Mumbai) (ITA No 5391/ M/ 2003 dt 16-10-2015)* (AY. 2009-10)
Jayantilal Voashnav HUF v. JCIT (Mum.)(Trib.) www.itatonline.org

2526 **S. 271F : Penalty – Return of income – Failure to furnish – Depression and under continuous medical treatment – Reasonable cause – Levy of penalty is held to be not valid. [S. 139(1), 271(1)(b)]**
Tribunal held that in the entire scheme of the Act concerning penal provisions specifically section 139(1) read with section 271F of the Act, the facts and circumstances and the reasonableness have always to be considered. The genuineness of the problem faced by the assessee had not been disputed by the Department. The provisions of section 271F of the Act were not so stringent that if section 139(1) of the Act was not complied with, penalty would be levied irrespective of any practical or reasonable situations brought on record. The Department had failed to conduct any specific enquiry as regards whether the facts stated by the assessee were correct or not. The facts on record and had not been disputed by the Department. Considering the totality of the

facts and circumstances, this was not a fit case for imposing penalty under section 271F of the Act.(AY.2009-10 to 2011-12)
Rupali Sanjay Bedmutha (Smt.) v. ITO (2020) 83 ITR 30 (SN) (Pune)(Trib.)

S. 271F : Penalty – Return of income – Failure to furnish – Refund return – Penalty is not leviable. [S. 139(4), 244A] 2527
The assessee had filed the return voluntarily without any enquiry or verification from the Department and explained that he had only salary income and no other income and the tax was deducted at source from the salary income. Always the Income-tax returns resulted in refund but not the demand. By filing the return belatedly there was no loss to the Revenue but there was a loss to the assessee and the assessee was losing the interest to be paid under S. 244A. Further, in the earlier assessment years, the CIT(A) had cancelled the penalty following the decision of the Bombay High Court. The CIT(A) had relied on the decision of the Supreme Court which related to prosecution. The Department had not made out the case that the assessee was required to pay tax which remained unpaid. The assessee had filed the return within the time allowed under S. 139(4), the return being a refund return, there was no case for levy of penalty under S. 271F. Accordingly, the order of the CIT(A) was set aside. (AY.2012-13 to 2015-16)
Rajesh Ajjavara v. ITO(TDS) (2020) 77 ITR 14 (SN) (Bang.)(Trib.)

S. 271F : Penalty – Return of income – Failure to furnish – Agriculturist – Bonafide belief that income not chargeable to tax – Levy of penalty is held to be not justified. [S. 139(1), 273B] 2528
Tribunal held that the reasons referred to the assessee being an agriculturist and illiterate ; facing financial and family problems; and being under the impression that gains arising from sale of any agricultural land were not chargeable to tax. There was reasonable cause on the part of the assessee in not filing return under section 139(1) against which the penalty had been imposed and confirmed under section 271F. Section 273B provides that no penalty shall be imposed, inter alia, under section 271F where the assessee establishes reasonable cause for the failure referred to in the section. Thus there was a reasonable cause with the assessee and the penalty was deleted. (AY.2011-12)
Arjun Dada Kharate v. Dy.CIT (2020) 81 ITR 68 (SN) (Pune)(Trib.)
Bhima Dada Kharate v. Dy.CIT (2020) 81 ITR 68 (SN) (Pune)(Trib.)

S. 271G : Penalty – Documents – International transaction – Transfer pricing – Failure to maintain documents – Levy of penalty is held to be not justified. [S. 92C(1), 92CA, 92D, 92D(1)] 2529
Assessing Officer alleging that the assessee has not maintained information/documents required under section 92D(1) r/w rule 10D for enabling him to determine the ALP, the Transfer Pricing Officer initiated proceeding for imposition of penalty under section 271G of the Act and ultimately imposed penalty for an amount of Rs. 16,14,61,108/-. CIT(A) deleted the penalty. On appeal by revenue. Tribunal affirmed the order of the CIT(A) relying on following judgements *Dilipkumar v. Lakhi, IT(TP)A no.2142/Mum./2017, dated 02.08.2018; Kiran Gems Pvt. Ltd., ITA no.5626/Mum./2016, dated 01.11.2018;CIT v.*

D. Navinchandra Exports P. Ltd., ITA no.6304/Mum./2016, etc. dated. 25.10.2017, DCIT v Blue Star Diamonds Pvt. Ltd., ITA no.6553/Mum./2017, dated 13.06.2019 DCIT v. Leo Schachter Diamonds India P. Ltd., ITA no. 5931/Mum./2017, dated 28.02.2019; DCIT v. Laxmi Diamonds Pvt. Ltd., ITA no.2643/Mum./2017, dated 27.12.2018; and DCIT v. Interjewel Pvt. Ltd. & Ors., ITA no.5628/Mum./2016, etc., dated 01.11.2018. (AY. 2012.13)
Dy.CIT v. Arjav Diamond India (P) Ltd. (2020) 187 DTR 59 / 203 TTJ 771 (Mum.)(Trib.)

2530 **S. 271G : Penalty – Documents – International transaction – Transfer pricing – TPO accepted benchmarking under TNMM – Levy of penalty is held to be not justified. [S. 92D]**

Assessee was engaged in business of importing rough diamond, getting them cut and polished and, thereafter, exporting to various countries including its Associated Enterprises (AEs). It benchmarked international transaction with its AE as regards sale of polished diamond adopting Transactional Net Margin Method (TNMM) as most appropriate method (MAM). TPO observed that entity level margin of assessee included its combined profit on transactions with both AEs and non-AEs; therefore, he called upon assessee to furnish separate segmental result in respect of transactions with AEs and non-AEs along with segmental profitability, however, assessee failed to produce same and TPO accepted transaction with AEs to be at arm's length due to lack of information furnished by assessee. TPO imposed penalty under section 271G alleging non-maintenance of specified documents. CIT(A) deleted the penalty. On appeal by revenue the Tribunal held that if TPO was not satisfied with benchmarking of assessee under TNMM, nothing prevented him from rejecting assessee's benchmarking and determining arm's length price of transaction with AEs independently by applying any one of prescribed methods. However, TPO having accepted benchmarking of assessee under TNMM, imposition of penalty under section 271G was to be deleted. (AY. 2011-12)

DCIT v. Decent Dia Jewels (P.) Ltd. (2020) 183 ITD 492 (Mum.) (Trib.)

2531 **S. 271G : Penalty – Documents – International transaction – Transfer pricing – Department must mention document and information required to be furnished but not furnished by assessee within specified time – Levy of penalty is held to be not valid.**

Tribunal held that for imposing penalty the Department must first mention the document and information, which was required to be furnished but was not furnished by the assessee within the specified time. The documentation or information should be that specified in rule 10D of the Income-tax Rules, 1962, which has been formulated in terms of section 92D(1). The assessee had sufficiently complied with the requirement of rule 10D(i) and moreover the Assessing Officer had not raised any specific issue as to which specific documents were not produced under section 92D(3). Thus the assessee has furnished all the information called for by the Assessing Officer and unless and until a specific defect was pointed out in the submission of documents, penalty under section 271G could not be levied. (AY.2012-13 to 2014-15)

Procter and Gamble Hygiene And Health Care Ltd. v. Dy.CIT (2020) 83 ITR 9 (SN) (Mum.) (Trib.)

S. 271G : Penalty – Documents – International transaction – Transfer pricing – Unless and until a specific defect is pointed out in documents submitted, penalty cannot be levied. [S. 92D(3), R.10D(i)] 2532

Allowing the appeal of the assessee the Tribunal held that, Unless and until a specific defect is pointed out in documents submitted, penalty cannot be levied. (AY. 2012-13 to 2014-15)

Procter & Gamble Home products (P) Ltd. v. Dy.CIT (2020) 180 ITD 194 (Mum.)(Trib.)

S. 272A : Penalty – Default in delivering statement of tax deducted at source – Affidavit stating it had not paid any amount or deducted any tax at source during years in question – Penalty is not leviable. [S. 200(3), 272A(2)(K), Form 26Q, 27EQ] 2533

Allowing the appeals the Tribunal stated that once the assessee has stated on affidavit and given an undertaking that the assessee had not paid any amount or deducted any tax at source on any sum during these assessment years for which it was required to submit form 26Q, the levy of penalty for default of delivering form 26Q was invalid and consequently the penalty order passed by the Assessing Officer was bad in law, ab initio. Once the Assessing Officer had accepted the fact that the assessee was not required to deduct tax at source or submit form 26Q the initiation of the penalty by the Assessing Officer for such a non-existing default was invalid. The invalid initiation of the proceedings vitiated the entire proceedings and consequently the penalty orders passed under section 272A(2)(k) based on absolutely non-existing grounds were not sustainable in law. (AY. 2008-09 to 2012-13)

District Mining Officer v. JCIT (TDS) (2020) 84 ITR 54 (SN) (All.)(Trib.)

S. 275 : Penalty – Bar of limitation – Limitation begins to run from date of order of Appellate Tribunal was served upon Commissioner (Judicial). [S. 271(1)(c), 275(1)(a)] 2534

Dismissing the appeal of the revenue the Court held that Tribunal was justified in holding that for purposes of penalty order under section 271(1)(c) read with section 275(1)(a) limitation begins to run from date of order of appellate tribunal was served upon Commissioner (Judicial). Followed *CIT v. Odeon Builders (P.) Ltd. (2017) 393 ITR 27 / 247 Taxman 184 (FB) (Delhi) (HC)* where in the Court categorically held that in the context of Section 260A of the Act, the limitation period for filing an appeal against an order of the TAT would begin to run immediately upon a copy of the order being received by the CIT (Judicial). (AY. 2009-10)

PCIT v. Indian Sugar Exim Corpn. Ltd. (2020) 115 taxmann.com 266 (Delhi)(HC)

Editorial: SLP of revenue is dismissed, PCIT v. Indian Sugar Exim Corpn. Ltd. (2020) 272 Taxman 185 (SC)

S. 276B : Offences and prosecutions – Failure to pay to the credit tax deducted at source – Application pending before Settlement Commission – Does not Bar Criminal Prosecution. [S. 245C, 245D, 276C, 277, Indian Penal Code, 1860, S. 417] 2535

Dismissing the writ petition to quash the continuation of prosecution proceedings, the Court held that pending application before Settlement Commission does not bar criminal prosecution.

Angels Immigration And Educational Consultants Pvt. Ltd. v. UOI (2020) 429 ITR 1/ (2021) 199 DTR 78 / 319 CTR 435 (P&H)(HC)

2536 **S. 276C : Offences and prosecutions – Concealment – Appeal against assessment pending before appellate authority – Criminal proceedings to be kept in abeyance till decision by appellate authority. [S. 276(1), Art. 226, 227]**

A complaint was filed against the assessee-company and its managing director by the Asst. Commissioner alleging wilful attempt to evade tax punishable under S. 276C(1) of the Act. On a writ petition, by the assessees contending that they had filed an appeal before the statutory authority challenging the assessment and that the criminal proceedings pending against them might be kept in abeyance till disposal of the statutory appeal, allowing the petition the Court held that there was force in the contention of the assessees that the appeal before the statutory appellate authority regarding the assessment and the computation of the tax would have a bearing on the prosecution against the assessees for wilful attempt to evade tax. The Additional Chief Judicial Magistrate (Economic Offences) was directed to keep in abeyance all further proceedings against the assessees.

Beaver Estates Pvt. Ltd. v. CIT (2020) 425 ITR 99 (Ker.)(HC)

2537 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Delay in payment of tax – Admission of liability in return and subsequent payment of tax – Criminal proceedings quashed. [S. 276(2)]**

The department has launched prosecution for wilful evasion of tax for delay in payment of admitted tax. On writ allowing the petition the Court held that the assessees had since cleared the dues and as on date no tax dues were payable in respect of the years in question. Inasmuch as the liability had been admitted in the counter-affidavit and inasmuch as the tax had been subsequently paid, continuance of the criminal prosecution would only amount to an abuse of legal process. The criminal proceedings were to be quashed. (AY. 2012-13 to 2015-16)

Bejan Singh Eye Hospital Pvt. Ltd. and Ors. v. IT Department (2020) 428 ITR 206 (Mad.) (HC)

2538 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Penalty deleted – Launching of prosecution is held to be not valid. [S.277]**

Court held that the act of concealment of income is the main constituent for the charge under S. 276C and 277 of the Act,, once the Commissioner (Appeals) concluded that there was no concealment of income on the part of the assessee, the very foundation of the charge would not survive.(AY.1990-91)

System India Castings v. PCIT (2020) 425 ITR 158 (Chhattisgarh) (HC)

2539 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Look-out circular – Application for withdrawal of look out circular and permission to travel abroad – Non-co-operation in investigation proceedings – Apprehension that assessee might flee India – Permission to travel abroad cannot be granted. [Code of Criminal Procedure, 1973, S. 482, Art.226]**

An application under section 482 of the Code of Criminal Procedure, 1973 was filed by the petitioner for stay of the look-out circular issued against him by the authorities and sought permission to travel abroad in connection with his business affairs. He submitted

that on account of the look-out notice he had been unable to travel abroad for work for more than a year and that the raid conducted under section 132 of the Act by the Department had caused huge negative impact and financial crisis on his business. A report in sealed cover was submitted by the Union of India. Dismissing the application, that the report prima facie revealed that the assessee was the promoter of a group and director in the companies of the group which had indulged in large scale tax evasion. The group had also obtained large scale credit facilities in different names from banks based upon fictitious transactions. The assessee had not been co-operating with the investigating agency and had been evasive during interrogation. The assessee being the main person controlling the affairs of the group within and outside India, there being large scale tax evasion, the investigation being still in progress and there being a strong apprehension that the assessee might not return and, thus would not be available for investigation, permission to travel abroad could not be granted to the assessee.
Piyoosh Kumar Goyal v. UOI (2020) 426 ITR 546 (Delhi)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Trail for more than one offence – Offences and Prosecution – Undisclosed foreign asset – Three different complaints based on same transaction – Single prosecution to be conducted. [Code of Criminal Procedure, 1973, S. 220, 300, Constitution of India, Art. 20(3), Indian Penal Code, S. 71, General Clauses Act, S.26] 2540

Court held that the three complaints in fact were a part of the same transaction. The first complaint had been filed on the assumption that the petitioner was holding an undisclosed foreign account and the two subsequent complaints were to arrive at a figure to meet the ingredients of the first offence. The material on record revealed that the allegations, documents and nature of evidence were the same in all the three complaints. In these circumstances, it would be in the interest of justice to have a common trial for all the three complaints.
Paraminder Singh Kalra v. CIT (2020) 429 ITR 577 / 196 DTR 433 / (2021) 318 CTR 211/ 279 Taxman 316 (Delhi)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Delay in payment of tax which was paid subsequently – Criminal proceedings quashed. [S. 276(2)] 2541

Allowing the petition the Court held that the assessees had since cleared the dues and as on date no tax dues were payable in respect of the years in question. Inasmuch as the liability had been admitted in the counter-affidavit and inasmuch as the tax had been subsequently paid, continuance of the criminal prosecution would only amount to an abuse of legal process. The criminal proceedings were to be quashed. (AY.2012-13 to 2015-16)
Bejan Singh Eye Hospital Pvt. Ltd. v. IT Department (2020) 428 ITR 206 (Mad.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Delay in payment of tax and filing of return – Delay in handing over books of account – Criminal proceeding is held to be clear abuse of process of law – Proceedings pending before Chief Metropolitan Magistrate was quashed. [S. 132, 276(2)] 2542

Allowing the petition the Court held that to punish the accused, there must be wilful attempt to evade payment of tax and he must be in passion of having the book

with false entries or person should have made false entries in the books of accounts and omitting any entry in the statement of accounts. On the facts the assessee had voluntarily disclosed the undisclosed income to the department on the inspection conducted under section 132 of the Act. The Court also observed that the entire tax was paid. Accordingly the Court held that the offence under section 276(2) of the Act is not attracted against the assessee. The Court allowed the petition and quashed the entire proceedings pending before Chief Metropolitan Magistrate. (Crl. OP.No. 31909 of 2019 dt 16-3-2020) (AY. 2013-14)

Kewalchnad M. Kothari v. DCIT (2020) 120 taxmann.com 91 / 274 Taxman 495 / (2021) 197 DTR 406 / 319 CTR 314 (Mad.)(HC)

2543 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Compounding of offences – Compounding fees to be computed on basis of tax evaded and not income sought to be evaded. [S. 132, 271, 276(1), 278, 278B]**

The Assessing Officer passed orders for the assessment years 1983-84, 1984-85 and 1985-86 making additions on account of cash credits and bogus purchases. Thereafter, in the year 1987, complaints under sections 276C(1), 271, 278B and 278 for those assessment years were filed against the assessee before the Additional Chief Metropolitan Magistrate. The assessee filed applications for compounding of the offences according to the guidelines issued by the Central Board of Direct Taxes for compounding of offences under the Direct Tax Laws, 2014. The Assessing Officer calculated the compounding fees on the basis of the concealed income and communicated this to the assessee with the approval of the Chief Commissioner. On writ the Court held that the compounding of offence under S. 276C(1) would be permissible on payment of 100 per cent. of the tax sought to be evaded and not 100 per cent. of the amount sought to be evaded by the assessee. The assessee was therefore required to pay 100 per cent. of the tax sought to be evaded for compounding of offence under S. 276C(1) of the Act. (AY.1983-84 to 1985-86)

Mehta Laboratories v. PCIT (2020) 424 ITR 405 / 271 Taxman 135 (Guj.)(HC)

2544 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax False statement in verification – Abetment of false return – Limitation – Limitation inapplicable to prosecution for certain Economic Offences – Prosecution of Members of Parliament and Legislative Assemblies – Transfer of case for Trial to Designated Court – No prejudice caused to assesses – Prosecution based on materials recovered in search and not launched based only on statements of third parties – Prosecution valid – Prosecution not barred by limitation. [S. 132, 148, 277, 278, 280A, 280B Economic Offences (Inapplicability of Limitation) Act, 1974, Code of Criminal Procedure, 1973, S. 6(1), 26, 200, 397]**

For the assessment years 2014-15 and 2015-16, notices under section 148 of the Income-tax Act, 1961 were issued to the assessees, in response to which the original returns were filed without changes. The assessees requested for the reasons recorded for issuance of the notices under section 148. Before the issuance of the reasons the assessees received notices from the magistrate's court for appearance in criminal complaints filed by the Dy. DCIT(Investigation) under section 200 of the Code of Criminal Procedure, 1973. Thereafter the Department supplied the reasons for the

issuance of notices under section 148 of the Act. These were to the effect that the assessees had received some part of the sale consideration of the immovable property in cash but had not disclosed it. It was also the case of the Department that search and seizure operations had been conducted by the Enforcement Directorate in the office of a company in which one of the assessees was a director, that some materials (soft copies) were shared with the Department by the Enforcement Department, that searches were conducted in the office of the purchaser company under section 132 during which some small note books were recovered which as explained by the accountant of the purchaser company led to the belief that the assessees had received part of the sale consideration for sale of the immovable property in cash and was not disclosed in their returns. One of the assessees was elected Member of Parliament in May 2019 and took oath as Member of Parliament on June 18, 2019. In the interregnum, the Registrar General of the High Court issued a letter dated July 9, 2019 which pertained to transfer of the criminal complaints from the Economic Offences court to the designated court for trying the offences against Members of Parliament and Members of Legislative Assemblies pursuant to orders of the Supreme Court. The assessees filed petitions under section 482 of the Code of Criminal Procedure, 1973 assailing the transfer on the grounds that the designated court did not have original jurisdiction, that only one of the assessees had become a Member of Parliament, that he was also neither a sitting nor a former Member of Parliament or Member of Legislative Assembly on the date of complaint and that the assessees were deprived of one tier of remedy by transfer from the economic offences court to the designated court which was a sessions court. The assessees submitted that (a) if the returns filed in response to the notice under section 148 of the 1961 Act were treated as returns under section 139, then the original returns ceased to exist and consequently, the criminal complaints were to be quashed, (b) in the absence of at least one assessment order, there could be no prosecution, (c) the entire prosecution was based on statements given by third parties and this was impermissible, and (d) the complaints were barred by limitation as they were launched after the prescribed period for reassessment. Dismissing the petitions the Court held that(i) that the complaints for the offences under sections 276C(1) and 277 read with section 278 of the 1961 Act having been instituted otherwise than on a police report were not bound by limitation and were not barred by limitation. The Schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974 included the 1961 Act.

(ii) That there being corroboration between the soft copies seized from the company in which one of the assessees was a director and the purchaser, the assessees' contention that the prosecution had been launched solely based on the statements made by some third parties in the search and seizure of the purchaser company was not sustainable.

(iii) That the statement of the Registrar General of the High Court made it clear that if the complaint regarding the offences under sections 276C(1) and 277 read with section 278 of the 1961 Act, were to be tried in the adjoining judicial district or in any one of the 31 judicial districts in Tamil Nadu (other than Chennai district), the assessees would stand trial before a Judicial Magistrate, whereas in Chennai alone, the assessees would stand trial in a sessions court. In the absence of a special court under section 280A of the 1961 Act, section 26 of the Code of Criminal Procedure, 1973 operated and according to section 26(b) of the Code the offences were "offences under any other law" and triable in accordance with the First Schedule to the Code. The designated

court was a court of sessions within the meaning of section 6(i) of the Code and not a court constituted under any law other than the Code within the meaning of section 6 of the Code.
(iv) That the only difference between standing trial in a magistrate's court and standing trial in a sessions court was the further revision under section 397. Revision was not a right unlike an appeal but a discretionary relief. Therefore, as far as the assessees were concerned, there was no difference between standing trial in a magistrate's court and standing trial in a sessions court.
(v) That the contention that only one of the assessees had become a Member of Parliament was of no avail to the assessees, as the Supreme Court had directed the transfer of all the cases involving sitting or former Members of Parliament and Members of Legislative Assemblies. No prejudice had been shown by the assessees owing to being asked to stand trial in a sessions court.
(vi) That though the Metropolitan Magistrate was designated as a court on the date of the actual transfer on July 10, 2019, the transfer to the sessions court did not infract the rights of the assessees owing to section 292 of the 1961 Act. The contention that the sessions court lacked jurisdiction was not tenable as committal was not necessary in a transfer.(AY.2014-15, 2015-16)
Srinidhi Karti Chidambaram v. Dy. DCIT(Inv) (2020) 424 ITR 30 / 193 DTR 217 / 316 CTR 502 (Mad.)(HC)
Karti P. Chidambaram v. Dy. DCIT(Inv) (2020) 424 ITR 30 / 193 DTR 217 / 316 CTR 502 (Mad.)(HC)

2545 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Concealment of income – Appeal – Failure to produce documents to prove there was no wilful default – Additional evidence – Appellate Court has the power to admit additional evidence in the interest of justice. [S. 271(1)(c), 278B(3), Criminal Procedure Code, 1973, S. 190, 200, 391]**
The assessee-company was a textile manufacturer. It was represented by its managing director, the first petitioner and the executive director, the second petitioner. The ACIT filed a complaint before the Judicial Magistrate under S. 200 and 190(1) of the Criminal Procedure Code against the petitioners for offences under S. 276C(2) read with S. 278B(3) of the Act, for the assessment year 2012-13 for wilful default in payment of penalty levied under S. 271(1)(c) for concealment of income on account of capital gains that arose by way of sale of certain immovable properties. The petitioners contended that the trial court had failed to take into consideration the necessity and requirement for marking the documents adduced by way of additional evidence. On a criminal revision petition allowing the petition the Court held that according to section 391 of the Code, if the appellate court opined that additional evidence was necessary, shall record its reasons and take such evidence itself. The petitioners had been charged under sections 276C(2) read with section 278B(3) of the Act for having wilfully failed to pay the penalty and having deliberately failed to admit the capital gains that arose from the sale transactions done by the assessee. The criminal revision petition under section 391 of the Code had been filed by the petitioners even at the time of presentation of the appeal. The documents sought to be marked as additional evidence were not new documents and they were documents relating to filing of returns with the Department

in respect of the earlier assessment years, copies of which were also available with the Department. By marking these documents, the nature or course of the case would not be altered. The documents had not been produced before the trial court due to inefficiency or inadvertence of the person who had conducted the case. Where documents were left out to be marked due to carelessness and ignorance, they could be allowed to be marked for elucidation of truth, in the interest of justice, by exercising powers under section 391 of the Code. The petitioners should be allowed to let in additional evidence subject to the provisions of Chapter XXIII of the Code in the presence of the complainant and his counsel.(AY.2012-13)

Gangothri Textiles Ltd. v. ACIT (2020) 423 ITR 382 / 189 DTR 380 / 314 CTR 776 / 269 Taxman 282 (Mad.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – The pendency of assessment proceedings cannot act as a bar to institution of prosecution – Framing the charge is held to be valid [S. 2(16), 116, 277, 279 Constitution of India, Art. 13 Code of Criminal Procedure, 1973, S. 245(2), Indian Penal Code, 1860, S. 120B, 193, 199] 2546

The assessee moved application before the special judge to quash the proceedings on the grounds that there was no valid sanction and also that the filing of return of the Income-tax for the year 2018 had not been completed, and prior to that, the prosecution had been initiated before the due date of filing of the return and that the prosecution proceedings were premature. The application was dismissed by the Special Judge. On appeal, dismissing the appeals the Court held that Director had power to sanction prosecution. The Court also held that the test to determine a prima facie case would naturally depend upon the facts of each case and there was no straitjacket formula or universal law in this behalf. It was the specific case of the prosecution that the assessees had evaded tax by concealing huge amounts and at the time of search proceedings it was noticed that there was escapement of the Income-tax. As could be seen from the statement given by each of the assessees, they had thrown the blame on each other. It is well proposed proposition of law that when the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charges and proceeding with the trial. Accordingly the launching of prosecution was held to be valid.

D. K. Shivakumar v. Income-Tax Department (2019) 106 CCH 0177 / (2020) 421 ITR 529 / 191 DTR 240 / 316 CTR 302 (Karn.)(HC)

Rajendra N. v. Income-Tax Department (2020) 421 ITR 529 / 191 DTR 240 / 316 CTR 302 (Karn.)(HC)

Anjaneya Hanumanthaiah v. Income-Tax Department (2020) 421 ITR 529 / 191 DTR 240 / 316 CTR 302 (Karn.)(HC)

S. 276CC : Offences and prosecutions – Failure to furnish return of income – Quashing complaint – Power of High Court – No power to consider facts. [S. 54F, Criminal Procedure Code, 1973, S. 482] 2547

Dismissing the petition filed under section 482 of the Criminal Procedure Code, 1973, that the complaint had been filed on the ground of non-filing of return. A petition stating that the assessee was not liable to file a return necessitated investigation of facts

which was not permissible. Court held that While invoking the power under section 482 of the Code of Criminal Procedure, 1973 for quashing a complaint or a charge, the court should not embark upon an enquiry into the validity of the evidence available. All that the court should see is whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The court may also be entitled to see whether or not the preconditions requisite for taking cognizance have been complied with, and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Referred *Jayanthi V. Meenakshi (SC)* (AY:2013-14)
Jayashree (Mrs.) v. ITO (2020) 427 ITR 209 (Mad.)(HC)

2548 **S. 276CC : Offences and prosecutions – Failure to furnish return of income – Failure to file return – Prior approval of CCIT was sought by CIT before passing the sanction order u/s 279 – Prosecution is held to be not maintainable. [S. 133A, 139(1), 142(10), 153, 278E, 279, Criminal Procedure Code, 200]**
A return for the Assessment year 2019 10 was not filed on due date. A survey was conducted on the petitioner on 30-8-2013. The return were filed there after which was delayed by 1430 days. The Assistant Commissioner of Income tax filed a complaint under section 200 of the Criminal Procedure Code alleging that the assessee have committed offences punishable under section 276CC of the Act as regards non filing of income tax returns in terms of sections 139(1), 142(1),or 153 of the Act. The assessee filed petition before the High Court seeking quashing of the said complaints. It was contended that sanctioning authority in terms of section 279 is the Commissioner of Income tax. Therefore there was no need for the Commissioner to take the permission of the Chief Commissioner. Allowing the petition the Court held that, sanction authority being the Commissioner of Income tax there was no need for the said commissioner of Income tax to have written to the Chief Commissioner of Income tax to seek approval. Having so written in the event of the Chief Commissioner of Income tax refusing the permission sought for, entire exercise of the Commissioner of income tax would be rendered superfluous, though the order dated 26-2-202014 would indicate the subjective satisfaction of the Commissioner of Income tax. On the facts the sanction order being passed with prior approval for the Chief Commissioner of Income tax, was tenable in law and therefore entire proceedings initiated cannot be countenanced in law. Accordingly the launch of criminal proceeding was quashed. (CP.No. 101902 of 2014 dt 24-2 2020) (AY.2009-10)
Pace Vision v. Income tax Department (2020) The Chamber's Journal-May-P. 82 (Karn.) (HC) / 174 TR (A) 561 (Kar-HC) / 2020 TaxPub(DT) 1901 (Karn-HC), 94

2549 **S. 276CC : Offences and prosecutions – Failure to furnish return of income – Finding that delay was not willful – Conviction is held to be not valid. [S. 132, 153A]**
Dismissing the appeal of the revenue the court held that the the copies of certain documents were provided to the representatives of the assessee. However, it was not disputed that copies of all material documents seized during the search and seizure operations were not provided to the assessee. Admittedly, the assessee was also not provided the copy of the panchnama in respect of the documents seized from the

premises occupied by his brother. More importantly, it was not disputed that the assessee had not sent several letters, seeking copies of the documents for the purpose of filing the returns. But copies of all the documents seized had not been provided to the assessee. It also had to be noted that the returns were filed in due course. Hence, the conviction under section 276CC was not valid. (AY. 2008-09)
ACIT v. V. K. Gupta (2020) 424 ITR 602 / 187 DTR 30 / 313 CTR 249 (Delhi)(HC)

S. 279 : Offences and prosecutions – Compounding – Review – Compounding fees was levied 5% as treating the same as second application – Review petition was dismissed. [S. 201(1), 276B, 279(2), CPC, S.114] 2550
Dismissing the revive petition the Court held that, the second application submitted by the petitioner for compounding, and therefore, keeping in view the CBDT Circular dated 23.12.2014 this Court has held that the PCIT was justified in treating the subsequent application as second application and levying the compounding fees at 5% treating the same as second application. (WP No. 3813 of 2019 dt 29-04-2019) (AY. 2013-14, 2015-16) (RP.No 972 of 2019 dt 13-12-2019)
PEB Steel LLoyd (India) Ltd. v. PCIT (2020) 423 ITR 29 / 185 DTR 233 / 313 CTR 200 (MP)(HC)
PEB Steel LLoyd (India) Ltd. v. PCIT (2020) 423 ITR 29 / 185 DTR 240 / 313 CTR 207 (MP)(HC)

S. 281B : Provisional attachment – Debatable issue – Quantum of tax being high cannot be ground for attachment – Order unsustainable. [S. 28(ii)(a), 28(iv), 246A, Art. 226] 2551
Allowing the petition the court held that the reasons recorded by the ITO and the explanation given by the Department with regard to the provisional attachment were not acceptable as the provision was to be used only in rare situations where the bona fides of the assessee were in question or there had been a clear case of evasion of tax. The taxability of the amount in question was a debatable issue. The ITO had himself changed the goal post by first charging the amount under section 28(iv) and thereafter, under section 28(ii)(a). In a situation wherein the ITO was himself not certain of the taxability, the use of a drastic provision such as section 281B was not tenable. Moreover, no reasons had been provided in the attachment notice. The submission of the Department that the amount of tax being large, the provisional attachment was resorted to, was not a good enough reason. If such reason was accepted then in all cases of high demands, provisional attachment would become the norm. The attachment order was quashed and set aside. However writ against assessment order was not entertained as the assessee has the alternative remedy of filing an appeal before CIT(A). (AY. 2017-18)
Abul Kalam v. ACIT (2020) 272 Taxman 467 / 194 DTR 379 / 317 CTR 477 / (2021) 431 ITR 395 (Cal.)(HC)

Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014

2552 **Tribunal-Courts, Tribunal and Judiciary – Appointments in certain Tribunals requiring immediate attention.**

Recommendations of Selection Committee, directed to be made immediately. Where recommendations had already have been made, they must be implemented expeditiously with in two weeks. Single nodal agency to overseas working of Tribunal.

Madras Bar Association v. UOI (2020) 6 SCC 247

2553 **Tribunal – Courts, Tribunal and Judiciary – Appointment and selection – Clarification of order dt 9-2 2018 in Kudrat Sandhu (2018) 4 SCC 346, pars 1 and 2.**

Members of ITAT will continue till the age of 62 years and the person holding the post of President shall continue till the age of 65 Years. Selection process that has commenced shall continue and no litigation in that regard shall be entertained. Any other grievance, in this regard shall be dealt with at the time of final hearing of the main case.

Kudrat Sandhu v. UOI (2020) 6 SCC 251
Kudrat Sandhu v. UOI (2020) 6 SCC 254

Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015

S. 10(1) : Assessment – Penalty – Taking an overall view of the matter, the respondents could proceed pursuant to the notices dated December 20, 2017. However, no coercive measures could be taken against the assessees if the occasion so arose. [S. 4(3), 59, Income-tax Act, 1961, S. 131, 148] 2554

The Income-tax authorities received information that the assessees with another related person were holding undisclosed foreign accounts in Singapore. Summons were issued under section 131 but the assessees denied the allegation. The Income-tax authorities entered into correspondence with foreign authorities. On the basis of information gathered from foreign sources a search was conducted in the residential and business premises of the assessees. Notice of reassessment was issued in March, 2016. While passing the reassessment order, reference was made to section 4(3) of the 2015 Act stating that the income included in the total undisclosed foreign income and assets under the 2015 Act would not form part of the total income under the Act. It was mentioned that the merits of that income had not been gone into and were left to be decided by the authorities under the 2015 Act. In December 2017 notice was issued to the assessees under the 2015 Act. On a writ petition challenging the notice, the Court held that it was evident that prior to issuance of the notices dated December 20, 2017, the assessees were subjected to proceedings under the Act though the Income-tax proceedings were concluded on December 30, 2017 stating that issue relating to escaped income was left to be decided by the authorities under the 2015 Act. The Income-tax proceedings pertaining to the assessees were reopened following receipt of information in respect of undisclosed asset by the competent authority in terms of agreements entered into by the Central Government under section 90 or section 90A of the Act. On the basis of such information, search and seizure operations were carried out in the premises of the assessees under section 132 of the Act leading to issuance of notice under section 148 of the Act. The issue raised by the assessees that they were statutorily barred from making a declaration under section 59 of the 2015 Act was not an issue in the case of *UOI v. Gautam Khaitan (2019) 110 taxmann.com 272 (SC) /(2019) 10 SCC 108.*

It was another matter that in the Income-tax proceedings the assessees had not disclosed any black money or asset ; rather they had denied it. In such circumstances and taking an overall view of the matter, the respondents could proceed pursuant to the notices dated December 20, 2017. However, no coercive measures could be taken against the assessees if the occasion so arose. (AY.2008-09, 2009-10)

Anila Rasiklal Mehta v. UOI (2020) 425 ITR 545 (Bom.)(HC)

2555 **S. 42 : Penalty for failure to furnish return relation to foreign income and asset – Black Money – Failure to file return – Alternative remedy – Court under writ jurisdiction cannot exercise the role of an appellate authority defined under the Black Money Act to deal with the controversy if brought into motion. [S. 3, 10, 11, Income-tax Act, 1961, 139(5), Art. 226]**

The assessee was a non-resident. He returned to India and filed his Income-tax return for the assessment year 2016-17. In the meanwhile, Parliament introduced the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015. The assessee was under the bona fide belief that disclosure under Schedule FA was to be made only from the assessment year 2017-18. Subsequently he was advised that even for the assessment year 2016-17, details of foreign assets owned had to be included in Schedule FA. Accordingly, the assessee filed a revised return on August 30, 2018, but since the period prescribed for filing the revised return under section 139(5) of the Income-tax Act, 1961 had expired, the return was filed physically. He received a notice of penalty under the 2015 Act for failure to furnish the return of income and information. Penalty was imposed overruling his objections. On a writ petition to quash the order dismissing the petition the Court held that this Court under Article 226 of the Constitution of India cannot exercise the role of an appellate authority defined under the Black Money Act to deal with the controversy if brought into motion. Petitioner is well within the right to assail the aforementioned order, as the impugned order is dated 17.03. 2020 and the limitation in the instant case expired during the lock down but as per the Government directive and judgment of the Full Bench of this Court limitation prescribed already stood extended. Petitioner if so advised shall be at liberty to assail the aforementioned order. Any observation hereinabove would not prejudice the right of the petitioner in case the remedy is availed. (AY.2016-17)

Thomas Mathew v. ITO (2020) 426 ITR 438 / 315 CTR 193 / 273 Taxman 34 / 189 DTR 400 (Ker.)(HC)

2556 **S. 53 : Punishment for abetment – Tax evasion – Bogus bills – Statement on oath – Petitioner appearing before authorities and co-operating in investigation and making admissions-Directions to authorities to recall look out circular,in name of petitioner. [Income-tax Act, 1961, S. 131(IA) 133A, Art. 226]**

Proceedings for a look-out circular were initiated against the petitioner under S. 53 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for abetment in tax evasion. The petitioner held a resident visa issued by the U. A. E. authorities and frequently visited India. On January 6, 2020, when he arrived at Hyderabad he was informed by the officers at the airport to meet the Income-tax authorities regarding some pending issues. When on January 8, 2020, the petitioner was leaving for Dubai from Hyderabad Airport he was approached by a few officers of the Income-tax Department who served him with the copy of summons dated January 8, 2020 and took him for questioning in regard to their investigation pertaining to the PL group. The petitioner was questioned by the officers of the Department. The officers impounded soft copies of the two mobile phones of the petitioner and his laptop. From January 14, 2020 to January 17, 2020, the petitioner appeared before the investigating officers on multiple occasions. The petitioner in his statements recorded on oath under

S. 131(1A) of the 1961 Act on January 8, 2020 and January 14, 2020 stated that the entities arranged by him had raised bogus invoices against PL and also quantified the total amount of expenses booked by PL against bogus invoices, that once the entities received the amount from the banks on behalf of PL, such entities then deducted their own commission for raising bogus bills while the petitioner deducted his commission for making the arrangement, after which the remaining amount went back to PL and its promoters. The petitioner filed a a writ petition seeking a direction to the Department to withdraw the look-out circular in his name Court held that the petitioner did not fall in any of the categories or types of persons who could be included in the look-out circular. There were no allegations that the petitioner ever absconded and did not participate in the criminal proceedings, rather according to the status report the petitioner had joined the investigation as and when called by the Income-tax office and his statements had already been recorded and as stated by the respondents, he had made certain admissions in his statements given to the Department, which showed that the petitioner had co-operated with the investigating agency. Since the statements of the petitioner had already been recorded, they could be confronted with the promoters of PL. In the entire status report there was neither any apprehension, nor any hint or any allegation that the petitioner would not be available for interrogation and would not present himself at the time of the trial. The petitioner was not an employee of PL. There was no justification to keep the look-out circular alive and therefore, it was to be recalled by the issuing authority.

Piyoosh Kumar Goyal v. UOI (2020) 426 ITR 546 (Delhi) (HC) distinguished. Court also observed that the petitioner was to join the investigation and co-operate as and when called by the Investigating Officer. However, the Investigating Officer shall give him at least 7 days' prior notice. If the petitioner proposed to travel beyond Dubai, he should furnish the details of the country or countries with his complete itinerary to the Investigating Officer.

Lakshmi Satyanarayana Dutt Tadikonda v. UOI (2020) 426 ITR 550 / 274 Taxman 414 (Delhi)(HC)

Finance, Act, 2017

2557 **S. 184 : Merger of Tribunals and other Authorities and Conditions of Service of Chairpersons, Members etc. – Excessive delegation – Whether Unconstitutional – Courts, Tribunals and Judiciary – Appointment process – Independence of Judiciary [S. 183, Constitution of India, Art. 124, 214, 216, 226, 323-A, 323-B]**

Lack of judicial dominance in the appointment process of Members and Presiding Officers of Tribunal is in direct contravention of doctrine of separation of powers and is encroachment on the judicial domain. Executive is a litigating party in most of the litigations and hence, cannot be allowed to be a dominant participant in judicial appointments. Tribunals constituted in substitution of Courts should have similar standards of appointment, qualification and conditions of service to inspire confidence of public at large. Central Government has given liberty to seek modification of the order after framing fresh Rules Strictly in conformity and accordance with the principles delineated in *R.K Jain (1993) 4SCC 119, L. Chandra Kumar (1997) 3 SCC 261, Madras Bar Association (2014) 10 SCC 1 and Gujarat Urja Nigam Ltd (2016) 9 SCC 103*, conjointly read with this judgement. Central Government directed to consult Law Commission of India and other expert body and revisit the provisions of statutes referable to the Finance, Act, 2017 or other Acts listed herein. Central Government should then place appropriate proposals before Parliament for consideration of the need to remove direct appeals to Supreme Court from orders of Tribunals. This should be done with in six months. Tribunal dealing with similar areas of law must be amalgamated to ensure efficient utilisation of reserves and facilitate greater access to justice.

Rojer Mathew v. South Indian Bank Ltd, Referred by its Chief Manager and Ors. (2020) 6 SCC 1

Kar Vivad Samadhan Scheme, 1998 (Finance Act 2 of 1998)

S. 90 : Tax arrears – Since the revenue had appropriated the amount against tax liability for the Assessment year 1987-88 computation / calculation of penalty and interest for the said assessment year in certificate of intimation dated 26-2-1999 was not justified. [Art. 226] 2558

Notice of demand dated 19.07.1991 was issued by Revenue in respect of assessment year 1985-86 for Rs. 9,33,020 and for assessment year 1987-88 for Rs. 3,11,206-Upon petitioner depositing Rs. 6,00,000 with Revenue in October 1991, demand was stayed. Revenue appropriated deposit amount towards petitioner's tax liability of Rs. 3,11,206 for assessment year 1987-88. Assessee applied under the Kar Vivad Samadhan Scheme. For the assessment year 1987-88 in Certificate of Intimation dated 26.2.1999, liability of petitioner was determined @ 50% of total liability at Rs. 6,16,838 towards penalty and interest only. On writ the Court held that since Tax Recovery Officer had already adjusted amount of Rs. 3,11,206 out of deposit amount of Rs. 6,00,000, petitioner was not liable to pay any interest on said amount of Rs. 3,11,206 As regards balance amount after adjusting any other penalty and interest that might arose for assessment year 1987-88, should be adjusted towards outstanding liability for assessment year 1985-86 (AY. 1985-86, 1987-88)

Kuber Builders v. UOI (2020) 272 Taxman 216 / 192 DTR 57 / 316 CTR 479 (Bom.)(HC)

Securities Transaction Tax (STT) Finance (No. 2) Act, 2004

2559 **S. 105 : Penalty for failure to collect or pay securities transaction tax – Penalty not to be imposed inn certain cases – No penalty shall be imposed on assessee for having failed to collect Securities Transaction Tax (STT) or having collected, failed to pay such STT to credit of Central Government without providing it a reasonable opportunity to prove that there was reasonable cause for such failure. [S. 108]**

As per section 105 any assessee who fails to collect whole or any part of Securities Transaction Tax (STT) or having collected STT fails to pay such tax to credit of Central Government shall be liable to pay penalty in addition to interest. However, as per section 108, no penalty shall be imposable for any failure referred to in said provision if assessee proves that there was reasonable cause for said failure and as per proviso no order imposing a penalty shall be made unless assessee has been given a reasonable opportunity of being heard. Therefore a conjoint reading of sections 105 and 108 of Securities Transaction Tax (STT) makes it clear that imposition of penalty is to be proceeded separately as a separate proceeding and on a reasonable opportunity being provided and if assessee can prove that there was reasonable cause for such failure, no penalty shall be imposed penalty (AY. 2006-07)

PCIT v. National Stock Exchange (2020) 272 Taxman 144 (Bom.)(HC)

Wealth-tax Act, 1957

S. 2(e)(a) : Asset – Urban land – Urban land on which construction has been prohibited – Not an asset for purposes of wealth-Tax. [S. 16(3)] 2560

Dismissing the appeal of the revenue the Court held that Tribunal rightly took note of section 2(e)(a) of the Act and more particularly, the proviso to Explanation 1(b) which defines urban land. After noting that there was proposal to form a 100 ft road and that no construction could be put up on the land and that apart the land had been classified as Coastal Region, Zone-II, the Tribunal allowed the assessee's appeal and set aside the orders passed by the Assessing Officer as well as the Commissioner (Appeals). The order passed by the Tribunal was perfectly legal and valid. Furthermore, the Government of Tamil Nadu, in G.O. (D). No. 91, Highways and Minor Ports (HW 2) Department, dated June 6, 2019 had acquired the part of the land in Survey No. 406/78 Part to an extent of 6500 sq. m. The land was not an asset for the purposes of wealth-tax.

PCIT v. M. Balasubramaniam (2020) 429 ITR 556 (Mad.)(HC)

CIT v. Sushila Devi Kejriwal (Smt.) (2020) 429 ITR 552 (2021) 201 DTR 333 (Mad.)(HC)

S. 7 : Value of assets – Land – Valuation date-Land sold subsequently for which agreement was entered in to before valuation date – Justified in taking the value on the basis of sale value. [S. 2(q), 27A, Urban Land (Ceiling and Regulation) Act 1976] 2561

The assessee valued the land as per rule 20 of Schedule III at Rs. 10,34,265. The assessee sold the land for Rs 3,12,20,774. The WTO valued the land as per market value of the land at Rs 3,12, 0,774. The valuation adopted by the WTO was affirmed by the CIT(A)and also Appellate Tribunal. On appeal the dismissing the appeal of the assessee the Court held that the WTO was justified in taking the value at Rs. 3,12,20,774. The Court also observed that for determining the value of the asset as on the valuation date there cannot be any embargo on the WTO not to take into a consideration valuation of identical assets immediately preceding or succeeding the valuation date. (AY. 1991-92)

Mahendra J. Vora v. Dy.CWT (2020) 187 DTR 25 / 313 CTR 355 (Bom.)(HC)

S. 17 : Reassessment – Limitation – Matter remanded to wealth tax officer for verification. [S. 18(1)(c)] 2562

The issue before the High Court was whether the order passed by the ACWT dated 30/06/2008, is barred by limitation being made beyond period of one year as required u/s 17A(2) of the WT Act, and consequently the penalty proceedings initiated u/s 18(1)(c) are unsustainable/bad in law. The Court held that the Wealth Tax Officer will have to investigate into the factual aspect and will have to re-examine the matter and thereafter, conclude whether the period of limitation, as prescribed under Section 17 of the Wealth Tax, is indeed attracted in this case, in the light of explanation 3 to Section 18 of the Wealth Tax Act. The issue as to whether, explanation 3 to Section 18 of the Wealth Tax Act, is attracted or not, is a mixed question of law and facts and therefore, the Wealth Tax Officer will have to consider this issue as well. Needless to mention that the Wealth Tax Officer will have to afford an opportunity of hearing before deciding the matter in pursuance of the remand. The substantial questions of law as framed, therefore, cannot

be answered in favour of the appellant, at this stage, as raised. (AY. 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06)
EDC Ltd. v. CWT (2020) 191 DTR 397 / 315 CTR 760 (Bom.)(HC)

2563 **S. 21AA : Assessment – Association of persons – Members' Club – No business or profession carried on by social members' Club-Surplus assets to be divided equally amongst members – Members' shares determinate at that date – Club not chargeable to Wealth-Tax. [S. 2(31), 3(1)]**

The objects of the assessee-club included, inter alia, the provision for its members, of social, cultural, sporting, recreational and other facilities, the promotion of camaraderie and fellowship among its members, and the undertaking of measures for social service consequent on natural calamities or disasters, national or local. Rule 35 of the club's rules provided that upon liquidation any surplus assets remaining after all debts and liabilities of the club were discharged shall be divided equally amongst the members of the club. On the ground that the rights of the members of the assessee-club were not restricted to user or possession, that the assets of the club belonged to them, that the number of members and the date of dissolution were uncertain and variable and therefore indeterminate, the Assessing Officer came to the conclusion that the assessee was liable to be taxed under section 21AA of the Wealth-tax Act, 1957 for AY.s 1981-82 and 1984-85 up to 1990-91. The Commissioner (Appeals) dismissed the assessee's appeals, but the Appellate Tribunal characterised the assessee as a "social club" and held that since the members were entitled to equal shares in the assets of the club on a winding-up after paying all debts and liabilities, the shares so fixed were determinate, thus making it clear that section 21AA of the Wealth-tax Act, 1957 would have no application to the facts. As a result, the Appellate Tribunal set aside the orders of the Assessing Officer and the Commissioner (Appeals). On appeal, the High Court decided in favour of the Department and dismissed a review petition by its order. On further appeal, allowing the appeals, the Court held that the assessee was a social club whose objects made it clear that persons did not band together for any business purpose or commercial purpose in order to make income or profits. The assessee was an association of persons and not the creation, by a person who was otherwise assessable, of one among a large number of associations of persons without defining the shares of the members so as to escape tax liability. Section 21AA of the Wealth-tax Act, 1957 was not attracted to the facts. Court also observed that That under rule 35 of the assessee's rules, on liquidation, any surplus assets remaining after all debts and liabilities of the club had been discharged, shall be divided equally amongst all categories of members of the club. This would show that "at any time thereafter" within the meaning of section 21AA(1), the members' shares were determinate in that on liquidation each member of whatsoever category would get an equal share. What had to be seen was the list of members on the date of liquidation in terms of rule 35 of the assessee's rules. Given that as on that particular date, there would be a fixed list of members belonging to the various classes mentioned in the rules, it was clear that such list of members not being a fluctuating body, but a fixed body as on the date of liquidation, and this would make the members "determinate", as a result of which, section 21AA would have no application. Court also held that The definition of "person" in section 2(31) of the Income-tax Act, 1961 would

take in both an association of persons and a body of individuals. "Body of individuals" is a wider expression than "association of persons" in which such body of individuals may have no common object at all but would include a combination of individuals who had nothing more than a unity of interest. Apart from this, to be taxed as an association of persons under the Income-tax Act is to be taxed as an association of persons per se. Section 21AA of the Wealth-tax Act does not enlarge the field of taxpayers but only plugs evasion as the association of persons must be formed with members who have indeterminate shares in its income or assets. The argument that where a club is taxed as an association of persons under the Income-tax Act, it must be regarded to be an "association of persons" for the purpose of a tax evasion provision in the Wealth-tax Act as opposed to a charging provision in the Income-tax Act, is not tenable.(AY. 1981-82,1984-85 to 1990-91)

Bangalore Club v. CWT (2020) 427 ITR 260 / 316 CTR 622 / 193 DTR 441 / 275 Taxman 480 (SC)

S. 27A : Appeal – High Court – Monetary Limit – Applicable to wealth tax Appeals. [S. 2(e), IT Act, S. 260A] 2564

Circular No. 5 of 2019 ([2019] 411 ITR (St.) 7), the threshold limit fixed by the Central Board of Direct Taxes for the Revenue to pursue appeals has been made applicable to wealth-tax appeals also with effect from February 5, 2019. (AY.2005-06 to 2007-08)

CIT v. Sushila Devi Kejriwal (Smt.)(2020) 429 ITR 552 / (2021) 201 DTR 333 (Mad.)(HC)
PCIT v. M. Balasubramaniam (2020) 429 ITR 556 (Mad.)(HC)

Interpretation of taxing statutes, precedents

2565 **Interpretation – Natural Justice – Audi Alteram Partem – Right of hearing – Cross-Examination – Matter remanded to first Appellate Authority. [IT Act, 1961, S. 226 (3)]**
Court held that, if Department wants to rely on their evidence, it may be necessary to provide opportunity of cross-examination of these witness to the appellant, which can be done by first appellate authority it self. Matter remanded to the CIT(A) to provide the assessee to cross-examine witness relied on by Revenue. Recovery proceedings stayed till the decision on remand is rendered by the CIT(A)(CA No. 6053-6054 of 2014 dt 17-2-2020.
ICDS Ltd. v. CIT (2020) 10 SCC 529
Editorial: Order in CIT v. ICDS Ltd, ITA No. 353 of 2001 dt 18-9-2007 (Kran) (HC) is reversed.

2566 **Interpretation – Natural Justice – There is a clear distinction between cases where there was no hearing at all and the cases where there was mere technical infringement of the principle**
The principles of natural justice have undergone a sea change. The earlier view that even a small violation would result in the order being rendered a nullity is not correct. Some real prejudice must be caused to the complainant by the refusal to follow natural justice. The prejudice must not merely be the apprehension of a litigant. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. There is a clear distinction between cases where there was no hearing at all and the cases where there was mere technical infringement of the principle (CA No 3498 of 2020, Arising ALP (C) No. 5136 of 2020 dt.16-10-2020)
State of U.P. v. Sudhir Kumar Singh, 2020 SCC OnLine SC 847 (SC), www.itatonline.org

2567 **Interpretation – Doctrine of precedents and stare decisis – Binding precedent.**
Court held that the doctrine of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they justify their holdings by relying upon the established tenets of law. Court also held that the decision rendered by a coordinate Bench on the subsequent Benches of equal or lesser strength. Followed *National Insurance Co. Ltd v. Pranay Sethi (2017) 16 SCC 680.*
Shah Faesal (Dr.) v. UOI (2020) 4 SCC 727 (5-Judge Bench)

2568 **Interpretation of taxing statutes – Precedent – Special leave Petition dismissed in Limine – Doctrine of merger is not applicable. [Constitution of India, Art. 141, Maharashtra Employees of private Schools (Conditions of Service) Regulation Act, S. 4(1), 16(2)(a)]**
When Special Leave Petition challenging the order of Court was dismissed by Supreme Court in Limine without granting an leave, doctrine of merger is not applicable.

Followed Khoday Distilleries Ltd (Now known as *Khoday India Ltd v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd Kollegal (2019) 4 SCC 376. (WP No. 3494 of 2016 dt 19-12-2019)*
Dhiraj Manoharro Chore v. State of Maharashtra AIR 2020 Bom 65 (FB)

Interpretation – Precedent – Doctrine of merger – Non-Speaking order of Supreme Court refusing to special leave to appeal – Doctrine of merger would not apply. [Constitution of India, Art. 141] 2569

Non-Speaking order of Supreme Court refusing to special leave to appeal, Doctrine of merger would not apply. Followed *Khoday Distilleries Ltd v. Shri. Mahadeswara Sarkkre Karkhane Ltd (2019) 4 SCC 376.* (WP.No. 6104 of 2016 dt. 18-12 2019)
Zahedabi Abdul Razaque Shete and Ors. v. Maharashtra State Board of Waqf Pan Chakki Aurangabad AIR 2020 Bom. 100

Interpretation – Reference to larger Bench can be made when there are conflicting views of Coordinate Bench on a subject – Reference cannot be made merely to create a precedent or to get an authoritative pronouncement by a larger Bench on any assumed conflict. [Constitution of India, Art, 225] 2570

Court held that, reference to larger Bench, can be made when there are conflicting views of Coordinate Bench on a subject. Reference cannot be made merely to create a precedent or to get an authoritative pronouncement by a larger Bench on any assumed conflict.(WP-A-No 2071 of 2017 dt 1-5-2020)
Manish Kumar Mishra v. UOI AIR 2020 All 97 (FB)

Interpretation of taxing statutes – Binding precedent – Two conflicting decision of different High Court – Transfer of case – Jurisdictional High Court decision will be binding on the Assessing Officer. 2571

Tribunal held that exemption cannot be denied when the property was purchased in the name of spouse. Followed *CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi) (HC)*. referred the decision of the Delhi High Court in *CIT v. AARBEE Industries (2013) 357 ITR 542 (Delhi) (HC)* where in the Court held that it is the date on which the appeal is filed which would be the material point of time for considering as to which court of appeal is to be filed. Decision of Jurisdictional High Court of Delhi is binding and not the judgement of Punjab and High Court in *CIT v Dinesh Verma (2015) 233 Taxman 409 (P&H) (HC) (ITA No 8478 /de/ 2019 dt 2-3-2020)* (AY. 2014-15)
Rampal Hooda v. ITO (2020) BCAJ-April-34 (Delhi)(Trib.)

Advocates Act, 1961

2572 **S. 33 : Advocates alone entitle to practice – Concession by counsel – Rent control and Eviction Compromise / Consent Degree – Compromise by an Advocate without having such right – Held to be not valid. [S. 34, Civil procedure Code, 1908 Or 3, 23, R. 3]**
Court held that Advocate cannot be deemed to have been vested with the right as a brief-holder to compromise the issue before the High Court, or express the consent of the appellant tenants, to an order proposed by the High Court. Order of High Court is restored and requested to hear the matter in accordance with law. (CA No. 183-84 of 2015 dt 30-1-2015
Ram Prakash v. Puttan Lal (2020) 14 SCC 418

Andhra Pradesh Value Added Tax Act, 2005

S. 21 : Assessment – Alternative remedy – Limitation – Power of Supreme Court & High Court under Articles 142 and 226 to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stands foreclosed by the law of limitation. [S. 31, Constitution of India 1949, Art. 142, 226] 2573

Allowing the petition of the revenue the Court held that, Power of Supreme Court & High Court under Articles 142 and 226 to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stands foreclosed by the law of limitation. The statutory period prescribed for redressal of the grievance cannot be disregarded and a writ petition entertained. Doing so would be in the teeth of the principle that the Court cannot issue a writ which is inconsistent with the legislative intent. That would render the legislative scheme and intention behind the statutory provision otiose. [CA NO. 2413/2020 (Arising out of SLP(C) No. 12892/2019) dt. 6/5/2020]

ACCT v. Glaxo Smith Kline Consumer Health Care Ltd. AIR 2020 SC2815/ Manu/SC/0434 /2020 (SC) www.itatonline.org

Central Sales Tax Act, 1956

2574 **S. 3 : Constructive delivery – Interpretation – legal fiction – The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practice. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature. [S. 6]**

The concept of "constructive delivery" of goods as expounded in *Arjan Dass Gupta v. CST (1980) 45 STC 52 (Delhi)(HC)* is not proper to interpret the provisions of s. 3 of the CST Act. A legal fiction is created s. 3 that the movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier. There is no concept of constructive delivery either express or implied in the said provision. On a plain reading of the statute, the movement of the goods would terminate only when delivery is taken. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. If the authorities felt any assessee or dealer was taking unintended benefit under the aforesaid provisions of the 1956 Act, then the proper course would be legislative amendment. The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practice. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature. (CA NO. 2217 OF 2011 dt. 27/4/2020)

CTO v. Bombay Machinery Stores (2020) 77 GSTR 304; Manu/SC/ 0419/2002 (SC) www. itatonline.org

Goods and Service Tax Act, 2017

S. 79 : Coercive Recovery of taxes etc during Corona Virus crisis – Orders of the Allahabad and Kerala High Courts directing the authorities to defer coercive recovery of taxes is stayed. [Art. 226, 227] 2575

The orders of the Allahabad & Kerala High Courts directing the authorities to defer coercive recovery of taxes is stayed in view of the stand of the Government that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one (SLP No. 10669/2020 dt 20-03-2020)

UOI v. P.D. Sunny & Ors. Manu/ SCOR/ 24176/ 2020 (SC) www.itatonline.org

Central Goods and Services Tax Act, 2017.

2576 **S. 83 : Provisional Attachment u/s 83 of GST Act – Provisional attachment ceases upon expiry of one year – The action is in violation of the right to carry on business under Article 19(1) & deprivation of property under Article 300A. The Revenue shall pay costs of Rs. 5 Lakh. [Art. 19(1)]**

Provisional attachment ceases upon expiry of one year. The authorities have acted in a blatantly highhanded and illegal manner by keeping the provisional attachments in a state of continuance. The failure is nothing short of being an act of highhandedness. Such actions of authorities is an obloquy and reprehensible. The action is in violation of the right to carry on business under Article 19(1) & deprivation of property under Article 300A. The Revenue shall pay costs of Rs. 5 Lakh. (W. P. No. 18429 (W) of 2019, dt. 4/3/2020)

Amazonite Steel Pvt. Ltd. v. UOI (2020) (36) G.S.T.L. 184; MANU/ WB/0593/2020 (Cal.) (HC) www.itatonline.org

Corundum Impex Pvt. Ltd. v. UOI (2020) (36) G.S.T.L. 184; MANU/ WB/0593/2020 (Cal) (HC) www.itatonline.org

Cuprite Marketing Pvt. Ltd. v. UOI (2020) (36) G.S.T.L. 184; MANU/ WB/0593/2020 (Cal.) (HC) www.itatonline.org

Central Goods and Services Tax Act, 2017 / Gujarat Goods and Services Act, 2017

GST – Search & Seizure – The action of the GST authorities of camping in the assessee's home for 8 days and placing him under house arrest is illegal & a blatant abuse of powers. It has shocked the conscience of the court. 2577

A search was conducted at the residential premises of he petitioner which went from 11-10-2019 to 18-10 2019. The petitioner for all eight days, during which period the family members were at the mercy of the authorised officers and were confined to the searched premises and kept under surveillance and were not permitted to leave the premises without the permission of the authorised Officer has shocked the consciousness of the Court. On writ the Court held that the action of the GST authorities of camping in the assessee's home for 8 days and placing him under house arrest is illegal & a blatant abuse of powers. It has shocked the conscience of the court. This unauthorised action of the officers may tantamount to an offence under the Indian Penal Code. The officials cannot take shelter behind ignorance of law to justify their illegal actions. It is a matter of deep regret that the Chief Commissioner has attempted to justify such wrongful action on the part of the officials. Court also observed that " However, the court found it necessary to pass the present order to curb any further abuse of powers in this manner by the authorities under the GST Act". The matter is listed for hearing on 23-01 2020. (C/SCA/ 18463 /2019 dt. 24-12-2019

Paresh Nathalal Chauhan v. State of Gujrat (2020) 79 GST105 /77 GSTR 89; MANU /GJ /3478/2019 (Guj.)(HC), www.itatonline.org

Constitution of India

2578 **Art. 141 : Covid-19 – Extension of limitation period due to Covid-19 Lock down – Service of all notices, summons and exchange of pleadings may be effected by e-mail, FAX, WhatsApp, Telegram, Signal etc in addition to service of the same document by e-mail simultaneously on the same date-The Reserve Bank of India may consider whether the validity period of a cheque under the Negotiable Instruments Act should be extended or not. [Arbitration and Conciliation Act, 1996, S. 23(4), 29A, Banking Regulation Act, 1949, S.35A, Commercial Courts Act, 2015, S.12A Constitution of India, 1949, Art. 141, Negotiable Instruments Act, 1881, S. 46, Limitation Act 1908, S. 5]**

On Suo Moto Writ petition in Re Cognizance for extension of limitation the court observed that service of all notices, summons and exchange of pleadings Service of notices summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. Accordingly the Court held that it is appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, the Court directed that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date. Accordingly the extension of validity of Negotiable Instruments Act, 1881 for impleadment is allowed. As regards with reference to the prayer, that the period of validity of a cheque be extended, the court held that the said period has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act,1949. Accordingly the Court directed the Reserve Bank of India may in its discretion, alter such period as it thinks fit. (Suo Moto Writ petition (c) no. 3/2020 dt 10-07-2020)

In Re Cognizance for extension of limitation v. Ors (2020) 9 SCC 468; MANU/SC/ 0654/ 2020 (SC) www.itatonline.org

2579 **Art. 141 : Corona Virus (COVID 19) – Extension of limitation period-All periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. [Art. 142]**

Taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. (Suo Moto writ (CIVIL) NO. 3 of 2020 dt. 6/5/2020) (Cogniznance for extension of limitation SUO MOTO WRIT (C) NO. 3 of 2020 dt. 6/5/2020)

In Re: Cognizance for Extension of Limitation (2020) 220 Comp Cas 454 (SC) ; MANU/ SC/ 0501/2020; www.itatonline.org

Art. 141 : Law declared by the Supreme Court shall be binding on all courts with in territory of India – Guidelines for Court functioning through video conferencing during covid-19 pandemic. [Art. 142] 2580

Court held that, all measures shall be taken to reduce the need for physical presence of all stakeholders within the court premises and to secure the functioning of courts in consonance with social distancing guidelines. The Supreme Court and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies. Every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies. [WC. No. 5 /2020 /6/4 /2020

In Re: Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic (2020) 6 SCC 686; MANU/SC/0361/2020 (SC) www.itatonline.org

Art. 141 : Law declared by the Supreme Court shall be binding on all courts with in territory of India Extension of limitation period – Corona Virus – Period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws, whether condonable or not, shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. [Art. 142] 2581

Court held that to obviate difficulties caused by Corona Virus in filing petitions / applications / suits / appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and / or State), it is ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws, whether condonable or not, shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. Suo Motu WP No 3/2020 dt 23-03-2020.

In Re: Cognizance For Extension of Limitation (2020) 424 ITR 314 / MANU/ SC/0566/2020(SC); www.itatonline.org

Art. 141 : Law declared by the Supreme Court shall be binding on all courts with in territory of India – Binding precedent – A decision, unaccompanied by reasons can never be said to be a law declared by the Supreme Court, though it will bind the parties inter se in drawing the curtain on the litigation. 2582

The pronouncement of the law on point shall operate as a binding precedent on all courts within India. Law declared by the Supreme Court has to be essentially understood as a principle laid down by the Court and it is this principle which has the effect of a precedent. A principle as understood from the word itself, is a proposition which can only be delivered after examination of the matter on merits. It can never be a summary manner, much less be rendered in a decision delivered on technical grounds, without entering in to merits at all. A decision unaccompanied by reasons can never be said to be a law declared by the Supreme Court, though it will bind the parties inter se in drawing the curtain on the litigation. (CA No. 2016 of 2020 dt 5-3-2020)

UOI v. M.V. Mohan Nair (2020) 5 SCC 421

2583 **Art. 226 : High Courts bound to issue Writ of Mandamus – For enforcement of public duties – Right to property is a fundamental right and human right. [Art. 300A]**

One Thorat family was the owner of Plot at Bhamburda in Pune. By a registered deed of conveyance dated 21.12.1956 one Mrs. Krishnabai Gopal Rao Thorat sold the northern part of the plot admeasuring jointly to Swami Dilip Kumar Roy, one of the most eminent disciples of Sri Aurobindo, and Smt. Indira Devi, daughter disciple of Swami Dilip Kumar Roy. Swami Dilip Kumar Roy had moved to Pune to propagate the philosophy of Sri Aurobindo and established the Hare Krishna Mandir with his daughter disciple Smt. Indira Devi, on the land purchased from Mrs. Krishnabai Gopal Rao Thorat. According to the appellants, by an order dated 20.8.1970 of the Pune Municipal Corporation, Plot No. 473 which was originally numbered Survey No.1092, was divided. Final plot No. 473 B was sub divided into 4 plots. On 20.8.1970 the City Survey Officer directed issuance of separate property cards in view of a proposed Development Scheme under the Regional and Town Planning Act which included Final Plot No.473, and an Arbitrator was appointed. The Arbitrator made an Award dated 16.5.1972 directing that the area and ownership of the plots were to be as per entries in the property register. The appellant contends that the Pune Municipal Corporation by its letters dated 29.6.1996, 4.1.1997 and 18.1.1997 admitted that the internal road had never been acquired by the Pune Municipal Corporation. The Town and Planning Department also admitted that Pune Municipal Corporation had wrongly been shown to be owner of said road.

The Urban Development Department rejected the proposal of the Appellant and held that Pune Municipal Corporation is the owner of the land. The Hon'ble High Court dismissed the Writ Petition challenging the said order and refused to issue a Writ of Mandamus.

The Hon'ble Supreme Court held that the right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is discretionary, but the discretion must be exercised on sound judicial principles. (CA No. 6156 of 2013 dt. 07.08.2020)

Hari Krishna Mandir Trust v. State of Maharashtra & Ors. (2020) 9 SCC 356; MANU/SC/0580/2020; AIR 2020 SC 3969 (SC); www.itatonline.org

Art. 226 : Corona Virus Lockdown Crisis – Extension of interim orders – All interim orders operating till today and are not already continued by some other courts / authority including this court shall remain in force till 30.04.2020 subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases. [Art. 227] 2584

Full court of four judges of the Bombay High Court held that, all interim orders operating till today and are not already continued by some other courts / authority including this court shall remain in force till 30.04.2020 subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases. Thus, all interim orders passed by this High Court at Mumbai, Aurangabad, Nagpur and Panaji as also all courts/ Tribunal and authorities subordinate over which it has power of superintendence expiring before 30.04.2020, shall continue to operate till then. It is clarified that such interim orders which are not granted for limited duration and therefore, are to operate till further orders, shall remain unaffected by this order. (WP 2 OF 2020 Dt. 26/3/2020

In Re: Extension of Interim Orders MANU/MH/0508/2020 (FB) (Bom.)(HC), www.itatonline.org

Art. 226 : Corona Virus Lockdown Crisis – Extension of interim orders – Expiring before 30-04-2020 – Shall continue to operate till then – Interim orders which are not granted for limited duration are to operate till further orders shall remain unaffected by this order. [Art. 227] 2585

The Bench of four Judges of Bombay High Court was constituted on 26-03-2020 emergent situation considering the outbreak of COVID-19 and consequential lockdown. Honourable Court held that, as the lock down is now declared till 14.04.2020,normal working of this court at least till then is not possible. As the staff is not available, files cannot be made over to court. As local transport is shut down, lawyers and litigants are finding it difficult to approach the court. In this situation, we find it appropriate to continue all interim orders which are operating till today and are not already continued by some other courts / authority including this court and the same shall remain in force till 30.04.2020, subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases. Thus, all interim orders passed by this High Court at Mumbai, Aurangabad, Nagpur and Panaji as also all courts/ Tribunal and authorities subordinate over which it has power of superintendence expiring before 30.04.2020, shall continue to operate till then. It is clarified that such interim orders which are not granted for limited duration and therefore, are to operate till further orders, shall remain unaffected by this order. (WP No 20 of 2020 dt 26-03-2020)

Court on its own Motion (Bom.)(HC) www.itat online.org.

Contempt Court Act, 1971

2586 **S. 5 : Fair criticism of judicial act not contempt – No party has the right to attribute motives to a Judge or to question the bona fides of the Judge or to raise questions with regard to the competence of the Judge – Judges are part and parcel of the justice delivery system – When there is a concerted attack by members of the Bar, the Court cannot shut its eyes to the slanderous and scandalous allegations made. If such allegations are permitted to remain unchallenged then the public will lose faith not only in those particular Judges but also in the entire justice delivery system and this definitely affects the majesty of law. [Advocate Act, 1961, S. 7(b), Constitution of India, 1949, Art. 129, 142]**

There can be no manner of doubt that any citizen of the country can criticise the judgments delivered by any Court including this Court. However, no party has the right to attribute motives to a Judge or to question the bona fides of the Judge or to raise questions with regard to the competence of the Judge. Judges are part and parcel of the justice delivery system. When there is a concerted attack by members of the Bar, the Court cannot shut its eyes to the slanderous and scandalous allegations made. If such allegations are permitted to remain unchallenged then the public will lose faith not only in those particular Judges but also in the entire justice delivery system and this definitely affects the majesty of law. (Suo Motu Contempt petition (Criminal) No 2 of 2019 dt 27-04 2020) [CA NO. 2413/2020 (Arising out of SLP(C) No. 12892/2019) dt. 6/5/2020]

Vijay Kurle & Ors AIR 2020 SC 3927; MANU/SC/0413/2020 (SC) www.itatonline.org

2587 **S. 5 : Fair criticism of judicial act not contempt – Contempt of Court by Advocates – It is obvious that this is a concerted effort to virtually hold the Judiciary to ransom – All three contemnors are sentenced to undergo simple imprisonment for a period of 3 months each with a fine of Rs. 2000. [Advocate Act, 1961, S. 7(b) Constitution of India, 1949 Art. 129, 142]**

The main Contempt Petition was heard at length and disposed of on 27.04.2020. After the judgment was pronounced, the case was fixed on 01.05.2020 for hearing the contemnors on sentence. The contemnors filed applications for recall of the judgment and, therefore, the matter was listed today. One of us (Deepak Gupta, J.) is to demit office on 06.05.2020 and, therefore, the matter had to be heard and we see no ground for one of us to recuse. The application is accordingly rejected. Court held that there is not an iota of remorse or any semblance of apology on behalf of the contemnors. In view of the scurrilous and scandalous allegations levelled against the judges of this Court and no remorse being shown by any of the contemnors we are of the considered view that they cannot be let off leniently. It is obvious that this is a concerted effort to virtually hold the Judiciary to ransom. All three contemnors are sentenced to undergo simple imprisonment for a period of 3 months each with a fine of Rs. 2000. Court also held that Keeping in view the COVID-19 pandemic and the lockdown conditions we direct that this sentence shall come into force after 16 weeks from today when the contemnors should surrender before the Secretary General of this Court to undergo

the imprisonment. Otherwise, warrants for their arrest shall be issued. (Interim Application No 48502 of 2000 dt 4-5 2020 [CA NO. 2413/2020 (Arising out of SLP(C) No. 12892/2019) dt. 6/5/2020]
Vijay Kurle & Ors. (SC) www.itatonline.org.

S. 12 : Punishment for contempt of Court – Advocate – Deliberately using haste / scandalous speech against Supreme Court and entire judicial system – Guilty of criminal contempt of Supreme Court. [Constitution of India, Art. 19 (1), 129] 2588
Court held that when an Advocate will fully and deliberately using haste /scandalous speech against Supreme Court and entire Judicial system based on distorted facts amounts to committing of criminal contempt of Supreme Court hence not entitle to protection under Art 19 (1) of the Constitution. Court also observed that, if statement made by Citizen tends to undermine dignity and authority of Supreme Court, it would come in ambit of criminal contempt and when Supreme Court is exercising its inherent powers to issue of notice, it is not necessary to take consent of anybody,including Attorney General. (CP (Cri) No. 1 of 2020 dt 14-8-2020)
Suo Motu Contempt Petition In. Re. Prashant Bhushan and Another AIR 2020 SC 4074

Customs Act, 1962

2589 **S. 129A : Appeal – Appellate Tribunal – Limitation – The period of limitation of three months commences from the date on which the order sought to be appealed against is communicated and not from the date of decision of the Committee of Commissioners. [S.128A, 129,General Clauses Act, 1897, S. 3(35), Rule 12 of the Customs Valuation Rules, 2007, Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 Art. 226]**

Allowing the petition the Court held that the period of limitation of three months commences from the date on which the order sought to be appealed against is communicated and not from the date of decision of the Committee of Commissioners. Relied on various case laws on the subject. On facts the court held that the limitation period of three months which commenced on 8.12.2019 had expired on 18.03.2020. Accordingly the writ was allowed and directed to release the goods seized. WP-ASDB-LD-VC-237 of 2020 dt 15-9-2020)

Mangalnath Developers v. UOI ; MANU/MH/1274/2020 (Bom.)(HC) www.itatonline.org

Foreign Exchange Regulation Act, (FERA), 1973

S. 8 : Liability for Offense – Role played by in Company Affairs – Not designation or Status. [S. 51, 68] 2590

Modi Xerox Ltd. (MXL) was a Company registered under the Companies Act 1956 in the year 1983. Between the period 12.06.1985-21.11.1985, 20 remittances were made by the Company-MXL through its banker Standard Chartered Bank. The Reserve Bank of India issued a letter stating that despite reminder issued by the Authorised Dealer, MXL had not submitted the Exchange Control copy of the custom bills of Entry/Postal Wrappers as evidence of import of goods into India. Enforcement Directorate wrote to MXL in the year 1991-1993 for supplying invoices as well as purchase orders. MXL on 09.07.1993 provided for four transactions and Chartered Accountant's Certificates for balance 16 amounts for which MXL's Bankers were unable to trace old records dating back to 1985. MXL amalgamated and merged into Xerox Modicorp Ltd. (hereinafter referred to as "XMC") on 10.01.2000. A show-cause notice dated 19.02.2001 was issued by the Deputy Director, Enforcement Directorate to MXL and its Directors, including the appellant. The show cause notice required to show cause in writing as to why adjudication proceedings as contemplated in Section 51 of FERA should not be held against them. The Directorate of Enforcement decided to hold proceedings as contemplated in Section 51 of the FERA, 1973 read with Section 3 and 4 of Section 49 of FEMA and fixed 22.10.2003 for personal hearing. Notice dated 08.10.2003 was sent to MXL and its Directors.

In the reply the appellant stated that he is a practicing Advocate of the Supreme Court and was only a part-time, nonexecutive Director of MXL and he was never in the employment of the Company nor had executive role in the functions of the Company. It was further stated that the appellant was never in charge of nor ever responsible for the conduct of business of the Company. The Deputy Director, Enforcement Directorate after hearing the appellant, other Directors of the Company passed an order dated 31.03.2004 imposing a penalty of Rs.1,00,000/-on the appellant for contravention of Section 8(3) read with 8(4) and Section 68 of FERA, 1973.

Appeal was filed by the appellant before the Appellate Tribunal for Foreign Exchange which appeal came to be dismissed by the Appellate Tribunal on 26.03.2008. Criminal Appeal was filed by the appellant in Delhi High. The Delhi High Court by the impugned judgment dated 18.11.2009 has dismissed the appeal of the appellant.

The Hon'ble Supreme Court held that for proceeding against a Director of a company for contravention of provisions of FERA, 1973, the necessary ingredient for proceeding shall be that at the time offence was committed, the Director was in charge of and was responsible to the company for the conduct of the business of the company. The liability to be proceeded with for offence under Section 68 of FERA, 1973 depends on the role one plays in the affairs of the company and not on mere designation or status. (CA No. 2463 of 2014 dt 27-07-2020)

Shailendra Swarup v. The Deputy Director, Enforcement AIR 2020 SC 3890; MANU/SC/0544/2020 (SC) www.itatonline.org

Editorial : FERA, 1973 has been substituted with FEMA, 1999. Section 51 of FERA, 1973 is similar to section 13(1) of FEMA, 1999.

Hindu Succession Act, 1956

2591 **S. 6 : Equal right of a daughter in HUF – Devolution of interest in coparcenary property-Confers status of coparcener on daughters, even if born prior to the amendment, with effect from 9.9. 2005 – Amendment is retrospective. [Hindu Succession (Amendment) Act, 2005]**

Several appeals on the issue of retrospective effect of Section 6 of the Hindu Succession Act was filed before the Hon'ble Supreme Court. In one of the cases, One Ms. Vineeta Sharma (Appellant) filed a case against her two brothers viz. Mr. Rakesh Sharma & Satyendra Sharma, and her mother (Respondents). Sh. Dev Dutt Sharma (Father) had three sons, one daughter and a wife. He expired on December 11, 1999. One of his sons expired on July 1, 2001 (unmarried). The Appellant claimed that being the daughter she was entitled to ¼th share in the property of her father. The case of the Respondents was that after her marriage, she ceased to be a member of the Joint family. The Hon'ble High Court disposed off the appeal as the amendments of 2005 did not benefit the Appellant as the father of the Appellant passed away on December 11, 1999.

The Hon'ble Supreme Court held that the provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005 (date of amendment). (CA No. Diary No. 32601 of 2018 dt 11.08.2020)

Vineeta Sharma v. Rakesh Sharma & Ors. (2020) 9 SCC 1 (SC) www.itatonline.org / MANU/SC/0582/2020

Indian Contract Act, 1872

S. 56 : Agreement to do impossible Act – An agreement to do an impossible Act is void – Doctrine of "Force Majeure" & "Frustration of Contract" – The effect of the doctrine of frustration is that it discharges all the parties from future obligations. [Arbitration and Conciliation Act, 1996, S. 37] 2592

Under Indian contract law, the consequences of a force majeure event are provided for u/s 56 of the Contract Act, which states that on the occurrence of an event which renders the performance impossible, the contract becomes void thereafter. When the parties have not provided for what would take place when an event which renders the performance of the contract impossible, then S. 56 of the Contract Act applies. The effect of the doctrine of frustration is that it discharges all the parties from future obligations. Order of High Court setting aside the award is affirmed. (CA No. 673 of 2012 dt 11-05-2020

South East Asia Marine v. Oil India Ltd. AIR 2020 SC 2323; (2020) 5 SCC 164; MANU/SC/0441/2020 (SC) www.itatonline.org

Indian Evidence Act, 1872

2593 **S. 65B : Evidence – Electronic records – Certificate under Section 65B(4) – Not necessary if original document is itself produced. [Information Technology Act, 2000, S.3]**

Two election petitions were filed by the present Respondents before the Bombay High Court challenging the election of the present Appellant, namely, Shri Arjun Panditrao Khotkar to the Maharashtra State Legislative Assembly for the term commencing November, 2014. The entirety of the case before the High Court had revolved around four sets of nomination papers that had been filed by the Appellant. It was the case of the present Respondents that each set of nomination papers suffered from defects of a substantial nature and that, therefore, all four sets of nomination papers, having been improperly accepted by the Returning Officer of the Election Commission and the election of the Appellant be declared void. In particular, it was the contention of the present Respondents that the late presentation of Nomination Form inasmuch as they were filed by the RC after the stipulated time of 3.00 p.m. on 27.09.2014, hence such nomination forms not being filed in accordance with the law, and ought to have been rejected.

The Respondents sought to rely upon video-camera arrangements that were made both inside and outside the office of the Returning Officer (RO). According to the Respondents, the nomination papers were only offered at 3.53 p.m. (i.e. beyond 3.00 p.m.), as a result of which it was clear that they had been filed out of time. A specific complaint making this objection was submitted by Shri Kailash Kishanrao Gorantyal before the RO on 28.09.2014 at 11.00 a.m., in which it was requested that the RO reject the nomination forms that had been improperly accepted. This request was rejected by the RO on the same day, stating that the nomination forms had, in fact, been filed within time. the High Court, by its order dated 16.03.2016, ordered the Election Commission and the concerned officers to produce the entire record of the election of this Constituency, including the original video recordings. A specific order was made that this electronic record needs to be produced along with the 'necessary certificates'. The Court held that the CDs that were produced by the Election Commission could not be treated as an original record and would, therefore, have to be proved by means of secondary evidence. Finding that no written certificate as is required by Section 65-B(4) of the Evidence Act was furnished by any of the election officials.

The Hon'ble Supreme Court held that certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. (CA No. 20825-20826 of 2017 14.07.2020)

Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. (SC), www.itatonline.org / MANU/SC/0521/2020

Indian Partnership Act, 1932

S. 37 : Rights of outgoing partner in certain cases to share subsequent profits – Retirement – Dissolution – Mode of settlement of accounts – When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm. [S.48] 2594

There is a clear distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. On retirement of the partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act. When the partners agree to dissolve a partnership, it is a case of dissolution and not retirement A partnership firm must have at least two partners. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm. Accounts to be settled as it amounts to dissolution of firm. Trial Court was directed to pass the final decree in accordance with law.(CANOS. 6659-6660 of 2010 dt 26-5-2020)

Guru Nanak Industries v. Amar Singh, Through LRS; AIR 2020 SC 2484; MANU/SC/0453/2020 (SC ; www.itatonline.org.

Indian Registration Act, 1908

2595 **S. 17 : Unregistered Document – Recording of memorandum of family Settlement prepared after the family arrangement does not require registration.**

She suit was filed by the predecessor of the appellants herein Harbans Singh, son of Niranjan Singh, against his real brothers Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) for a declaration that he was the exclusive owner in respect of land. He asserted that there was a family settlement with the intervention of respectable persons and family members, whereunder his ownership and possession in respect of the suit land including the constructions thereon. It is stated that in the year 1970 after the purchase of suit land, some dispute arose between the brothers regarding the suit land and in a family settlement arrived at then, it was clearly understood that the plaintiff-Harbans Singh would be the owner of the suit property including constructions thereon and that the name of Mohan Singh (original defendant No. 1) and Sohan Singh (original defendant No. 2) respectively would continue to exist in the revenue record as owners to the extent of half share and the plaintiff would have no objection in that regard due to close relationship between the parties. However, the defendants raised dispute claiming half share in respect of which Harbans Singh (plaintiff) was accepted and acknowledged to be the exclusive owner and as a result of which it was decided to prepare a memorandum of family settlement incorporating the terms already settled between the parties. The stated memorandum was executed by all parties on 10.3.1988. However, after execution of the memorandum of family settlement dated 10.3.1988, the defendants once again raised new issues to resile from the family arrangement. One of the issues raised was whether there was any family settlement between the parties on 10.3.1988 and memo of family settlement was executed by parties on that day?

The Hon'ble Supreme Court held that that document dated 10.3.1988 executed between the parties was merely a memorandum of settlement, and it did not require registration. (CA No. 7764 of 2014, 31-07 2020)

Ravinder Kaur Grewal & Ors. v. Manjit Kaur 6& Ors (SC) MANU/SC/0570/2020 / www.itatonline.org.

Insolvency & Bankruptcy Code, 2016

S. 14 : Moratorium – Proceedings for declaration of wilful defaulter can continue pending moratorium under the IBC Law – Writ petition dismissed. [S. 29, 39, Art. 226] 2596

The Calcutta high court in the case of *Sandip Kumar Bajaj & Ors v. SBI in WP No 236 of 2020 on 15/9/2020* was considering challenge to a show cause notice issued by State Bank of India for declaring the petitioner herein as a Wilful defaulter which was challenged interalia on the ground that the same could not have been continued in view of moratorium granted under the IBC Law. The court noted that the scheme framed by the RBI was to identify events of wilful default by borrowers where the particular unit has defaulted in its payment obligations to the lender despite having a capacity to pay or has diverted the borrowed funds for some other purpose other than the specific purpose for which the funds were made available. The scheme evolved a mechanism of identifying such defaults by various methods of monitoring and prevention. Section 14(3)(b) of Insolvency code provides that the prohibition on institution or continuation of suits and other proceedings against the corporate debtor do not extend to a surety and relating on the decision of the Apex Court in the case of *State Bank of India v. Jen Developers Pvt ltd (2019) 6 SCC 787 (SC)* where the apex court held that the proceedings under the Master Circular, being essentially in the nature of in-house proceedings and of an administrative character, cannot permit legal representation, dismissed the writ petition. (WP No 236 of 2020 dt 15/9/2020)

Sandip Kumar Bajaj & Ors. v. SBI ; MANU/WB/0662/2020 (Cal.)(HC) www.itatonline.org

Indian Succession Act, 1925

2597 **S. 32 : Devolution of such property – Partition – Family and Personal Laws – Relinquishment of right – Accepting money and ornaments in lieu of share in family property – Not entitle to claim share in family property thereafter. [S. 33]**

Court held that when one member of family has accepted the money and ornaments in lieu of share in family property, the party concerned or his /her heirs not entitle to claim share in family property thereafter. (CA No. 7207-208 of 2008 dt 2-7-2019)

Pharez Johan Abraham (Dead) by Legal Representatives v. Arul Jothi Sivasubramaniam K. & Ors. (2020) 13 SCC 711

Limitation Act, 1963

Appeal-Supreme Court – Condonation of delay – The special leave petition has been filed after a delay of 387 days with further delay of 302 days in refiling – This is one more case which we have defined as "Certificate Cases" – Administration directed to hold an inquiry into the aspect as to who is responsible for such inordinate delay and take suitable action against the officers concerned. [Limitation Act, 1963, S.5] 2598

The special leave petition has been filed after a delay of 387 days with further delay of 302 days in refiling. This is one more case which we have defined as "Certificate Cases". There are large gaps which are unexplained. It is not known whether any action was taken against the officers who are responsible for the inordinate delay. The highest Court cannot be a walk in place to file any time irrespective of period of limitation prescribed. To blame it on the inefficiency of the administration is no more good excuse. Administration directed to hold an inquiry into the aspect as to who is responsible for such inordinate delay and take suitable action against the officers concerned (*Post Master General v. Living Media (2012) 3 SCC 563* referred). SLP is dismissed. The compliance report be filed within six weeks and the Registrar to ensure that the same is taken on record.(SLP NO. 3097/2018, dt. 17.01.2020)

Administrator, Jammu Municipality & Anr. v. Swarn Theatre and Ors. MANU/SCOR/04882/2020 (SC); www.itatonline.org

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (20 of 1964)

2599 **S. 2(1)(a) : Agricultural produce – Sugar – Edible oil and Vanaspati – Agricultural produce.**

As per definition, it includes all produce (Whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in Schedule. Accordingly sugar is agricultural produce. Similarly Edible oil and Vanaspati is also agricultural produce. (CA No. 1746 of 2010 dt 24-1-2019)

Britannia Industries Ltd. v. Bombay Agricultural produce Marketing Committee (2020) 11 SCC 623

Protection of Women from Domestic Violence Act 2005

S. 2(s) : Shared household – Right to stay/reside in the shared household – Daughter in law-gratuitous licences – Order of High Court affirmed. [CPC 151, Hindu Succession Act 2005] 2600

One of the issue for consideration was, whether definition of shared household under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share? Honourable Supreme Court dismissed the appeal of father in law where interalia it was argued that the house property where daughter in law was staying since marriage was not a shared household as the said house was not a joint family property and belonged to father in law exclusively. Court also held that High Court has rightly set aside the decree of the Trial Court and remanded the matter for fresh adjudication.

(Editorial : The judgement has laid down several other principles)

(CA No.2483 of 2020 (SLP (C) No. 1048 of 2020 dt.15-10-2020)

Satish Chnadra Ahuja v. Sneha Ahuja ; AIR 2020 SC 5397; (2021) 1 SCC 414; MANU/SC/0767/2020 (SC) www.itatonline.org.

Prohibition of Benami Property Transactions Act, 1988

2601 **S. 2(9) : Benami transactions – Where son sought to obtain a declaration of being real and/or benami owner of property on ground that he had given money to his father and mother to purchase property which they got registered in their name but actually property belonged to him, however, no particulars of father and mother standing in any fiduciary capacity to son were disclosed, son would not be entitled to obtain a declaration of being real and/or benami owner of property.**

Benami transaction means a transaction or an arrangement where a property is transferred to, or is held by, a person, and consideration for such property has been provided, or paid by, another person; and property is held for immediate or future benefit, direct or indirect, of person who has provided consideration. Prohibition of Benami Property Transactions Act, 1988, prior to its amendment and now, bars a suit, claim or action, to enforce any right in respect of any property held benami against person in whose name property is held or any other person, by or on behalf of a person claiming to be real owner of such property. Son sought to obtain a declaration of being real and/or benami owner of property for partition of which suit was filed on ground that he had given money to his father and mother to purchase property which they got registered in their name but actually property belonged to him. However, though parent may be a trustee of a minor son but not of a major son and thus question of transaction being within exception to benami did not arise and thus son could not have taken plea that his father and mother were holding property in trust or for its benefit. Further, no particulars of father and mother standing in any fiduciary capacity to son were disclosed. Therefore, there was no cause of action or entitlement of son to obtain a declaration of being real and/or benami owner of property.

Vinay Khanna v. Krishna Kumari Khanna (2020) 270 Taxman 34 (Delhi)(HC)

2602 **S. 2(9)(a) : Benami – No Procedure For Declaring Property Benami under Act of 1988 – Amendment Act not made retrospective – Prosecution in respect of Transaction In 2011 is held to be not valid. [Benami Transactions (Prohibition) Act, 1988, 3, 5, 8, General Clauses Act, 1897, S. 6(c)]**

The 2016 amendment is a new legislation and in order to have retrospectivity it should have been specifically provided therein that it was intended to cover contraventions at an earlier point of time. That express provision is not there. Section 6(c) of the General Clauses Act, 1897 lays down that repeal of an enactment, which necessarily includes an amendment, would not affect "any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed", unless a different intention is expressed by the Legislature. A declaration that the property was benami could not have been made unless a procedure was prescribed by rules made under section 8 of the 1988 Act. No rules under that section were ever made. Hence, although the Act was entered in the statute book, it was an Act on paper only and inoperative. By the addition of Chapter III to the Act by the Amendment Act of 2016, an Adjudicating

Authority and its composition, jurisdiction and powers were provided. Accordingly the Court held that applying the definition of benami property and benami transaction the Central Government could not, on the basis of 2016 amendment, allege contravention and start the prosecution in respect of a transaction in 2011.
Ganpati Dealcom Pvt. Ltd. v. UOI (2019) 106 CCH 0420 / (2020) 421 ITR 483 / 269 Taxman 489 (Cal.)(HC)

S. 3 : Prohibition of benami transactions – Right to recover property held benami – Onus of establishing that a transaction is benami is upon one who asserts it. [S. 4] 2603
Dismissing the appeal the Court held that benami transactions are forbidden by reason of section 3 however no action lies, nor can any defense in a suit be taken, based on any benami transaction in terms of section 4 and onus of establishing that a transaction is benami is upon one who asserts it. Accordingly the order of High Court is affirmed. Referred *Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100.*
Fair Communication & Consultants v. Surendra Kardile (2020) 269 Taxman 453 (SC)

S. 24 : Notice and attachment of property – Provisions of Act providing for confiscation of properties found to be 'Benami' could be applied in respect of transactions carried out prior to 1-11-2016, i.e. date on which amended provision of law by virtue of Amendment Act, 2016 came into force. 2604
High Court held that provisions of Act providing for confiscation of properties found to be 'Benami' could be applied in respect of transactions carried out prior to 1-11-2016, i.e. date on which amended provision of law by virtue of Amendment Act, 2016 came into force.
Tulsiram v. Asst. CIT (Benami Prohibition) (2020) 270 Taxman 309 (Chhattisgarh)(HC)

S. 26 : Adjudication of benami property – Appeal – Show cause notice – Not an order appeal is not maintainable. [S. 26(1), 46, Art. 226] 2605
Initiating Officer, in instant writ petition, challenged order of Appellate Tribunal on ground that no appeal could have been filed before Appellate Tribunal against show-cause notice issued by Adjudicating Authority under section 26(1). High Court held that since appeal to an Appellate Tribunal lies only from 'an order of Adjudicating Authority' under section 26(3) and said show-cause notice does not-constitute 'an order', jurisdiction of Appellate Tribunal to entertain challenge to said show-cause notice was to be held in doubt.
Initiating Officer v. Appellate Tribunal under the Prohibition of Benami Property Transactions, Act, 1988 (2020) 272 Taxman 166 (Delhi)(HC)

Right to Information Act, 2005

2606 **S. 2(j) : Right to information – Tax Informer-Tax evasion petition – Not entitled to information regarding progress of investigation following his report. [Black Money (Criminal Procedure Code, S. 482, Undisclosed Foreign Income and Assets) and Imposition of Tax Rules Act, 2015, S. 51, 55]**

Allowing the petition the Court held that the application filed by respondent No. 1 before the Additional Chief Metropolitan Magistrate was without the provisions of either the Code of Criminal Procedure, 1973 or the Income-tax Act, 1961 and was bad in law. Moreover, the orders passed by the judge were illegal, perverse and without jurisdiction. *PDIT(Inv.) v. Rajiv Yaduvanshi (2020) 429 ITR 369 (Delhi)(HC)*

Specific Relief Act, 1963

S. 12 : Specific performance of part of Contract – The onus of proof lies on the party who makes an allegation – Time is not of essence to agreements for sale of immovable property, unless the agreement specifically and expressly incorporates the consequence of cancellation of the agreement, upon failure to comply with a term within the stipulated date. [S. 10, 11(2), 14, Limitation Act, 1963, S. 21(1)] 2607

Dismissing the petition the Court held that the relief of specific performance of an agreement, was at all material times, equitable, discretionary relief, governed by the provisions of the Specific Relief Act 1963, hereinafter referred to as S.R.A. Even though the power of the Court to direct specific performance of an agreement may have been discretionary, such power could not be arbitrary. The discretion had necessarily to be exercised in accordance with sound and reasonable judicial principles. Where a party to the contract is unable to perform the whole of his part of the contract, the Court may, in the circumstances mentioned in Section 12 of the S.R.A., direct the specific performance of so much of the contract, as can be performed, particularly where the value of the part of the contract left unperformed would be small in proportion to the total value of the contract and admits of compensation On facts a major portion of the full consideration, that is, Rs.45,000/-had already been paid by the Vendor to the Vendee and the Vendor had been ready to and had offered to pay the entire balance consideration to the Vendor. However, the Vendor purported to sell 100 square yards of the suit land to Pratap Reddy by executing a registered deed of conveyance in his favour. A transferee to whom the subject matter of a sale agreement or part thereof is transferred, is a necessary party to a suit for specific performance. Unfortunately, the Vendee omitted to implead Pratap Reddy. By the time she filed an application to implead Pratap Reddy, in 1989, the suit for specific performance of the agreement dated 21.3.1984 had become barred by limitation as against Pratap Reddy. Under the Limitation Act 1963 the period of limitation for filing a suit for specific performance is three years from the date fixed for performance of the contract, or if no date is fixed, then three years from the date on which the Vendee is put to notice of refusal to perform the agreement (Item No.54 in Part II of the Schedule to the Limitation Act 1963). The Vendee was put to notice of the refusal of the Vendor to execute the agreement dated 21.3.1984, by the Vendor's letter/legal notice dated 20.6.1984. Any suit for specific performance would be time barred by June/July 1987. Moreover, it is a matter of record that the Vendee knew of the registered deed of conveyance in favour of Pratap Reddy, when she instituted the suit in 1984. The Vendee neither amended her pleadings in the plaint nor amended the prayers. Pratap Reddy was simply added defendant. The Court adding Pratap Reddy as defendant in the suit for specific performance, did not make any direction in terms of the proviso to Section 21(1) of the Limitation Act, that the suit against Pratap Reddy be deemed to be instituted at any earlier date. There could therefore be no question of any relief against Pratap Reddy in the suit for specific performance. There could be no question of a document being adjudged null and void without impleading the executant of the document, as defendant. The suit for specific performance being time barred against Pratap Reddy, and the suit against Pratap Reddy also having been dismissed for

non joinder of the Vendor, there could be no question of nullifying the rights that had accrued to Pratap Reddy, pursuant to the Deed of Conveyance dated 25.4.1984 executed by the Vendor transferring 100 sq. yards of the suit land to Pratap Reddy. Moreover, there was apparently an agreement in writing executed between the Vendor and Pratap Reddy on or about 25.01.1984 before execution of the agreement between the Vendor and the Vendee.

86. Since title in respect of 100 square yards had passed to Pratap Reddy and the suit for specific performance was barred by limitation, the Trial Court was constrained to decree the suit for specific performance in part. and direct that a Deed of Conveyance be executed in respect of the balance 200 square yards of the suit land, under the ownership and control of the Vendor. Section 12 of the SRA is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed, in a case like this. To hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same.. Section 12 has to be construed in a liberal, purposive manner that is fair and promotes justice. A contractee who frustrates a contract deliberately by his own wrongful acts cannot be permitted to escape scot free. 89. After having entered into an agreement for sale of 300 Sq. yards of land, with her eyes open, and accepted a major part of the consideration (Rs.45,000/- out of Rs.75,000/-) it does not lie in the mouth of the Vendor to contend that the contract should not have specifically been enforced in part in respect of the balance 200 sq. yards meters of the suit land which the Vendor still owned. It is patently obvious that the Vendor did not disclose any earlier agreement to the Vendee, as discussed above. The agreement in writing dated 21.3.1984, does not bear reference to any earlier agreement, as noted above. Since we have upheld the dismissal of Suit No.92/1993 filed by the Appellant against Pratap Reddy, it is not really necessary to go into the question of whether the said suit was barred under Order II Rule 2 of the Civil Procedure Code. (CA No. 3574 of 2009, dt. 18-9 2020

B. Santoshamma v. D. Sarala; MANU/SC/0698/2020; (SC), www.itatonline.org

Circulars, Notifications & Articles

Finance Bill, Act, Circulars, Notifications, Schems etc

BILLS :
Budget Speech of Minister of Finance for 2020-21

Part A (2020) 420 ITR 115 (St.)

Part B (2020) 420 ITR 140 (St.)

Finance Bill, 2020 (2020) 420 ITR 164 (St.)

Finance Bill, 2020-Notes on clauses (2020) 420 ITR 249 (St.)

Finance Bill, 2020-Memorandum explaining the provisions in the Finance Bill, 2020-(2020) 420 ITR 326 (St.)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (Act. No. 38 of 2020) (2020) 428 ITR 29 (St.).

Acts : Finance Act, 2020 (Received the Assent of the President on the 27 th March 2020), (2020) 422 ITR 25 (St.)

Acts: Repealing and Amending, Act, 2019 (No. 31 of 2019) (Assent of the President on 8 th August, 2019-An Act to repeal certain other enactments (2020) 425 ITR 4 (St.)

Acts : Direct Tax Vivad Se Vishwas Act, 2020 (Received the Assent of the President on the 17th March, 2020), (2020) 422 ITR 121 (St.)

CIRCULARS :

Circular No 7 of 2018 dated 20th December 2018-Condonation of delay under section 119 (2) (b) of the Income-tax Act, 1961 in fling of form No 10 and form no 9A for the assessment year 2016-17 (2020) 420 ITR 389 (St.)

Circular No 30 of 2019, dated 17th December, 2019-Condonation of delay under section 119 (2) (b) of the Act in filing of Form No. 9A and Form No. 10 for the assessment year 2017-2018-Extension of applicability of circular No.7 of 2018-Reg. (2020) 420 ITR 390 (St.)

Circular dated 31st December 2019-Public consultation on the proposal for amendment of Income-tax Rules, 1962, to insert new rule 29BA and Form 15E to give effect to the amendment in section 195 of the Income-tax Act, 1961 (the Act) vide Finance (No 2) Act, 2019-Reg. (2020) 420 ITR 27 (St.)

Circular No. 1 of 2020 dt. 30-1-2020-Relaxation of time-Compounding of offences under Direct Tax laws-One time measure-Extension of time-Reg. (2020) 420 ITR 26 (St.)

Circular No. 2 of 2020 dt. 3-01-2020-Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No.10B for the assessment year 2018-19 and subsequent years-Reg. (2020) 420 ITR 38 (St.)

Circular No. 3 of 2020 dated 3-01-2020-Condonation of delay under section 119 (2) of the Income-tax Act, 1961 in filing of form No 10 and form no 9A for the assessment year 2018-19 and subsequent years-Reg. (2020) 420 ITR 391 (St.)

Circular No. 4 of 2020 dt. 16-01-2020-Income-tax deduction from salaries during the financial year 2019-20 under section 192 of the Income-tax Act, 1961. (2020) 420 ITR 40 (St.)

Circular No. 6 of 2020, dated 19th February-Condonation of delay under section 119(2) (b) of the Income-tax Act, 1961 in filing of return of income for the assessment years 2016-17, 2017-18 and 2018-19 and from No 9A and form No 10-Reg. (2020) 421 ITR 31 (St.)

Circular No. 7 of 2020 dated 4 th March 2020-Clarifications on provisions of the Direct Tax Vivad Se Viahwas Bill 2020-Reg. (2020) 422 ITR 8 (St.)

Circular dated 5th March, 2020-Corrigendum to Circular No. 4 of 2020 dt 16-1-2020-Income-tax deduction from salaries during the financial year 2019-2020 under section 192 of the Income-tax Act, 1961. (2020) 422 ITR 23 (St.)
Circular No. 8 of 2020, dated 13 th April, 2020-Clarification regarding short deduction of TDS/TCS due to increase in regards of surcharge by Finance (No 2) Act, 2019-regarding. (2020) 422 ITR 153 (St.)

Circular No. 9 of 2020, dated 22nd April 2020-Clarification on provisions of Direct Tax Vivad Se Vishwas Act, 2020. (2020) 422 ITR 131 (St.)

Circulars / MAP Guidance / 2020 (Foreign Tax and Tax Research Division) Circular dated 7th August, 2020. (2020) 426 ITR 1 (St.)

Circular No. 10 of 2020 dated 24th April, 2020-Order under section 119 of the Income-tax Act, 1961. (2020) 423 ITR 39 (St.)

Circular No. 11 of 2020 dated May 8, 2020-Clarification in respect of residency under section 6 of the Income-tax Act, 1961. (2020) 423 ITR 40 (St.)

Circular dated 31st March 2020-Order under section 119 of the Income-tax Act, 1961, on issue of certificate for lower rate /nil deduction / collection of TDS or TCS under sections 195, 197 and 206C (9)-reg. (2020) 423 ITR 47 (St.)

Circular No. 12 of 2020 dated 20th May, 2020-Clarification in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961-reg. (2020) 423 ITR 41 (St.)

Circular No. CI of 2020 dated April 13, 2020-Clarification in respect of option under section 115BAC of the Income-tax Act, 1961. (2020) 423 ITR 42 (St.)
Circular No. 13 of 2020 dated 13-7-2020-One time relaxation for verification of tax-returns for the assessment years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-2020 which are pending due to non-filing of ITR-V form and processing of such returns-Reg.

Circular No. 16 of 2020, dated 30 th August 2020-Imposition of charge on the prescribed electronic modes under section 269SU of the Income-tax Act, 1961-Reg. (2020) 427 ITR 334 (St.).

Circular No. 17 of 2020 dated 29 th September, 2020-Guidelines under section 194-0 and section 206(1-1) of the Income-tax Act, 1961,-reg. (2020) 428 ITR 78 (St.)

Circular No. 18 of 2020, dated 28th October, 2020-Clarifications in respect of the Direct Tax Vivad Se Vishwas Act, 2020-Reg. (2020) 428 ITR 104 (St.).

Circular No. 19 of 2020, dated, 3rd November, 2020-Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No.10BB for the Assessment year 2016-17 and subsequent years-Reg. (2020) 428 ITR 119 (St.).

NOTIFICATIONS :

Finance Act, 2016 : Notification under proviso to sub-section (1) of section 187 : Time for payment of tax, surcharge and penalty on undisclosed income notified (2020) 420 ITR 38 (St.)

S.139AA(2) : Mandatory quoting of Aadhaar number for filing of return of income (2020) 420 ITR 37 (St.)

Notifications : Notification dated, 18 th March, 2020-Notification of "Designated authority" under the Direct Tax Vivad Se Vishwas Act, 2020-Reg. (2020) 422 ITR 152 (St.)

Notification dated 18th March, 2020-Notification dated, 18th March, 2020-Notification of "Designated authority" under the Direct Tax Vivad Se Vishwas Act, 2020-Reg. (2020) 423 ITR 44 (St.)

E. assessment Scheme, 2019 - Notification No. S.O. 3264 (E), dated 12 the September, 2019 – [Notification No. 61/ 2019 /F.No 370149/154/2019-TPL] (2019) 417 ITR 12 (St)

E. assessment Scheme, 2019 - Notification No. S.O. 3265(E), dated 12th, September, 2019 [Notification No 62 / 2019 /F.No 370149/154/ 2019-TPL](2019 437 ITR 29 (St)
Notification under section 143(3A): E-assessment Scheme, 2019 : Amendments - Notification No. S.O. 2745 (E), dated 13 the August, 2020 (Notification No .60 /2020 /F. No. 370149/154/ 2019-TPL (2020) 426 ITR 18 (St)

Notification under section 143(3B) : Directions to E. assessment Scheme, 2019 : Amendments – Notification No. S.O. 2746 (E), dated 13th August 2020 [Notification No. 61/ 2020/F No. 370149/154/2019 -TPL] (2020) 426 ITR 25 (St)

CBDT order dt 13th August, 2020 – F No. 187/3/2020-ITA-I (Expalinunh the Scheme)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (Act. No. 38 of 2020), Notification under section 3(1) : Time limit for furnishing of return notified. Notification No. S.O. 3906(E), dated 29th October, 2020 (2020) 428 ITR 106 (St.).

THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

List of important dates and events under the Direct Tax Vivad Se Vishwas Act, 2020

Sr. No.	Date	Particulars
1.	January 31, 2020	Specified date as defined under the VSVA
2.	February 1, 2020	The Union Finance Minister Nirmala Sitharaman during her budget speech on February 1, 2020 (2020) **420 ITR 115 (St) (146)** proposed to introduce a scheme at para 126 of the speech.
3.	February 5, 2020	The Bill is formally presented before the Parliament.
4.	February 12, 2020	The Cabinet approved certain amendments with a view to widen the scope of the Bill.
5.	March 4, 2020	Central Board of Direct Taxes **(CBDT)** vide **Circular No. 7 of 2020 (2020) 422 ITR 8 (St)** provided clarifications on provisions of VSV in the form of FAQs.
6.	March 4, 2020	VSV Bill, 2020 **(2020) 421 ITR (St) 21** passed in the Lok Sabha
7.	March 5, 2020	Press Release: CBDT issues FAQs on Direct Tax Vivad se Vishwas Scheme, 2020.
8.	March 13, 2020	VSV Bill, 2020 receives a nod from the Rajya Sabha
9.	March 17, 2020	VSV Bill, 2020 receives a nod from the President

Sr. No.	Date	Particulars
10.	March 17, 2020	VSVA (2020) **422 ITR 121 (St)** comes into force
11.	March 18, 2020	VSV Rules, 2020 are notified **(2020) 423 ITR 1 (St)** Notification of designated Authority **(S.120(1), 120(2) (2020) 422 ITR 152 (St)**
12.	April 22, 2020	CBDT issues Circular No. 9 of 2020 **(2020) 422 ITR 131 (St)** thereby Circular 7 of 2020 stands withdrawn.
13.	June 30, 2020	Cut-off date for beneficial payment under the VSVA extended by Finance Ministry in view of COVID-19 as per Press Release dated March 24, 2020. (Previously the date was March 31, 2020)
14.	October 28, 2021	CBDT issues Circular No. 18 of 2020 dated October 28, 2020 **428 ITR (St) 104** relaxing the period of 15 days from the date of issuance of Form 3 to make the payment under the Scheme
15.	December 4, 2020	CBDT issues Circular 21 of 2020 **(2020) 429 ITR (St) 001** with a view to provide further clarifications
16.	December 31, 2020	Cut-off date for declaration & beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 35 of 2020 dated June 24, 2020 **(2020) 425 ITR (St) 26**
17.	March 31, 2021	Cut-off date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Circular No. 18 of 2020 dated October 28, 2020 **(2020) 428 ITR (St) 104.**
18.	January 31, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Press Release dated December 30, 2020 and Notification No. 92 of 2020 dated December 31, 2020 **(2021) 430 ITR (St) 30.**
19.	February 01, 2021	Finance Bill, 2021 **(2021) (430) ITR (St) 74** wherein certain provisions of VSVA are proposed to amended, to exclude any Writ/SLP against the Order of the Settlement Commission. Clarification on the amendments is contained in the Memorandum Explaining the provisions in the Finance Bill, 2021 **(2021) 430 ITR (St) 214.**
20.	February 28, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Notification No. 04 of 2021 dated January 31, 2021 **431 ITR (St) 18**
21.	March 04, 2021	CBDT Circular No. 3 of 2021 dated March 04, 2021, (2021) **432 ITR (St) 10** wherein Ld. Assessing Officers are directed to pass orders giving consequential reliefs.

Sr. No.	Date	Particulars
22.	March 23, 2021	CBDT Circular No. 4 of 2021 dated March 23, 2021, **(2021) 432 ITR (St) 50** wherein, the term "search cases" arising from FAQ 70 contained in Circular No. 21 of 2020, is clarified.
23.	March 31, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Notification No. 09 of 2021 dated February 26, 2021 **(2021) 432 ITR (St) 13.**
24.	April 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 09 of 2021 dated February 26, 2021
25.	June 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.39 of 2021 dated April 27, 2021
26.	August 31, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.75 of 2021 dated June 25, 2021 **(2021) 435 ITR (St) 25**
27.	September 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 94 of 2021 dated August 31, 2021 **(2021) 437 ITR (St) 13**
28.	October 31, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.75 of 2021 dated June 25, 2021 **(2021) 435 ITR (St) 25**

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DIGEST OF CASE LAWS
DIRECT TAXES

Salient features

- The cases are digested section wise very briefly, carving ratio of the decision without discussing on facts in the descending order of relevance, i.e., Supreme Court, High Courts, Tribunal and Authority for Advance Ruling.
- Most of the cases reported in the year 2020 from ITRs, 420 to 429, Taxman 268 to 275, CTR 312 to 317, DTR 185 to 196
- Most of the cases reported in the year 2020 from ITD 179 ITD to 185, TTJ 203 TTJ 208, ITR (Trib), 77 ITR to 84, DTR 185 to 196
- Case laws reported in www.itatonline.org.
- Wherever an SLP is admitted or rejected, the reference is provided as editorial.
- Case law index is provided in alphabetical order.
- Wealth tax, Gift tax, etc is also arranged section wise.
- Interpretation of taxing statues are digested in a separate chapter.
- Allied laws are arranged in alphabetical order.
- Reference to circulars and notifications are arranged number wise and date wise.
- Reference to Articles are arranged section wise and also subject wise.